

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN INTERIM DEVELOPMENT AGREEMENT WITH AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP AND DECLARING AN EMERGENCY.

WHEREAS, Avon Lake Environmental Redevelopment Group (ALERG), as a Land Developer, and the City of Avon Lake seek to unite in the redevelopment of the former Avon Lake Power Plant into a mixed-use development containing a public park, multi-family residential, office and/or retail uses; and

WHEREAS, Council, coming now to consider said Interim Development Agreement, approves it in full.

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 Interim Development Agreement with ALERG for the redevelopment of the former Avon Lake Power Plant, as attached hereto and made a part hereof.

Section No. 2: That the Mayor is hereby authorized to execute such amendments to said Agreement and to take such action and to execute such other documents and amendments thereto as may be necessary and as are approved by the Law Director.

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 fulfilling the terms of the cost-sharing Memorandum of Understanding, 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: 10/15/2024

2nd reading: 10/28/2024

3rd reading:

PASSED: 11/12/2024

/s/ Jennifer J. Fenderbosch
President of Council

POSTED: 11/15/2024

APPROVED: 11/13/2024

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

/s/ Mark A. Spaetzel
Mayor

INTERIM DEVELOPMENT AGREEMENT

by and between

AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP

and

CITY OF AVON LAKE, OHIO

Dated as of November 13, 2024

INTERIM DEVELOPMENT AGREEMENT

This Interim Development Agreement is entered into by and between Avon Lake Environmental Redevelopment Group (the “Land Developer”), and the City of Avon Lake, Ohio (the “City”), dated as of November 13, 2024 (the “Agreement”).

WHEREAS, the Land Developer and the City seek to cooperate toward the redevelopment of the former Avon Lake Power Plant into a mixed-use development containing a public park, multi-family residential, office and/or retail uses.

Now, therefore, for valuable consideration, the sufficiency and validity of which is hereby recognized, the Land Developer and the City agree as follows:

1. **Defined Terms.** In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings set forth below:
 - a) “City” shall mean the City of Avon Lake, Lorain County, Ohio, a political subdivision of the State of Ohio and a chartered municipality.
 - b) “City Administration” or “City’s administration” shall mean the Mayor of the City and the executive departments under the Mayor.
 - c) “City Council” shall mean the legislative body of the City.
 - d) “Property” shall mean the property depicted on **Exhibit A** attached hereto. For purposes of clarity, the Property does not include the property subject to the Submerged Land Lease.
 - e) “Project” shall mean the development of the former Avon Lake Power Plant into a mixed-use development consisting of a public park, multi-family residential, office and/or retail uses, substantially in accordance with the plan attached hereto as **Exhibit B**.
 - f) “PILOT” or “PILOTS” shall mean payments in lieu of taxation under Ohio Revised Code (“R.C.”) 5709.42.
 - g) “Port Authority” shall mean the Lorain County Port Authority or another port authority that is engaged to issue debt serviced by the PILOTS associated with the Project.
 - h) “Submerged Land Lease” shall mean the property subject to the Submerged Land Lease as assigned by the State of Ohio to Avon Lake Environmental Redevelopment Group, LLC (Charah Environmental Redevelopment Group, LLC) dated December 21, 1999.
 - i) “TIF” shall mean tax increment financing applicable to the Project.
 - j) “TIF District” shall mean the area designated on **Exhibit A-1** attached hereto.

2. Environmental Remediation and Demolition.

- a) The Land Developer agrees to remediate the Property, including, but not limited to the Public Park areas, as defined in Section 3b) herein, to applicable standards for the Property's intended use, in accordance with the requirements of the Ohio Voluntary Action Program, Ohio Revised Code Chapter 3746 et seq., including all applicable regulations thereunder (collectively, the "Ohio VAP").
 - b) Prior to the closing of any transaction transferring ownership of the Public Park area referred to in Section 3b) hereof, the Land Developer and the City's environmental consultants shall collaborate regarding the completion of environmental investigations and Land Developer's "Remediation and Demolition Plans", as defined in the non-binding letter of intent attached as **Exhibit D** hereto. Prior to the conveyance of the Public Park to the City (or, if the City desires, to the Lorain County Metroparks), the Land Developer shall perform all environmental assessment and remediation activities necessary to enable an Ohio VAP "Certified Professional" selected by the City (the "City's Certified Professional"), to issue a No Further Action Letter for the Public Park (the "NFA Letter") consistent with the Remediation and Demolition Plans. The City's Certified Professional will collaborate, in good faith, with any Ohio VAP Certified Professional representing the Land Developer, to confirm that the Public Park has been investigated and remediated to achieve applicable standards under the Ohio VAP for safe recreational use as a park open for public access, as provided in the Land Developer's Remediation and Demolition Plans, and as agreed and confirmed by the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to technical assistance under the Ohio VAP ("Technical Assistance"). As will be provided in a purchase agreement between the parties, the Land Developer will pay all reasonable costs for the City's Certified Professional in connection with the NFA Letter and for Technical Assistance within thirty (30) days of any invoice therefore, which costs shall be reimbursable to the Land Developer through TIF funds.
 - c) At the City's option, and at the City's cost through the use of TIF funding, as identified herein, the City may request the City's Certified Professional to submit the NFA Letter for a Covenant Not To Sue under the Ohio VAP from the Director of Ohio EPA (a "CNS"); provided, however, the issuance of a CNS shall not be a condition of the closing for the Public Park to be acquired by the City. The Land Developer and the City shall provide a reasonable escrow amount using TIF funding, as mutually agreed by the parties in a definitive agreement (the "Definitive Agreement") for the Public Park's acquisition, as contemplated in **Exhibit D** hereto, to address any additional costs necessary to secure the CNS for the Public Park after the closing.
 - d) After closing on the transfer of ownership of the Public Park areas, the City agrees to evaluate the use of available TIF funds, as it deems necessary, to achieve residential standards on portions of the Public Park.
3. **Zoning.** The City's administration shall support the Property Owner's application before the City Planning Commission and City Council for the adoption of an overlay zoning district which shall be made available to the Property in order to enable a mixed-use development on the Property, including a public or publicly-accessible park, multi-family residential, office

and/or retail uses, as such overlay zoning district is set forth in **Exhibit C** attached hereto (the “Overlay District”). The City Council shall not unreasonably delay or condition its consideration of the adoption of the Overlay District.

