

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AGREEMENT TO SELL PERMANENT PARCEL NO. 04-00-017-102-212 ON PIN OAK PARKWAY TO BEY PROPERTIES, LLC AND DECLARING AN EMERGENCY.

WHEREAS, the City is the owner of a vacant parcel located on Pin Oak Parkway, Avon Lake, Ohio, consisting of 1.044 acres, and identified by the Lorain County Auditor as Permanent Parcel No. 04-00-017-102-212 (the "Premises"); and

WHEREAS, BEY Properties, LLC, 225 Cherry Avenue, Avon Lake, Ohio, desires to purchase Permanent Parcel No. 04-00-017-102-212 (the "Premises"), Exhibit A to the purchase agreement attached hereto; and

WHEREAS, in consideration for the purchase of the Premises, BEY Properties, LLC agrees to grant the City a permanent ingress/egress easement; and

WHEREAS, Council has determined that the Premises is not needed for any of the following purposes and in connection with any such purposes or as incidental to the acquisition of land for any of such purposes: public highway, street, avenue, sidewalk, public grounds, bridge, aqueduct, viaduct, or any other public purposes; and

WHEREAS, Council has determined the sale of the Premises to BEY Properties, LLC is 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 City sell the Premises to BEY Properties, LLC in exchange for a permanent ingress/egress easement.

Section No. 2: That the Mayor is hereby authorized and directed to execute an agreement for the sale of the portion of the parcel in substantially the form as attached as hereto.

Section No. 3: That the Mayor and Finance Director are authorized and directed to execute all other instruments and take such actions as may be required to complete the sale of the Premises.

Section No. 4: That all actions taken by the Mayor and his Administration to effectuate the sale of the Premises on behalf of the City are duly ratified and confirmed.

Section No. 5: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted 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. 6: That this Ordinance is hereby declared to be an emergency measure to ensure the timely and efficient operations of the City, thus for the public welfare. Therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: 10/10/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 10/13/2023

APPROVED: 10/11/2023

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of the _____ day of September 2023 ("Effective Date"), by and between **THE CITY OF AVON LAKE, OHIO**, a municipal corporation ("Seller"), and **BEY PROPERTIES, LLC**, an Ohio limited liability company, or its nominee or assignee ("Buyer"),

WITNESSETH:

WHEREAS, Seller is the owner of a vacant parcel of real property containing 1.0144 acres, located in Avon Lake, Ohio, and known as permanent parcel number 04-00-017-102-212 (the "Parcel");

WHEREAS, Seller desires to sell such property to Buyer and Buyer desires to purchase such property from Seller upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained and other good and valuable consideration received to the full satisfaction of each of them, the parties hereto agree as follows:

1. Agreement To Buy And Sell. Seller agrees to sell and convey to Buyer, and Buyer agrees to buy and take title to, under the terms and conditions set forth below, the following:

(a) Real Estate. All of Seller's right, title, estate and interest in and to the real estate owned by Seller located in the City of Avon Lake, Lorain County, Ohio, and being more particularly described in **Exhibit A**, to be attached hereto and made a part hereof, including, without limitation, the Parcel (the "Real Estate").

(b) Appurtenances. The parties agree that the real property to be purchased and sold hereunder shall include the Real Estate described in **Paragraph 1(a)** hereof; all landscaping, all appurtenant rights, easements and privileges, including all contract rights, warranties, guarantees, reports, plans, specifications, drawings, permits, approvals and rights established by reason of governmental approvals; all of Seller's right (none of such rights having been retained by Seller) in all air, mineral, oil and gas, riparian, water, division and development rights; any land lying on the bed of any street, road or avenue in front of or adjoining such Real Estate to the centerline thereof, to the extent of Seller's interest therein; and any and all buildings, structures, fixtures and any and all other improvements of whatever kind or nature currently existing on the Real Estate.

All of the foregoing assets and property to be acquired by Buyer described or referred to in **Paragraphs 1(a)** and **1(b)** hereto are hereinafter collectively referred to as the "Property."

2. Consideration/Purchase Price.

Subject to adjustment as described in this Agreement, in consideration for the purchase of the Property described herein, Buyer agrees to grant Seller a permanent ingress/egress easement which is described in **Exhibit B**, attached hereto and incorporated herein.

