



CITY OF AVON LAKE
150 Avon Belden Road
Avon Lake, Ohio 44012

VOTING ORDER

D. Kos
M. O'Donnell
R. Shahmir
K. Zuber
Z. Arnold
J. Fenderbosch
A. Gentry

The following business is to be considered at the regular meeting of the Avon Lake City Council on April 22, 2024, at 7 p.m. in the Council Chamber.

Pledge of Allegiance

Roll Call: Mr. Arnold, Mrs. Fenderbosch, Ms. Gentry, Mr. Kos, Mr. O'Donnell, Mr. Shahmir, Mr. Zuber, Mayor Spaetzel, Law Director Ebert, Finance Director Widman, Public Works Director Liskovec.

Proclamation: National Dog Therapy Appreciation Day.

Approval of Minutes: March 11, 2024, Council Meeting.

Correspondence

Reports

Mayor
Council President
Law Director
Finance Director
Public Works Director
Standing Committees
Special Committees

Audience Participation

Motions

Authorizing the City Engineer to advertise for bids for the Edgewood Drive Outfall Rehabilitation Project. **Sponsor: A. Gentry**

Authorizing the City Engineer to advertise for bids for the 31900 Lake Road Outfall Rehabilitation Project. *Sponsor: A. Gentry*

Authorizing the City Engineer to advertise for bids for the 31922 Lake Road Outfall Rehabilitation Project. *Sponsor: A. Gentry*

Authorizing the Community Development Director to submit a grant application for the Ohio Senate Capital Budget/OTSCIF for “Renew ALPS (Avon Lake Play Space)”.¹
Sponsor: R. Shahmir.

Authorizing the sunset of the Solar Eclipse Support Ad Hoc Committee. *Sponsor: D. Kos.*

Legislation

Third Reading:

Ordinance No. 24-43, AN ORDINANCE ADOPTING A JOB DESCRIPTION FOR THE POSITION OF PART-TIME RECORDS CLERK AND ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION. *Sponsor: K. Zuber*

Second Reading:

Ordinance No. 24-52R, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE PROFESSIONAL SERVICES AGREEMENTS FOR MASTER PLANS EXAMINER AND DECLARING AN EMERGENCY. → *Sponsor: A. Gentry*

First Readings:

Ordinance No. 24-53, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES AND DECLARING AN EMERGENCY. *Sponsor: J. Fenderbosch*

Ordinance No. 24-54, AN ORDINANCE PROVIDING CONTINUED LEGAL COUNSEL REGARDING ZONING MATTERS PURSUANT TO THE REDEVELOPMENT OF THE AVON LAKE POWER PLANT AND DECLARING AN EMERGENCY. *Sponsor: Z. Arnold*

Ordinance No. 24-55, AN ORDINANCE PROVIDING CONTINUED LEGAL COUNSEL AND DECLARING AN EMERGENCY. *Sponsor: Z. Arnold*

Ordinance No. 24-56, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED LEASE WITH AVON LAKE BOAT CLUB, INC., AND DECLARING AN EMERGENCY. *Sponsor: J. Fenderbosch*

Ordinance No. 24-57, AN ORDINANCE TO DESIGNATE A PORTION OF LAKE ROAD AS A BUSINESS DISTRICT PURSUANT TO CODIFIED ORDINANCE SECTION 402.07 AND TO

¹ Subject to the actions of the Communications, Environmental, and Recreational Programming Committee conducted prior to the Council Meeting.

→ Suspension of the rule requiring three readings

MODIFY THE SPEED LIMIT ON LAKE ROAD PURSUANT TO CODIFIED ORDINANCE SECTION 434.03 TO BE TWENTY-FIVE MILES PER HOUR (25 mph) ONLY WITHIN THE BUSINESS DISTRICT AND DECLARING AN EMERGENCY. *Sponsor: D. Kos*

Public Input

Miscellaneous Business and Announcements

Adjournment

AN ORDINANCE ADOPTING A JOB DESCRIPTION FOR THE POSITION OF PART-TIME RECORDS CLERK AND ESTABLISHING THE QUALIFICATIONS AND DUTIES FOR SAID POSITION.

WHEREAS, it has been recommended by the Human Resources Committee that a job description for the position of part-time Records Clerk be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the specifications, responsibilities, and duties applicable to the position of part-time Records Clerk shall be as shown in the job description, a copy of which is attached hereto and made a part hereof.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance shall be in full force and effect from and after the earliest period allowed by law.

1st reading: 3/25/2024

2nd reading: 4/15/2024

3rd reading:

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____

Clerk of Council

Mayor

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE PROFESSIONAL SERVICES AGREEMENTS FOR MASTER PLANS EXAMINER AND DECLARING AN EMERGENCY.

WHEREAS, that the Ohio Building Code requires all building plans and specifications filed with the City to be examined and approved by a certified Master Plans Examiner; and

WHEREAS, that the Administration and the Building and Utilities Committee reviewed and recommended the firms of ~~Makovich & Pusti Architects, Inc., a CPL Company~~ **CPL Architects, Engineers, Landscape Architects D.P.C.** of Berea, Ohio, and Sixmo, Inc., of Cleveland, Ohio; and

WHEREAS, Council has determined the proposals submitted by the firms of Makovich & Pusti Architects, Inc., a CPL Company, of Berea, Ohio and Sixmo Inc. of Cleveland, Ohio, to be the best responsive proposals and are acceptable to this Council.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into two-year agreements with ~~Makovich & Pusti Architects, Inc., a CPL Company~~ **CPL Architects, Engineers, Landscape Architects D.P.C.** of Berea, Ohio, and Sixmo, Inc., of Cleveland, Ohio, for Master Plans Examiner services at the hourly rate of \$100. (Exhibits A & B)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of examining building plans and specifications in compliance with the Ohio Building Code, thus for the health, safety, and welfare of the citizens of Avon Lake. Therefore, this Ordinance shall take effect and be in full force immediately after its passage and approval by the Mayor.

1st reading: 4/15/2024

2nd reading:

3rd reading:

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____

Clerk of Council

Mayor



Master Plans Examiner Services
City of Avon Lake
80070124
April 18, 2024

- + **Architects**
- + **Engineers**
- + **Code Compliance**
- + **City Services**

Cleveland
Indianapolis
Pittsburgh
Zanesville
Marietta



April 18, 2024

Mayor Mark Spaetzel
150 Avon Belden Road
Avon Lake, Ohio 44012
Email: MSpaetzel@avonlake.org

Re: Professional Services Proposal Number 80070124
Master Plans Examiner Services

Mayor Spaetzel,

We appreciate the opportunity to provide you with this professional services proposal regarding the above referenced project. We have reviewed the information you provided in an effort to develop a thorough understanding of the project parameters. This understanding is reflected in the following proposal for professional services.