- a) Simultaneous with, and as a condition of, the adoption of the Overlay District, the City’s administration shall initiate and support before the City Planning Commission and the City Council the rezoning of the Property to the zoning designation of “B-3 Special Commerce District”.
- b) In connection with the adoption of the Overlay District, the City shall negotiate in good faith with the Land Developer for the acquisition of a public park on the Property in the approximately 23.22-acre area, as depicted on **Exhibit B** attached hereto (the “Public Park”). The City’s administration agrees to work with the Land Developer to acquire the Public Park lands on the Property, as provided in and subject to the terms of the non-binding Letter of Intent in **Exhibit D** attached hereto. The City’s administration also agrees to evaluate acquiring the Land Developer’s interest in the Submerged Land Lease.
- c) In the event the City Council adopts the Overlay District and it is made available to the Property, the Property shall be developed only in accordance with a City-approved final development plan that is substantially in accordance with **Exhibit B**, and a written development agreement between the City and one or more yet-to-be determined vertical developer(s) (i.e., one or more developers who will construct, or contract to construct, the Project pursuant to a separate development agreement with the City) (the “Vertical Developer(s)”) that provides, among other things, the specifications of the public improvements, the use of TIF funds (except the use of TIF funds in connection with the Public Park), exceptions from strict zoning code compliance, timelines for completion of public and private improvements, and surety for construction and completion of the public improvements.

4. **Tax-Increment Financing (“TIF”)**. The City Council’s adoption of a TIF Ordinance shall be a pre-condition of the development of the Project on the Property as such development is contemplated by **Exhibit B**, including the acquisition and development of the Public Park property. The City’s administration shall initiate and support before the City Council, one or more ordinances pursuant to R.C. Section 5709.40, et seq. (the “TIF Ordinance”) and any other necessary legislation for tax-increment financing to assist the payment of the costs of the public improvements supporting the Project on the Property. The City Council shall not unreasonably delay or condition its consideration of the TIF Ordinance’s adoption; provided, however, the City Council shall have the right to approve or deny the adoption of the TIF Ordinance in its sole and absolute discretion with the understanding the Project may not be developed in the sole and absolute discretion of the Land Developer.

- a) The value and duration of the exemption granted by the TIF Ordinance (the “TIF Exemption”) with respect to the TIF District shall be contingent on the Avon Lake School District’s approval of the TIF Ordinance as required by R.C. Section 5709.40. The City’s administration agrees to support the Land Developer’s efforts to secure the Avon Lake School District’s agreement for the largest TIF Exemption feasible to support the Project.

- b) The City's administration agrees to support, and if approved by City Council, the City's administration agrees to enter into a cooperative or other agreement with a Port Authority to assign the City's rights to the PILOTS and to transfer the PILOTS to the Port Authority or its designee to service debt issued by the Port Authority to monetize the TIF revenue.
- c) Notwithstanding any other provision of this Agreement to the contrary, the Land Developer agrees and acknowledges that the City is not expected to, required to and will not issue any debt or pledge the City's credit toward the monetization of the TIF revenues for the Project.

5. Use of TIF for Park Acquisition and Development.

- a) The Land Developer and the City's administration shall exercise their reasonable, good faith efforts to secure public or philanthropic grants to enable public acquisition and development of the Public Park on the Property ("Grant Funds"). The City's administration and the Land Developer mutually agree to reasonably cooperate in the pursuit of any such Grant Funds.
- b) Provided the TIF Ordinance is adopted by City Council, the TIF Ordinance shall provide for the use of TIF revenue toward the acquisition of the Public Park property, as depicted on **Exhibit B** and as contemplated by **Exhibit D**, attached hereto, by the City or, if the City desires, the Lorain County Metroparks, on the following terms:
 - i) The maximum amount of TIF revenue that may be used for Public Park property acquisition cannot exceed 25% of the total expected TIF revenue proceeds or \$15 million, whichever is less.
 - ii) It is understood and agreed that the City will not contribute any City funds toward the acquisition of the Public Park property. Any sum due for the purchase of the Public Park property not paid by grants shall be paid from the proceeds of bonds issued by the Port Authority that are serviced by the PILOTS. In no circumstance may the City be required to advance any funds for the assessment, remediation, demolition or acquisition of the Public Park property notwithstanding whether such funds may be reimbursed via grants, TIF bond proceeds, or otherwise.
 - iii) The TIF revenue also shall be used to make improvements to the Public Park property, as may be approved by the City, in the amount of at least \$15 million.
 - iv) The value paid for any acquisition of the land for the Public Park property as may be approved by the City shall be based on an objective, independent appraisal of the portion of the Public Park property for acquisition or as otherwise agreed upon in writing by the parties.
 - v) It is understood and agreed that the City will not be expected to subsidize or otherwise incentivize the Project, other than incentivizing the Public Park property through the TIF and/or grants, in any manner other than the implementation of the TIF as provided herein.

- vi) The City’s acquisition of Public Park property shall be subject to a separate purchase and sale agreement to be negotiated and mutually approved by the parties and (subject to subsection iv above) generally consistent with the terms of the non-binding Letter of Intent which is attached hereto and incorporated herein as **Exhibit D** or such other terms upon which the parties may agree.
- vii) Any acquisition by the City of an interest in the Submerged Land Lease shall be subject to a separate agreement to be negotiated and mutually approved by the parties.
- viii) The Land Developer will pay all reasonable costs and expenses for the City’s outside professionals participating in the Project, including outside counsel, environmental professionals, engineers and financial advisors participating in the TIF financing (the “City Costs”), pursuant to a separate Professional Services Reimbursement Agreement for Power Plant Redevelopment Project by and between City of Avon Lake, Ohio and Avon Lake Environmental Redevelopment Group, LLC dated May 2, 2023, as amended (the “Reimbursement Agreement”). The City Costs shall be identified in a budget (the “Budget”) attached to the Reimbursement Agreement, which shall be prepared by the City for approval by the Land Developer (and which approval shall not be unreasonably denied, delayed or conditioned) and which Budget may be amended, from time-to-time, as the City deems necessary to close this transaction (subject to approval of each such amendment by the Land Developer (which approval shall not be unreasonably denied, delayed or conditioned). The Budget (and any amendment thereof) shall provide for the Land Developer to deposit with the City a retainer in the amount of \$50,000.000 to be used by the City to pay the City Costs, which retainer shall, within thirty (30) days of written request by the City, be replenished by the Land Developer. It is understood and agreed that the retainer is simply a security mechanism to avoid delay in paying the City Costs to the professionals and not a limitation of the reimbursable City Costs. The Land Developer is responsible to pay the City Costs and replenish the retainer monthly should the City Costs exceed the deposit in the retainer. The City shall use good faith efforts to minimize the City Costs to those costs and expenses reasonably necessary to achieve the transaction’s stated demolition, remediation and redevelopment goals, as identified in this Agreement. The City Costs shall be submitted for reimbursement by the Land Developer through available TIF funds.

6. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the parties and their respective successors and permitted assigns.

7. **Joint Preparation.** This Agreement shall be deemed to have been jointly prepared by both parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against any party.

8. **Calculation of Time.** To calculate any time period set forth in this Agreement that is stated in days or a longer unit of time: (a) exclude the day of the event that triggers the period (for instance, if a time period is 14 days from an approval, exclude the day of the approval); (b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (c)

include the last day of the period, but if the last day is a Saturday, Sunday, or a legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. This methodology shall apply to such time-period calculations under this Agreement no matter how the period is stated. For instance, a time period that is stated to run 14 days of an event shall be equivalent to a time period that is stated as 14 days after an event.

9. **Counterparts.** This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) signatures provided via DocuSign or by facsimile or in Adobe Portable Document Format (PDF) sent by electronic mail shall be deemed to be original signatures for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.
10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, representations, and understandings of the parties, written or oral. Each party executing this Agreement represents and warrants that such party is authorized to sign the Agreement on behalf of such party.
11. **Amendments, Changes, Modifications.** This Agreement may not be amended, supplemented, changed, modified, or altered except by an instrument in writing executed by both parties to this Agreement.
12. **Severability.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act, or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.
13. **Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles of conflicts of laws.
14. **Assignment.** The Land Developer may not assign its rights or obligations under this Agreement without the written consent of the City, which consent shall not be unreasonably delayed, conditioned, or denied.
15. **Notice.** All notices, demands, and other communications hereunder shall be in writing and shall be delivered to, emailed, or mailed at the addresses set forth below:

To the City:

City of Avon Lake
150 Avon Belden Road
Avon Lake, OH 44012
Attn: Director of Community Development

and to

City of Avon Lake
150 Avon Belden Road
Avon Lake, OH 44012
Attn: Director of Law

with a copy to:

Berns, Ockner, & Greenberger, LLC
3733 Park East Drive, Suite 200
Beachwood, OH 44122
Attn: Jordan Berns and Majeed G. Makhoulouf
jberns@bernssockner.com
mmakhlouf@bernssockner.com

and to

Todd S. Davis, Esq.
3 Hemisphere Way
Bedford, OH 44146
tdavis@hemispheredev.com

To Land Developer:

Avon Lake Environmental Redevelopment Group
c/o Scott Reschly, President
4235 South Stream Blvd., Suite 180
Charlotte, NC 28217
sreschley@charah.com

with a copy to:

Richard Shields, Executive Vice President
Avison Young US
1 South Wacker Drive, Suite 3000
Chicago, IL 60606
dick.shields@avisonyoung.com

and to:

Roetzel & Andress, LPA
c/o R. Todd Hunt
1375 East 9th Street, 10th Floor
Cleveland, OH 44114
rthunt@ralaw.com

Notices shall be deemed delivered upon actual delivery to the receiving party by whatever means the notice is sent. Either party may change its addresses herein upon written notice to the other party.

16. Non-Recording of Agreement. This Agreement shall not be recorded with the County of Lorain or any other public agency.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

CITY OF AVON LAKE, OHIO

**AVON LAKE ENVIRONMENTAL
REDEVELOPMENT GROUP**

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A
[Depiction of Property]

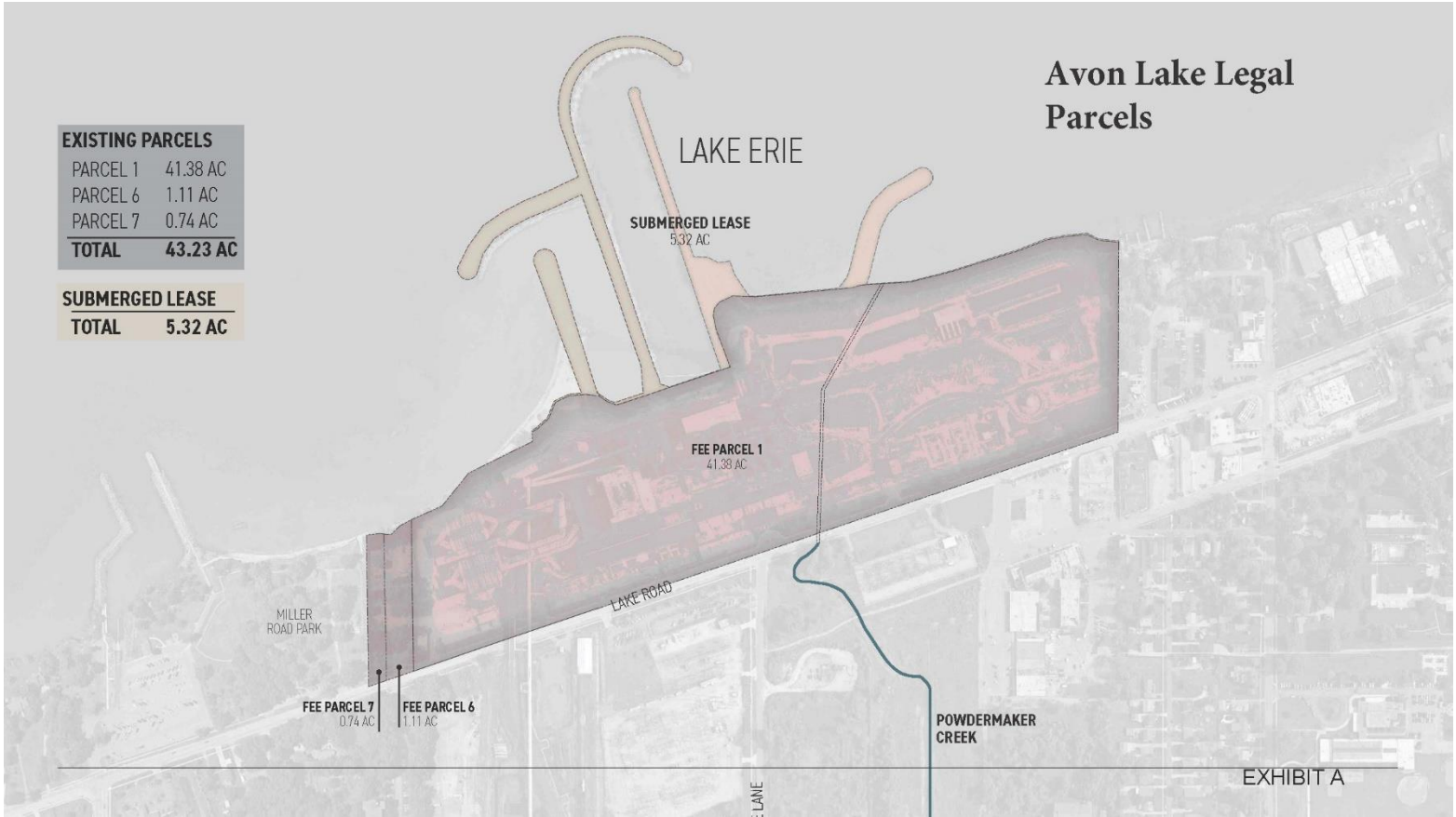


EXHIBIT A-1
[TIF District – Identified in Red]