3. Instruments Of Conveyance/Closing Documents.

(a) Seller shall convey good, indefeasible, and insurable fee simple title to the Property to Buyer by good and sufficient limited warranty deed duly and properly executed, with dower rights, if any, released, free and clear of all liens, charges and encumbrances whatsoever except: (i) restrictions, reservations, covenants, limitations, easements and conditions of record, if any, as shall have been approved by Buyer in writing in accordance with **Paragraph 4** hereof; and (ii) real estate taxes and assessments that are a lien but not yet due and payable at the Closing Date. Buyer's attorney shall prepare and submit to the Title Company (hereinafter defined) for approval the form of a limited warranty deed proposed to be executed by Seller.

(b) On or before the Closing Date, Seller shall execute, where applicable, and deliver to Buyer or the Escrow Agent (as applicable), the following:

(i) Copies of any (A) certificates of occupancy, licenses, permits and franchises issued by any federal, state or local authorities relating to the use, development, maintenance and/or operation of the Real Estate, (B) all architectural and construction plans, specifications and mechanical and engineering drawings relating to the improvements on the Real Estate as are in Seller's possession, and (C) all unexpired warranties and guaranties received by Seller in connection with the construction, improvement, equipment or repair of the Real Estate, if any.

(ii) An assignment, in form and substance satisfactory to Buyer, of all Buyer's interest in the matters identified in item (i) hereof, if any.

(iii) An affidavit of Non-Foreign Status.

(iv) Any and all documents required by the Title Company to delete the standard exceptions from the Title Policy (hereinafter defined).

(v) A Closing Statement showing both Buyer and Seller sides.

(vi) Resolutions of Seller authorizing the transaction contemplated hereby along with documentation of ownership of Seller in form and substance reasonably satisfactory to Buyer and the Escrow Agent.

(vii) Such other documents, instruments, certifications and confirmation as may be reasonably required by Buyer, the Title Company or the Escrow Agent to fully effect and consummate the transactions contemplated by this Agreement.

4. Title Policy. On the Closing Date, Seller agrees to furnish to Buyer an owner's fee policy of title insurance through Ohio First Land Title Agency, Attention: Tricia Ventura, 22649 Lorain Rd, Cleveland, Ohio 44126 (in such capacity, the "Title Company"), in the amount of the Purchase Price (the "Title Policy"). Within 30 days following the Effective Date of this Agreement, Seller agrees to deliver to Buyer and Buyer's attorney a preliminary title commitment with respect to the Real Property (with special tax and lien searches) (the "Title Commitment"). During the Inspection Period, following Buyer's receipt of both the Title Commitment (including copies of all documents noted as exceptions therein) and Survey (as hereinafter defined), Buyer shall either (i) approve the form and substance of the Title Commitment, or (ii) notify Seller in writing to remove or satisfy any exceptions or other matters shown on the Title Commitment which are objectionable to Buyer (said exceptions or other matters together herein called the "Title Defects"). Any

monetary liens or encumbrances need not be objected to by Buyer and shall be removed by Seller, at Seller's sole cost and expense, prior to or on the Closing Date. If within fifteen (15) days after receipt of notice from Buyer to Seller to remove or satisfy any such Title Defects, all such Title Defects are not removed or satisfied to Buyer's sole satisfaction, then Buyer may, at Buyer's option, (a) accept such title as Seller is able to furnish, or (b) grant Seller additional time in which to cure any Title Defects, or (c) terminate this Agreement and receive all funds and documents previously paid or deposited by Buyer. Upon such termination, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder. In the event any update of the Title Commitment includes exceptions or other matters not previously disclosed, Buyer shall have a right to object to such exceptions or other matters that are objectionable to Buyer by written notice to Seller, and such exceptions and other matters shall be deemed Title Defects for all purposes of this **Paragraph 4**.

