**Monroe Council Agenda**
**Regular Meeting of Council**
**May 28, 2024 – 6:30 PM**
**233 South Main Street, Monroe, Ohio**

***Pledge of Allegiance***

***Roll Call***

***Approval of the Minutes***

**Council Minutes of May 14, 2024**

***Visitors***

***Committee Reports***

Public Works Committee
Finance Committee
Administrative Liaison Committee
Technology Committee
Public Involvement Committee
Public Safety Committee

***Old Business***

**Emergency Ordinance No. 2024-11. An Ordinance authorizing the City Manager to enter into a Lease Agreement with the highest bidder for the real property known as the Clark Boulevard Property and declaring an emergency. (Second Reading)**

**Sponsor**: Angela S. Wasson

**Strategic Priority**: Good Governance

**Background**: After advertisement and bidding, one bid was submitted by Majors Farms. Due to the fact that planting season has started, staff is requesting that this Ordinance be adopted as an emergency to avoid additional delay in the planting of crops.

**Emergency Ordinance No. 2024-13. An Ordinance amending and supplementing the Traffic Code and General Offenses Code of the Codified Ordinances to bring City law into conformity with State law and declaring an emergency. (Second Reading)**

**Sponsor**: Angela S. Wasson

**Strategic Priority**: Good Governance

**Background**: These updates allow for the City Codes to mirror state law. Citations under the local code results in more fine money remaining with the City.

**Emergency Ordinance No. 2024-14. An Ordinance authorizing the City Manager to enter into a Master Lease by and between the City of Monroe and the Monroe Area Community Improvement Corporation for the lease of a portion of the real property located at 601-685 South Main Street and declaring an emergency. (Second Reading)**

**Sponsor**: Jennifer Patterson

**Strategic Priority**: Strategic Growth and Development

**Background**: The City purchased the strip center next to the police department in 2019 with the intent of evaluating the site for future retail or office uses. Since the purchase, the building has remained largely vacant despite interest from a variety of private businesses. City Council and the MACIC have considered the future of this property numerous times over the past 5 years, and staff believes there is a possibility of securing project funds if the building is under the control of the MACIC. (The MACIC has been the designated economic development agency of the City since 2009 and is able to lease/sublease property under their Articles of Incorporation and the Ohio Revised Code.)

Once the lease is transferred, the roof is repaired or replaced appropriately, and the City has vacated the building, the MACIC will pursue funding and subleases to improve the space for the benefit of the community. In the event that the project does not move forward as anticipated under this Master Lease, the lease can be terminated by either party.

***New Business***

**Resolution No. 29-2024. A Resolution approving a Then-and-Now Certificate in the amount of $14,798.51 to PowerDMS.**

**Sponsor**: Kacey Waggaman

**Strategic Priority**: Good Governance

**Background**: the invoice was received prior to the purchase order being opened.

**Resolution No. 30-2024. A Resolution authorizing the City Manager to apply for, accept, and enter into a cooperative agreement for construction of the South Main Street Water Main Project between the City of Monroe and the Ohio Water Development Authority.**

**Sponsor**: Jake Burton

**Strategic Priority**: Well Managed Infrastructure

**Background**: The 2024 Capital Budget included $1,200,000 for the South Main Street Water Main Replacement Project, with $365,000 being funded from the Water Fund and $885,000 being funded by an Advance from the General Fund. The final bid cost for this project was $818,621.10 or $381,378.90 under the original estimate.

As the City continues to work on the Stonybrook residential development, the possible opportunity to upsize the water main associated with the project from the required 8-inch main to a 12-inch main has been discussed. The hope is the City would only pay, or waive fees, for the additional material costs associated with the larger main and be able to meet the long-term water infrastructure needs of this area based on the City's water modeling, which would prep this area for long-term growth and save taxpayer dollars in the future.

