

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SUBLEASE BETWEEN JOANN DOSZTAL, DBA BOSS CLE ATHLETIC COMPANY AND STOP 65, LLC AND DECLARING AN EMERGENCY.

WHEREAS, TBP Avon Lake, LLC ("TBP") and the City entered into a lease dated November 13, 2017, whereby TBP leased to the City certain premises (the "Premises") in the Artstown Shopping Center, 33483 Lake Road, Avon Lake; and

WHEREAS, TBP assigned its interest in the Lease to Stop 65, LLC on December 1, 2022 and the initial term of the Lease was extended by Ordinance No. 23-108 and will expire on December 31, 2026; and

WHEREAS, JoAnn Dosztal, d/b/a Boss CLE Athletic Company, desires to sublease the Premises commencing January 1, 2024 and expiring December 31, 2026; and

WHEREAS, Council desires the City to sublet the Premises to JoAnn Dosztal, d/b/a Boss CLE Athletic Company.

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 a sublease incorporating the terms set forth in Exhibit A hereto, such sublease to be in form and substance acceptable to the Mayor and in form acceptable to 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 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. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to amend the Lease to allow the Recreation Department to continue to offer recreational activities to the citizens of Avon Lake at the Premises, thus for the public welfare. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 10/23/2023

/s/ Martin E. O'Donnell
President of Council

POSTED: 10/27/2023

APPROVED: 10/24/2023

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

SUBLEASE

This Sublease ("Sublease"), by and between the **City of Avon Lake**, an Ohio political subdivision (which with its successors and assigns is herein called "Sublessor"), and **JoAnn Dosztal, an individual d/b/a Boss CLE Athletic Company** (which with her heirs, legal and estate representatives is herein called "Sublessee"), (with Sublessor and Sublessee being individually referred to as "Party" and collectively referred to herein as "Parties"), is to EVIDENCE THAT:

WHEREAS, Sublessor (as "Tenant") and TBP Avon Lake, LLC, an Ohio limited liability company entered into a certain Lease (as amended, herein called the "Lease"), for a portion of the real property located at 33483 Lake Road, Avon Lake, Ohio, as more fully identified and described within the Lease as the "Premises." On or about December 1, 2022, TBP Avon Lake, LLC assigned its interest in the Lease to Stop 65, LLC, an Ohio limited liability company ("Landlord"); and

WHEREAS, Sublessor desires to sublease the Premises, and Sublessee desires to sublease the Premises from Sublessor.

NOW, THEREFORE, subject to the foregoing and in consideration of the mutual covenants and promises made herein and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree as follows:

1. All capitalized terms not defined herein shall have the meanings set forth in the Lease.

2. Sublease. Sublessor subleases unto Sublessee, and Sublessee does hereby sublease and accept from Sublessor, the Premises. Sublessee has thoroughly examined the Premises and acknowledges that the Premises are in good order and repair and fit for Sublessee's intended purpose. This Sublease shall also include Sublessor's License to the Common Areas of the Shopping Center granted under the Lease.

3. Sublease Term.

3.1 The term of this Sublease (hereinafter called the "Term") shall commence on January 1, 2024 (the "Effective Date") and terminate on December 31, 2026, unless earlier terminated as provided below.

3.2 Subject to the provisions set forth below, the Term of this Sublease and Sublessee's right to possession of the Premises shall end on the earliest of the following dates:

- (a) Upon no less than thirty (30) days' prior written notice from either Party to the other;

- (b) The date a petition is filed by Sublessee under any Chapter of the United States Bankruptcy Code or any comparable state law or the date on which Sublessee is adjudicated a bankrupt or is reorganized in a bankruptcy or reorganization proceeding;
- (c) The date of Sublessee's death or the date Sublessee abandons or vacates the Premises or permits the Premises to remain vacant or unoccupied for more than five (5) consecutive business days or for such shorter period of time if it is evident that Sublessee has removed all personal and business effects such that, in the sole opinion of Sublessor, it appears that Sublessee has vacated and abandoned the Premises; or
- (d) The date of any breach of this Sublease by Sublessee (including, but not limited to, the failure of Sublessee to pay Usage Fee or other monies due and owing hereunder when due).

