

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**CITY OF BROOK PARK, OHIO**

6161 Engle Road  
Brook Park, Ohio 44142

Plaintiff,

v.

**CITY OF CLEVELAND, OHIO**

Barbara A. Langhenry, Director of Law  
601 Lakeside Ave., Room 106  
Cleveland, Ohio 44114

Defendant.

) CASE NO.

)

)

) JUDGE

)

)

)

)

)

)

)

)

)

)

)

**COMPLAINT FOR DECLARATORY  
JUDGMENT, SPECIFIC  
PERFORMANCE, AND OTHER  
RELIEF**

**(Jury Demand Endorsed Hereon)**

Pursuant to Civ. R. 8, Plaintiff City of Brook Park, Ohio (“Brook Park”) states the following allegations as its Complaint against Defendant City of Cleveland, Ohio (“Cleveland”):

**NATURE OF THE DISPUTE**

1. This tale of two cities, where a long-term peace was thought to be achieved 20 years ago, has re-emerged with a fresh dispute arising from Cleveland’s betrayal of its promises to the City and residents of Brook Park.

2. Twenty years ago, the City of Cleveland planned to expand Cleveland Hopkins International Airport. Cleveland planned to build a third runway—and that runway would have knifed straight through a residential neighborhood south of the Airport in the adjacent City of Brook Park. Cleveland has not built the third runway. Nevertheless, the threat to the Airport’s neighbors in Brook Park was real, and the residents heard Cleveland threaten to use its powers of eminent domain to forcibly remove them from their homes and their neighborhood. Cleveland’s third-runway plans threatened the homes and lives of its Brook Park neighbors. The Cleveland

Plain Dealer published a diagram depicting the violence the third runway would inflict on the Brook Park neighborhood just south of the Airport, and that diagram is attached as Exhibit 1.

3. In the late 1990's, with the third runway looming in the background, Cleveland and Brook Park battled in the courts over Brook Park's efforts to buy the I-X Center, sandwiched between the Airport and Brook Park. After a trial, but before the appeal could be heard, Cleveland and Brook Park achieved what was thought to be a long-term peace. The two cities agreed to terms of a settlement that they formalized in a 30-page (plus appendices) Settlement Agreement between the Cities of Brook Park, Ohio and Cleveland, Ohio ("Settlement Agreement"), dated September 6, 2001. Cleveland and Brook Park agreed to a host of terms, including payments of money, conveyances of land, adjustment of municipal borders, access to NASA Glenn Research Center, the use of zoning, the development of the airport, and the development of Aerospace Parkway, among other terms and conditions. Brook Park gave up its purchase of the I-X Center.

4. In addition to all the other pieces of a complicated settlement deal, in the Settlement Agreement Cleveland and Brook Park agreed to create a program of critical importance to the residents of Brook Park most affected by the Airport and the third-runway plan—the Residential Acquisition Program ("RAP"). Through the RAP, Cleveland was required to offer to purchase the homes in the path of the third runway that Cleveland had threatened to take through eminent domain. Under the more orderly process provided in the RAP, Cleveland entered into "Election Agreements" with each homeowner who elected to participate in the RAP. Cleveland's willingness to agree to the RAP sealed the deal for Brook Park, and it signed the Settlement Agreement. The homeowners' expectations of a buyout eased the anxiety and uncertainty surrounding Cleveland's Airport expansion plans.

5. For about a third of Brook Park's homeowners caught up in third runway anxiety and the RAP, and who signed Election Agreements, the buyout never came. Brook Park files this lawsuit because Cleveland failed to abide by the terms of the Settlement Agreement and many Election Agreements that Cleveland signed with Brook Park homeowners who have waited patiently—and still wait—for Cleveland to honor the obligations it committed to in the Settlement Agreement.

### **PARTIES AND VENUE**

6. Plaintiff Brook Park is a municipal corporation located in Cuyahoga County.

7. Defendant Cleveland is a municipal corporation located in Cuyahoga County.

8. Venue is proper in this Court because the parties reside in Cuyahoga County, and because the claims for relief arise in Cuyahoga County.

9. An actual controversy exists regarding the legal rights and relationships between the parties in this action.

### **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

#### **Litigation between Brook Park and Cleveland Resulted in a Settlement Agreement.**

10. In January 1999, Brook Park filed a lawsuit, *City of Brook Park v. Brook Park Community Urban Redevelopment Corporation, et al.*, Case No. 99 ADV 15039, in the Probate Court of Cuyahoga County, seeking to purchase the International Exposition Center (the "I-X Center"). Cleveland and the I-X Center Corporation intervened in the lawsuit.