City Council passed Ordinance No. 2021-52 on October 26, 2021 which adopted the Water Rate Study dated September 14, 2021 and adjusted water rates through calendar year 2025. The Water Rate Study contemplated the City issuing $5.5 million in loan/bond/grant funded projects and $3.1 million in rate (cash) funded projects from 2021-2025. The actual spending from 2021 through 2024 (budget) has been $4.8 million in rate (cash) funded projects and no loans/bonds issued.

With all of these factors considered, an OWDA Loan for the South Main Street Water Main Project is recommended. The interest rate on the OWDA loan varies monthly based on the previous 8-week average of the 20 year and 30 year MMD Aa Index plus 0.30%. The interest rate for May is 3.85% on loan terms 5 to 20 years and 4.18% on loan terms 21 to 30 years. The City's loan application will be considered at the June OWDA Board Meeting, so the actual interest rate will vary slightly. OWDA has no minimum or maximum amount, and terms are based on the applicants request, from 5 years to 30 years. OWDA charges a Loan Administration Fee of 0.35% which would result in a fee of $2,865 on our $818,621.10 project, bringing the total loan amount to $821,486.10. This is the first time the City has applied for a OWDA loan, but all future loans would receive a 12.5% interest rate reduction for being a previous OWDA borrower. A 15-year term is being recommended for this project, which would result in an estimated total cost of $1,089,075 or $72,605 per year.

**Resolution No. 31-2024. A Resolution accepting the lowest and/or best bid for the South Main Street Water Main Replacement Project and authorizing the City Manager to enter into a contract with Majors Enterprises Inc. for said project.**

**Sponsor**: Gary Morton

**Strategic Priority**: Well Managed Services and Infrastructure

**Background**: This project will replace and upsize the water main from Carson Road to Mason Ave. on South Main Street. It is necessary for the health of the city's water distribution system. The current 8" cast iron main, which is in use, is causing a pinch point in the system, not allowing our North Main Street tower to fill. This replacement project will allow this to happen by improving the system's hydraulics, which will allow the tank to fill to its one million-gallon capacity.

Majors Enterprises was the low bidder on the project. Five bids were received. The bid opening sheet outlines all five bids. It is attached for your review. Work will likely begin in late July on this project.

**Resolution No. 32-2024. A Resolution repealing Resolution No. 69-2018 wherein Council accepted a $650,000 grant for the Great Miami Trail Monroe Section Project.**

**Sponsor**: Gary Morton

**Strategic Priority**: Parks and Connectivity

**Background**: Public Works requests that the council return the $650,000.00 grant to OKI for the Great Miami River Trail. Due to inflation and stream bank erosion, the City is unable to build the Great Miami River Trail for the amount originally budgeted. OKI will not allow the scope of work to be altered under the terms of the awarded grant. Therefore, the City cannot spend the funds.

Also, each year we hold onto these funds, we are penalized by OKI. This means we are very unlikely to receive OKI funding for other projects or even more funding for the Great Miami River Trail. However, the City is committed to finding a solution. It is in the City's best interest to return these funds, redesign the trail and then look to secure funding with updated plans and cost estimates.

**Resolution No. 33-2024. A Resolution repealing Resolution No. 67-2020 wherein Council accepted a $500,000 grant for the construction of a 2.3 mile long trail along the Great Miami River.**

**Sponsor**: Gary Morton

**Strategic Priority**: Parks and Connectivity

**Background**: Public Works requests that the council return the $500,000.00 grant to ODNR for the Great Miami River Trail. Due to inflation and stream bank erosion, the City cannot build the Great Miami River Trail for the amount originally budgeted. ODNR will not allow the scope of work to be altered under the terms of the awarded grant. Therefore, the City cannot spend the funds.

Also, each year we hold onto these funds, we are penalized by ODNR. This means we are very unlikely to receive ODNR funding for other projects or even more funding for the Great Miami River Trail. However, the City is committed to finding a solution. It is in the City's best interest to return these funds, redesign the trail and then look to secure funding with updated plans and cost estimates.