Please review this document and feel free to contact me if you have any questions or comments in its regard. I am generally available between 7:30 AM - 5:00 PM EST in our office at 216-767-5400, extension 100, and always available via email at pthornton@sixmoae.com.

Sincerely,

A handwritten signature in blue ink that reads "Pat E. Thornton".

Patrick E. Thornton, AIA
Principal
Sixmo, Inc.

PROJECT UNDERSTANDING

The City of Avon Lake (Client) is seeking plans examination services to support the Building Department on a part-time, as requested basis. Sixmo Inc. (Consultant) will serve as a Plans Examiner on a consulting basis.

SCOPE OF SERVICES

The scope of professional services for this project shall include the review and examination of any plans the Client deems necessary to be sent to the Consultant for review. The Consultant shall render a professional opinion in writing for all plans received from the Client as to whether or not such plans are in complete compliance with the Ohio Building Code, and codes referenced therein.

Specifically, these services shall include:

1. Plan Review
 - a. Based on the Ohio Building Code and referenced codes (for commercial projects)
 - b. Based on the Residential Code of Ohio and referenced codes (for residential projects)
2. Courier of documents
 - a. Electronic documents transmitted electronically or obtained from the submitter by Sixmo.
3. Develop a Document Examination Review Report (DERR) for each submittal
4. Develop a Fee Reporting document for each submittal
5. Submit monthly invoices, including a record of each submittal fee
6. Provide miscellaneous hourly plans examination related services on an "as requested in writing" basis
7. Provide year-end reporting to the City for submittal with State of Ohio requirements
8. *When instructed to do so by the Client's Building Official, the Consultant shall attend all meetings and work sessions in connection with business matters involving the Building Department and/or any other public body or department.*

DELIVERABLES

Consultant shall provide PDF files for all deliverables, transmitted via email, including the following:

1. One (1) hard copy of the DERR for each plan review, and subsequent reviews
2. One (1) hard copy of the Fee Report for each plan review, and subsequent reviews
3. One (1) PDF copy of each document is available at no charge upon written request

Additional hard copies of deliverables are available to the Client at Consultant's cost of reproduction and labor, plus 10%.

CLARIFICATIONS AND EXCEPTIONS

The following clarifications and exceptions refine Sixmo's understanding and offering to this project:

1. Plans may be delivered to Sixmo via email / electronic file transfer. There is no specific requirements for Sixmo to receive hard copies or documents.
2. At no additional cost and when convenient for the Client, Sixmo will provide courier service between the City of Avon Lake Building Department's offices and Sixmo's offices for the exchange of hard copies, up to two times a week.

SCHEDULE

We are available to begin this work immediately. We will proceed according to a mutually agreeable schedule.

It is our intent to provide services in accordance with the State of Ohio Board of Building Standards requirements for plans examinations. We will also meet any reasonable schedule established by the Client for any specific plan review.

PROFESSIONAL FEES

The professional services outlined herein shall be provided for an hourly rate of **\$100.00** per hour.

These fees are based on the language included in this professional services proposal. Any requested alterations to the language of this agreement may result in an adjustment to the proposed fee.

EXPENSES

Expenses included in the professional fees above include:

1. Reproduction of deliverables and in-house progress documents required to execute our services.
2. Mileage/Travel costs related to project meetings, and other local travel required to execute the scope of work.

Expenses that will be considered reimbursable, shall include:

- Reproductions not included in the base scope of services.
 - Reproductions produced in-house will be billed at the following rates:
 - 8-1/2 x 11: \$.25 per page (single or double sided, color or B&W)
 - 11 x 17: \$.50 per page (single or double sided, color or B&W)

- Large Format: \$1 per square foot
- 3. Mileage/Travel over and above that specifically indicated as included in the base scope of services. This includes mileage and travel expenses incurred resulting from any additional services not specifically addressed above.
- 4. Postage/shipping costs for other than normal day-to-day firm operations, including the cost of shipping hard copies of construction documents and revisions to authorities having jurisdiction and to the Client.

Additional expenses, besides those described above, will be invoiced based on cost +10%. This includes additional subconsultant fees over and above the base services of this scope of work; the payment of permit and application fees that are not specifically included in the base scope of services, and other miscellaneous expenses incurred at the direction of the Client. Additional expenses will only be incurred upon written direction from the Client.

METHOD OF PAYMENT

Payment for the proposed professional services will be invoiced monthly, in proportion to services provided and expenses incurred between the first and last day of the month, or upon completion of the scope of services. Payments are due **Net 30 Days** from their receipt.

Client agrees that any non-payment of the professional fees under this Agreement will result in interest being charged at the rate of eighteen percent (18%) per annum or the highest amount legally to be charged. Client also agrees that it will be responsible for any costs or fees, including attorney's fees, in the collection of any unpaid professional fee.

If the Client fails to make payments to Consultant in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination; or, at Consultant's option, cause for suspension of performance of services under this agreement. If Consultant elects to suspend services, Consultant shall give seven days' written notice to the Client before suspending services. In the event of a suspension of services, Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension, and any expenses incurred in the interruption and resumption of Consultant's services. Consultant's fees for the remaining services and the time schedules may be equitably adjusted.

STANDARD OF CARE

In providing services under this agreement, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant will perform its services as expeditiously as

is consistent with professional skill and care, and the orderly progress of Consultant's part of the Project. Regardless of any other term or condition of this Agreement, Consultant makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

DEFECTS IN SERVICE

The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

CONSTRUCTION ACTIVITIES

The Consultant shall not be responsible for the acts or omissions of any person performing any construction work, or for instructions given by the Client or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.

COPYRIGHTS AND LICENSES

The Consultant and the Client shall warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this agreement, the Consultant grants the Client a nonexclusive license to utilize the instruments of service solely for the project, provided that the Client performs its obligations, including payment based on the terms of this document.

If the Instruments of Service are used without retaining the Consultant or without the written permission of the Consultant, the Client releases the Consultant and Consultant's subconsultants from any and all claims and causes of action arising from such use. Any unauthorized use of the Instruments of Service shall be at the Client's risk and without liability to the Consultant.

The Instruments of Service shall be defined as any representation, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and their subconsultants under their respective professional services agreements.

DISPUTE RESOLUTION

Any claim or dispute between the Client and the Consultant shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator, the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, subject to Risk Allocation below, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

RISK ALLOCATION

In recognition of the relative risks and benefits of the Project to both the Client (**City of Avon Lake**) and the Consultant (**Sixmo Inc.**), the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any

nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the Consultant's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

TERMINATION

This agreement shall be in full force and effect from and after execution but may be terminated by either party by providing a thirty (30) day written notice to that party so terminated. The Consultant understands and agrees that this is not an exclusive contract, and the Client has the right to engage the services of another Architect(s) to perform the services set forth herein.