11. After Brook Park filed its lawsuit, Cleveland purchased the I-X Center and entered into a Lease of the I-X Center with the I-X Center Corporation.

12. After extensive and costly litigation including a trial, Cleveland and Brook Park desired to settle the lawsuit. While the framework for the settlement was negotiated by February

of 2001, both Cleveland and Brook Park were required to secure the authorizations necessary to ensure that the people's representatives approved of the Settlement Agreement before executing the formal agreement.

13. In fact, both Cleveland and Brook Park fulfilled numerous formalities—including a voter referendum—to ensure that the Settlement Agreement reflected the will of the people.

14. Brook Park entered into the Settlement Agreement “acting pursuant to the authority of Ordinance No. 8783-2001, approved by the electors of Brook Park on August 7, 2001.” Cleveland entered into the Settlement Agreement “acting pursuant to the authority of Ordinance No. 624-01, passed July 18, 2001.” (Settlement Agreement, attached as Exhibit 2, at 1).

15. By entering into the Settlement Agreement, Brook Park and Cleveland agreed that the Settlement Agreement “represents a fair, reasonable and mutually beneficial settlement,” and that the “payments, property transfers and boundary adjustments to be effected under this Agreement are fair and reasonable . . .” (Exhibit 2, at 2). Moreover, Brook Park and Cleveland agreed that the consideration for the Settlement Agreement included “the acquisition of property by Cleveland . . .” (Exhibit 2, at 12, Article 8.1).

16. The Settlement Agreement was executed on behalf of Cleveland by Michael R. White, Cleveland's Mayor; Cornell P. Carter, Cleveland's Director of Law; and Reuben J. Sheperd, Director of Cleveland's Department of Port Control. (Exhibit 2, at 30). Their execution of the Settlement Agreement was witnessed and notarized. (Exhibit 2, at 30, 32, and the first page marked 33).

17. Chief Corporate Counsel for the City of Cleveland, Richard F. Horvath, approved “[t]he legal form and correctness” of the Settlement Agreement. (Exhibit 2, at 30).

18. The Settlement Agreement was executed on behalf of Brook Park by Thomas J. Coyne, Jr., Mayor of Brook Park. His execution of the Settlement Agreement was witnessed and notarized. (Exhibit 2, at 31 and second page marked 33).

19. David A. Lambros, Director of Law for the City of Brook Park, approved the “legal form and correctness” of the Settlement Agreement.

20. The Fiscal Officer of the City of Cleveland gave a certificate “in compliance with Sections 5705.41 and 5705.44 of the Revised Code” regarding the lawful appropriation of funds required to meet Cleveland’s obligations under the Settlement Agreement. (Exhibit 2, at 34).

21. The Fiscal Officer of the City of Brook Park gave a certificate “in compliance with Sections 5705.41 and 5705.44 of the Revised Code” regarding the lawful appropriation of funds required to meet Brook Park’s obligations under the Settlement Agreement. (Exhibit 2, at 34).

22. The Settlement Agreement provides that in the event of a breach the non-breaching party is entitled to specific performance:

The parties acknowledge and agree that damages as a result of a breach of this Agreement, other than related to the payments described in Paragraph 8.1, by either party are not readily ascertainable, that money damages or other legal relief will not adequately compensate for any such breach, and that the party that has not breached this Agreement is entitled to injunctive relief compelling the specific performance of those obligations under this Agreement.

(Exhibit 2, at 25, Article 11.1). Moreover, “Brook Park . . . may pursue all remedies . . . to enforce the performance and observance of any obligation of either party under this Agreement.” (Exhibit 2, at 25, Article 11.2).

23. The Settlement Agreement further provides that “[t]he prevailing party in any court proceeding, other than a temporary restraining order, shall be entitled to recover its

reasonable attorneys' fees as determined by the court, taking into account all of the circumstances of the ultimate decision rendered." (Exhibit 2, at 28, Article 11.9).

