



Land Development Committee Agenda

October 8, 2024 at 4:30 PM

Land Development Committee

Jay Shatz, Chair
Bob Rosen
Dara Wood

Staff Liaison

Scot Lahrmer, Village Manager
Chris Fritsch, Zoning and Project
Administrator

MINUTES

1. Approval of minutes: September 18, 2024

TOPICS OF DISCUSSION

1. Review a purchase contract for land at the North Site

ADJOURNMENT

LAND DEVELOPMENT COMMITTEE MEETING

September 18, 2024

In attendance:

Jay Shatz

Robert Rosen

Dara Wood

Scot Lahrmer

Meeting called to order and Committee approved minutes from last meeting with no revisions.

The Port Authority, along with representatives from Colliers Greater Cincinnati provided an update on the marketing of Cincinnati Centerpoint (2100 Section Road) and any potential interest from buyers.

In summary, the report outlined how the sales strategy has shifted to include offering to divide the site to capture 2 Advanced Manufacturing operations instead of just one. However, the revenue generating goals of a sale and tenant with a robust payroll have not changed. There is currently no buyer interest to report in the site.

Public discussion included questioning the types of prospects being sought and the Port's continued focus on securing "a good neighbor" who will have limited impact on the adjacent Amberley neighborhoods and provide a revenue stream to the Village to help replace the yearly \$1,000,000 in payroll tax lost when Gibson left the site. The Port and Colliers assured the Village finding a purchaser(s) for the site remains a high priority.

Next, the committee reviewed proposed changes to updating the AG Conservation and Land Use studies to include resident surveys focusing on possible construction of a park at AG that Chair Shatz presented at the August 27th meeting. Discussion from committee members and the public covered a variety of topics resulting in additional language to assure the surveying included resident input on paying for a potential park in the event there is resident interest.

Attached is the revised resolution that passed unanimously by committee and is headed to Council for approval.

Chairman Shatz encouraged all residents who have comments or questions about AG to contact him or committee members to keep an open line of discussion.

Chair Shatz adjourned the meeting.

DRAFT

Resolution by LD Shatz:

Update the AG Conservation Study of Fall 2020 to include creation of a park in Amberley Green that increases the quality of life for all residents young and old and adds value to living in Amberley.

This resolution, if approved by the committee and Council, would authorize the Village Manager to hire a firm with expertise in urban design and planning to update the study and offer recommendations based on the following input:

1. Conduct a robust and extensive survey of Amberley residents using multiple channels of contact. These include, but are not limited to “Open Houses”, digital surveys, virtual opportunities, focus groups and a variety of methods to best reach across all demographic groups and reach the highest number of residents.
2. This surveying will ask residents their opinions on what (if any) park development they would like to see part of future development within Amberley Green and how to pay for it.
3. Prior to conducting the survey, the vendor hired will meet with Council and the Village Manager in open working session.
4. Final Deliverable: an updated AG Visioning Study, including an addendum listing detailed survey results.

ADDENDUM TO PURCHASE CONTRACT

This Addendum to Purchase Contract (the “Addendum”) is made effective as of the last date of execution (the “Effective Date”), by and between **INTEGRITY GREEN LANDSCAPING, LLC**, an Ohio limited liability company, its successors or assigns (“Buyer), and **AMBERLEY VILLAGE, OHIO**, an Ohio municipal corporation (“Seller” and sometimes referred to as the “Village”). The Buyer and the Seller may be referred to herein as a “Party” or, collectively, as the “Parties.”

RECITALS

A. Seller has determined it to be a public purpose for certain long-term strategic economic development and planning efforts to enter into an agreement with the Buyer, for future development plans in the area known as North Site (as described in Recital D below) which includes a portion of the Property, as defined in Article 2 below, and intends to make a good faith effort to preserve or create jobs and employment opportunities within the Village through the development of North Site.

B. Purchase and Seller are parties to that certain “Contract to Purchase-Land Commercial-Industrial-Investment,” with an effective date of _____ (the “Purchase Contract”), on a form adopted by the Commercial Real Estate Council of Greater Cincinnati for exclusive use by REALTORS®.

C. Buyer proposes a +/- 5.29 acre development to specifically achieve the construction and operation of a warehouse and office with accessory outdoor equipment and inventory storage, (the “Project”). The Project is expected to consist of two buildings totaling approximately 14,080 square feet, and result in the creation of an initial 23 jobs with associated payroll of approximately \$689,660.14 (2023), with projected payroll for 2024 to be \$900,000.00.

D. Seller owns certain real property consisting of approximately 20.096 acres, more or less, of land. The land is located in Hamilton County, Ohio. Said land and all improvements thereon and all appurtenant rights, privileges, and easements thereto may sometimes be referred to as the “Seller’s Property.”

E. Seller has determined that sale of a portion of the Seller’s Property to Buyer will facilitate positive long-term development planning and encourage the development of office and commercial end-users that will benefit the people of the Amberley Village, Ohio by increasing opportunities for employment and strengthening the economic welfare of the Amberley Village, Ohio.

E. Buyer has the financial capability to purchase the Property from Seller.

F. Buyer under this Contract, may choose to transfer and assign its rights and obligations under this Contract to an affiliated land holding company, and shall have the right to assign all of Buyer’s obligations under this Agreement, as approved by Seller and as more fully set forth in Article 9D, below. Buyer, and its affiliates shall remain obligated under the terms of this Purchase Contract.