**Ordinance No. 2024-15. An Ordinance authorizing the City Manager to enter into a Development Agreement by and between the City of Monroe and Grand Communities, LLC/Fischer Homes for the Stonybrook Subdivision.**

**Sponsor**: Tom Smith

**Strategic Priority**: Well Managed Services and Infrastructure

**Background**: On July 11, 2023, City Council approved a Planned Unit Development for the Stonybrook Subdivision. Because of the specialized nature of this project, a development agreement has been prepared that will identify the responsibilities of both the City and the developer throughout the development process. This development agreement references infrastructural public improvements such as right-of-way, intersection points, water, sanitary sewer, storm water, traffic management and access, sidewalks, and pedestrian connectivity. It outlines construction and maintenance obligations, and compliance with the terms of the approved Planned Unit Development. This agreement also articulates the process steps for bonding with the language from the newly adopted Planning and Zoning Code.

**Consideration of Motion requesting a hearing for the transfer of a D5 and D6 Liquor Permit from Froggys to Froggys Bar and Grill at 10 South American Way.**

***Administrative Reports***

***Adjournment***

**Monroe Council Minutes**
**Regular Meeting of Council**
**May 14, 2024 – 6:30 p.m.**
**233 South Main Street, Monroe, Ohio**

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***Pledge of Allegiance***

Vice Mayor McElfresh opened the regular meeting of Council at 6:30 p.m. with the Pledge of Allegiance.

***Roll Call***

Council members present: Michael Graves, Tom Hagedorn, Christina McElfresh, and Ben Wagner.

Mr. Wagner moved to excuse Mr. Centers, Dr. Clark, and Mayor Funk; seconded by Mr. Hagedorn. Voice vote. Motion carried.

***Approval of the Minutes***

Mr. Wagner moved to approve the Council minutes of April 23, 2024; seconded by Mr. Graves. Voice vote. Motion carried.

***Visitors***

Tom Ratterman addressed the recent amendment to the Official Zoning Map and was of the opinion that a change to his property would decrease the value of his property.

***Committee Reports***

Mr. Wagner reported the Park and Recreation Board met last week resulting in recommendations concerning the bike path and funds set aside that were grants from the Ohio Department of Natural Resources and the Ohio Department of Transportation. The Board recommended returning the funds so the City can move forward with the larger scale erosion problem at Dick's Creek.

Mr. Wagner also reported there were several recommendations from the Public Works Committee that met earlier this evening.

Mr. Wagner moved to adjourn into executive session to consider the purchase of property for public purposes; for the sale of property at competitive bidding; and reviewing negotiations with public employees concerning their compensation or other terms and conditions of their employment; seconded by Mr. Hagedorn. Roll call vote: four ayes. Motion carried.

Council adjourned into executive session at 6:40 p.m.

Mr. Wagner moved to reconvene into regular session; seconded by Mr. Hagedorn. Voice vote. Motion carried.

Council reconvened into regular session at 8:08 p.m.

***New Business***

**Ordinance No. 2024-11.** An Ordinance authorizing the City Manager to enter into a Lease Agreement with the highest bidder for the real property known as the Clark Boulevard Property.

The Clerk of Council read Ordinance No. 2024-11 by title only.

Vice Mayor McElfresh advised Ordinance No. 2024-11 will be on the next agenda for a second reading.

**Ordinance No. 2024-12.** An Ordinance amending and supplementing Ordinance No. 2024-08 otherwise known as the permanent appropriations ordinance, to meeting current expenses and other expenditures of the City of Monroe, for fiscal year ending December 31, 2024.

The Clerk of Council read Ordinance No. 2024-12 by title only.

Mr. Wagner moved to adopt Ordinance No. 2024-12; seconded by Mr. Graves. Roll call vote: four ayes. Motion carried.

**Ordinance No. 2024-13**. An Ordinance amending and supplementing the Traffic Code and General Offenses Code of the Codified Ordinances to bring City law into conformity with State law.