TERM

This is a two-year agreement and may be renewed for additional one-year extensions.

ACKNOWLEDGEMENT

Please acknowledge acceptance of this proposal by signing below and returning a copy to the Consultant. Authorization to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition or deletion.

**Acknowledgement
and Acceptance:**
(Consultant)
Sixmo Inc.



By: Patrick E. Thornton, AIA

Title: Principal

Date: April 18, 2024

**Acknowledgement
and Acceptance:**
(Client)
City of Avon Lake

By: _____

Title: _____

Date: _____



ACCOUNTS PAYABLE

By accepting and acknowledging the terms of this proposal, the Client designates the following individuals to receive invoices and issue payment to Consultant for services rendered on this project.

Direct all invoices to:

Name: _____

Title: _____

Email: _____

Phone: _____

Carbon copy all invoices to: (optional)

Name: _____

Title: _____

Email: _____

Phone: _____

Cleveland Location



EXHIBIT A

AGREEMENT FOR MASTER PLANS EXAMINER SERVICES

THIS AGREEMENT, made and entered into this Sixteenth day of April, 2024, by and between the City of Avon Lake, Ohio (hereinafter referred to as “City”), and CPL Architects, Engineers, Landscape Architects D.P.C. (CPL) (hereinafter referred to as “Architect”).

WHEREAS, the Ohio Building Code (OBC) requires a Certified Plans Examiner, registered in the State of Ohio, to examine and approve the building plans and specifications filed with the City other than for one, two, and three family dwellings; and

WHEREAS, the City of Avon Lake desires to enter into an Agreement with CPL to provide such services.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES HEREBY AGREE AS FOLLOWS:

I. SCOPE OF WORK

- (a) The Architect shall act as an Independent Contractor and shall supervise and act in a responsible manner and take charge of the review of the general building plans and specifications for commercial buildings which are referred to Architect by the Building Official of the City. One, two and three family dwellings are not included as part of this agreement. The work shall not include review of civil engineering or zoning or residential additions. The work of the Architect shall be under the oversight of the Chief Building Official. The Architect agrees that they are not an employee of the City and are not public employees under Ohio State Law.
- (b) Term and Renewal: The term of this Agreement shall begin on the effective date of April 16, 2024 and terminating April 16, 2026. This two-year agreement can be renewed for addition one-year extensions.
- (c) The Architect shall maintain a Plans Examination Certificate from the State of Ohio.
- (d) The Architect shall maintain professional liability insurance in the minimum amount of \$2 million and \$4 million aggregate.



- (e) The Architect shall make an examination, either alone or in concert with authorized Personnel of the Building and Fire Department, of all such plans and specifications to determine conformity with applicable sections of the Ohio Building Code as it applies to any such proposed building structure.
- (f) After completion of a plan review by the Architect, Architect shall communicate the findings of the scope of plan approval by “Approved”, “Conditional Approval”, “Phased Approval”, or “Insufficient Documents”. Architect shall also identify all non-compliant or code deficiencies that need to be addressed as a condition of the plan approval. A Documents Review Record and Report to Building Official shall be returned to the Building Official for further disposition by them to the applicant. If documents are not submitted electronically, one (1) paper copy of the plans shall remain with the architect until such time as a Certificate of Occupancy has been issued.

Under Ohio law, it is understood that the Architect makes plan review comments as a recommendation to the Building Official who is the Authority Having Jurisdiction (AHJ,) and is the only one having authority to enforce the Plan Review. At the request of the Building Official, the Architect shall, upon reasonable notice, meet with them or their authorized representative, and shall, with them, as instructed, visit construction sites under the jurisdictional authority of the Building Official and make recommendations to the Public Official.

- (g) When instructed to do so by the Building Official, the Architect shall attend all meetings and work sessions in connection with business matters involving the Building Department and/or any other public body or department.

II. GENERAL CONDITIONS

- (a) All architectural services shall be carried out in accordance with the code of professional practices of the American Institute of Architects.
- (b) Insofar as the work for plan examination under this agreement may require, the Building Official agrees to furnish the Architect with one (1) complete set of plans and specifications, or an electronic copy received from each applicant.



- (c) The Architect shall not assign, sublet, or transfer any work under this agreement without written consent of the City.
- (d) The City agrees that if any work covered by this Agreement and performed by the Architect shall be suspended or abandoned, the Building Official shall notify the Architect of such suspension or abandonment of work and the City shall pay the Architect for all rendered service which were completed in accordance with the schedule agreed to herein.

III. FEES AND SCHEDULE OF PAYMENT

- (a) The Architectural fee for building plan review under this Agreement shall be One hundred (\$100.00) Dollars per hour.
Additional services that are billed hourly include the following:
 - (1) Preliminary plan evaluation if requested by its submitter and approved by the Building official, including meeting.
 - (2) Examination of plans resubmitted after the initial plan review including responses to the plan review, resubmittals, or changes to the original design such as project change orders or bulletins.
 - (3) Services required in case of an adjudication order and/or adjudication hearing as per ORC 119.09 to 119.13;
 - (4) Other technical services to the Building Department or any other City agencies, with the approval of the of the Building Official.
 - (5) Fees for meetings and site visits will be invoiced door to door to include travel time.
- (b) The Architect shall submit a fee statement to the City for each service provided and shall invoice once a calendar month for services rendered in the previous month based upon on itemized statement from the Architect.



IV. TERMINATION

This agreement shall be in full force and effect from and after execution but may be terminated by either party by providing a thirty (30) day written notice to that party so terminated. The Architect understands and agrees that this is not an exclusive contract, and the City has the right to engage the services of another Architect(s) to perform the services set forth herein.

IN WITNESS WHEREOF, the parties hereto execute the Agreement on this _____ day of _____ 2024, at Avon Lake,

WITNESSES:

Mark Spaetzel
Mayor City of Avon Lake, Ohio

Donald Rerko, AIA, NCARB
Vice President
CPL Architects, Engineers,
Landscape Architects D.P.C.

Approved as to form:

Gary A. Ebert, Law Director
City of Avon Lake

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES AND DECLARING AN EMERGENCY.

WHEREAS, Section 59 of the Avon Lake City Charter, entitled Competitive Bidding, authorizes the expenditure of funds exceeding \$75,000 without public bidding for “personal services” as defined in the Charter; and

WHEREAS, the Administration and Council desire to continue to retain the personal services of a professional environmental consulting firm to monitor the closed landfill at the Public Works Department for 2024.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into an agreement with HZW Environmental Consultants, LLC, of Mentor, Ohio, for the purpose of retaining personal services to monitor the closed landfill.