G. The Parties now desire to agree to certain additional terms and conditions, as more fully set forth in this Addendum, which will be deemed to be part of the Purchase Contract.

AGREEMENT

NOW THEREFORE, in consideration of Six Hundred Sixty-One Thousand Two Hundred Fifty and 00/100 Dollars (\$661,250.00) and the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows.

ARTICLE 1. RELATION TO PURCHASE CONTRACT

- A. **Binding Effect.** The Parties hereby agree that this Addendum is part of and shall be interpreted in conjunction with the Purchase Contract.
- B. **Capitalized Terms.** Unless otherwise defined in this Addendum, all capitalized terms used herein shall have the respective meanings given to such terms by the Purchase Contract.
- C. **No Further Modification; Conflicts.** Except as supplemented and modified by this Addendum, the Purchase Contract remains unsupplemented, unmodified, and in full force and effect. The Purchase Contract, as supplemented and modified hereby, is ratified and confirmed. In the event of the conflict between the terms of this Addendum and the Purchase Contract, this Addendum shall govern and control.

ARTICLE 2. PROPERTY

- A. **Purchase and Sale.** On the terms and conditions set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, an approximately 5.29-acre parcel of land located on Ridge Road in the Village of Amberley, Hamilton County, (currently a portion of an approximately 20.096 acre tract of land commonly known as Hamilton County, Ohio Auditor's Parcel Id. No. 526-0040-0026-90, the "Parent Parcel" which includes the ingress/egress private road access from Ridge Road,), together with all rights, easements and appurtenances pertaining thereto or any portion thereof, including, but not limited to, roads, alleys, easements, adjacent streets and ways, rights of ingress and egress, any strips and gores within, or bounding any portion thereof, and any rights or appurtenances pertaining thereto (the "Property"), as depicted in the greyish area outlined in blue on **Exhibit A** attached hereto and made a part hereof. For the avoidance of doubt, the Property is the same real property as the Real Estate described in the Purchase Contract.

ARTICLE 3. PURCHASE PRICE AND EARNEST MONEY DEPOSIT

- A. **Purchase Price.** In accordance with the terms and conditions set forth herein, at Closing Buyer shall pay Seller a purchase price in an amount of **Six Hundred Sixty-One Thousand Two Hundred Fifty and 00/100 Dollars (\$661,250.00)** ("Purchase Price").
- B. **Earnest Money.** Within five (5) business days of the Effective Date, Buyer shall deposit the sum of **Ten Thousand and 00/100 Dollars (\$10,000)** as earnest money, which shall be

applicable to the Purchase Price and refundable to Buyer as set forth herein (the “Earnest Money Deposit”). The Earnest Money Deposit shall be held in an interest bearing account, separate from other accounts, by Buyer’s title company, Sibcy Cline Title Agency, LLC, 8044 Montgomery Road, Suite 305, Cincinnati, OH 45236 (the “Title Company”), as escrow agent (the “Escrow Agent”), subject to an escrow agreement mutually agreeable to the parties and conforming to the terms of this Addendum.

ARTICLE 4. DUE DILIGENCE AND INSPECTIONS

- A. Property Inspections and Due Diligence.** Buyer shall have one hundred and eighty (180) days from the date of the Addendum in which to conduct its inspection and due diligence (“Inspection Period”) with respect to the Property. Buyer’s inspection of the Property may include, but will not be limited to, status and review of title and survey matters, zoning, environmental issues, soils and subsurfaces, site access, applicable permits, consents and approvals required on a local, state, and federal level.
- B. Right to Enter.** During the Inspection Period, Buyer, its agents, employees, consultants, contractors, and engineers shall have the right to enter onto the Property to conduct its Due Diligence Investigations. The right to conduct Due Diligence Investigations includes the right of Buyer and Buyer’s agents, employees, consultants, contractors, and engineers to enter upon any portion of the Property to take measurements, make inspections, conduct test borings, make boundary and topographical survey maps, and to conduct geotechnical, soil, environmental, groundwater, wetland, and other studies required by Buyer in its sole discretion, and to determine the existence and adequacy of utilities serving the Property, the Property’s zoning, market feasibility, and compliance with laws. No such Due Diligence Investigations shall constitute a waiver or relinquishment on the part of Buyer of its rights under any covenant, condition, representation, or warranty of Seller under this Addendum. Buyer agrees to indemnify and hold Seller harmless against any liability, cost, or expense arising from any injury to persons or property caused by the negligence or willful misconduct of Buyer or any of its agents, employees, consultants, contractors, and engineers while on, in or about the Property during the Inspection Period or otherwise prior to Closing. Buyer shall promptly repair any resulting damage to the Property and shall indemnify and hold harmless Seller against any claims for personal injury or property damage and shall pay for all Due Diligence arising from the exercise of the rights granted by this Section. Further, Buyer shall pay for all Due Diligence Investigations and shall not permit any mechanic’s liens to be filed against the Property.
- C. Delivery of Property Reports.** Within five (5) business days following the execution of this Addendum, Seller shall deliver to Buyer, at no cost to Buyer, the following items pertaining to the Property as are in the possession of or available to Seller: existing soil and groundwater tests; underground storage tank test results; waste disposal records, if any; boundary and ingress/egress surveys; and a Phase I environmental report (collectively, the “Property Reports”).
- D. Approvals and Right to Terminate.** The obligation of the Buyer to purchase the Property shall be contingent on the Buyer obtaining the following approvals in a form satisfactory to Buyer: (i) all necessary approvals and relief (whether legislative or administrative in nature)