Sublessee's right to possession shall automatically end on the dates described in subparagraphs (a) and (b) without entry, notice and/or demand or any other action by Sublessor and shall end on the dates described in subparagraphs (c) and (d) solely at Sublessor's option and discretion, without entry, notice and/or demand or any other action by Sublessor.

3.3 If Sublessee's right to possession ends pursuant to Section 3.2, Sublessor may use all available means to recover possession of the Premises and such action by Sublessor shall not prejudice Sublessor's cause(s) of action against Sublessee for any damages resulting from Sublessee's use or occupancy of Premises, breach of this Sublease or any rights of redemption. In such event, Sublessor may immediately take possession and/or commence an action for damages (including, but not limited to, the accelerated rent and the costs necessary to satisfy Sublessee's obligations hereunder).

3.4 Upon termination of Sublessee's right to possession, regardless of reason, Sublessee shall immediately remove all Sublessee's personal property located on the Premises and return the keys and possession of the Premises to Sublessor in its original condition, ordinary wear and tear excepted. Sublessee shall repair and/or reimburse Sublessor for any damage to the Premises resulting from Sublessee's use and/or removal of Sublessee's property from the Premises. If Sublessee fails to immediately remove any such personal property as of the date of termination of Sublessee's right to possession of the Premises, at Sublessor's option, all rights, interest and title to (and all right to possession of) such items shall automatically and immediately pass to Sublessor without notice to Sublessee and without further qualification.

3.5 Notwithstanding any contrary provision of this Sublease, in the event Sublessor loses its underlying tenancy under the Lease, for any reason, this Sublease shall immediately and automatically terminate unless otherwise agreed to by the Parties hereto, in writing.

4. Fees.

4.1 Sublessee shall pay Sublessor a fee for sublease and use of the Premises (the "Usage Fee"), beginning on the Effective Date, as set forth on Exhibit A, attached hereto and incorporated herein by reference.

4.2 The Usage Fee shall be due and payable on or before the first (1st) day of each calendar month of the Term. If the Usage Fee is not paid on or within five (5) days of the aforementioned due date, Sublessee shall pay Sublessor a late charge equal to five percent (5%) of the amount due, which shall be due and payable immediately on accrual. Any demand for the Usage Fee shall be deemed made on the date the Usage Fee is due and payable. If the Sublessee is delinquent on her Usage Fee payment and/or defaults under any provision of this Sublease, and same requires additional collection efforts by Sublessor, a charge will be assessed to Sublessee based upon the cost incurred by Sublessor for reasonable attorney fees, court costs, and other out-of-pocket expenses reasonably related to the collection of delinquent Usage Fee payments and/or for pursuit of Sublessee for breach of this Sublease.

4.3 Sublessee shall pay the Usage Fee at 150 Avon Belden Rd., Avon Lake, Ohio 44012, or at such other reasonable place as Sublessor hereafter designates in writing to Sublessee. Sublessee may also pay the Usage Fee through the Sublessor's Recreation website.

4.4 In the event Sublessee terminates the Lease prior to the end of the Term, Sublessee shall owe Sublessor a cancellation fee (the "Cancellation Fee") as set forth on Exhibit A.

5. Use of Premises/Obligations of Sublessee.

5.1 Sublessee shall use the Premises only for activities approved in advance by Sublessor and for no other purpose whatsoever, and in no event shall Sublessee do, or permit to be done, anything in or about the Premises, nor bring or keep anything therein, which will in any way unreasonably increase the existing rate of, or otherwise affect any fire or other insurance policy upon the Premises, or cause a cancellation of any insurance policy covering said Premises or any part thereof or any of its contents. Sublessee shall not use or allow the Premises to be used for any unlawful purpose or any legal nuisance, shall not cause or produce any excessive waste in or upon the Premises, and shall refrain from using any portion of the Premises for living quarters, sleeping quarters, or lodging.