**The Settlement Agreement Requires the City of Cleveland to Purchase Residential Property Affected by the Third Runway.**

24. Article 9.1 provides that Brook Park residents impacted by the third runway could sell their homes to Cleveland for a fair price: "To provide for the orderly acquisition of property in the Expansion Zone, balancing the stability of the existing neighborhood against the need to accommodate any future Airport Expansion, the parties hereby establish a RAP to create the option for owners of residences to sell their property to Cleveland as described below . . . Subject to the provisions of Article 9 of this Agreement, **Cleveland will acquire all residences (not including apartments) whose owners elect to participate in the Residential Acquisition Program.**" (Exhibit 2, at 14–15) (emphasis added).

25. The Settlement Agreement provides that "[t]he Residential Acquisition Program will be carried out in two Phases." (Exhibit 2, at 15; Article 9.2).

26. Under the Settlement Agreement Cleveland is required to purchase all residences whose owners elect to participate in Phase 1 of the RAP. However, "Cleveland has the option, in its discretion, to carry out Phase 2 of the Residential Acquisition Program." (Exhibit 2, at 15; Articles 9.2.1 & 9.2.2).

27. The Settlement Agreement provides that "[t]he owners of all residences in the Expansion Zone shown as Phase 1 on Appendix 17 are eligible to participate in Phase 1 of the Residential Acquisition Program." (Exhibit 2, at 15, Article 9.2.1; Appendix 17 to the Settlement Agreement is attached as Exhibit 3).

28. Cleveland was obligated to “cause the Notice of Residential Acquisition Program . . . to be delivered” to the owners of the Phase 1 properties “no later than three months after the Closing Date.” (Exhibit 2, at 16, Article 9.5).

29. “[P]roperty owners may elect to sell their property to Cleveland by submitting to Cleveland an executed copy of the Election and Agreement to Sell Residential Property form attached as Appendix 18 (‘Election Agreement’).” (Exhibit 2, at 16, Article 9.5; Appendix 18 to the Settlement Agreement is attached as Exhibit 4).

30. In other words, to seal the deal, to reflect the will of the people, and to achieve peace between the cities, Brook Park and Cleveland agreed that every resident in Phase 1—right where Cleveland planned to pave a third runway—could sign up to receive a fair purchase price for their home from Cleveland.

**Cleveland Entered into Many Election Agreements with Property Owners,  
and Brook Park May Enforce Them.**

31. Almost all property owners in Phase 1 elected to participate in the RAP by executing Election Agreements.

32. According to the Settlement Agreement, “[t]he Election Agreement details the rights and responsibilities of the property owner and Cleveland in the Residential Acquisition Program and constitutes a binding contract between the property owner and Cleveland.” (Exhibit 2, at 16, Article 9.5).

33. Furthermore, under the Settlement Agreement “Cleveland agrees that each signed Election Agreement is enforceable by the property owner, provided that Brook Park may enforce provisions of the Election Agreement to cure material, recurring violations of the Election Agreement.” (Exhibit 2, at 16, Article 9.5).

34. Phase 1 of the RAP was divided into six zones. (See Exhibit 3).

35. Cleveland received signed Election Agreements from property owners in all zones, including Zones 5 and 6.

36. An example includes the Election Agreement entered into between Richard and Victoria Mihna and Cleveland dated February 8, 2002 (the “Mihna Election Agreement”). (attached as Exhibit 5). The Mihna Election Agreement, like all Election Agreements, is a version of Appendix 18 of the Settlement Agreement modified for the particular property owners.

37. The Mihna Election Agreement, like all other executed Election Agreements, is a separately enforceable contract independent of the Settlement Agreement.

38. The Mihna Election Agreement, like all other executed Election Agreements, details the rights and obligations between the parties to the Election Agreement.

39. The Mihna Election Agreement provides that Richard and Victoria Mihna elected “to participate in the Residential Acquisition Program described in Article 8 of the Settlement Agreement defined below and enters into this contract with the CITY OF CLEVELAND, OHIO (“Cleveland”) regarding participation in the Residential Acquisition Program.” (Exhibit 5, at 1).

40. The Mihna Election Agreement states that “Homeowner is eligible to participate in the Residential Acquisition Program because the Property is located in Zone 6 of Phase One of the Residential Acquisition Program, as depicted on Appendix 17 of the Settlement Agreement...” (Exhibit 5, at 1, Recitals).

41. As set forth in the Settlement Agreement and Election Agreements, Cleveland was required to acquire Phase One properties in sequence, in general starting with Zone 1 properties and ending with Zone 6 properties.