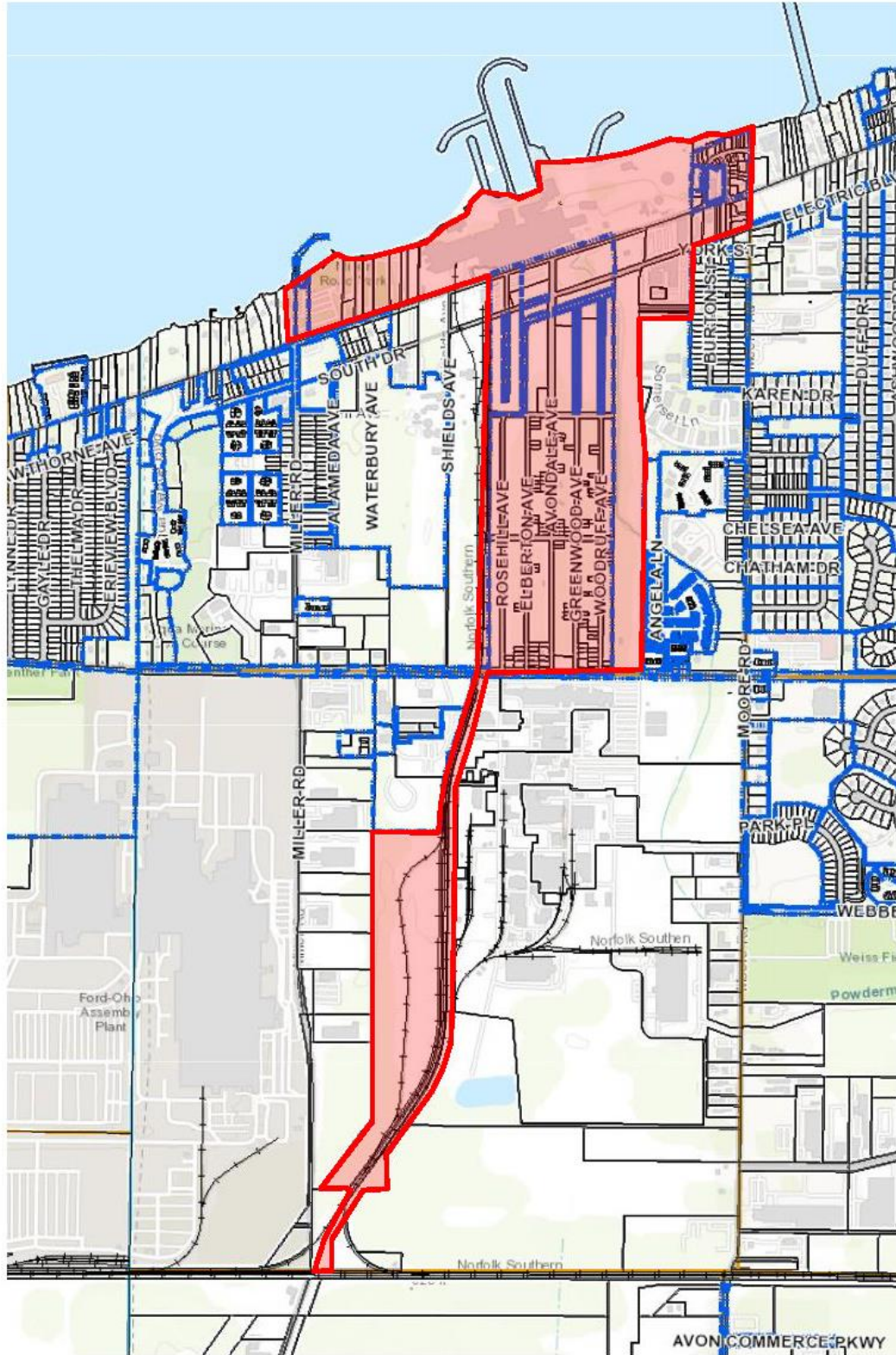


EXHIBIT B
[Concept Plan of the Development]