5.2 Sublessee agrees to abide by all rules and regulations promulgated by Sublessor and/or Landlord relating to the Premises. Sublessee further agrees to comply with and abide by all of Sublessor's covenants, duties, obligations and agreements under the Lease.

5.3 Sublessee shall keep the Premises clean, serviceable and attractive at all times. Sublessee shall pay for all damage to the Premises caused by Sublessee or Sublessee's employees, agents, contractors, and invitees that exceed ordinary wear and tear.

5.4 Sublessee shall have access to the Premises on the days and times scheduled in advance with Sublessor. During the Term, Sublessee shall have a set of keys to gain admission to the Hallway. Sublessee shall be responsible for all costs incurred by Sublessor in replacing said keys.

6. Alterations. Sublessee shall not improve or alter the Premises without first obtaining Sublessor's prior written approval of any such improvements. Any leasehold improvements shall immediately become the property of Sublessor. Sublessee shall indemnify and hold Sublessor and Landlord harmless from and against any liens placed on the Premises or Shopping Center directly or indirectly as a result of Sublessee's authorization of the construction or addition of any leasehold improvements. Sublessee shall remove, at Sublessee's expense, any and all leasehold improvements, at Sublessor's and/or Landlord's option.

7. Destruction of Premises. In the event of damage to or destruction of the Premises by Casualty, Sublessee shall satisfy Sublessor's obligations under the Lease, if any, and, in the event of the occurrence of any destruction or other casualty as provided in the Lease, Sublessee shall have the rights and options available to Sublessor under the Lease; provided, however, that Sublessee provides to Sublessor timely notice(s) (if any) as required to be provided in the Lease. Sublessor shall have no liability, responsibility, or obligation with respect to any damage to Sublessee's removable trade fixtures or personal property.

8. Trade Fixtures in Leased Premises. Sublessee agrees that all trade fixtures installed by Sublessor on the Premises are and shall remain the property of the Sublessor without qualification. Sublessee agrees to abide by all terms and conditions of the Lease and assumes all obligations of the Sublessor under the Lease regarding trade fixtures.

9. Access to Premises. Sublessee covenants and agrees to allow Sublessor and the Landlord to enter the Premises at all times and for all purposes provided under the Lease.

10. Insurance.

10.1 At Sublessee's expense, Sublessee shall maintain a Commercial General Liability Insurance policy (with General Aggregate Amount & Per Occurrence Limits of not less than One Million Dollars (\$1,000,000.00)) and a Special Form policy of insurance insuring the Premises (for coverages that include, but are not limited to, injury to person and/or property). Landlord, Landlord's lender (if any), Sublessor and its agents, employees, successors and assigns shall be additional named insureds by endorsement on such insurance coverage. Sublessee shall immediately provide Sublessor evidence that said insurance is in full force and effect. Said policies shall provide that they will not be cancelled without at least thirty (30) days' prior written notice to Landlord and Sublessor. Said insurance policy shall be with an insurance company with a general policy holders' rating of not less than "A-VIII" as rated in the most currently available Best's Key Rating Guide and which are qualified to do business in Ohio.

10.2 Sublessor and Sublessee shall each procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Premises and the Premises and the building, as well as personal property, fixtures and equipment located thereon or therein,

pursuant to which the Parties' respective insurance companies waive subrogation or consent to a waiver of right of recovery against the other Party, and each hereby agrees that it will not make any claim against or seek to recover from the other Party for any loss or damage to its property or the property of others resulting from fire or other hazards covered by such fire and extended coverage insurance. In the event that Sublessee fails to obtain the waiver of subrogation, then Sublessor's insurance clause waiving subrogation shall be deemed null and void and without force or effect.

11. Indemnity. Sublessee shall defend, indemnify and hold Sublessor harmless from and against any and all actual and/or threatened injuries, damage, losses, costs (including, but not limited to, court costs and attorneys' fees), fines, penalties and other charges suffered or incurred by Sublessor arising (directly or indirectly) from any acts or omissions of Sublessee, Sublessee's breach of this Sublease, a breach of the Lease, the use and occupancy of the Premises, and/or the operation of Sublessee's business, Sublessee's breach of or failure to perform any duty, covenant, responsibility or obligation of Sublessee under this Sublease, or from Sublessee's storage, use, or management of hazardous or toxic substances or any other materials on or about the Premises.