42. The Mihna Election Agreement, like all Election Agreements, provides: “If the Property is Early Election Property, Cleveland will send Homeowner a Notice of Acquisition before sending a Notice of Acquisition to any Standard Election Property within Homeowner’s Zone and before Cleveland sends Notices of Acquisition to any homeowner in a Zone numbered higher than Homeowner’s Zone.” (Exhibit 5, at 2, Section 3(a)).

43. The majority of participants in the RAP were Early Election Properties.

44. Cleveland was required to acquire Zones 5 and 6 properties last.

45. The Election Agreements provide that they “shall remain in full force and effect unless and until Homeowner withdraws from the Residential Acquisition Program as provided in Paragraph 10 above.” (Exhibit 5, at 5, Section 14).

46. A Homeowner may withdraw from the RAP “by delivering to Cleveland a Notice of Withdrawal from Residential Acquisition Program in substantially the form attached as Exhibit 3.” (Exhibit 5, at 4, ¶ 10; a copy of the “Exhibit 3” referenced in Paragraph 10 is attached as Exhibit 6).

47. Upon information and belief no Homeowner in Zones 5 or 6 withdrew from RAP.

48. The Election Agreements provide that “[n]either this Agreement, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by instrument in writing.” (Exhibit 5, at 5, Section 15).

49. The Election Agreements also provide that Brook Park may “enforce provisions of the Election Agreement to cure material, recurring violations of this Agreement and other Election Agreements Cleveland enters into with other participants in the Residential Acquisition Program.” (Exhibit 5, at 6, Section 21).

**Cleveland Breached the Settlement Agreement and Numerous Election Agreements.**

50. Due to Cleveland's foot-dragging, the RAP got off to a rocky start. While the Settlement Agreement required Cleveland to start the RAP at the end of 2001 or beginning of 2002, the program sputtered under Cleveland's management. Finally, Cleveland started the RAP in 2004, and it bought nearly all the homes in Zones 1 through 4 of Phase 1. And then it stopped.

51. Over time, Cleveland has offered a number of excuses for stopping the RAP before completing Zones 5 and 6. None of them negates Cleveland's plans in the late 1990's to build a third runway over top of a residential neighborhood in Brook Park or Cleveland's obligations to do what it said it would do to convince Brook Park to give up its effort to purchase the I-X Center.

52. Although required to purchase all homes in Phase One that elected to participate, including, for example, the Mihnas' property, Cleveland did not.

53. Cleveland breached all Article 9 provisions of the Settlement Agreement relating to the acquisition of Phase 1 properties located in Zones 5 and 6, including, but not limited to, Articles 9.1, 9.5, 9.7, 9.8, 9.9.1, 9.9.2, 9.9.3, 9.9.4, and 9.10.

54. Cleveland breached Article 9.1 requiring Cleveland to "acquire all residences (not including apartments) whose owners elect to participate in the Residential Acquisition Program." (Exhibit 2, at 15, Article 9.1).

55. By refusing to purchase the properties in Zones 5 and 6 that elected to participate in the RAP Cleveland breached Article 9.5, authorizing homeowners in Phase 1 to participate in the RAP by submitting Election Agreements. (Exhibit 2, at 16, Article 9.5).

56. Cleveland breached Article 9.8 regarding “Residential Acquisition Budget Compliance” by, among other things, failing to send the required number of Notices of Acquisition. (See Exhibit 2, at 17 - 18, Article 9.8).

57. For any properties that were appraised pursuant to Article 9.9.1, but not purchased by Cleveland, Cleveland breached Article 9.9.2, which provides “Cleveland shall be required to acquire the property for at least the amount identified by the review appraiser, subject to the conditions in the contract for sale of property.” (Exhibit 2, at 18, Article 9.9.1).

58. Cleveland breached several provisions of Article 9 relating to the timeframes for establishing a purchase price and completing the purchase of properties in Zones 5 and 6. (See Exhibit 2, at 18–19, Articles 9.9.2, 9.9.3, and 9.9.4).

59. Furthermore, by failing to purchase the properties in Zones 5 and 6, Cleveland breached each and every Election Agreement entered into by Cleveland, including, by example, the Mihna Election Agreement.

60. Cleveland’s breach of each Election Agreement for Zones 5 and 6 is the type of material and recurring breach contemplated by Article 9.5 entitling Brook Park to enforce the Election Agreements.

61. Cleveland breached each Election Agreement for which it failed to deliver a Notice of Acquisition pursuant to Section 3. (Exhibit 5, at 2, Section 3).