for all applicable zoning and property maintenance regulations, so as to permit the Property to be developed for Buyer's Project, as a warehouse and office with accessory outdoor equipment and inventory storage, in accordance with Buyer's plans as they may exist from time to time in Buyer's sole and absolute discretion; (ii) site plan approval and building plan approval (including building permit) from the municipality and/or other applicable government authority; (iii) applicable engineering approvals, including access approval and all necessary curb cuts and subdivision from the municipality; (iv) verification that public utilities, including but not limited to water, sewer, gas, and electric or sufficient size and pressure are available at the site for Buyer's intended use; (v) FEMA base flood elevation amendment and/or wetlands jurisdiction, if required; (vi) a lot split or subdivision to separate the Property from the Parent Parcel, such that the Property is a separately transferrable parcel with a unique parcel identification number from the Office of the Auditor of Hamilton County, Ohio; and (viii) the provision of vehicular and utilities access to the Property in accordance with Article 4(H) (collectively, the "Approvals"). The Approvals shall not be deemed to be received until any applicable appeal periods have expired without the filing of any appeals. If Buyer is unable to obtain the Approvals, or for any or no reason in Buyer's sole and absolute discretion, then prior to the expiration of the Inspection Period, Buyer shall have the right to terminate the Purchase Contract and this Addendum. If Buyer so terminates, then Buyer shall (i) deliver copies of all reports and materials generated by Buyer arising from its Due Diligence Investigations to the Seller other than any reports or materials protected by the attorney-client privilege, (ii) receive a full refund of the Earnest Money Deposit, and thereupon the Purchase Contract and this Addendum shall automatically be terminated and neither Party shall have any further rights or obligations under the Purchase Contract and this Addendum whatsoever except as may expressly be provided herein.

- E. **Title and Survey.** Buyer may obtain from the Title Company, at Buyer's sole cost and expense, a commitment (the "Commitment") for an ALTA Owner's Policy of Title Insurance (Form 2021, with the creditors' rights and arbitration clauses deleted) in an amount at least equal to the Purchase Price (the "Title Policy"), and an ALTA survey of the Property showing, among other things, the Property's boundary, any plottable encumbrances, any improvements or encroachments, any right-of-way, and the Property's topography and natural features, and including a transferrable legal description of the Property ("Survey"). Buyer shall pay for the Commitment and Survey at Closing, or within ten (10) business days following the earlier termination of the Purchase Contract and Addendum. Seller shall pay the cost of a boundary/split survey to cut up the Property from Seller's property.
- F. **Title and Survey Objections.** If the Commitment or the Survey is not satisfactory to Buyer, then Buyer shall give Seller notice of those items that Buyer finds unacceptable within ninety (90) days of the Effective Date ("Buyer's Title Objections"). Seller shall have fifteen (15) days after notice from Buyer to either agree to cure the defect at or prior to Closing or to advise Buyer that it will not cure the defect at or prior to Closing ("Seller's Response"). If Seller does not agree to cure the defect, or if Seller fails to respond in writing within fifteen (15) days, Buyer may either: (i) accept title to the Property subject to the defect without a reduction in the Purchase Price; or (ii) terminate the Purchase Contract and this Addendum by written notice to Seller and receive a return of the Earnest Money Deposit, and neither Party shall have any further rights or obligations under the Purchase Contract and this Addendum whatsoever except as may expressly be provided herein. Buyer shall provide

written notice to Seller of its election within fifteen (15) days. (Notwithstanding any other provision of this Addendum to the contrary, Seller shall have the unconditional obligation to remove or cure, at no cost to Buyer, any title matters which are a lien for the payment of money, or any title matter which arose after the Effective Date as a result of any acts or omissions of Seller, and Buyer shall not have any obligation to close on the purchase of the Property unless and until Seller so removes or cures the same.) All title matters to which Buyer does not timely object as unacceptable, or which Seller elects not to cure and Buyer agrees to take title subject thereto, shall be considered "Permitted Exceptions" for purposes of this Addendum.

- G. **Environmental Site Assessment.** As set forth in Article 4 A above, Seller will provide to Buyer a Phase I Environmental Site Assessment (the "Phase I ESA"), addressed to Buyer, for the Property from a reputable environmental consultant.
- H. **Vehicular and Utilities Access.** Purchaser shall ensure, at its sole cost and expense, that electrical, water, and sewer lines are reasonably available for the owner or occupant of the Property to tap into. Sanitary sewer availability shall be reviewed and approved by the appropriate County department in Hamilton County, Ohio. Seller shall also provide, at its sole cost and expense, that the Property has permanent vehicular access from the Ridge Road public right-of-way. Seller shall, during the Investigation Period and at Seller's sole cost and expense, grant a permanent ingress/egress access and utility easement over the portion of the Parent Parcel that is currently paved for vehicular access, also known as Fuhrman Road, as further illustrated in Exhibit B attached hereto (the "Access Road") benefitting the Property and burdening the Parent Parcel. The grant of the ingress/egress access and utility easement shall be in accordance with the requirements of the Declaration of Easements, Covenants, Conditions, and Private Road Maintenance recorded in Official Record Book 14269, page 1202, Hamilton County, Ohio records ("Declaration").

ARTICLE 5. ADDITIONAL CONTINGENCIES.