Section No. 2: That said agreement shall state in its terms that the cost of said personal services shall not exceed \$76,300. Upon receipt of an itemized billing, in conformance with the guidelines and scope of work as set forth in said agreement, to the satisfaction of the Public Works Director, the Director of Finance is hereby directed to deliver to HZW Environmental Consultants, LLC, the warrant of this City in the amount due and payable and to cause said warrant to be paid.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing environmental consulting services for groundwater monitoring according to EPA requirements, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____
Clerk of Council

Mayor

AN ORDINANCE PROVIDING CONTINUED LEGAL COUNSEL REGARDING ZONING MATTERS PURSUANT TO THE REDEVELOPMENT OF THE AVON LAKE POWER PLANT AND DECLARING AN EMERGENCY.

WHEREAS, the Administration and Council has authorized Berns, Ockner & Greenberger, LLC, to represent the City in the redevelopment of the Avon Lake Power Plant relating to zoning matters.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Berns, Ockner & Greenberg, LLC, be, and they are hereby authorized and directed to continue to provide legal services for the redevelopment of the Avon Lake Power Plant.

Section No. 2: That the necessary expenses for said representation be paid upon approval voucher submitted therefore in an amount not to exceed \$25,000.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of the continuation of legal services regarding zoning matters in the redevelopment of the Avon Lake Power Plant, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____

Clerk of Council

Mayor

AN ORDINANCE PROVIDING CONTINUED LEGAL COUNSEL AND DECLARING AN EMERGENCY.

WHEREAS, the Administration and Council has authorized Todd S. Davis, Esq. to represent the City in the Brownfield Redevelopment and the West End Redevelopment, including the former NRG Power Plant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Todd Davis, Esq., be, and he is hereby authorized and directed to continue to provide professional services for Brownfield Redevelopment in the west end of the City.

Section No. 2: That the necessary expenses for said representation be paid upon approval voucher submitted therefore in an amount not to exceed \$35,000.00.

Section No. 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing legal counsel for Brownfield Redevelopment in the west end of the City, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____

Clerk of Council

Mayor

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED LEASE WITH THE AVON LAKE BOAT CLUB, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake, as Landlord, and the Avon Lake Boat Club, Inc., as Tenant, entered into a lease dated February 27, 2017, for the Lease of the Boat Club located at Veterans Memorial Park, 32770 Lake Road (US 6), that includes a storage room, building, boat launch structure, and the area around the boat launch structure, for the purposes of the Tenant's boating activities; and

WHEREAS, the initial term of the Lease will expire on December 31, 2037; and

WHEREAS, the Landlord and the Tenant wish to amend and fully restate the Original Lease as of the Effective Date of February 27, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is authorized and directed to enter into the Amended and Restated Lease incorporating the terms set forth in Exhibit A and in the form and substance acceptable to the Mayor and the Law Director.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of permitting the Avon Lake Boat Club, Inc., to remain in their current location and allowing their members to continue with their boating activities, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1st reading:
2nd reading:
3rd reading:

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____
Clerk of Council

Mayor

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (“Lease”) made as of January 1, 2024 (the “Effective Date”), by and between the CITY OF AVON LAKE, OHIO, an Ohio municipal corporation (“Landlord”), and the AVON LAKE BOAT CLUB, INC., an Ohio not-for-profit corporation (“Tenant”).

WITNESSETH:

WHEREAS, Landlord owns certain real property on Lake Road described in Exhibit A attached hereto and made a part hereof (the “Property”); and

WHEREAS, Tenant leases a portion of the Property (the “Premises”) from Landlord, and Landlord leases the Premises to Tenant upon the terms and conditions set forth in that certain Lease dated February 27, 2017 (the “Original Lease”) for a term ending March 31, 2037; and

WHEREAS, Landlord and Tenant wish to amend and fully restate the Original Lease to change certain terms and provisions. This Lease shall amend, replace, and supersede the Original Lease as of the Effective Date; and

WHEREAS, Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord upon the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound, the parties hereby covenant and agree as follows:

ARTICLE I

DEMISE

Section 1.1 Premises.

Landlord hereby leases the Premises to Tenant, and Tenant hereby takes the Premises from Landlord upon the terms and conditions hereinafter set forth. The Premises are designated as “BOAT CLUB PREMISES” on Exhibit B attached hereto and made a part hereof. The Premises also include the interior storage portion (the “Storage Room”) of the building designated as “BUILDING” on Exhibit B (the “Building”), the boat launch structure designated as “BOAT CLUB LAUNCH STRUCTURE” and the area around the boat launch structure outlined on Exhibit B (the “Boat Launch Area”). The location and configuration of the Storage Room may be altered by Landlord from time to time but shall have a floor area of not less than three hundred forty-three (343) square feet. The Premises do not include Heider Creek, the banks or retaining walls of Heider Creek.

Section 1.2 Common Elements.

Landlord grants to Tenant during the Term (hereinafter defined) the nonexclusive license to use the drive designated as “WEST SHARED ACCESS DRIVE” and the exclusive license to use the

drive designated as “EAST SHARED ACCESS DRIVE” on Exhibit B (the “Shared Drives”), and such other portions of the Property as Landlord may from time to time designate as common elements (collectively, the “Common Elements”) in common with Landlord and all others to whom Landlord has or may hereafter grant rights to use same, and subject to the exclusive control, management and direction thereof at all times by Landlord. Landlord will have the right to:

- (a) establish, modify and enforce rules and regulations with respect to the Common Elements and the use of the same;
- (b) close any or all portions of the Common Elements Areas for maintenance, repair, modification or improvement;
- (c) improve or modify the Common Elements; and
- (d) do and perform such other acts in and to the Common Elements as Landlord shall determine to be advisable.

Notwithstanding the foregoing, except for temporary closures to enable Landlord to make repairs or improvements to the Shared Drives or the other Common Elements, Landlord may not close the Shared Drives. Tenant shall have the right to maintain in its current location within the Common Elements the rail leading to the Boat Launch Area from the balance of the Premises (the “Boat Launch Rail”); however, Tenant shall not have the right to prevent others from crossing between the Boat Launch Area and the balance of the Premises.

Section 1.3 Inner Access Drive.

Although the east-west drive designated as “INNER ACCESS DRIVE” on Exhibit B (the “Inner Access Drive”) is part of the Premises, Landlord and its employees and contractors shall have the non-exclusive right to use Inner Access Drive and the aisles between the rows of boat racks for access to the lake. Tenant may not alter the Inner Access Drive, nor may Tenant install anything in or on the Inner Access Drive that would interfere with such access.

Section 1.4 Restroom.

Landlord grants to Tenant during the Term (hereinafter defined) the exclusive license to use the restroom portion of the Building (the “Restroom”). Landlord will have the right to:

- (a) establish, modify and enforce rules and regulations with respect to the Restroom and the use of the same;
- (b) close any or all portions of the Restroom for maintenance, repair, modification or improvement;
- (c) improve or modify the Restroom; and
- (d) do and perform such other acts in and to the Restroom as Landlord shall determine to be advisable.