5. Survey. Removed.

6. Escrow. The Escrow Agent for this transaction shall be the Title Company (in such capacity, the "Escrow Agent"). An executed copy of this Agreement shall be deposited with the Escrow Agent within five (5) days following the Effective Date, and this Agreement shall serve as the escrow instructions. The Escrow Agent may attach its standard conditions of acceptance thereto; provided, however, that in the event said standard conditions of acceptance are inconsistent with or in conflict with the terms and provisions hereof, then the terms and provisions of this Agreement shall control.

7. Closing Date And Possession. Unless the parties otherwise agree in writing, this transaction shall close (the "Closing") thirty (30) days following the expiration of the Inspection Period, as the same may be extended (the "Closing Deadline"). The date on which the Closing occurs shall be the "Closing Date." All necessary funds (or commitments therefor) and documents shall be deposited in escrow no later than the Closing Date. Buyer shall be entitled to take possession of the Property on the Closing Date broom clean and free and clear of all tenants and other claimants, but subject to the Lease (hereinafter defined).

8. Delivery Of Documents. Within five (5) days after the Effective Date, Seller shall deliver to Buyer the following documents with respect to the Property, together with all other information in Seller's possession concerning the Property that Buyer, its attorneys or agents may reasonably request (collectively, the "Property Information"):

(a) If applicable, copies of the most recent bills for real estate taxes, assessments, water charges and other utilities, together with proof of payment (if any of the same have been paid); and

(b) Copies of all environmental reports or assessments in Seller's possession, along with copies of all available surveys, title commitments and/or policies and copies of all available reports and studies relating to engineering, physical conditions and/or operation of the Property; and

9. Charges.

(a) The Escrow Agent shall charge Seller (or credit Buyer) the following: prorated real estate taxes and assessments as hereinafter provided for; one-half (1/2) the cost of the Title Policy; the cost of the conveyance fee and all real estate transfer taxes or similar charges; the cost of discharging any and all mortgages, liens and encumbrances on the Property; one-half

(1/2) of the escrow fee; and all broker's commission due to the Broker (as such term is hereinafter defined).

(b) The Escrow Agent shall charge Buyer the following: the cost of the title examination, including the cost of the title commitment, one-half (1/2) the cost of the Title Policy; the cost of the Survey; and the cost of filing Seller's limited warranty deed for record.

10. Prorations. The Escrow Agent shall prorate and apportion, as of the close of business on the Closing Date, the real estate taxes and assessments, both general and special, using for such purpose the rate and valuation shown on the last available tax information. Seller shall be responsible for and shall pay all reassessed assessments and/or respread taxes upon the Real Property and all additional or "recaptured" taxes payable by reason of loss of any tax exemption, reduction or abatement, such as loss of any homestead exemption or CAUV. In the event that the taxes and assessments actually levied against the Property and paid by Buyer for the period of the proration exceed the prorated credit given Buyer on the Closing Date, Seller shall, upon presentation of a tax bill or bills, pay to Buyer the amount that the taxes and assessments actually levied for the prorated period exceed the credit given Buyer on the Closing Date. All utilities, services and other charges incurred at the Property through the Closing Date shall be the responsibility of, and paid by, Seller. The terms and provisions of this **Paragraph** shall survive the consummation of this transaction and the delivery and filing for record of Seller's limited warranty deed.

11. Filing. On the Closing Date, the Escrow Agent shall file for record Seller's limited warranty deed and any other instruments required to be recorded and shall thereupon deliver to each of the parties hereto the documents to which they shall be respectively entitled, together with its escrow statement; provided that it shall then have on hand all funds and documents necessary to complete this transaction and shall be in a position to and will issue and deliver the Title Policy to Buyer in the form and substance described in **Paragraph 4** hereof, with such endorsements and additional coverage as may be required by Buyer, upon the filing of Seller's limited warranty deed for record.

12. Fire Or Other Casualty. Removed

13. Eminent Domain. If, prior to the Closing Date, the Property or any part thereof shall be appropriated or taken by the exercise of the power of eminent domain or Seller shall receive any notice ("Condemnation Notice") of any condemnation proceeding or other proceeding in the nature of eminent domain, then Buyer shall have the option, exercisable by written notice to Seller within ten (10) days after such taking or after Buyer receives written notice of any Condemnation Notice, either to (a) terminate the obligations of the parties pursuant to this Agreement and receive any and all funds and documents previously paid or deposited by Buyer, including, without limitation, the Deposit (in which event Seller shall be entitled to receive and retain the entire proceeds awarded in the proceedings relating to such taking), or (b) proceed with the purchase of the Property or remaining Property pursuant to the terms of this Agreement (in which event Buyer shall be entitled to receive and retain the entire proceeds awarded in the proceedings relating to such taking). Immediately upon Seller's receipt of any Condemnation Notice, Seller shall advise Buyer in writing of the same. Upon termination of this Agreement by Buyer pursuant to this **Paragraph**, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder.

14. Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, which shall be deemed renewed by Seller on the Closing

Date as if made at such time and shall survive the consummation of this transaction and the delivery and filing for record of Seller's limited warranty deed:

(a) Seller is a municipal corporation duly formed, validly existing and in good standing under the laws of the County of Lorain, State of Ohio.

(b) Seller has the power and authority to enter into this Agreement and all related agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and all related agreements to which it is a party and the consummation of the transaction contemplated hereby and thereby have been duly authorized and approved by the necessary governmental officials/governmental body on the part of Seller which are necessary to authorize and approve this Agreement, any related agreements to which Seller is a party, or the transactions contemplated hereby and thereby. This Agreement and all related agreements to which Seller is a party have been or will be duly executed and delivered by Seller and constitute, or will constitute, upon execution thereof, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. The execution, delivery and performance by Seller of this Agreement and all related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) contravene any provisions of the articles of organization or operating agreement or any other similar agreement (including any comparable governing instrument with a different name) of Seller;

(ii) conflict with, result in a breach of any provision of, constitute a default under, result in the modification or cancellation of, or give rise to any right of termination or acceleration in respect of, any Seller Agreement (hereinafter defined), whether presently or upon notice or passage of time or both, or require any consent or waiver of any party to any Seller Agreement. For purposes of this Agreement, "Seller Agreement" shall mean any mortgage, indenture, note, agreement, contract, lease, license, franchise, obligation, instrument or other commitment, arrangement or understanding of any kind or nature, whether oral or written, binding or non-binding, to which Seller is a party or by which Seller or the Property, may be bound or affected, and including all amendments, modifications, extensions or renewals of the foregoing;

(iii) result in the creation of any liens upon, or result in any person or entity obtaining any right to acquire, the Property or any rights of Seller;

(iv) violate or conflict with any legal requirements applicable to Seller or the Property; or

(v) require any authorization, consent, order, permit or approval of, or notice to, or filing, registration or qualification with, any or any other individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or judicial authority (each, a "Person").

(c) There is no claim, action, suit, litigation, investigation, inquiry, review or proceeding before or by any court, arbitrator, panel, agency or other governmental, administrative or judicial authority, domestic or foreign (collectively "Claims" and each a "Claim"), pending against, or, to the best knowledge of Seller, threatened against or affecting, Seller or the Property, nor is any basis known to Seller for any Claim. Neither Seller, nor the Property is subject to any

judgment, decree, writ, injunction, ruling or order of any governmental, administrative or judicial authority, domestic or foreign.

(d) Seller has had no boundary, water drainage or other disputes with the owners of any adjacent premises.

(e) There are no options, purchase agreements, land contracts, rights of first refusal or other such agreements affecting the Property or any part thereof, and no other covenants, conditions, restrictions, obligations, contracts or agreements affecting the Property that will be binding on Buyer and/or the Property from and after the Closing other than the Existing Leases (subject to **Paragraph 17(a)(vii)** hereof) or as disclosed in the Title Commitment.

(g) Seller has received no written notice of any default or breach by Seller of any covenants, conditions, restrictions, rights-of-way, or easements which may affect the Property or any portion of the Property, and to the best of Seller's knowledge, no such default or breach now exists.

(h) No improvements (site or area) have been installed, the cost of which is to be assessed against the Property in the future. Seller has not received written notice of any special or general assessment threatened against all or any part of the Property.

(i) Seller has not received any written notice of and has no knowledge of any condemnation proceeding or other proceedings in the nature of eminent domain in connection with the Property.