**Avon Lake Open Space and
Private Parcels**

- 23.22 acres of open park space/land
- 19.60 acres of private development

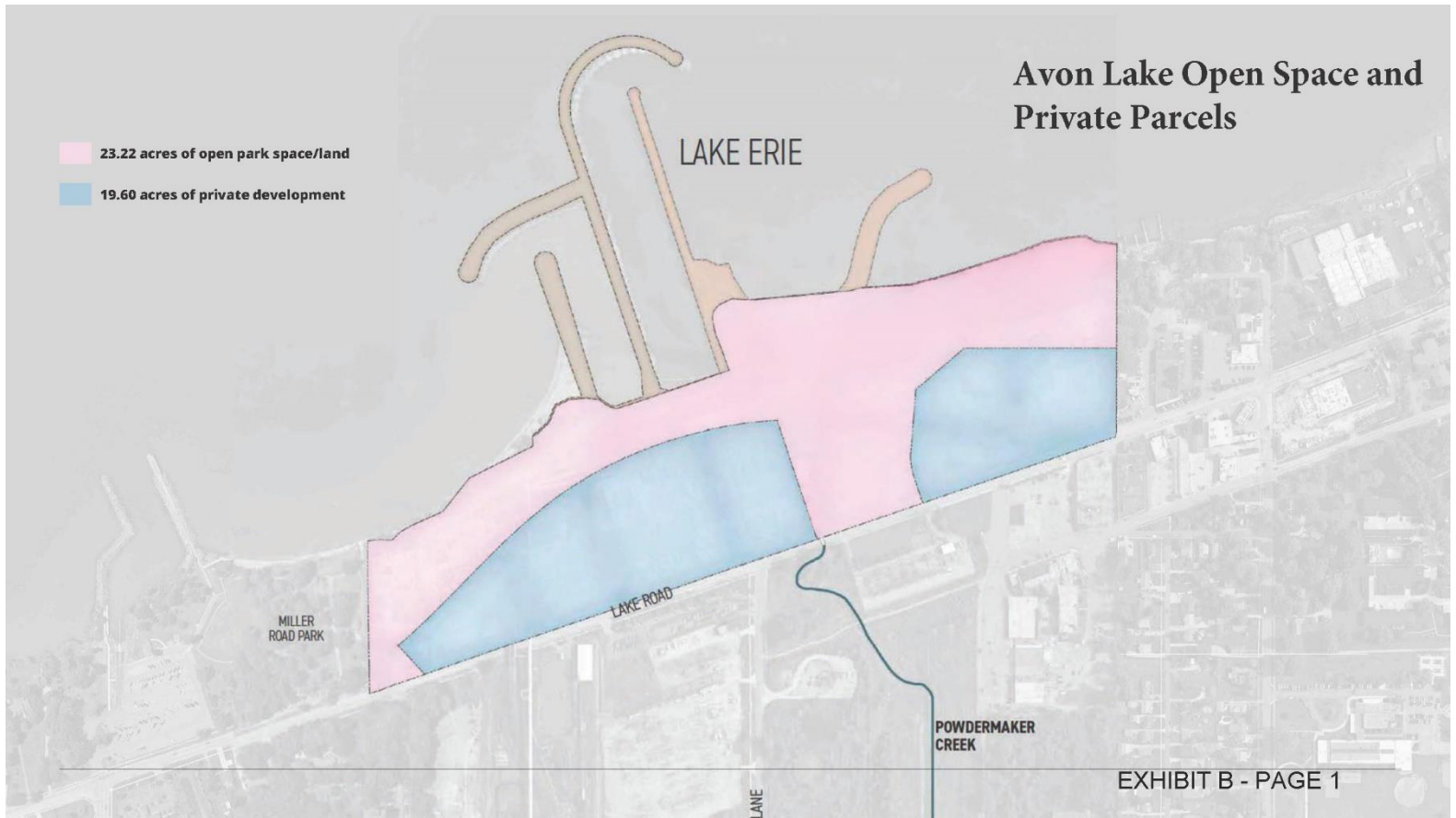


EXHIBIT B

[Concept Plan of the Development]



EXHIBIT C

CHAPTER 1219: LAKEFRONT MIXED-USE OVERLAY DISTRICT (LMU-O)

1219.01 Purpose

The Lakefront Mixed-Use Overlay District (“LMU-O District”) is intended to provide for high-quality development in alignment with a development plan for a wide-variety of nonindustrial uses for the larger parcel areas adjacent to Lake Erie, while this LMU-O District is also providing for the continued permitted uses in the base zoning district. The LMU-O District is created to transform certain larger land areas along Lake Erie from their historical industrial and/or older commercial/retail uses to a variety of permitted and conditionally permitted uses, including various types of residential living units, office uses, commercial retail uses, commercial and personal service uses, and recreational uses, such as public parks, open spaces and beach areas. This LMU-O District is also created to facilitate new mixed-use development with new public streets, bike and hike trails and open spaces for the enjoyment thereof. The redevelopment of the LMU-O District will create new roadways connected to the existing City street grid and new public and private internal roads with landscaping and public parks built to City standards. It is intended this overlay zoning district be used in conjunction with the site plan procedures of the Mixed-Use Overlay District in Chapter 1218 of this code. This approach will allow the developer the greatest flexibility in redeveloping these larger parcels with uses that are economically viable and specifically permitted under this code and will provide the City greatest control over the design of the development and the image it creates within the City, all in furthering the City’s 2019 Comprehensive Plan. It is anticipated that the LMU-O District may be developed over a number of years, in multiple phases and on individual parcels, but made a cohesive district development by way of the City’s site plan procedures which will create consistency in development across the LMU-O District.

1219.02 Location of District

[See attached land areas outlined in red.]

1219.03 Scope and Applicability

The LMU-O District is an overlay zoning district that applies as a secondary zoning district over the base zoning district(s).

- (a) Property owners that are subject to the LMU-O District may continue to use their property in accordance with the requirements of the applicable base zoning district.
- (b) At the election of the property owner, the owner may choose to develop pursuant to the LMU-O District, in accordance with this chapter, without requiring the rezoning of the base zoning district.

1219.04 Permitted, Conditional, and Prohibited Uses

(a) Permitted Uses

A combination of two or more of the following uses:

- (1) Multi-Family Dwellings
- (2) Offices: Administrative, Business, Professional, Medical
- (3) Cultural Facilities
- (4) Residential Community Centers
- (5) Commercial Business Support Services
- (6) Financial Institutions
- (7) Microbrewery, Microdistillery, and Microwinery
- (8) Mixed-Use Buildings (provided that they comply with Section 1216.05(c))
- (9) Multi-Tenant Use (provided that they comply with Section 1216.05(c))
- (10) Public Parks, Open Space, and Natural Areas
- (11) Personal Service
- (12) Public Marinas
- (13) Restaurants
- (14) Retail Businesses
- (15) Taverns or Bars

(b) Conditional Uses

- (1) Commercial Recreational Facilities (Indoor and Outdoor)
- (2) Commercial Marinas, Boat Rental and Charter
- (3) Hotels

(c) Prohibited Uses

- (1) Single-Family Dwellings
- (2) Nursery Schools and Day Care Centers

- (3) General merchandise discount stores, i.e., a retail establishment that offers a variety of product lines that are stocked in considerable depth and at discount prices.
- (4) Hardware or home-improvement stores primarily stocking lumber, building materials, and building supplies.
- (5) Stores primarily selling used merchandise, second-hand merchandise, samples, and floor models, demonstration merchandise, fire-sale merchandise, store-closing merchandise, and damaged merchandise.
- (6) Stores primarily selling on consignment except that such stores primarily selling art and/or jewelry on consignment are not prohibited.
- (7) Automotive services and uses, such as automobile and truck dealerships (including sales, rental, and leasing), automobile service stations, carwashes, and automotive body shops.
- (8) Indoor self-storage facilities or outdoor storage of any kind.
- (9) Adult Entertainment Businesses and cannabis sales.

1219.05 Development Standards

(a) Shoreline Parks

There shall be public park land adjacent to Lake Erie and within the LMU-O District consisting of no less than twenty (20) contiguous acres that is accessible to the public, as the shoreline exists at the time of approval of any development.

(b) Setbacks

- (1) Buildings and other structures shall be set back from the Lake Road public right of way no greater than ten (10) feet.
- (2) Setbacks of buildings and structures from the easterly and westerly boundaries of the LMU-O District shall be a minimum of fifteen (15) feet from abutting parcels with non-residential zoning or uses and a minimum of thirty (30) feet from abutting parcels with residential zoning or uses.
- (3) Except for the setback requirements in subparts (b)(1) and (2) of this section, there are no minimum setback requirements from property lines of parcels within the LMU-O District.

