

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

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

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

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

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

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

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

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

1<sup>st</sup> reading: 4/22/2024

2<sup>nd</sup> reading:

3<sup>rd</sup> reading:

PASSED: 5/13/2024

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

POSTED: 5/17/2024

APPROVED: 5/14/2024

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

/s/ Mark A. Spaetzel  
Mayor

## AMENDED AND RESTATED LEASE

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

### WITNESSETH:

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

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

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

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

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

### ARTICLE I

#### DEMISE

##### Section 1.1 Premises.

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

##### Section 1.2 Common Elements.

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

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

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

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

#### Section 1.3 Inner Access Drive.

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

#### Section 1.4 Restroom.

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

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

## ARTICLE II

### TERM

#### Section 2.1 Term and Commencement Date.

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

#### Section 2.2 Termination.

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

#### Section 2.3 Surrender.

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

## ARTICLE III

### USE AND OPERATIONS

#### Section 3.1 Use.

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

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

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

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

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

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

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

### Section 3.3 Signs.

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

## ARTICLE IV

### RENT

#### Section 4.1 Rent Payable.

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

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

Section 4.2 Base Rent.

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

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

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

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

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

Section 4.3 Payment of Rent.

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

ARTICLE V

IMPROVEMENTS

Section 5.1 Landlord's Improvements.

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

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

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

Section 5.2 Tenant's Improvements.

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

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

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



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

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

(ii) installation of security systems; and

(iii) installation of lighting.

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

## ARTICLE VI

### REPAIRS AND ALTERATIONS

#### Section 6.1 Repairs to be Made by Landlord.

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

#### Section 6.2 Repairs to be Made by Tenant.

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

#### Section 6.3 Alterations by Tenant.

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

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

## ARTICLE VII

### UTILITIES

#### Section 7.1 Utilities.

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

## ARTICLE VIII

### INDEMNITY AND INSURANCE

#### Section 8.1 Indemnity by Tenant.

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

#### Section 8.2 Tenant's Insurance.

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

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

(b) If and to the extent required by law, Worker's Compensation or similar insurance in form and amounts required by law.

Section 8.3 Waiver of Liability.

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

ARTICLE IX

DAMAGE AND DESTRUCTION

Section 9.1 Option to Terminate Lease.

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

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

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

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

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

#### Section 9.2 Repair and Reconstruction.

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

#### Section 9.3 Abatement of Rent.

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

### ARTICLE X

#### ASSIGNMENTS AND SUBLETTING

##### Section 10.1 Assignment Not Permitted,

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

### ARTICLE XI

#### DEFAULT

##### Section 11.1 "Event of Default" Defined.

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

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

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

#### Section 11.2 Remedies.

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

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

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

#### Section 11.3 Damages Upon Termination.

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

## ARTICLE XII

### NOTICES

#### Section 12.1 Sending of Notices.

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

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

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

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

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

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

### ARTICLE XIII

#### MISCELLANEOUS

##### Section 13.1 Access to Premises.

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

##### Section 13.2 Remedies Cumulative.

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

##### Section 13.3 Successors and Assigns.

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

#### Section 13.4 Compliance with Laws and Regulations.

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

#### Section 13.5 Captions and Headings.

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

#### Section 13.6 No Modification.

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

#### Section 13.7 Severability.

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

#### Section 13.8 Third Party Beneficiary.

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

#### Section 13.9 Authorization.

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

Section 13.10 Applicable Law.

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

Section 13.11 Quiet Enjoyment.

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

Section 13.12 Holding Over.

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

Section 13.13 Landlord's Consent.

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

Section 13.14 Termination.

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



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

LANDLORD:

CITY OF AVON LAKE, OHIO

By: \_\_\_\_\_  
Mark Spaetzel, Mayor

Date: \_\_\_\_\_

STATE OF OHIO )

LORAIN COUNTY )

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

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

\_\_\_\_\_  
Notary Public

TENANT:

AVON LAKE BOAT CLUB, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO )

\_\_\_\_\_ COUNTY )

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

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

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Legal Description**

**EXHIBIT B**  
**Property Map**