(j) To the best of Seller's knowledge, (i) no Hazardous Materials (hereinafter defined) are located in, on or about the Property; (ii) no Hazardous Materials have been buried or accumulated in, on or about the Property; (iii) neither the Property nor any part thereof is contaminated by or contains any Hazardous Materials; and (iv) no permit is required from the State of Ohio or Federal Environmental Protection Agency for the use or maintenance of any improvement or facility on or about the Property. To the best of Seller's knowledge, there is no liability, whether asserted or unasserted, fixed or contingent, relating to the Property or any part or parts thereof resulting from any environmental matters, including, without limitation, the discharge, disposal, storage, accumulation, transport, leakage, spillage or other actions or omissions with respect to Hazardous Materials or any breach or violation of any Environmental Laws (hereinafter defined). To the best of Seller's knowledge, there are no tanks, whether aboveground or underground, located in, on, under or about the Property. For purposes hereof, the term "'Hazardous Materials" shall mean all those things defined as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "toxic substances" or other similar terms in any of the Environmental Laws, and the term "Environmental Laws" shall mean all present federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended) and any state and local counterparts of such statutes or regulations.

(k) To the best of Seller's knowledge, the Property and the operation and use thereof conform and comply with all applicable laws, ordinances, regulations, zoning regulations, building codes, fire codes and directives of all governmental or quasi-governmental authorities. Seller has not received written notice of any kind from any Governmental Authority (hereinafter defined) alleging that Seller has failed to comply with any applicable law, ordinance, regulation, statute, rule or restriction pertaining to or affecting the Property. As used herein, the term "Governmental Authority" shall mean and include every department, agency, commission, board, bureau or instrumentality of the United States, the State of Ohio, the County of Lorain, or the City of Avon Lake having jurisdiction over the Property, including, without limitation, the United States Environmental Protection Agency and/or any equivalent state environmental agencies. There are no open permits affecting the Property.

(l) Seller is not a "nonresident alien," "foreign corporation," "foreign partnership," "foreign trust" or "foreign estate" within the meaning of the Internal Revenue Code and income tax regulations.

(m) To the best of Seller's knowledge, there are no oil or gas wells, or pipes, tanks of any kind, machinery, structures, equipment, fixtures or other appliances relating thereto on the Property, whether aboveground or underground, whether installed by or for the benefit of Seller or any of Seller's predecessors in title or otherwise, and whether or not granted or reserved by lease, easement or other instrument.

(n) Prior to the Effective Date, Seller delivered to Buyer copies of all blue prints, site plans, drawings, building plans, specifications and other documents, instruments or similar materials relating to the use, development or modification of the Property or any improvements thereon.

All of the representations, warranties, covenants and agreements of Seller set forth in this **Paragraph 14** shall be deemed renewed on the Closing Date as if made or agreed to at such time and shall survive the consummation of this transaction and the delivery and filing for record of Seller's limited warranty deed.

15. Inspections; Approvals.

(a) For sixty (60) days following the date of this Agreement (the "Inspection Period"), Seller shall provide Buyer or Buyer's agents or representatives complete access to all or any portion of the Property for the purpose of making such inspections, assessments, tests, audits and delineations of the Property as Buyer, in Buyer's sole discretion, deems necessary. Said inspections, assessments, tests, audits and delineations may include, without limitation, such environmental tests, audits, assessments, inspections, soil borings, samples and tests and other inspections of the Property as Buyer, in Buyer's sole discretion, deems necessary, and such wetland delineations, studies and inspections as Buyer, in Buyer's sole discretion, deems necessary (collectively, the "Inspections"). Buyer hereby agrees to indemnify and hold harmless Seller from any damage to the Property caused solely by the Inspections. If any inspections are unacceptable to Buyer, in Buyer's sole discretion, or if Buyer determines that the Property is unacceptable to Buyer for any reason or no reason whatsoever, Buyer may, at Buyer's option, terminate this Agreement prior to the expiration of the Inspection Period, as the same may be extended, and receive all funds and documents previously paid or deposited by Buyer, including, without limitation, the Deposit.