The Clerk of Council read Ordinance No. 2024-13 by title only.

Vice Mayor McElfresh advised Ordinance No. 2024-13 will be on the next agenda for a second reading.

**Consideration of Motion** to purchase fire hydrant repair kits and appurtenances in the amount of $39,934.23.

Mr. Wagner moved to authorize the purchase of fire hydrant repair kits and appurtenances in the amount of $39,934.23; seconded by Mr. Graves. Voice vote. Motion carried.

**Consideration of Motion** accepting the January, February, and March 2024, Finance Reports as submitted.

Mr. Wagner moved to accept the January, February, and March 2024, Finance Reports as submitted. Voice vote. Motion carried.

Mr. Wagner moved to amend the agenda to include the consideration of Ordinance No. 2024-14; seconded by Mr. Graves. Voice vote. Motion carried.

**Ordinance No. 2024-14.** An Ordinance authorizing the City Manager to enter into a Master Lease by and between the City of Monroe and the Monroe Area Community Improvement Corporation for the lease of a portion of the real property located at 601-685 South Main Street.

The Clerk of Council read Ordinance No. 2024-14 by title only.

Vice Mayor McElfresh advised Ordinance No. 2024-14 will be on the next agenda for a second reading.

***Administrative Reports***

Mr. Lester announced that the Fire Department is scheduled to receive the EMS Agency of the Year Award at ODOT's Central office in Columbus and invited Council to attend.

***Adjournment***

Mr. Wagner moved to adjourn; seconded by Mr. Hagedorn. Voice vote. Motion carried.

The regular Council meeting adjourned at 8:17 p.m.

Respectfully submitted,

Angela S. Wasson, MMC
Clerk of Council

**EMERGENCY ORDINANCE NO. 2024-11**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE HIGHEST BIDDER FOR THE REAL PROPERTY KNOWN AS THE CLARK BOULEVARD PROPERTY, AND DECLARING AN EMERGENCY.

WHEREAS, advertisement for the lease of real property further described herein was made pursuant to Ohio Revised Code Section 721.03; and

WHEREAS, after advertisement, according to law, Council desires to enter into a lease agreement for the real property described herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: After bidding conducted according to law, it is hereby determined that the bid submitted by Majors Farms on April 29, 2024, is the highest bidder.

SECTION 2: The City Manager is hereby authorized to enter into a lease agreement by and between the City of Monroe and Majors Farms for the lease pursuant to the terms and conditions and as described in Exhibit "A" attached hereto and made a part hereof.

SECTION 3: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that planting season has begun and Council doesn't want to further delay the planting of crops. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: _____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

Exhibit “A” E. Ord No. 2024-11

# LEASE AGREEMENT

This Agreement made and concluded this ____ day of May, 2024; by and between the City of Monroe (“Lessor”) and Majors Farms (“Lessee”)

*W I T N E S S E T H*

THAT SAID LESSOR does hereby demise, let and lease unto the said Lessee the real property outlined on the map attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same for and during the term commencing the date hereof and ending on the _____ day of May, 2025.

Said Lessee does hereby covenant and agree with Lessor as follows:

1. Lessee shall pay to Lessor, its successors and assigns, a rent of $3,000 for the Real Property payable on the 15th of November, 2024.

2. The term of this lease shall be for one year.

3. The Real Property shall used for farming purposes only, i.e., no hunting.

4. The crop or crops to be grown on the Real Property shall be subject to the approval of the City of Monroe.

5. The roots of any trees growing in any field, or near any fence on said Real Property shall not be cut or injured and when plowing a space around said trees sufficient for their protection will be left.

6. The Real Property shall be used and occupied in a careful, safe, and proper manner.

7. The Real Property shall not be used or occupied for any unlawful purpose, and compliance with all requirements of law and with all ordinances, regulations, or orders of any federal, state, county, municipal or other public authority must be made.