ARTICLE II

TERM

Section 2.1 Term and Commencement Date.

Unless sooner terminated in accordance with the terms of this Lease, the term of this Lease (the "Term") shall be fifteen (15) years, commencing on April 1, 2017 (the "Commencement Date") and expiring on March 31, 2032.

Section 2.2 Termination.

This Lease shall terminate at the end of the Term without the necessity of any notice from either Landlord or Tenant to terminate the same. Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of premises from a tenant holding over to the same extent as if statutory notice had been given.

Section 2.3 Surrender.

Upon the expiration or other termination of this Lease in any way, Tenant shall deliver and surrender to Landlord possession of the Premises, including all leasehold improvements and all fixtures permanently attached to the Premises, broom clean and in as good condition and repair as the same shall be on the Commencement Date or may have been put during the Term, excepting only ordinary wear and tear and damage by Casualty (as defined in Section 9.1), other than damage by Casualty that is caused by the negligence of Tenant, its agents, employees or contractors and that is not wholly covered by Landlord's hazard insurance policy.

ARTICLE III

USE AND OPERATIONS

Section 3.1 Use.

Tenant shall use and permit the use of the Premises solely for the launching and storage of small, non-commercial boats owned by residents of the City of Avon Lake (the "Permitted Use"). Tenant may use the Storage Room only for the storage of equipment and supplies related to the Permitted Use. Tenant may not use, permit or suffer the use of the Premises, or any part thereof, for any other purpose whatsoever without the prior written consent of Landlord.

Section 3.2 Operations by Tenant and Landlord; Removal of Trash.

(a) Tenant will at its expense: (i) maintain the Premises in a clean, orderly and sanitary condition; (ii) comply with all laws, ordinances and governmental rules and regulations; (iii) collect and properly dispose of all litter surrounding the Premises that results from or is attributable to the Premises and (iv) procure a contractor mutually acceptable to the parties to control noxious weeds on the Premises.

(b) So long as no other tenants of the Property are permitted to use the Restroom, Tenant shall maintain the Restroom in good, clean, sanitary condition, free of insects, rodents, vermin and other pests, keep the Restroom fully supplied with sufficient quantities of paper towels, toilet paper and soap (“Restroom Supplies”), keep all plumbing fixtures and electrical fixtures in the Restroom in good working order, and during the boating season, clean all plumbing fixtures and mirrors in the Restroom and mop all floors of the Restroom as needed.

(c) Tenant will not: (i) place or maintain any trash or refuse other than in Landlord approved solid waste and recyclable materials collection containers; (ii) permit accumulations of trash, rubbish or refuse within or without the Premises; (iii) permit Tenant’s members to discard trash, rubbish or refuse on the Property other than in Landlord-approved collection containers; (iv) permit fish cleaning on the Property or the disposal of fish or fish parts on the Property; or (v) permit any part of the Premises to be used for any disreputable, offensive, immoral or illegal purpose.

(d) Landlord shall arrange for the collection of solid waste and recyclable materials properly placed in Landlord-approved collection containers.

(e) Landlord shall arrange for exterminator services to eliminate and prevent rodent infestation.

Section 3.3 Signs.

Tenant shall have the right to maintain those signs that were on the Premises on February 7, 2017. Tenant will not place or suffer to be placed or maintained on the Premises any additional sign, lettering, advertising matter or any other item of any kind without the prior written consent of Landlord. All such signs or other items shall comply with all applicable laws. Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other item permitted by Landlord in writing in good condition and repair at all times. Tenant shall indemnify, defend and save Landlord harmless from and against any and all claims, actions, demands, damages, liability and expense, including attorneys and other professional fees, arising from or related to, wholly or in part, directly or indirectly, the erection, maintenance, existence or removal of any sign or other item installed by Tenant, and Tenant shall repair all damage caused by the erection, existence, maintenance or removal of same. At the request of Landlord, at the termination of this Lease, Tenant shall remove all signs and such other items and repair damage caused by such removal. Landlord shall have the right to remove any sign or other matter which does not conform to the requirements of this section, and the cost of such removal shall be payable by Tenant to Landlord on demand.

ARTICLE IV

RENT

Section 4.1 Rent Payable.

Tenant shall pay to Landlord as rent (“Rent”) for the Premises, the following:

- (a) the Base Rent; and
- (b) all additional sums, charges or amounts of whatever nature to be paid by Tenant to Landlord in accordance with the provisions of this Lease, whether or not such sums, charges or amounts are referred to as additional rent (“Additional Rent”).

Section 4.2 Base Rent.

- (a) The “Base Rent” shall be payable as follows:

- (i) The Base Rent for the first ten (10) Lease Years is Ten Thousand Dollars (\$10,000.00) per Lease Year. The Base Rent for the first ten Lease Years shall be payable in advance in two (2) installments of Fifty Thousand Dollars (\$50,000.00) each, the first of which shall be payable on the Commencement Date and the second of which shall be payable on April 1, 2022.

- (ii) The Base Rent for the eleventh through fifteenth Lease Years is Six Thousand Dollars (\$6,000.00) per Lease Year. The Base Rent for the eleventh through fifteenth Lease Years shall be payable in advance in three payments of Thirty Thousand Dollars (\$30,000.00) each on April 1, 2025, April 1, 2030 and April 1, 2037.

Tenant acknowledges that Landlord will be relying upon the receipt of the advance installment payments of Base Rent to fund improvements. Therefore, the obligation of Tenant to pay Base Rent in advance installment payments is absolute and unconditional and under no circumstances shall Tenant be entitled to have refunded to it any portion of the Base Rent. Tenant further acknowledges that the foregoing is a material term of this Lease and that in the absence thereof, Landlord would not have agreed to enter into this Lease.

- (b) Subject to adjustment if an Extension Period (hereinafter defined) is added to the Term in accordance with Section 9.1, as used in this Lease, “Lease Year” means each successive period of twelve (12) consecutive months commencing on the Commencement Date.

Section 4.3 Payment of Rent.

Tenant shall pay all Rent when due and payable, without any setoff, deduction or prior demand therefor whatsoever. Rent shall be paid and delivered to Landlord at 150 Avon Belden Road, Avon Lake, Ohio 44012. Landlord may, at any time, change such remittance address by sending a notice to Tenant in accordance with Section 12.1 stating the change and setting forth the new address or addresses. Payments of Rent shall be deemed to have been given upon receipt. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

ARTICLE V

IMPROVEMENTS

Section 5.1 Landlord's Improvements.