62. Cleveland breached each Election Agreement for which it failed to deliver an offer to each participating homeowner. (See Exhibit 5, at 3, Section 6).

**Cleveland’s Director of Port Control Drafted an Unenforceable Memorandum of Understanding and Asked the Mayor of Brook Park to Sign.**

63. In May and June of 2008, Mark J. Elliott, the Mayor of the City of Brook Park, and Ricky Smith, Director of the Department of Port Control, signed a Memorandum of Understanding (“MOU”). (MOU attached as Exhibit 7).

64. The MOU pertains to “Phase 1 of the Residential Acquisition Program of the 2001 Settlement Agreement.” (Exhibit 7).

65. The MOU constitutes an attempt to materially amend the Settlement Agreement.

66. The MOU provides that “[b]oth parties agree to abide by the provisions of this Memorandum of Understanding as outlined here; otherwise, the terms of the original 2001 Settlement Agreement remain as is.” (Exhibit 7).

67. The MOU purports to move Zone 5 and 6 properties from Phase One to Phase Two. If enforceable, Cleveland’s purchase of Zone 5 and 6 properties—even for all homeowners who already submitted Election Agreements which Cleveland also signed and acknowledged—would become optional, subject entirely to Cleveland’s whim. (Exhibit 7, Paragraph 1).

68. The MOU is null and void. It fails to comply with either the requirements of the Settlement Agreement or with the law.

69. Article 12.2 of the Settlement Agreement provides that **it** “may be altered, amended, or modified only by a written instrument executed pursuant to the governmental consent of both Brook Park and Cleveland.” (Exhibit 2, pg. 28).

70. In violation of the Settlement Agreement, neither Cleveland nor Brook Park executed the MOU with governmental consent. Neither of the municipal governments of Cleveland nor Brook Park mustered the approvals necessary to enter into such a contract.

71. The MOU does not adhere to several Brook Park and Cleveland ordinances, and it is null and void and utterly meaningless.

72. Section 83 of the Cleveland Code of Ordinances entitled “Director of Law” provides that the Director of Law “shall prepare all contracts, bonds and other instruments in writing in which the City is concerned and shall endorse on each his approval of the form and correctness thereof.” (Cleveland, Ohio Code of Ordinances, § 83 Director of Law). Section 83 further provides that “[n]o such bond, contract or instrument shall become effective without such endorsement by the Director of Law thereon.” (*Id.*)

73. Unlike the Settlement Agreement, the MOU includes no endorsement by the Cleveland Director of Law as to his or her approval of the form and correctness of the MOU.

74. Pursuant to Section 83, the MOU is void.

75. The version of Section 108 of the Cleveland Code of Ordinances effective in June of 2008 entitled “Authorization of Contracts” states, in part: “All contracts involving any expenditure in excess of ten thousand dollars (\$10,000.00) shall first be authorized and directed by ordinance of Council...” (Cleveland, Ohio Code of Ordinances, § 108 Authorization of Contracts).

76. Upon information and belief Cleveland’s obligations under the MOU require expenditures in excess of ten thousand dollars.

77. Cleveland’s City Council never authorized the MOU, so it violates Section 108, and is void.

78. Section 106 of the Cleveland Code of Ordinances entitled Contracts Certified states:

No contract, agreement, or other obligation, involving the expenditure of money, shall be entered into, nor shall any ordinance, resolution, or order for the

expenditure of money be passed by the Council, or be authorized by any officer of the City, unless the Director of Finance first certifies to the Council or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation, or expenditure, is in the Treasury, to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the City is discharged from the contract, agreement or obligation.

(Cleveland, Ohio Code of Ordinances, § 106 Contracts Certified).

79. The MOU violates Section 106 because the Director of Finance never issued the certification required by Section 106.

80. Under Section 109 of the Cleveland Code of Ordinances entitled “When Contracts Void,” any agreement failing to comply with Sections 106 and 108 is void:

All contracts, agreements, or other obligations entered into and all ordinances passed, resolutions and orders adopted, contrary to the provisions of the preceding sections, shall be void, and no person whatever shall have any claim or demand against the City thereunder, nor shall the Council, or any officer of the City, waive or qualify the limits fixed by any ordinance, resolution or order, as provided in Section 106, or fasten upon the City any liability whatever, in excess of such limits, or release or relieve any party from an exact compliance with his contract under such ordinance, resolution, or order.

(Cleveland, Ohio Code of Ordinances, § 109 When Contracts Void).