- A. **Sewer/Sewer Installation.** Buyer, at its sole expense, shall identify how the sewer system will be processed and developed with Metropolitan Sewer District, and Seller shall reasonably cooperate to accomplish this, by providing a utilities easement agreeable to Buyer at Seller's sole cost and expense. This provision shall survive the Closing and shall not merge in the Closing or in the deed.
- B. **Natural Gas.** Buyer, at its sole expense, shall determine the extension of natural gas for Buyer's Project, and Seller shall reasonably cooperate to accomplish this, by providing a utilities easement agreeable to Buyer at Seller's sole cost and expense.
- C. **Storm Sewer.** Buyer, at its sole expense, shall determine the storm sewer easement necessary to service the Property, and Seller shall reasonably cooperate to accomplish this, by providing a utilities easement agreeable to Buyer at Seller's sole cost and expense.
- D. **Electric.** Buyer, at its sole expense, shall determine the location of the easement for underground electric that is currently overhead to be brought to the Property, and Seller shall

reasonably cooperate to accomplish this, by providing a utilities easement agreeable to Buyer at Seller's sole cost and expense.

Seller, as current owner of the Property, will reasonably cooperate to assist Buyer with municipally required reviews or applications, in order to accommodate the contingencies in Sections 5 A through D.

- E. **Ingress/Egress Easement.** Seller shall provide Buyer, at Seller's sole cost and expense, with an egress and ingress easement for access to the adjacent Service Drive which is reasonably acceptable to Buyer.
- F. **Sign Installation.** Seller shall accommodate the use of a sign by Buyer, at Buyer's cost, to coordinate with the sign located at Ridge Road, pursuant to the terms of the License Agreement Granting Permission for Use of County Roads, recorded in Official Record Book 13335, page 2573, Hamilton County, Ohio records. Buyer shall pay to Seller a one-time fee for the use of its promotional business sign; in order to use one sign panel Buyer shall pay to Seller a onetime fee of \$5,325.00. The maintenance and any repairs with the sign will be paid for by Seller.
- G. **Covenant not to Compete.** Seller shall create a deed restriction or recorded covenant and restrictions providing for a covenant not to compete for certain use restrictions on the Property as more fully set forth in Article 6H below.
- H. **Remainder Property.** The remainder of Seller's property may be platted to provide for the future use of the Service Drive and to provide for utilities, including but not limited to electric, water, gas, etc.
- I. **Construction Progress.** If the Project has not made "Substantial Progress" on the Project within two (2) years of the day of recordation of the deed of transfer of the Property to Buyer, then Seller may repurchase the Property from Buyer by tendering to Buyer: (i) the Purchase Price (as defined herein); plus (ii) the appraised value of any improvements which are included in the definition of "Substantial Progress." Seller may only exercise its aforementioned right to repurchase the Property after providing Buyer one hundred twenty (120) days' notice of Seller's intent to exercise such right. In the event that Buyer and Seller disagree about the appraised value of any improvements, the value will be the average of the values determined by (i) a certified appraiser selected by Seller; (ii) a certified appraiser selected by Buyer; and (iii) a certified appraiser agreeable to both parties. For the purposes of this Section, the term "Substantial Progress" shall mean that Buyer has caused the construction of the following improvements upon the Property: i) construction of foundations for at least one of the buildings contemplated by the Project; ii) installation of various utilities as contemplated by the Project and/or referenced herein; and (iii) installation of means of access as contemplated by the Project and/or referenced herein. This provision shall survive the Closing and shall not merge in the Closing or in the deed.
- J. **Right of First Option to Purchase.** For five (5) years following the date of recordation of the deed of transfer of the Property to Buyer, Seller shall have a Right of First Option to purchase the Property from Buyer. During those five (5) years, in the event that Buyer, its

affiliates, successors and/or assigns ever desires to sell the Property, it shall first notify Seller and provide Seller an opportunity to submit an offer to purchase the Property. Seller may determine the purchase price to be the average of the values determined by (i) a certified appraiser selected by Seller; (ii) a certified appraiser selected by Buyer; or (iii) a certified appraiser agreeable to both parties. Seller may then submit an offer to purchase the Property from Buyer within thirty (30) days of receiving Buyer's notice, but Buyer will have no obligation to accept Seller's offer or enter into any agreement with Seller. Once the thirty (30) days have elapsed after Buyer's notice to Seller, Seller's Right of First Option will terminate, only if Buyer accepts a bona fide offer from a third party to purchase, then Buyer may proceed in its sole and absolute discretion to accept that offer for the purchase of the Property, whether from the Seller or any third party.

K. Access Gate. Seller and Buyer shall negotiate the shared control and access to the gate and fence motor operator that provides the entrance to the Property.

ARTICLE 6 CLOSING

A. Buyer Conditions Precedent to Closing. The following shall be additional conditions precedent to Buyer's obligations to close this transaction, all of which shall be satisfied to Buyer's sole and absolute satisfaction prior to Buyer being obligated to close ("Buyer Closing Conditions"):

1. Seller shall have fee simple absolute title to the Property, subject only to the Permitted Exceptions and free and clear of all tenancies and parties in possession.
2. Buyer shall have received verification that there are no wetlands on the Property that would affect Buyer's intended use in compliance with all applicable federal, state, and local laws.
3. Seller shall have complied with all its obligations under the Purchase Contract and this Addendum.
4. Buyer shall have received all Approvals in Article 4(D).
5. Title Company shall be in a position to issue the Title Policy to Buyer subject only to the Permitted Exceptions.
6. All of the certifications of Seller contained in Article 8A below shall be true as of Closing.
7. Buyer shall have obtained financing satisfactory to Buyer, in its sole and absolute discretion, for the payment of the Purchase Price.
8. An amendment to the Declaration shall be executed and recorded.
9. There shall be no material and adverse change in the condition of the Property (not caused by Buyer or its employees, agents, or contractors) that has occurred after the date that the Inspection Period expired.