(c) Building Height

All buildings shall not exceed 100 feet in height from grade. The grade shall be established from the grade level of Lake Road at the closest point to the southern edge of the proposed structure.

(d) Density

The maximum number of residential units of all types that shall be permitted in the LMU-O District is 1,250.

(e) Building Orientation

- (1) Buildings shall be oriented toward the public or private street, as applicable, unless adjacent to a common open space, in which case the Planning Commission and City Council may approve an alternative orientation to face the open space.
- (2) Buildings located near the intersection of two streets (public or private) may be oriented toward a corner. If the building is oriented toward one of the streets, any facade facing other streets shall have similar architectural styles.

(f) Parking

Any development in the LMU-O District shall comply with the minimum parking requirements of this code. However, the Planning Commission and City Council shall have the authority to modify the parking requirements of this code if the applicant can demonstrate adequate availability of public parking, shared parking, or other alternatives that will meet the intent of the requirements of Chapter 1234: Parking, Access, and Mobility Standards.

(g) Signs

- (1) Signs shall be integrated into the building and landscaping plans to enhance the development's overall appearance while providing adequate identification of the development and the structures and uses therein.
- (2) The requirements of Chapter 1236: Sign Standards, may be waived as part of the approval of the LMU-O District development plan when the applicant submits a master sign plan for an LMU-O District development plan application with a minimum acreage of five acres. In such cases, the master sign plan shall not allow for more than a 10 percent increase in the total sign area allowed in Chapter 1236: Sign Standards.

(h) Utilities and Service Equipment

All industry standard grade utilities shall be located underground. All manholes, utility boxes, entry fixtures and other service equipment shall be located inside or rear yards and away from walkways. These fixtures shall be adequately screened as provided in Section 1232.05: Screening Requirements.

(i) Viewsheds

Building heights, setbacks, and separation shall be provided for in the LMU-O District development plan to guarantee that views of Lake Erie from Lake Road south of any buildings in the LMU-O District will be provided between each building in the LMU-O District and that the buildings are not of such width as to prevent views of Lake Erie, and reviewed as a component of the approval process under Section 1218.03 of the code.

(j) Pedestrian and Bike Connections

There shall be pedestrian and bike access for the public from Lake Road to the public park areas along the Lake Erie shoreline.

1219.06 Procedure for Development Plan Review and Approval

The applicant shall submit a plan of development and the procedure for review of the plan and the criteria for the plan shall follow the provisions of Section 1218.03 of this code.

1219.07 Modifications to Standards

Notwithstanding any other provision of this code to the contrary, the Planning Commission may recommend and City Council may approve a development plan which varies from the strict standards of this Chapter and act upon the proposed application as if in compliance with this Chapter if they determine that the proposed development substantially complies with the purposes, intent, and basic objectives of this Chapter, and that through imaginative and skillful design in the arrangement of buildings, open space, streets, access drives or other features, the proposal results in a development of equivalent or higher quality than that which could be achieved through strict application of such standards and requirements.

1219.08 Phases

Developments intended to be developed in phases shall proceed initially with the area indicated as the first phase. The construction sequence of subsequent phases may be reordered with the recommendation of the Planning Commission and approval of City Council, provided that the reordering does not obstruct or limit the development of all approved remaining phases.

1219.09 Areas subject to more than one overlay district

Should any property in the LMU-O District also be included in another overlay district, the LMU-O District shall override the other overlay district and the provisions of this Chapter shall govern.

Location of Overlay District Identified in Section 1219.02 (Overlay District Outlined in Red)



EXHIBIT D

LETTER OF INTENT

Re: Offer to Purchase approximately 23.22 acres comprising certain lakefront parcels of the former Avon Lake power plant site.

To: AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP, LLC

The City of Avon Lake, a municipal corporation in Ohio, (“**Purchaser**”) hereby expresses its interest in purchasing an approximately 23.22-acre portion of the lakefront property of the former Avon Lake Power Plant site (the “**Transaction**”), as more fully described below in this Letter of Intent (the “**LOI**”) and Attachment A hereto.

Seller: AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP, LLC, an Ohio limited liability company (“**Seller**”).

Purchaser: CITY OF AVON LAKE, OHIO, a municipal corporation in Ohio or its assigns.

Property: Approximately 23.22 acres of land located in the City of Avon Lake, County of Lorain, State of Ohio, known commonly as certain portions of the lakefront of the former Avon Lake Power Plant site. It is Purchaser’s intention to acquire the property together with all of the Seller’s right, title and interest in any and all improvements that Purchaser elects to retain (including any personal property which is integral to the operation of any improvements to be conveyed, if and to the extent Purchaser elects to include such improvements and/or associated personal property), easements, rights and appurtenances pertaining thereto (collectively, the “**Property**”), as more fully described in Attachment A hereto.

Purchase Price: \$15,000,000.00 or twenty-five percent (25%) of the total expected TIF revenue proceeds, whichever is less, in immediately available funds payable at the Closing, as defined herein, and subject to an objective, independent appraisal of the Property supporting such Purchase Price.

Purchase Agreement: After Seller’s full execution and delivery of this LOI to Purchaser, Seller’s counsel within twenty (20) days shall prepare and deliver to Purchaser a proposed form of agreement of purchase and sale (the “**Purchase Agreement**”) setting forth, among other things, the terms and conditions contained herein, other terms and conditions mutually acceptable to the parties, as well as any terms of a development agreement between the parties (or with the Seller’s assignee), tax increment financing (“TIF”) to fund the purchase, other funding contingencies, and zoning contingencies.

Deposit:

Within ten (10) days after the full execution of the Purchase Agreement, Purchaser shall deposit One Hundred Dollars (\$100.00) in immediately available funds with a national title insurance company (or an authorized agent of a national title insurance company) of Purchaser's choice (the "**Title Company**") which shall be held in escrow by the Title Company (pursuant to escrow terms mutually acceptable to Seller and Purchaser) and credited (with interest accrued, if any) to the Purchase Price at Closing (the "**Deposit**").

Due Diligence Period:

Purchaser's due diligence efforts will primarily focus on assessing the viability of the Property and contiguous areas in Lake Erie for public park land, beach and recreational uses. Purchaser's due diligence may include, but is not limited to; technical assessments, environmental assessments, geotechnical analysis, shoreline analysis, title review, zoning and land use analysis, energy and regulation evaluations and other professional work needed or desired by Purchaser, in Purchaser's sole discretion, to determine the feasibility of Purchaser's acquisition and redevelopment plan ("**Due Diligence**"). Purchaser has engaged a complete team of qualified advisors, each with expertise in their respective fields, to assist throughout the due diligence process. Seller, and Seller's environmental and other professionals shall reasonably cooperate with Purchaser, in good faith, during Purchaser's Due Diligence activities.