8. All ditches, drains, water courses, and sewers on said Real Property shall be kept clean, open, and free from obstructions.

9. No part of the Real Property shall be occupied or used by any person, for any purpose or in any manner not consistent with the terms hereof, nor as to increase the insurance risk or rates or prevent the obtaining of insurance.

10. Lessee acknowledges the lease of said property after an examination of same without any representation on the part of the City of Monroe, and that the City of Monroe shall not be responsible at any time or in any event for any latent defect, deterioration, or change in the condition of the Real Property.

11. Lessee shall indemnify the City of Monroe, its employees, agents, contractors, and representatives against any expense, loss or liability paid, suffered or incurred as a result of any breach of the successful Lessee, Lessee's agents, servants, employees, customers, visitors, or licensees, of any covenant or condition of this lease, or as a result of Lessee's use of occupancy of the Real Property, or the carelessness, negligence or improper conduct of the Lessee, Lessee's agents, servants, employees, customers, visitors, or licensees.

12. In the event the City of Monroe at any time during the term of the lease desires to use or sell all or any of the Real Property, it may repossess all or any part of said Real Property upon seven days written notice to the successful bidder. Upon receipt of said notice, the successful bidder shall forthwith vacate the premises.

13. If the Lessee shall abandon or vacate said premises during said term, or shall assign this lease or underlet said premises or any part thereof, or shall fail to keep and perform any of the covenants, agreements or conditions of this lease on the successful bidder's part to be kept or performed, the City of Monroe, its successors or assigns, may enter immediately onto said premises and have, repossess and enjoy the same as if the lease had not been made, except that the City of Monroe may retain the total rent paid by the successful bidder, and thereupon the lease and everything herein contained on the part of said City of Monroe to be done and performed shall cease, determine and be utterly void. The commencement of a proceeding or suit in forcible entry or detainer or in ejectment, or otherwise, after any default by the successful bidder, shall be equivalent in every respect to actual entry by the City of Monroe.

14. The City of Monroe, for itself, its successors and assigns, hereby covenants and agrees with the successful bidder, successful bidder's executors, administrators, successors, and assigns, that the successful bidder keeping and performing the covenants of said lease to be kept and performed, the successful bidder shall peaceably and quietly hold, occupy, and enjoy said premises during said term.

IN WITNESS WHEREOF, the Lessor and Lessee, being first duly authorized, have hereunto set their hands to duplicates hereof the day and year first written above.

CITY OF MONROE, OHIO

By:_____
Larry Lester, City Manager

MAJORS FARMS

By:_____

Name:_____

Title:_____

Majors Farms

6393 Hamilton-Lebanon Rd

Monroe, OH 45050

Bid for Lease of:

30 tillable acres on Hamilton-Lebanon Rd/ Clark Blvd

Parcels C1800017000002, C1800017100001, and C1800017100002

Bidder offers to lease the above-referenced agricultural land for $100.00 per acre times 30 acres totaling $3000.00 for the term of one year.

Bidder acknowledges it has had an opportunity to examine the property involved and is relying solely upon its own examination of the agricultural land in the submission of its bid. Bidder acknowledges the property is being offered for lease "as is" and the City of Monroe makes no warranties, representations, or guaranties as to the condition or suitability of the real estate, implied or otherwise.

Majors Farms — Bidder

Dennis Majors — Authorized Signature

Dennis Majors — Print name

COO — Title

Majors.Enterprises@outlook.com — Bidder's Email Address

(513)539-8212 — Telephone

6393 Hamilton Lebanon Road Monroe, OH 45050 — Bidder's current address

**EMERGENCY ORDINANCE NO. 2024-13**

AN ORDINANCE AMENDING AND SUPPLEMENTING THE TRAFFIC CODE AND GENERAL OFFENSES CODE OF THE CODIFIED ORDINANCES TO BRING CITY LAW INTO CONFORMITY WITH STATE LAW AND DECLARING AN EMERGENCY.