(b) Buyer shall have sixty (60) days from the date of this Agreement (the "Approval Period") in which to obtain all consents, approvals, permits, licenses and all other items that Buyer deems necessary for Buyer's intended use, operation and/or development of the Property including, without limitation, all approvals and other items Buyer deems necessary to own and operate a new and used vehicle sales facility on the Property, on terms acceptable to Buyer in its sole discretion (all such items collectively, the "Approvals"). Buyer may extend the Approval Period for one (1) additional period of thirty (30) days upon written notice to Seller given prior to the expiration of the Approval Period. If Buyer does not receive all or any of the Approvals within the Approval Period, then Buyer may, at Buyer's option, terminate this Agreement and receive all funds and documents previously paid or deposited by Buyer, including, without limitation, the Deposit.

(c) Upon termination of this Agreement by Buyer pursuant to this **Paragraph**, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder.

16. Operations Prior to Closing. From the date hereof to the Closing Date, Seller shall keep and perform all of the obligations to be performed by it, maintain (or cause to be maintained) the Property in as good repair, order and condition as of the date hereof. From the date hereof to the Closing Date, Seller shall not:

(a) enter into, amend or extend any contracts or pertaining to the Property, including, without limitation, the Existing Leases, without the prior written consent of Buyer;

(b) cause or permit any grading, excavation or construction upon the Property or any addition, alteration or removal of any improvements, fixtures or equipment forming a part of the Property;

(c) initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property;

(d) impose any restrictive covenants, liens or encumbrances on the Property or execute or file any subdivision plat affecting the Property nor permit such imposition, execution or filings by any other party; nor

17. Other Conditions.

(a) The obligations of Buyer under this Agreement are also subject to the following conditions precedent:

(i) The Title Company shall be ready, willing and able to issue the Title Policy to Buyer in the form and substance described in **Paragraph 4** hereof on the Closing Date.

(ii) Seller shall have executed and delivered into escrow (or to Buyer) all of the funds and documents required to be deposited or delivered by Seller pursuant to this Agreement including, without limitation, Seller's limited warranty deed, and Seller shall have performed and observed all other obligations to be performed and observed by Seller prior to and on the Closing Date.

(iii) The representations and warranties of Seller set forth in **Paragraph 14** hereof shall have been true and correct when made and as of the Closing Date in all respects, including the Seller's receipt of a release/satisfaction of the Property herein from any mortgage/encumbrance which presently affects the Property.

(iv) Buyer shall have received all consents, approvals and other items Buyer deems necessary, including, without limitation, receipt of approval of the City of Avon Lake, Ohio, for Buyer's proposed use of the Property.

(v) No material adverse change shall have occurred with respect to the Property, including, without limitation, to the condition thereof.

(b) In the event that any of the above conditions are not satisfied as of the Closing Date, Buyer, at Buyer's option, may either: (i) extend the Closing Date to grant Seller additional time to satisfy the conditions, or (ii) terminate this Agreement and receive all funds and documents previously paid or deposited by Buyer, including, without limitation, the Earnest Money. The foregoing options of Buyer shall be in addition to all other rights or remedies of Buyer at law or in equity or specifically granted to Buyer pursuant to the terms of this Agreement, including, without limitation, **Paragraph 20** hereof. Upon termination of this Agreement by Buyer pursuant to this **Paragraph**, neither party hereto shall thereafter be under any further liability or obligation to the other party hereunder.

18. No Liabilities Assumed. Except as expressly provided for herein, Buyer shall not, by the execution or performance of this Agreement, or otherwise, assume, become responsible for or incur any liability or obligation of any nature of Seller, matured or contingent, known or unknown, and Seller, on behalf of Seller's members, managers, officers, partners, agents and representatives, shall indemnify and defend Buyer and Buyer's successors and assigns, against, and save each of them and the Property harmless from, such liabilities and obligations and against and from all claims, costs, damages and expenses (including reasonable attorneys' fees and court costs) with respect to the same. Without limiting the generality of the foregoing, Buyer shall not assume any of Seller's liabilities or obligations, whether as a transferee of the Property, Seller's business or otherwise including, without limitation, any liability inconsistent with any of Seller's representations, warranties, covenants or agreements contained in this Agreement. The terms and provisions of this **Paragraph** shall survive the consummation of this transaction and the delivery and filing for record of Seller's limited warranty deed.