Due Diligence will be conducted in two stages, as follows:

- (i) Preliminary phase: from the full execution of the LOI and receipt of the information indicated by the Seller to be provided, and until both parties have fully executed a Purchase Agreement (the "**Preliminary Phase**"); and
- (ii) Second phase: from the full execution of a Purchase Agreement, and for one hundred twenty (120) days, in order to complete Purchaser's Due Diligence; (both phases together the "**Due Diligence Period**"). For purposes of clarity, Purchaser shall not be obligated to execute the Purchase Agreement unless and until Purchaser is completely satisfied with the condition of the Property, in Purchaser's sole discretion.

If Purchaser decides for any reason during the Due Diligence Period not to proceed with the Transaction, the Deposit shall be refunded in full to Purchaser, and the Purchase Agreement shall be null and void and neither party shall have any liability hereunder. If Purchaser does not elect to terminate the Purchase Agreement during the Due Diligence Period, the Deposit shall become non-

refundable (but remains a credit to the Purchase Price), except in the event of a Seller default, or a condemnation or casualty affecting the Property.

Feasibility Materials:

Within three (3) days after the full execution of this LOI, Seller shall provide Purchaser with copies of (or electronic access to) all information in Seller's possession or control pertaining to the Property, including: all information indicated by the Seller to be provided; any surveys; title reports; soil and groundwater sampling results; environmental assessments; covenants, conditions and restrictions ("CCR")-related assessments; workplans and reports; any consent orders; other orders with ongoing obligations; summaries of any allegations of environmental liability; site plans; shoreline plans; utility maps; architectural, construction and/or as-built drawings; Remediation and Demolition Plans (as hereinafter defined); permits; and any other information regarding the Property within Seller's custody or control, including **Environmental Information** as defined below. Seller shall cooperate with Purchaser to obtain further information regarding the Property that is outside Seller's custody or control.

As used in this LOI, "**Environmental Information**" shall include but is not limited to soil and groundwater sampling results, environmental assessments, summaries of environmental liability, permits governing environmental issues, and any information commonly associated with environmental matters.

Remediation and Demolition Plans:

The "**Remediation and Demolition Plans**" shall include detailed written plans, as agreed in the Purchaser's sole discretion, including a narrative, for the remediation, demolition and any other site work currently underway at the Property or to be completed on the Property either before or after the Closing, along with an asset list of the structures yet to be demolished, an overview of the progress against schedule to date, highlighting key areas of delays (if any) encountered to date, as well as the latest estimates on the completion of the works, and consistent with the Remediation and Demolition Plans to be attached to the Purchase Agreement. Seller shall complete all demolition and active remediation activities on or before December 31, 2025, and shall provide a legal survey of the Property reasonably acceptable to Purchaser once the remediation and demolition activities are complete.

Physical Structures to Remain:

Upon full execution of the LOI, Purchaser will promptly visit the Property and meet with Seller to review the Remediation and Demolition Plans and agree upon which physical structures will remain. Preliminarily, Purchaser anticipates, but cannot guarantee, the following structures and infrastructure to remain intact:

- (i) All utility connections and service infrastructure;
- (ii) Lakefront water intake structure; and
- (iii) Temporary stormwater protection facilities.

Closing:

If Purchaser desires to proceed, closing of this Transaction (the “**Closing**”) shall occur within the later of (i) thirty (30) days after the expiration of the Due Diligence Period, (ii) thirty (30) days after the Seller’s completion of all obligations under the Remediation and Demolition Plans, or (iii) thirty (30) days after the proceeds of Tax Increment Financing funds in connection with the Project are available and provided to the City to fund the acquisition; provided that Purchaser may, at its option, close earlier upon twenty (20) days of written notice (the “**Closing Date**”). The Closing shall occur at the Title Company’s office (or Purchaser’s attorney’s office) in Northeast Ohio, or through Purchaser’s attorney or a mutually acceptable escrow managed by the Title Company. Seller shall deliver exclusive possession of the Property to Purchaser on the Closing Date.

Title:

At Closing, title to the Property shall be conveyed by limited warranty deed, free and clear of all liens and encumbrances, free of possession, and otherwise subject only to such matters as may be approved in writing by Purchaser, in its sole discretion, during the Due Diligence Period.

**Representations,
Warranties and Conditions
to Closing:**

Seller shall represent and warrant in the Purchase Agreement that, following completion of Seller’s remediation and demolition activities as described in the Remediation and Demolition Plans, there will be no remaining liabilities of any nature (including any financial or environmental liabilities or obligations) associated with the Property. Seller or a financially adequate affiliate shall provide an indemnification in the Purchase Agreement, effective as of the Closing Date, reasonably acceptable to the Purchaser.

Seller shall complete, at its own cost, the shutdown and full decommissioning of the coal power plant and associated infrastructures and all environmental remediation and necessary demolition work on the Property.

The Purchase Agreement shall contain other representations, warranties and terms, acceptable to each party, in each party’s sole discretion.

Purchaser’s offer is based on the foregoing representations and warranties, as well as the following conditions to Closing:

- The Property is satisfactory to the Purchaser's intended use as a public park, without regard to zoning, permitting, land development and municipal, county and state requirements.
- **Environmental Remediation and Demolition.**
 - The Seller agrees to remediate the Property to applicable standards for the Property's intended use, in accordance with the requirements of the Ohio Voluntary Action Program, Ohio Revised Code Chapter 3746 et seq., including all applicable regulations thereunder (collectively, the "Ohio VAP") and in accordance with the Remediation and Demolition Plans to be mutually agreed to between the parties and to be attached as an exhibit to the Purchase Agreement. (The Purchaser acknowledges that the Remediation and Demolition Plans may provide for the placement of clean fill in certain areas of the Property after the Closing, to be paid for with available TIF funds.)
 - Prior to the Closing on the Property, the Seller's and the Purchaser's environmental consultants shall collaborate regarding the completion of environmental investigations of the Property and Seller's Remediation and Demolition Plans as defined in this LOI. Prior to the conveyance of the Property to the Purchaser (or, if the Purchaser desires, to the Lorain County Metroparks), the Seller shall perform all environmental assessment and remediation activities necessary to enable an Ohio VAP "Certified Professional" selected by the Purchaser (the "Purchaser's Certified Professional"), to issue a No Further Action Letter for the Property (the "NFA Letter") consistent with the Remediation and Demolition Plans (which may provide for the placement of clean fill to achieve the relevant direct contact point of compliance under the Ohio VAP as a post-Closing obligation). The Purchaser's Certified Professional will collaborate, in good faith, with any Ohio VAP Certified Professional representing the Seller, to confirm that the Property has been investigated and remediated to achieve applicable standards under the Ohio VAP for safe recreational use as a park open for public access, as provided in the Seller's "Remediation and Demolition Plans," and as agreed and confirmed by the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to technical assistance under the Ohio VAP ("Technical Assistance"). Pursuant to and in accordance with the "Budget," as defined in the Interim Development Agreement between the parties, the Seller will pay all

reasonable costs for the Purchaser's Certified Professional in connection with the NFA Letter and for Technical Assistance within thirty (30) days of any invoice therefore, which costs shall be reimbursable to the Seller through available TIF funds.