- B. Seller Conditions Precedent to Closing.** The following shall be additional conditions precedent to Seller's obligations to close this transaction, all of which shall be satisfied to Seller's sole and absolute satisfaction prior to Seller being obligated to close ("Seller Closing Conditions"):
1. The certifications of Buyer made in Article 8B of this Contract shall be true and complete in all material respects as of the Closing Date as if made on and as of that date.
 2. All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.
 4. Buyer and its assignee, if any, shall have executed the easements to Seller as required and described in this Contract.
 5. Buyer shall have paid the Purchase Price as required herein.
- C. Closing.** The closing of the transactions contemplated by this Addendum (the "Closing") shall occur within thirty (30) days after the date that Buyer provides written notice to Seller that all of the Closing Conditions are either satisfied and waived or will be satisfied and waived by Closing, and Buyer is ready to close on the purchase of the Property ("Closing Notice"). In no event shall Closing take place until such time that Seller provides evidence satisfactory to Buyer and the Title Company of the full and final satisfaction of those Closing Conditions which are its obligations under Article 6(A)(1) (3), (6) and (8) ("Final Closing Condition"). Upon the full and final satisfaction of the Final Closing Condition, Buyer shall instruct the Title Company to proceed to issue a pro forma Title Policy and that parties shall proceed to Closing within ten (10) days thereof.
- D. Closing Deliveries.** At Closing, Seller shall deliver: (a) limited warranty deed conveying the Property to Buyer (or its designee) subject only to the Permitted Exceptions (the "Deed"); (b) any easements or covenants required by this Addendum, which, as applicable, shall also be signed by Buyer; (c) a seller's affidavit or other document required by the Title Company, together with the Survey provided by Purchased, in a form satisfactory to the Title Company, to delete the so-called standard exceptions, mechanics lien exception, and survey exception to the Title Policy; (d) an affidavit of non-foreign status; (e) any other affidavit or document required by Title Company, in addition to the Survey provided by Buyer in a form satisfactory to the Title Company, to delete the so-called standard exceptions to the Title Policy; and (f) such other customary documents, instruments, certifications, and confirmations as may be reasonably required to fully effect and consummate the transactions contemplated hereby and for Title Company to issue the Title Policy in form as required by this Addendum. All documents required to be executed and delivered by Seller shall be reviewed and approved by the Village Solicitor. In addition, in the event required by Buyer in order to obtain survey coverage in regard to the Title Policy, Seller shall deliver a quitclaim deed for the legal description of the Property contained on the Survey. Buyer shall deliver at Closing such other documents, instruments, certifications and confirmations as may be

reasonably required to fully effect and consummate the transaction contemplated hereby.

- E. **Prorations.** Buyer acknowledges that the Seller's property is currently benefitted by a property tax exemption and that the property tax exemption will not be applicable to the cut-up portion of the Property. Buyer and Seller shall prorate any real property taxes and any assessments related to the Property as of the date of Closing, with the day of Closing being treated as a day of ownership by Buyer. Real property taxes shall be deemed to cover the calendar year in which the tax bills are issued. Real property tax bills, if any, issued in years prior to year of closing shall be paid by Seller without proration. Real property tax bills issued, if any, or to be issued, in the year of closing shall be prorated so that Seller shall be charged with taxes from the first of the year to closing date, and Buyer shall be charged with taxes for the balance of the year, including the date of closing. If the real property final tax bill is not available at Closing, the real property taxes and assessments shall be prorated based upon the latest tax duplicate for the Property based upon the land only values and only upon the number of acres constituting the Property. The proration shall be final at the Closing. **NOTE:** Property taxes and assessments are subject to change. Buyer and Seller agree that the taxes and any assessments shall be based on the latest tax information available through the Hamilton County, Ohio Auditor and Treasurer's records. Buyer and Seller acknowledge that property taxes and assessments may not be pro-ratable at Closing as they will be based upon a large tract or parcel from which the subject Property has been cut-out. Seller shall continue to pay the property taxes and assessments on the large tract, if any, until such time as they are assessed on the subject Property, at which time, Seller and Buyer shall handle any proration of the property taxes and assessments, as appropriate. In addition, Seller is pursuing tax increment financing ("TIF") for the Property, with no representation or warranty that the TIF will be granted or available to the Property.
- F. **Costs.** Seller shall be responsible for and pay all costs required and necessary to convey clear title, including the cost of preparing the Deed. Seller shall pay, any fees, of any nature, associated with prepayment of debt, if any, encumbering the Property, all documentary and state, county and municipal transfer taxes relating to the instruments of conveyance contemplated herein, if any, and one-half (½) of any Title Company closing or escrow fees, not to exceed \$250.00. Buyer shall pay the cost of the Title Policy with standard exceptions, the cost of any title insurance endorsements, the ALTA Survey, the cost of Buyer's inspections, Title Company title examination, closing or escrow fees, all of its mortgage loan closing costs, and the cost of recording the Deed, any easements, amendment to the Declaration and any mortgage loan documents. Except as may otherwise be stated herein, each Party shall bear its own expenses, including, but not limited to, its own attorneys' fees.
- G. **Possession.** At Closing, Seller shall deliver possession of the Property to Buyer free of all tenancies, leases, occupants, personal property, equipment, and third-party rights in the Property other than those that are Permitted Exceptions.
- H. **Restriction.** The sale of the Property by Seller and the purchase of the Property by Buyer is expressly conditioned upon a covenant not to compete. Accordingly, the parties expressly agree that conveyance shall be subject to, and that the Deed shall contain, an Exclusive/Geographic Limitation imposed upon the Property, and Seller's remaining property, as follows:

“Purchaser agrees that it will not sell, lease, or sublease any portion of the North Site to a Competing Entity of Mercy Health Cincinnati LLC. A “Competing Entity” is (i) a hospital; (ii) a health system, health care management company or other entity that operates and/or manages hospitals; (iii) medical office; (iv) medical clinic; (v) ambulatory care; (vi) surgery center; (vii) laboratory; (viii) radiology, imaging or other diagnostic testing; (ix) physical therapy; (x) sports medicine; (xi) any entity that competes with Mercy Health Cincinnati LLC or an affiliate of Mercy Health Cincinnati LLC in the provision of inpatient hospital services, hospital based outpatient services or ambulatory surgery services; (xii) pharmacies (such as Walgreens or CVS), provided such pharmacy does not include staffing of a doctor of medicine, doctor of osteopathic medicine, or any pharmacy that is sponsored by or affiliated with another hospital or health system; or (xiii) an entity that controls, is controlled by, or is under common control with any of the foregoing.”

- I. **Utilities.** Upon Closing, Buyer shall be responsible for the installation of and future payments for all utilities including, but not limited to water, sanitary sewer, and storm water utility, that will service the Property.

ARTICLE 7. DEFAULTS AND REMEDIES

- A. **Seller Default.** In the event the sale of the Property is not closed pursuant to the Purchase Contract and this Addendum due to a default hereunder by Seller, then Buyer shall give Seller written notice specifying Seller’s default, and Seller shall have ten (10) business days to cure the default. In the event that Seller fails to cure Seller’s default within said cure period, Buyer may elect to terminate the Purchase Contract and this Addendum, whereupon the Earnest Money Deposit shall be immediately refunded and returned to Buyer, or Buyer may elect to enforce the terms and conditions of the Purchase Contract and this Addendum by filing an action within thirty (30) days after the Seller’s 10-day cure period requesting a court to order specific performance of the Purchase Contract and this Addendum.
- B. **Buyer Default.** In the event the sale of the Property is not closed pursuant to the Purchase Contract and this Addendum due to a default hereunder by Buyer, then Seller shall give Buyer written notice specifying Buyer’s default, and Buyer shall have ten (10) business days to cure the default. If Buyer fails to cure Buyer’s default within said cure period, the Earnest Money Deposit shall be immediately forfeited by Buyer, and retained by Seller as and for liquidated damages and not as a penalty, and as Seller’s sole and exclusive remedy; and thence the Parties shall have no further rights, duties or obligations hereunder except as expressly provided in the Purchase Contract and this Addendum. Seller acknowledges and agrees that retention of the Earnest Money Deposit is a fair and equitable remedy and expressly waives the right to exercise any and all other rights available at law or in equity, including, but not limited to, the right to sue Buyer for additional damages or any kind or specific performance.

ARTICLE 8. SELLER’S CERTIFICATIONS AND BUYER’S REPRESENTATIONS AND WARRANTIES

- A. Seller certifies to Buyer that all of the following are true and accurate as of the Closing:

1. **Powers of Seller.** Seller has the capacity and authority to execute the Purchase Contract and this Addendum and perform the obligations of Seller under the same. The Purchase Contract and the Addendum constitute a legal and valid binding obligation of Seller, enforceable in accordance with its terms. All action necessary to authorize the execution, delivery and performance of the Purchase Contract and the Addendum by Seller has been taken and such action has not been rescinded or modified.
2. **Title.** Seller is and, at the time of Closing, will be the sole owner of the Property, free and clear of any liens or claims, except property taxes and assessments, if any. At Closing, Seller shall convey all right, title, and interest, if any, in and to all easements, privileges, reservations, permits, approvals, authorizations, rights-of-way, consents, and other use rights, interests, and privileges owned or used by Seller in connection with the Property.
3. **Leases and Possessory Rights.** The Property is, and at the time of Closing, will be unencumbered by any leasehold, license and/or possessory interest of any kind, not approved by Buyer.
4. **Liens.** Neither Seller nor any person or entity claiming by, through, or under Seller has or will have, at any time or times prior to the Closing, done or suffered anything whereby any lien, encumbrance, claim, or right of others has been or will be created on or against the Property or any part thereof or interest therein, including but not limited to, mechanic's liens.
5. **Environmental.** Seller has not received any notice of, and Seller has no actual knowledge of any claim or citation of noncompliance from any federal, state or local governmental authority alleging a violation of any Environmental Laws (as defined below), or the existence on, at or under the Property of any toxic or hazardous substance, asbestos, urea formaldehyde insulation, PCBs, radioactive material, flammable explosive, underground storage tanks or any other hazardous or contaminated substance prohibited, limited or regulated under Environmental Laws. "Environmental Laws" shall mean any and all past, present or future federal, state and local statutes, regulations, directives, ordinances, rules, policies, guidelines, court orders, decrees, arbitration awards and the common law, which pertain to environmental matters, contamination of any type whatsoever, as such have been amended, modified or supplemented from time to time (including all present and future amendments thereto and re-authorizations thereof). To Seller's actual knowledge, there are no oil or gas wells (capped or uncapped) or underground storage tanks (in use or abandoned) on or about the Property, and all previously existing underground storage tanks on or about the Property were removed in compliance with all applicable laws, rules, regulations and orders.
6. **Conflicts.** Neither the execution of the Purchase Contract and Addendum nor the consummation by Seller of the transaction contemplated hereby will (i) conflict with or result in a breach of or default under any of the terms,

conditions or provisions of any note, bond, mortgage, indenture, lease, if any, license, agreement or other instrument or obligation to which Seller is a party or by which it or the Property is bound, or (ii) violate any order, injunction, decree, statute, rule or regulation applicable to Seller or the Property.