19. Default. In the event of default by Seller under this Agreement, if such default is not cured within ten (10) days after written notice thereof is delivered by Buyer to Seller, then, in addition to all other rights and remedies available to Buyer at law or in equity, Buyer shall have the right to (a) terminate this Agreement and receive all funds and documents previously paid or deposited by Buyer, including, without limitation, the Deposit, and Seller shall reimburse Buyer for all third party, out-of-pocket expenses incurred by Buyer in connection with this Agreement and the transactions contemplated hereunder, including, without limitation, reasonable attorneys' fees; or (b) seek specific performance of this Agreement. In the event of default by Buyer under this Agreement, if such default is not cured within ten (10) days after written notice thereof is delivered by Seller to Buyer, then, as Seller's sole and exclusive remedy, Seller shall have the right to terminate this Agreement and receive, as liquidated damages, it being agreed that Seller's actual damages are difficult to ascertain and the amount of the Deposit is a reasonable estimate of such damages, and neither party hereto shall have any further liability or obligation to the other party hereto, except for such obligations as expressly survive such termination.

20. Notices. Any notice which may be or is required to be given pursuant to the provisions of this Agreement shall be personally delivered, sent by certified or registered mail, postage prepaid, return receipt requested, by overnight delivery service or by email (if sent by email, with a copy to follow by another recognized delivery method) and addressed as follows:

if to Buyer, to: BEY Properties, LLC
225 Cherry Street
Avon Lake, Ohio 44012
Attention: Brian Yarham
Email: brian@eyringmovers.com

With a copy to: Hallett Legal Group, LLC
35651 Detroit Rd.
Avon, Ohio 44011
Attn: Matthew H. Hallett, Esq.
Email: mhallett@hallettlegalgroup.com

if to Seller, to: City of Avon Lake, Ohio
150 Avon Belden Road
Avon Lake, Ohio 44012
Attention: Gary Ebert
Email: GAEbert@avonlake.org

21. General Provisions.

(a) The titles and headings of the various **Paragraphs** hereof are intended solely for means of reference and are not intended for any purpose whatsoever to modify, explain or place any construction on any of the provisions of this Agreement.

(b) If any of the provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement by application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified, amended or otherwise changed in any manner except by a writing executed by the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

(d) This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(e) Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender.

(f) Without the prior consent of Seller, Buyer may assign all or any of Buyer's rights under this Agreement or appoint a nominee to take title to the Property provided Buyer shall remain liable hereunder.

(g) Each person and entity signing on behalf of Seller or Buyer individually warrants his and its authority so to do and individually warrants that all necessary actions have been taken to authorize the execution and delivery of this Agreement by such party.

(h) Both parties having participated fully and equally in the negotiation and preparation hereof, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against either party hereto.

(i) The representations, warranties, covenants and indemnities set forth in this Agreement shall survive the consummation of this transaction and the delivery and filing for record of Seller's limited warranty deed.

(j) This Agreement may be executed by electronic or facsimile signature(s) and in any number of counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

CITY OF AVON LAKE, OHIO,
a municipal corporation

By: _____
Print name: _____
Its: _____

BUYER:

BEY PROPERTIES, LLC,
an Ohio limited liability company

By: _____
Print name: _____
Its: _____

ACCEPTANCE OF ESCROW

Receipt of an executed copy of the foregoing instrument is hereby acknowledged, and the undersigned hereby agrees to act as Escrow Agent in accordance with the foregoing Agreement.

Date: _____

Ohio First Land Title Agency, LLC

Escrow No.: _____

By: _____

EXHIBIT A

Legal Description

Situated in the City of Avon Lake, County of Lorain and State of Ohio, and known as being part of Original Avon Township Section No. 17 and bounded and described as follows:

Beginning at a 1" iron pin found in a monument box at the intersection of the centerline of Avon Belden Road (variable width) and the centerline of Belmont Drive (50 feet wide);

Thence South 00° 18' 30" West, on the centerline of Avon Belden Road, a distance of 239.48 feet to the Northeasterly corner of land conveyed to the City of Avon Lake by deed recorded in Volume 1342, Page 300 of Lorain County Deed Records;