12. Assignment and Subletting. Sublessee shall not assign this Sublease or sublet all or any part of the Premises or permit any other persons or entities to occupy the Premises without the prior written consent of Sublessor. Any such assignment or subleasing shall be void.

13. Sublessor's Satisfaction of Sublessee's Obligations. Sublessor may satisfy any of Sublessee's obligations under this Sublease. In such event, Sublessee shall forthwith reimburse Sublessor on demand for any expenses incurred by Sublessor to satisfy any of Sublessee's obligations hereunder.

14. Remedies. Sublessor's rights and remedies under this Sublease shall be cumulative and not exclusive of any other rights or remedies at law or in equity. Sublessor's failure to exercise any right under this Sublease (at law or in equity) and/or Sublessor's acceptance of Usage Fees or other payments from Sublessee shall not constitute a waiver of any default or breach by Sublessee of this Sublease. Sublessor may recover from Sublessee all Sublessor's damages under this Sublease without terminating the Sublease or ending Sublessee's right to possession. Sublessor's acceptance of possession or any other act of Sublessor shall not constitute a termination of this Sublease, unless expressly stated in a writing by Sublessor.

15. Miscellaneous.

15.1 If the context of this Sublease so requires, the plural includes the singular (and vice-versa) and the masculine, neuter and feminine include each other.

15.2 This Sublease constitutes the only agreement and understanding of the Sublessor and Sublessee with regard to the Premises and supersedes all prior agreements, promises, representations and understandings related to the subject matter hereof.

15.3 Ohio law shall govern all aspects of this Sublease and any controversies arising thereunder; any litigation involving this Sublease shall be exclusively venued in the State

Courts of Lorain County, Ohio; and the Parties hereby submit to the personal jurisdiction of the State Courts of Lorain County, Ohio.

15.4 The provisions of this Sublease shall be severable and, if any part of this Sublease is held to be unconstitutional or unenforceable, such holding shall not affect the enforceability or validity of any other portion of this Sublease.

15.5 Headings and captions are for convenience only and shall not be used to expand, contract, modify or otherwise affect the interpretation or intention of any portion of this Sublease.

15.6 This Sublease may be periodically amended or modified only by a written instrument which is clearly designated as an amendment or modification to this specific Sublease and which is signed by the Sublessor and Sublessee.

IN WITNESS WHEREOF, the Parties have set their hands as of the date(s) set forth below.

City of Avon Lake

By: _____
Gregory J. Zilka, Mayor

Date: _____

Address: _____

JoAnn Doszta, d/b/a Boss CLE Athletic
Company

Date: _____

Address: _____

STATE OF OHIO)
) ss:
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, who acknowledged that he/she did sign the foregoing instrument, and that the same was his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20__.

Notary Public

STATE OF OHIO)
) ss:
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, who acknowledged that he/she did sign the foregoing instrument, and that the same was his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 20____.

Notary Public

Exhibit A
Usage Fees

The Usage Fee shall be as follows:

- Fifty Dollars (\$50.00) per hour for the sublease and use ½ of the court on the Premises.
- One Hundred Dollars (\$100.00) per hour for the sublease and use of the full court on the Premises.

Notwithstanding the forgoing, if Sublessor reserves the Premises for 100 to 199 hours at one time, the Usage Fee shall be discounted by five percent (5%).

Notwithstanding the forgoing, if Sublessor reserves the Premises for 200 or more hours at one time, the Usage Fee shall be discounted by thirteen percent (13%).

The Cancellation Fee shall be as follows:

In the event Sublessee reserves the Premises and cancels less than thirty (30) days prior to the reserved day and time, Sublessee may owe a Cancellation Fee of 10 percent (10%) of the Usage Fee at the discretion of the Director of Recreation.