As promptly as reasonably possible after the Commencement Date, taking into account weather conditions and Landlord's ability to obtain the necessary permits, Landlord shall make the following improvements and repairs to the Property:

- (a) Maintenance and repair of the eastern and western retaining walls of Heider Creek;
- (b) Maintenance and repair or replace fence on East Driveway, between Folger home and the Property;
- (c) Maintenance and repair of the decking approach to the launch facility, from approximately the flagpole to the launch structure.

Tenant shall cooperate fully with Landlord to enable Landlord to complete Landlord's work as promptly and efficiently as possible, including moving boats and boat racks and suspension of boat launching during the work on the Heider Creek retaining walls. Tenant acknowledges that the work on the retaining walls will probably be performed in the summer months (when the water flow in Heider Creek is at a minimum) and that the interference caused by such work shall not be deemed a Casualty Impact (as hereinafter defined). Except as specifically set forth herein, Landlord shall not be required to make any improvement to or alteration or repair of the Premises or the Common Elements, Tenant hereby agreeing to accept them in "AS IS" condition.

Section 5.2 Tenant's Improvements.

(a) Except as hereinafter provided, Tenant shall not undertake, directly or indirectly, any construction work, improvements or alterations, nor shall Tenant install any equipment (all such construction work, improvements, alterations and installations being hereinafter collectively referred to as the "Work") without first obtaining Landlord's written approval of the plans and specifications therefor. The approval by Landlord of Tenant's plans and specifications shall not constitute the assumption of any liability on the part of Landlord for their accuracy or their conformity with building code requirements, and Tenant shall be solely responsible for such plans and specifications. The approval by Landlord of Tenant's plans and specifications shall not constitute a waiver by Landlord of the right thereafter to require Tenant to amend the same to provide for omissions or deficiencies therein later discovered by Landlord.

(b) Tenant shall not commence any Work without first delivering to Landlord:

- (i) the policies of insurance, or certificates thereof, required by Section 8.2; and
- (ii) such security satisfactory to Landlord that such Work will be timely and properly performed.

(c) Notwithstanding the foregoing, Tenant shall not be required to obtain Landlord's approval for Minor Modifications, nor shall Subsection 5.2(b)(ii) apply to Minor Modifications. As used in this Lease, "Minor Modifications" means the following Work:

(i) installation or construction of boat racks, rails to transport boats to and from their racks and the boat launches, and related facilities;

(ii) installation of security systems; and

(iii) installation of lighting.

(d) If Tenant shall fail to complete any Work commenced by Tenant, then Landlord may, in addition to all other rights and remedies it may have, complete such Work on behalf of and for the account of Tenant upon five (5) days' prior notice to Tenant of its intention to do so. The costs and expenses incurred by Landlord in completing the Work shall be deemed to be Additional Rent, due and payable on demand.

ARTICLE VI

REPAIRS AND ALTERATIONS

Section 6.1 Repairs to be Made by Landlord.

Except for repair of damage arising from or caused by the negligence or willful acts of Tenant, its agents, concessionaires, subtenants, officers, employees, licensees, invitees or contractors (which repairs may be effected by Landlord at Tenant's sole cost and expense), Landlord shall be responsible for making any repairs required to the Common Elements, the exterior, roof and structural elements of the Building, including the Restroom, and repairs to the utility lines and connections servicing the Premises to the extent such utility lines and connections are situated beyond the footprint of the Premises. However, because Landlord is a political subdivision, Landlord's obligation to make repairs shall be limited by the funds available for such purposes. Landlord shall not be required to maintain or to make any other repair or improvement to the Premises not previously described herein.

Section 6.2 Repairs to be Made by Tenant.

Except for the repairs to be made by Landlord pursuant to Section 6.1, all needed repairs and replacements to the Premises and any installations, equipment or facilities therein and thereon, shall be made by Tenant, promptly, at Tenant's sole cost and expense.

Section 6.3 Alterations by Tenant.

Tenant will not make any alteration, renovation, improvement or installation in, on or to the Premises or any part thereof (including without limitation, any alteration of signs, structural alteration, or securing of any fixture, apparatus or equipment of any kind to any part of the Premises) unless and until Tenant shall have caused plans and specifications in the form required by Section 5.2 to have been prepared, at Tenant's expense, and shall have obtained Landlord's

approval thereof. If such approval is granted, then Tenant shall cause the work described in such plans and specifications to be performed, at its expense, in accordance with the requirements of Section 5.2, promptly, efficiently and competently by duly qualified and, if necessary, licensed persons or entities.

ARTICLE VII

UTILITIES

Section 7.1 Utilities.

As Tenant's contribution toward the cost of utilities supplied to the Property (the "Utility Contribution"), Tenant shall pay to Landlord the sum Five Hundred Dollars (\$500.00) per Lease Year, payable in advance on the first day of April of each year beginning April 1, 2024.

ARTICLE VIII

INDEMNITY AND INSURANCE

Section 8.1 Indemnity by Tenant.

Tenant shall indemnify, defend and save Landlord and Landlord's officials, representatives, agents and employees harmless from and against any and all claims, actions, demands, damages, liability and expense, including attorneys' and other professional fees, in connection with loss of life, personal injury and/or damage to property arising from or related to, wholly in part, directly or indirectly, the construction, occupancy or use of the Premises or any part thereof, or arising from or related to, wholly or in part, directly or indirectly, any act or omission of Tenant, its officers, agents, contractors or employees. The obligations of Tenant pursuant to this section shall survive the expiration or termination of this Lease as to taxes and assessments payable for any period prior to such termination.

Section 8.2 Tenant's Insurance.

At all times after the execution of this Lease, Tenant will obtain and keep in force, at its expense:

- (a) Commercial general liability insurance, on an occurrence basis, including premises and operations coverage, products and completed operations coverage, broad form property damage coverage and contractual liability coverage with a per occurrence combined single limit of liability for bodily injury, property damage liability and personal injury liability of not less than One Million Dollars (\$1,000,000.00). Landlord and Landlord's agents, officials, representatives and employees shall be named as insureds on the certificate of insurance. Such liability insurance shall be primary and not contributing to any insurance available to Landlord, and Landlord's insurance, if any, shall be in excess thereto.
- (b) If and to the extent required by law, Worker's Compensation or similar insurance in form and amounts required by law.

Section 8.3 Waiver of Liability.

Landlord and Landlord's agents, officials, representatives and employees shall not be liable for, and Tenant waives all claims arising from damage to property sustained by Tenant or any person claiming by, through or under Tenant resulting from any accident or occurrence in or upon the Premises or any other part of the Property. The foregoing waiver shall include, but not be limited to, claims for damage resulting from: (a) any building, structure, improvement, equipment, appurtenance, utility line or Common Element becoming out of repair or any defect in any of the foregoing, (b) injury done or occasioned by wind, storm or other weather conditions, (c) the collapse of a retaining wall or any portion thereof, and (d) any act, omission or negligence of trespassers or other occupants or users of the Property.