81. The MOU also fails to comply with several Brook Park ordinances.

82. The MOU fails to comply with Section 133.011 of the Brook Park Code of Ordinances requiring the Brook Park Law Director “to be present at the negotiation and execution of all agreements made on behalf of the city regarding real estate sales and/or purchases.” (Brook Park Code of Ordinances, §133.011 Real Estate Transactions).

83. The MOU fails to comply with Section 132.03 of the Brook Park Code of Ordinances, which states, in part: “for contracts exceeding \$1,000.00, but not requiring public bidding, Brook Park City Ordinance requires approval of the Board [of Control].” (Brook Park Code of Ordinances, §132.03(b) Purpose and Duties).

84. The MOU fails to comply with Chapter 181 of the Brook Park Code of Ordinances, which established the Department of Airport Relations and Community Assistance for the purpose of:

- (1) Providing support and assistance to residents of Brook Park affected by the Residential Acquisition Program established in Article 9 of the Settlement Agreement between the Cities of Brook Park and Cleveland, dated September 6, 2001 (the "Settlement Agreement");
- (2) Developing a City program to assist and protect Brook Park residents in every phase of the Residential Acquisition Program;
- (3) Monitoring Cleveland's compliance with the Settlement Agreement; and
- (4) Monitoring Brook Park's compliance with the Settlement Agreement.

(Brook Park Code of Ordinances, §181.02(a) Purpose and Powers).

85. Per Section 181.02(b) “[t]he Department of Airport Relations and Community Assistance is vested with the power to take all reasonably necessary action(s) to achieve the purposes of the Department set forth in division (a) of this section.” (Brook Park Code of Ordinances, §181.02(b) Purpose and Powers).

86. Mayor Elliott’s unilateral execution of the MOU violated Chapter 181 of the Brook Park Code of Ordinances vesting the Department of Airport Relations and Community Assistance with the power of monitoring compliance with the Settlement Agreement.

87. The MOU was essentially a secret deal between officials who failed to account for their decisions and actions to anybody, and therefore do not reflect the will of the people who elected their government leaders.

88. To add insult to injury, Cleveland did not substantially perform its obligations under the MOU.

89. Cleveland however has relied upon the MOU as a basis for not purchasing all Phase One properties as required by the Settlement Agreement.

**Cleveland and Brook Park Have Complied with the Settlement Agreement's Dispute Resolution Procedures**

90. Article 11.6 of the Settlement Agreement provides "for a mandatory informal dispute resolution process and a formal, non-binding mediation process prior to any litigation to enforce this Agreement." (Exhibit 2, pg. 26).

91. Brook Park and Cleveland completed the informal dispute resolution and formal mediation provided for in Articles 11.6.2 and 11.6.3 of the Settlement Agreement, which did not result in a resolution of the dispute regarding Cleveland's breach of the Settlement Agreement and Election Agreements. (*Id.*)

**COUNT ONE**

**Breach of Contract (Settlement Agreement)**

92. Brook Park hereby incorporates the allegations in preceding paragraphs as if fully restated herein.

93. Brook Park and Cleveland entered into a written contract, the Settlement Agreement, whereby among other things, Cleveland agreed to offer to purchase all homes in Phase One of the RAP.

94. At all times, Brook Park fully performed its obligations to Cleveland under the Settlement Agreement.

95. Cleveland breached the Settlement Agreement by failing to comply with Article 9 providing for the RAP, including by failing to purchase the properties in Zones 5 and 6 that elected to participate in the RAP.

96. As a direct and proximate result of Cleveland's breach, Brook Park is entitled to specific performance of the Settlement Agreement.

## **COUNT TWO**

### **Breach of Contract (Election Agreements)**

97. Brook Park hereby incorporates the allegations in preceding paragraphs as if fully restated herein.

98. Cleveland and several homeowners in Zones 5 and 6 of Phase One entered into written contracts titled Election Agreements whereby among other things, Cleveland agreed to purchase the homeowners' property.

99. Upon information and belief, the homeowners have fully performed their obligations under the Election Agreements.

100. Cleveland has breached the Election Agreements by failing to purchase the homeowners' properties per the terms of the Election Agreements.

101. Pursuant to Paragraph 21 of the Election Agreements and Article 9.5 of the Settlement Agreement, Brook Park may enforce the Election Agreements to cure material, recurring violations.