7. **Violation of Law or Covenants.** Seller (i) has no actual knowledge of and (ii) has not received any written notice that the Property or any portion thereof is situated, used or operated in violation of any law, court order, regulation, ordinance or requirement of any city, county, state or other governmental authority; nor has Seller has received written notice, nor does it have any actual knowledge, that the Property or Seller is in violation or in breach of any of the covenants, conditions, restrictions or other agreements affecting the Property.
8. **Taxes, Condemnation, and Litigation.** Other than real estate taxes that are liens on the Property but not yet due and payable, there are no outstanding tax claims or tax liability of any kind that will affect Buyer or the Property from and after Closing arising out of, or in connection with, Seller's ownership of the Property prior to the Closing. The Property has not been classified under any designation authorized by law to obtain a special low ad valorem tax rate or to receive a reduction, abatement or deferment of ad valorem taxes which, in such case, will result in additional, catch-up or roll-back taxes in the future in order to recover the amounts previously reduced, abated or deferred. Seller has not received any written notice of, nor has Seller otherwise been made aware of, the following: (i) proposed special assessments, (ii) pending public improvements which will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings, against or involving the Property. To Seller's actual knowledge, there is no pending or threatened litigation, arbitration, administrative action or examination, claim, or demand whatsoever relating to the Property. No attachments, execution proceedings, liens, assignments, or insolvency proceedings are pending against Seller or the Property or contemplated by Seller. Seller is not contemplating the institution of insolvency proceedings.

Seller shall fully disclose to Buyer, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the Closing that may affect the representations and warranties set forth above. The certifications of Seller contained herein shall survive the Closing and delivery of the Deed for a period of twelve (12) months.

- B. Buyer represents and warrants to Seller that all of the following are true and accurate as of the Closing:
 1. **Powers of Buyer.** Buyer has the full power and authority to enter into the Contract, to purchase the Property from Seller as provided in the Contract, and to carry out 's obligations hereunder.

2. **Authority of Buyer.** All requisite action necessary to authorize Buyer to enter into and perform this Agreement in accordance with its terms and to carry out Buyer's obligations has been obtained.
3. **Enforcement of Contract.** The Purchase Contract and this Addendum have been duly authorized, executed and delivered by Buyer and is enforceable against Buyer in accordance with its terms.
4. Neither the execution and delivery of this nor the performance hereof will (i) be in violation of Buyer's organizational documents including its bylaws, Articles of Organization and its operating agreement, (ii) conflict with any law, decree, judgment, regulation or decree of any court or governmental agency, or (iii) conflict with any agreement or instrument to which Purchaser is a party or by which Buyer is or may be bound.
5. Buyer is deemed to have made the certifications contained in this Article 8B again as of the time and date of the Closing, except that Buyer shall not be in default hereof if any certification contained herein cannot be made at the Closing because of the acts or fault of Seller.

Buyer shall fully disclose to Seller, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Buyer becomes aware prior to the Closing that may affect the certifications set forth above. This Article 8B shall survive the Closing and shall not merge in the Closing or in the Deed and shall expire on the date that Buyer's Project is completed as evidenced by the issuance of a Certificate of Occupancy.

ARTICLE 9. MISCELLANEOUS

- A. **Brokers.** Seller certifies to Buyer that Seller has not dealt with any agent or broker who in any way has participated as the procuring cause of the sale of the Property other than Rusty Myers and Mark Volkman of JLL. Buyer represents and warrants to Seller that Buyer has not dealt with any agent or broker who in any way has participated as the procuring cause of the purchase and sale of the Property other than Steven Wolber of Sibcy Cline, Inc. Buyer shall protect and save harmless Seller against the claim of any other brokers hired with respect to this Contract.
- B. **Notices.** Any notice, request, demand, instruction, or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by email and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, in three (3) business days after deposit in the mails if mailed, and when sent if by email; provided that notice sent via email shall be sent concurrently via another method permitted by this paragraph. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. A copy of all notices shall be sent to each Party's attorney at the following addresses:

If to Seller:

Scot Lahrmer, Village Manager
Amberley Village
7149 Ridge Road
Amberley Village, Ohio 45237

With a copy to Seller's attorney:

Andy R. Kaake, Village Solicitor
Wood and Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202
arkaake@woodlamping.com
and
rsniehaus@woodlamping.com

If to Buyer:

Integrity Green Landscaping, LLC
Attn: Joseph Middleton
P.O. Box 42779
Cincinnati, OH 45242
joe@integritygreenoh.com

With a copy to Buyer's attorney:

Suder, LLC
Attn: J.P. Burleigh, Esq.
1502 Vine Street, Fourth Floor
Cincinnati, Ohio 45202
E-mail: jp@ssuder.com