Thence South 89° 44' 46" West, along the Northerly line of a parcel of land conveyed to the City of Avon Lake and the Southerly right of way of Pin Oak Parkway (variable width), as conveyed to the City of Avon Lake, by deed recorded in Lorain County Recorder's Instrument No. 19990586883. a distance of 2097.45 feet, to a 5/8" capped (Reitz Eng.) iron pin set at the principal place of beginning;

Thence South 00° 18' 30" West, a distance of 184.98 feet to a 5/8" capped (Reitz Eng.) iron pin set on the Northerly line of a parcel of land conveyed to the Irish Heritage Club, Inc., by deed recorded in Volume 966, Page 227 of Lorain County Deed Records;

Thence South 89° 47' 02" West, along the Northerly line of land so conveyed to the Irish Heritage Club, Inc., a distance of 238.88 feet to a point 0.85 feet North of a 5/8" iron pipe found on the Westerly line of Avon Township Section No. 17 and the Easterly line of the Avon Lake Office and Storage Condominiums as recorded in Volume 83, Pages 26-30 of Lorain County Record of Maps;

Thence North 00° 14' 00" East along the Westerly line of said Section Number 17 and the Easterly line of land so conveyed to Avon Lake Office & Storage Condominiums, a distance of 184.82 feet, to a 5/8" capped (Bramhall) iron pin found on the Southerly right of way of Pin Oak Parkway;

Thence North 89° 44' 46" East, along the Southerly right of way of Pin Oak Parkway, a distance of 239.13 feet, to the principal place of beginning, and containing 1.0144 acres (44,190 square feet) of land, but subject to all legal highways as surveyed by The Henry G. Reitz Engineering Company, in July, 2006, by James T. Sayler, Registered Surveyor No. S-7425. Bearings are based on the Southerly right of way of Pin Oak Parkway being North 89° 44' 46" East, and used to denote angles only.

Permanent Parcel No. 04-00-017-102-212



Polaris Engineering & Surveying
34600 Chardon Road Suite D
Willoughby Hills, Ohio 44094
Office: (440) 944-4433
Fax: (440) 944-3722

September 29, 2023
Legal Description
Ingress / Egress Easement

Situated in the City of Avon Lake, County of Lorain, and State of Ohio, being part of Original Avon Township Section 17, being further known as an easement over of part of land conveyed to the City of Avon Lake by document number 2022-0883758 of Lorain County Records (PPP 04-00-017-102-212) over part of land conveyed to Christ Church Westshore by document number 2022-0900416 of Lorain County Records (PPN 04-00-017-102-220);

BEGINNING in the southerly right of way of Pin Oak Parkway (width varies) at the northeasterly corner of Avon Lake Storage Condominiums as shown by plat recorded in volume 83, page 26-30 of Lorain County Plat Records and being the line between Original Avon Township Section 8 and Original Avon Township Section 17;

- | | |
|----------|---|
| COURSE 1 | Thence South 89°48'15" East, along the southerly right of way of Pin Oak Parkway, 60.00 feet; |
| COURSE 2 | Thence South 00°40'59" West, 754.04 feet to the northerly line of land conveyed to the City of Avon Lake by deed recorded in volume 1057, page 365 of Lorain County Deed Records (PPN 04-00-017-102-022); |
| COURSE 3 | Thence North 89°47'04" West, along the northerly line of the City of Avon Lake, 60.00 feet to the easterly line of land conveyed to the City of Avon Lake by deed recorded in volume 1128, page 207 of Lorain County Official Records (PPN 04-00-008-102-096) and Original Avon Township Section 8; |

COURSE 4 Thence, North 00°40'59" East along the easterly line of said City of Avon Lake, and Avon Lake Storage Condominiums and Original Avon Township Section 8, 754.02 feet to the **PLACE OF BEGINNING** and containing 1.0386 acres (45,242 square feet) calculated and described in October 2023 by Michael P. Spellacy, P.S. 8169 of Polaris Engineering and Surveying, Inc.

Michael P. Spellacy 10/2/2023
Michael P. Spellacy P.S. 8169 10/2/2023



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Project Surveying Info\4-Legal Descriptions (Word Files)\04-Legal - Ingress-Egress Easement.doc