ARTICLE IX

DAMAGE AND DESTRUCTION

Section 9.1 Option to Terminate Lease.

If the retaining walls of Heider Creek, the Building, or the improvements on the Property owned by Landlord and constituting Common Elements (all of the foregoing, collectively, "Landlord's Improvements") are damaged or destroyed by fire, the elements, or other peril, whether insured or uninsured (any of such causes being referred to herein as a "Casualty"), then Landlord shall promptly notify Tenant whether and to what extent it will repair such damage or destruction and the time within which such damage or destruction will be repaired. If such damage or destruction or Landlord's repair thereof would significantly and adversely affect the ability of Tenant to use the Premises for the Permitted Use (the "Casualty Impact") for more than thirty (30) days, then Tenant shall have the right, by notifying Landlord within ten (10) days after Tenant receives Landlord's notice, to:

- (a) terminate this Lease as of the date of such Casualty; or
- (b) if the Casualty Impact commences during the first ten (10) Lease Years, extend the Term by a period of time (the "Extension Period") equal to the lesser of:
 - (i) one (1) year,
 - (ii) the period of time between the date the Casualty Impact commences and the end of the first ten (10) Lease Years, or
 - (iii) the period of time of the Casualty Impact.

No Base Rent or Utility Contribution shall be payable for the Extension Period. The Extension Period shall commence the day after the expiration of the tenth (10th) Lease Year, and the eleventh (11th) Lease Year shall commence after the expiration of the Extension Period,

If Tenant timely elects to terminate this Lease, then this Lease shall terminate as of the date of such notice, and the parties shall be relieved of all obligations and liabilities thereafter accruing. If such

termination occurs after the first ten (10) Lease Years, then Rent shall be adjusted to the date of termination. However, in no event shall Tenant be entitled to any refund of Rent paid for the first ten (10) Lease Years. If Tenant does not timely respond to Landlord's notice, then Tenant will be deemed to have elected not to terminate this Lease and also elected not to extend the Term.

Section 9.2 Repair and Reconstruction.

If Landlord's Improvements shall be damaged by Casualty, Landlord has indicated in its notice to Tenant that it will repair all or part of the damage or destruction, and Tenant has not timely elected to terminate this Lease, then Landlord shall repair such damage or destruction as Landlord stated it would repair in its notice to Tenant.

Section 9.3 Abatement of Rent.

There shall be no abatement of Rent as a result of the Casualty or the progress of the repairs for the first (10) Lease Years. However, if there is Casualty Impact during any period of time after the first ten (10) Lease Years, then Base Rent and the Utility Contribution for such period of time shall be abated.

ARTICLE X

ASSIGNMENTS AND SUBLETTING

Section 10.1 Assignment Not Permitted,

Tenant will not mortgage, pledge, encumber, assign or in any manner transfer this Lease or Tenant's interest herein, directly or indirectly, in whole or in part. Tenant will not sublet all or any part of the Premises, other than the rental of boat slips and boat storage racks in accordance with the Permitted Use.

ARTICLE XI

DEFAULT

Section 11.1 "Event of Default" Defined.

Any one or more of the following events shall constitute an "Event of Default":

- (a) The taking, sale or transfer of Tenant's interest in the Premises under attachment, execution or other process of law or equity.
- (b) The failure of Tenant to pay any Rent or other sum of money under this Lease within fifteen (15) days after the same is due.
- (c) The use of the Premises for any purpose other than the Permitted Use.
- (d) The discovery that any material representation made by Tenant in this Lease is untrue.

(e) Default by Tenant in the performance or observance of any term, condition or covenant of this Lease (other than a default involving the payment of money), which default is not cured within thirty (30) days after the giving of notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently and continuously prosecute the curing of same and shall completely cure such default as promptly as possible.

Section 11.2 Remedies.

Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below), in addition to and not in lieu of any other rights or remedies available to Landlord at law or in equity, may exercise any one or more of the following rights:

(a) Landlord may perform, on behalf and at the sole cost and expense of Tenant, any obligation of Tenant under this Lease that Tenant has failed to perform and of which Landlord shall have given Tenant notice; the cost of which performance by Landlord shall be deemed Additional Rent and shall be payable by Tenant to Landlord upon demand.

(b) Landlord may (i) terminate this Lease and the tenancy created hereby by giving notice of such election to Tenant and (ii) reenter the Premises, by summary proceedings or otherwise, remove Tenant and all other persons and property from the Premises and store such property in a public warehouse or elsewhere at the sole cost and expense of and for the account of Tenant without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

Section 11.3 Damages Upon Termination.

If this Lease is terminated by Landlord pursuant to Section 11.2, Tenant nevertheless shall remain liable for any Rent and damages which may be due or sustained prior to such termination, and for all reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder, including attorneys' and other professional fees (all such Rent, damages, costs, fees and expenses being referred to herein collectively as "Termination Damages") plus additional damages (the "Liquidated Damages") which are hereby stipulated to be equal to the Rent which, but for termination of this Lease, would have become due during the remainder of the Term, discounted at the rate of four percent (4%) per annum.

ARTICLE XII

NOTICES

Section 12.1 Sending of Notices.

Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in writing and shall be deemed to have been given upon receipt (if hand delivered and receipt obtained) or on the third day following the day on which the same shall have been mailed

by United States registered or certified mail, return receipt requested, with all postal charges prepaid, addressed to the following addresses:

If to Landlord: City of Avon Lake, Ohio
150 Avon Belden Road
Avon Lake, Ohio 44012
Attention: Mayor

with a copy to: City of Avon Lake, Ohio
150 Avon Belden Road
Avon Lake, Ohio 44012
Attention: Law Director

If to Tenant: Avon Lake Boat Club, Inc.
P.O. Box 17
Avon Lake, Ohio 44012
Attention: _____

Either party may, at any time, change its address for the above purpose by sending a notice to the other party stating the change and setting forth the new address, which notice, however, shall be deemed to have been given only upon receipt by the other party.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Access to Premises.

Landlord and its agents, representatives, employees and contractors shall have the right to enter all parts of the Premises for the purpose of inspecting the Premises, or for the purpose of making such additions, alterations or repairs to the Premises as Landlord is required or permitted to make, and to take all materials, tools and equipment in, through, or above the Premises that may be required therefor without the same constituting an actual or constructive eviction of Tenant.

Section 13.2 Remedies Cumulative.

No reference to any specific right or remedy of Landlord shall preclude Landlord from exercising any other right or remedy or from maintaining any action which it may otherwise be entitled to maintain at law or in equity. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy upon a breach thereof and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition.

Section 13.3 Successors and Assigns.

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant.

Section 13.4 Compliance with Laws and Regulations.

Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof.

Section 13.5 Captions and Headings.