102. As a direct and proximate result of Cleveland's breaches, Brook Park is entitled to Cleveland's specific performance of the Election Agreements.

## **COUNT THREE**

### **Declaratory Judgment**

103. Brook Park hereby incorporates the allegations in preceding paragraphs as if fully restated herein.

104. Brook Park and Cleveland entered into a written contract, the Settlement Agreement, whereby among other things, Cleveland agreed to purchase certain property in accordance with Article 9 of the Settlement Agreement.

105. At all times, Brook Park has fully performed its obligations to Cleveland under the Settlement Agreement.

106. Cleveland and numerous homeowners in Zones 5 and 6 of Phase One entered into Election Agreements whereby among other things, Cleveland agreed to purchase the homeowners' property.

107. Upon information and belief, the homeowners have fully performed their obligations under the Election Agreements.

108. The MOU on its face purports to relieve Cleveland of its obligation to purchase Phase One properties in Zones 5 and 6.

109. The MOU is void and unenforceable due to its failure to comply with Cleveland and Brook Park city ordinances.

110. The MOU is void and unenforceable because it fails to comply with Article 12.2 requiring any alteration, amendment, or modification be executed pursuant to the governmental consent of both Brook Park and Cleveland.

111. The MOU does not purport to amend, alter, or modify any of the Election Agreements entered into between Cleveland and owners of property in Zones 5 and 6 of Phase One of the RAP.

112. The MOU is not signed by any owners of property in Zones 5 and 6 of Phase One of the RAP.

113. Cleveland has relied upon the MOU as the basis for not purchasing all Phase One properties as required by the Settlement Agreement and Election Agreements.

114. As a result, there is a real and genuine controversy between Brook Park and Cleveland as to the enforceability of the MOU.

115. The dispute constitutes an actual case and justiciable controversy in which the Court may declare the rights of the parties.

116. Brook Park is entitled to a judgment that the MOU is void and unenforceable and does not amend or modify any Election Agreement.

**WHEREFORE**, Brook Park respectfully requests the following relief:

- A. As to Count One, that the Court: (1) enter an order and judgment in favor of Brook Park and against Cleveland for specific performance ordering Cleveland be required to comply with the terms of the Settlement Agreement, including but not limited to Article 9 regarding the Residential Acquisition Program; (2) award Brook Park its attorney fees, costs and expenses; and (3) award Brook Park such other and further relief as this Court may deem just or proper or to which Brook Park may be entitled.
- B. As to Count Two, that the Court: (1) enter an order and judgment in favor of Brook Park and against Cleveland for specific performance ordering Cleveland be required to comply with the terms of all Election Agreements entered into between Cleveland and homeowners; (2) award Brook Park its attorney fees, costs and expenses; and (3) award Brook Park such other and further relief as this Court may deem just or proper or to which Brook Park may be entitled.
- C. As to Count Three that the Court issue a declaration that: (1) the MOU is void and unenforceable; (2) Cleveland is in breach of Article 9 of the Settlement Agreement by failing to purchase properties in Zones 5 and 6 of Phase One; and (3) Cleveland is in breach of all Election Agreements entered into with owners of properties in Zones 5 and 6 of Phase One.
- D. Such other necessary and proper relief, both legal and equitable, including attorneys' fees, as this Court deems just and proper.

Dated December 19, 2017

Respectfully submitted,

*/s/ Steven S. Kaufman*

\_\_\_\_\_  
Steven S. Kaufman (OH – 0016662)

Chad D. Cooper (OH – 0074322)

**KAUFMAN & COMPANY, LLC**

1001 Lakeside Avenue – Suite 1710

Cleveland, Ohio 44114

PH: 216.912.5500

FX: 216.912.5501

*Steve.Kaufman@Kaufman-Company.com*

*Chad.Cooper@Kaufman-Company.com*

*/s/ Carol D. Horvath*

\_\_\_\_\_  
Carol Dillon Horvath (0017404)

**Director of Law, City of Brook Park**

6161 Engle Road

Brook Park, OH 44142

PH: (216) 433-1300 ext. 7208

FX: (216) 433-1630

*chorvath@cityofbrookpark.com*

*Attorneys for Plaintiff Brook Park*

**JURY DEMAND**

Pursuant to Civil Rule 38, Plaintiff respectfully demands a trial by jury on all claims and issues triable by a jury.

*/s/ Steven S. Kaufman*

\_\_\_\_\_  
*One of the Attorneys for Plaintiff*