- At the Purchaser's option, and at the Purchaser's cost through the use of TIF funding, as identified herein, the Purchaser may request the Purchaser's Certified Professional to submit the NFA Letter for a Covenant Not To Sue under the Ohio VAP from the Director of Ohio EPA (a "CNS"); provided, however, the issuance of a CNS shall not be a condition of the Closing for the Property to be acquired by the Purchaser. The Seller and the Purchaser shall collaborate to include adequate budgets and funding in any TIF legislation for the project, reasonably acceptable to both parties, to perform any post-Closing activities identified in the Remediation and Demolition Plans, or as otherwise provided in the Purchase Agreement.
- After Closing on the Property, the Purchaser agrees to evaluate the use of available TIF funds, as it deems necessary, to achieve residential standards on portions of the Public Park.
- The TIF financing has been monetized and funding necessary to pay for the Purchase Price and all other costs associated with the Closing of the Transaction has been provided to the Purchaser.

Right of Entry:

Upon full execution of this LOI and continuing throughout the Due Diligence Period, Purchaser, and its agents, consultants and prospective occupants, shall be entitled to enter the Property to conduct Purchaser's Due Diligence activities, including but not limited to such tests and studies as Purchaser deems necessary, in Purchaser's sole discretion, to determine the feasibility of the Property for Purchaser's intended use. Such studies may include, but will not be limited to, soil borings, test pits, monitoring wells, water pressure tests, surveys and other investigations. Notwithstanding the foregoing, Purchaser agrees not to perform any physical sampling or testing until the definitive Purchase Agreement is fully-negotiated to the complete satisfaction of both parties and ready for execution.

Additionally, commencing on the full execution of this LOI and continuing throughout the Due Diligence Period, Seller authorizes Purchaser to make application for municipal approvals and other regulatory approvals as necessary for Purchaser's proposed development and use of the Property. Seller hereby designates Dan

Rogatto as the person with whom Purchaser may coordinate Due Diligence matters and access to the Property. He may be reached at dan.rogatto@Charah.com and (502-377-5955).

Closing Costs:

Purchaser and Seller shall equally share any state and local transfer taxes. All municipal assessments, real estate taxes and similar costs shall be prorated through the Closing and allocated in accordance with customary local commercial practices to be described in the Purchase Agreement.

Brokerage:

The parties stipulate that Avison Young represents the Seller and is the sole broker in this transaction and no other broker represents the Seller or Purchaser. Any fees due to Avison Young shall be paid by the Seller pursuant to a separate agreement and Seller shall indemnify Purchaser regarding same.

Confidentiality:

Except as provided herein, until the execution of any definitive documentation in relation to the Transaction contemplated in this LOI, Seller agrees to maintain the confidentiality of the “Feasibility Materials,” as defined herein, and not to disclose the same, except as may be required by applicable law or any governmental authority, including but not limited to the Ohio Public Records Act and the Ohio Open Meetings Act.

The Purchaser also agrees it shall not disclose to any third party, except for Purchaser’s agents, advisors, consultants and attorneys which have agreed to maintain the information as confidential, and shall maintain the confidentiality of any and all of trade secrets, confidential business information, which Seller identifies in writing as being “confidential” (collectively with the Feasibility Materials “*Confidential Information*”); and Purchaser shall, upon a request by any third party for any Confidential Information either under the Ohio Public Records Act (Ohio Revised Code Section 149.43, or its successor statute) or otherwise and, before disclosing any Confidential Information to a third party shall immediately notify Seller and Seller shall be given sufficient time to take court action or otherwise to prevent such disclosure. Seller shall defend Purchaser at Seller’s sole expense and Seller shall indemnify Purchaser for any and all liabilities, penalties and damages incurred by Purchaser for its non-disclosure of Confidential Information. For purposes of clarity, this LOI shall be publicly disclosed by the City during consideration of the Interim Development Agreement being negotiated by the parties. Additionally, in the Purchase Agreement, the parties shall identify a process for disclosing the Environmental Information to the public, in connection with the submittal of the NFA Letter, as described in the Interim Development Agreement.

Governing Law and

Jurisdiction:

This LOI will be governed by and construed in accordance with the laws of the State of Ohio and Seller and Purchaser hereby irrevocably consent to the exclusive jurisdiction of any Ohio state court in Lorain County or the federal court for the Northern District of Ohio and each party acknowledges and agrees that the venue provided above is the most convenient forum and waives any objection to venue and any objection based on a more convenient forum in any action instituted under this LOI.

Non-Binding LOI:

Except for the sections of this LOI titled "Right of Entry", "Confidentiality" and "Governing Law and Jurisdiction" which shall be binding in all respects, this is a non-binding LOI and neither Purchaser nor Seller shall have any rights, duties, liabilities or obligations under this LOI or with respect to the purchase and sale of the Property unless and until both parties have executed a Purchase Agreement and then only to the extent set forth in the Purchase Agreement. This LOI may be terminated by written notice from one party to the other, provided: any Environmental Information provided by Seller to Purchaser shall remain confidential for a period of ten (10) years from the date of this LOI.

No Assignment:

Except as expressly set forth above, no party shall have the right, power or authority to assign this LOI or any of its rights or obligations hereunder to any third party, without the prior written consent of the other party. Any such assignment without the other party's prior written consent shall be null and void.

[Signature Page Follows]

[Signature Page to Letter of Intent]

Sincerely,

City of Avon Lake, Ohio

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

SELLER ACKNOWLEDGMENT

Agreed and accepted this _____ day of _____ 2024.

Seller: Avon Lake Environmental Redevelopment Group LLC,
An Ohio limited liability company

By: _____

Print Name: _____

Title: _____

ATTACHMENT A

(Property – Identified in Pink)