The Article and Section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

Section 13.6 No Modification.

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof; all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representation, understanding, or agreement has been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease may be modified only by a writing signed by the party against whom the modifications is sought to be enforced.

Section 13.7 Severability.

If any term or provision, or any portion thereof, of this Lease, or the application thereof to any person or circumstance shall, to any extent, be adjudged invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 13.8 Third Party Beneficiary.

Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third-party beneficiary.

Section 13.9 Authorization.

Each person executing this Lease on behalf of Tenant individually represents and warrants his or her authority to do so.

Section 13.10 Applicable Law.

This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Ohio.

Section 13.11 Quiet Enjoyment.

If Tenant pays the Rent as and when due and timely performs all the covenants and agreements herein required to be performed by Tenant, Tenant shall, at all times during the Term, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from Landlord or any persons lawfully claiming under or through Landlord.

Section 13.12 Holding Over.

If Tenant or anyone claiming under Tenant shall be in possession of all or any part of the Premises after the expiration or other termination of this Lease, the tenancy hereunder shall be deemed to be from month-to-month if such holdover is with the express written consent of Landlord, otherwise such holdover shall be deemed to be at sufferance. Such holdover shall be subject to all the terms and conditions of this Lease except as to Term and except that the Base Rent shall be One Thousand Two Hundred Fifty Dollars (\$1,250.00) per month, payable in advance on the first day of each month.

Section 13.13 Landlord's Consent.

Unless otherwise specifically provided herein to the contrary, whenever the consent, approval or acceptance of Landlord is required, such consent, approval or acceptance shall be deemed given if given by the then Mayor of the City of Avon Lake, Ohio. Whenever Landlord's consent, approval or acceptance is required, unless specifically provided to the contrary herein, such consent, approval or acceptance may be granted or withheld in Landlord's sole discretion.

Section 13.14 Termination.

Unless the context otherwise requires, use of the phrases "termination of this Lease" or "termination of the Term" or similar language shall also refer to the expiration of the Term.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have executed this Lease as of the day and year first above written.

LANDLORD:

CITY OF AVON LAKE, OHIO

By: _____
Mark Spaetzl, Mayor

Date: _____

STATE OF OHIO)

LORAIN COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Mark Spaetzl, known to me to be the Mayor of the above named City of Avon Lake, Ohio, a municipal corporation, and acknowledged that he did sign the foregoing instrument on behalf of said municipal corporation, duly authorized, and that the same is his free act and deed as Mayor, and the free act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Avon Lake, Ohio this ____ day of _____, 2024.

Notary Public

TENANT:

AVON LAKE BOAT CLUB, INC.

By: _____

Name: _____

Title: _____

Date: _____

STATE OF OHIO)

_____ COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, known to me to be the _____ of the above named Avon Lake Boat Club, Inc., an Ohio not-for-profit corporation, and acknowledged that they did sign the foregoing instrument on behalf of said corporation, duly authorized, and that the same is their free act and deed as such officer, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at _____, Ohio this ____ day of _____, 2024.

Notary Public

EXHIBIT A
Legal Description

EXHIBIT B
Property Map

AN ORDINANCE TO DESIGNATE A PORTION OF LAKE ROAD AS A BUSINESS DISTRICT PURSUANT TO CODIFIED ORDINANCE SECTION 402.07 AND TO MODIFY THE SPEED LIMIT ON LAKE ROAD PURSUANT TO CODIFIED ORDINANCE SECTION 434.03 TO BE TWENTY-FIVE MILES PER HOUR (25 MPH) ONLY WITHIN THE BUSINESS DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS, Section 434.03(a) of the Codified Ordinances of the City of Avon Lake (“C.O.”) provides that it is unlawful to operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard for the traffic, surface, and width of the street or highway and any other conditions; and

WHEREAS, C.O. Section 434.03(b)(1)(G)(2) provides that it is prima facie lawful for the operator of a motor vehicle to operate said vehicle at a speed not exceeding twenty-five miles per hour (25 mph) in all portions of the Municipality other than within a school zone, an alley, or on state routes or through highways outside of business districts; and

WHEREAS, C.O. Section 402.07 defines a “business district” as “territory fronting upon a street or highway, including the street or highway, between successive intersections within the Municipality, where 50% or more of the frontage between successive intersections is occupied by buildings in use for business, or within or outside the Municipality where 50% or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of the territory is indicated by official traffic-control devices.”

WHEREAS, a 1,512-foot section of Lake Road between 33368 Lake Road and 33525 Lake Road entirely within the municipal boundaries of the City and has at least 50% of the frontage between successive intersections occupied by buildings in use for business; and

WHEREAS, in accordance with its powers of self-governance as set forth in Chapter I, Section 2 of the Charter of the City of Avon Lake, and Article XVIII, Sections 3 and 7 of the Ohio Constitution, the City has the authority to designate the section of Lake Road starting at a point 417 feet east of Moore Road and ending at a point 1,095 feet west of Moore Road, for a total of 1,512 feet (0.29 miles), and as depicted on the map attached as Exhibit A, as a business district and adopt and enforce local Police and similar regulations affecting the health, safety, and welfare of its residents, including regulating the speed limit within the business districts of the City; and

WHEREAS, the City has determined that the maximum speed limit on portions of Lake Road outside of the business district should be raised to thirty-five miles per hour (35 mph).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Council hereby designates the section of Lake Road starting at a point of 417 feet east of Moore Road and ending at a point 1,095 feet west of Moore Road, for a total of 1,512 feet (0.29 miles), as depicted on the map attached as Exhibit A, as a business district.

Section No. 2: That Council hereby directs that the maximum speed limit on Lake Road within the business district be and is hereby twenty-five miles per hour (25 mph).

Section No. 3: That Council hereby directs that the maximum speed limit on Lake Road, other than within the business district lying, be, and is hereby thirty-five miles per hour (35 mph).

Section No. 4: That Council hereby directs that the twenty-five miles per hour (25 mph) speed limit within the business district of Lake Road be indicated by official traffic-control devices.

Section No. 5: That Council hereby directs that the thirty-five miles per hour (35 mph) speed limit on Lake Road outside of the business district be indicated by official traffic-control devices.

Section No. 6: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 7: That this Ordinance is hereby declared to be an emergency measure, the emergency being the immediate preservation of the public health, safety, morals, convenience, and the general welfare of the community. Therefore, this Ordinance shall be in full force and effect from and immediately after passage and approval by the Mayor.

1st reading:

2nd reading:

3rd reading:

PASSED: _____

President of Council

POSTED: _____

Approved

ATTEST: _____

Clerk of Council

Mayor



NOTE: PROPOSED SIGN PLACEMENT MAY REQUIRE RELOCATION OF EXISTING SIGNS



LAKE ROAD SPEED LIMIT SIGNING