- C. **Attorneys' Fees.** In the event either Party hereto brings against any other Party an action at law or other proceeding permitted under the terms of this Addendum in order to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Addendum or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs, including reasonable attorneys' fees.
- D. **Binding/Assignment/Entire Agreement.** Buyer, as the current purchaser under this Contract, shall have the right to assign all of Buyer's rights and obligations under this Contract to an affiliated land holding company ("Company") created by Buyer, intended to act as title holder for the Property, provided Seller approves of the proposed assignee, with Seller's approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer shall remain responsible for all obligations under the Contract. This provision shall survive the Closing. The Purchase Contract and this Addendum shall be binding upon and

inure to the benefit of the Parties and their respective legal representatives, successors, and assignees. The Purchase Contract and this Addendum shall be construed and interpreted according to the laws of the State where the Property is located. The Recitals set forth herein, the Purchase Contract and *Exhibits "A" through "C"* constitute the entire contract between the parties hereto, and supersede all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions certifications, or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties. If any provisions in this Addendum conflict with the terms of the Purchase Contract, the provisions of this Addendum shall prevail.

- E. **Offer to Purchase.** If Buyer executes the Purchase Contract and Addendum prior to Seller, then the Purchase Contract and Addendum shall constitute and be an Offer to Purchase by Buyer that shall remain open to acceptance by Seller, based upon approval by the Amberley Village, Ohio Council, until _____, 2024. Upon Seller's acceptance, execution, and delivery of the Purchase Contract and Addendum, these documents shall constitute and collectively be a valid Contract to Purchase that is binding upon all parties hereto.
- F. **Counterpart/Signatures.** This Addendum may be executed in counterparts and shall be fully enforceable so long as all parties have signed the Addendum in counterpart. This Addendum may be executed with signatures delivered by electronic means, or facsimile or scanned email, and copies of such signatures so delivered shall be deemed as originals. All parties signing this Addendum have taken all duly authorized action necessary to authorize the execution of this Addendum and to execute any and all documents related hereto, and each of the parties may rely upon this section of the Addendum without the necessity of having further documentation to evidence such authority.

[Signatures follow]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the Effective Date.

BUYER:

INTEGRITY GREEN LANDSCAPING, LLC,
an Ohio limited liability company

By: _____
Joseph Middleton, Member

Date: _____

SELLER:

AMBERLEY VILLAGE, OHIO,
An Ohio municipal corporation

By: _____
Scot Lahrmer, Village Manager

Date: _____

APPROVED AS TO FORM:

Andy R. Kaake, Village Solicitor

458999.1

EXHIBIT A

DEPICTION OF THE PROPERTY (APPROXIMATE LOCATION)

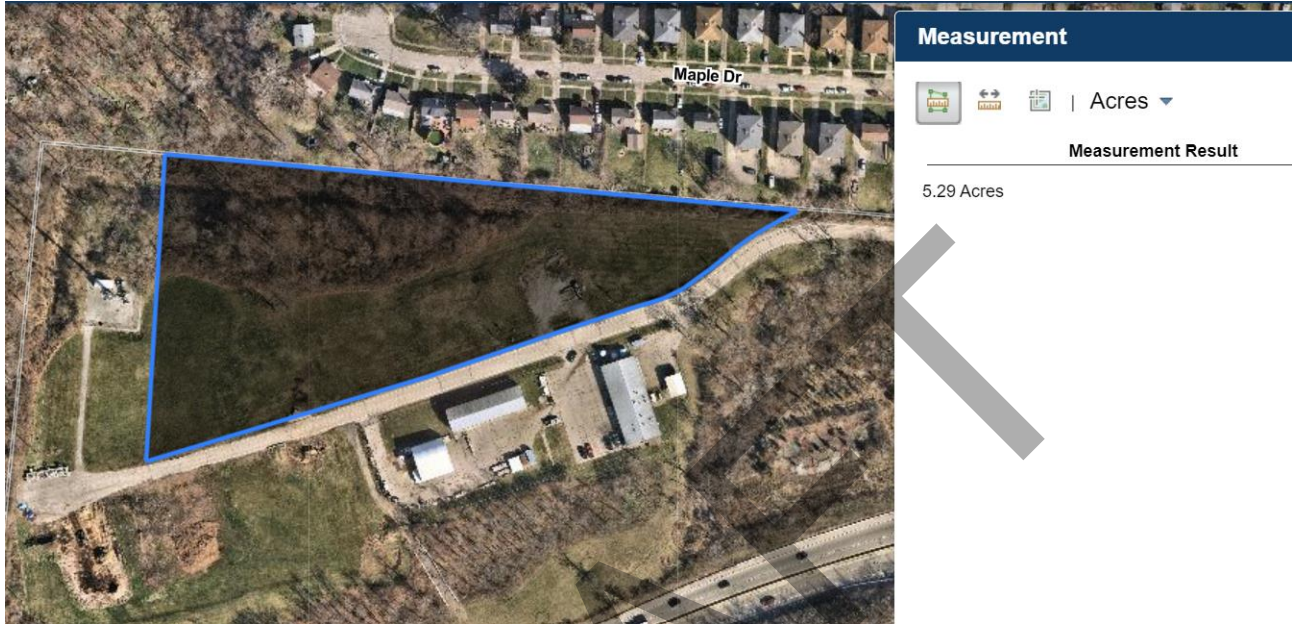


EXHIBIT B

DEPICTION OF ACCESS ROAD



4589991.1