WHEREAS, Council deems it necessary to establish consistency with State Law, which include providing for penalties, codification, severability, and repeal conflicting ordinances set forth in the Traffic Code and General Offenses Code of the Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The following sections of the Codified Ordinances are or contain new matter in the Traffic Code and General Offenses Code and are hereby approved, adopted, and enacted:

402.077, 402.37, 408.04, 432.30, 432.43, 434.01, 434.03, 436.071, 436.073, 436.074, 436.075, 436.09, 438.16, 438.17, 438.23, 438.28, 440.01, 440.08, 442.01, 442.03, 442.04, 442.05, 452.04, 606.01, 606.06, 606.12, 624.01, 624.04, 624.14, 630.11, 636.02, 636.045, 636.05, 636.10, 636.11, 636.12, 636.20, 636.23, 642.02, 642.08, 648.05, 648.07, 666.01, 666.05, 666.06, 672.04, 672.17, 672.18, 698.02, and 698.03.

SECTION 2: Pursuant to Section 7.16 of the City Charter, Ohio R.C. 731.23, and Section 222.01 of the Codified Ordinances, the Clerk of Council shall publish, in a manner required by law, a notice of the enactment of this Ordinance, containing the title of this Ordinance, together with a summary of the new matter contained in Exhibit "A" attached hereto and made a part hereof.

SECTION 3: All ordinances and resolutions or parts thereof which are in conflict or inconsistent with any provision of the new matter adopted in Section 1 of this Ordinance are hereby repealed as of the effective date of this Ordinance, except as follows:

(a) The enactment of such sections and subsections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full force notwithstanding its repeal for the purpose of revision and recodification.

(b) The repeal provided above shall not affect any legislation enacted subsequent to May 14, 2024.

SECTION 4: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that it is necessary to have an up-to-date codification of the traffic and general offenses laws of the City consistent with the latest State law, where such consistency is required by the Ohio Constitution. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

EXHIBIT "A"
SUMMARY OF NEW MATTER
CONTAINED IN THE TRAFFIC CODE AND GENERAL OFFENSES CODE
OF THE CODIFIED ORDINANCES OF THE CITY OF MONROE

| Section | New or amended matter regarding: |
|---|---|
| 402.077 | Child day-care center or type A family day-care home |
| 402.37 | School bus |
| 408.04 | Moving violation while distracted |
| 432.30 | School bus |
| 432.43 | Texting while driving |
| 434.01 | Driving or physical control while under the influence |
| 434.03 | Maximum speed limits; assured clear distance |
| 436.071 | Driving under suspension or license restriction |
| 436.073 | Driving under O.V.I. suspension |
| 436.074 | Driving under financial responsibility or nonpayment of judgement suspension |
| 436.075 | Failure to reinstate license |
| 436.09 | Display of license plates; registration; obstructions |
| 438.16 | Number of lights; red and flashing lights |
| 438.17 | Vehicles transporting preschool children |
| 438.23 | Windshield |
| 438.28 | Child restraints |
| 440.01 | Load limits |
| 440.08 | Travel trailer or manufactured home while in motion |
| 442.01 | Definitions |
| 442.03 | Licensing requirements |
| 442.04 | Physical qualification to operate commercial motor vehicle |
| 442.05 | Criminal offenses |
| 452.04 | Parallel and angle parking; handicapped persons |
| 606.01 | Definitions |
| 606.06 | Limitation on criminal prosecutions |
| 606.12 | Failure to report crime or death |
| 624.01 | Definitions |
| 624.04 | Possession of drug abuse instruments |
| 624.14 | Use or possession of paraphernalia |
| 630.11 | Raffle drawings |
| 636.02 | Assault |
| 636.045 | Menacing by stalking |
| 636.05 | Menacing |
| 636.10 | Nonsupport of dependents |
| 636.11 | Endangering children |
| 636.12 | Interference with custody |
| 636.20 | Illegal distribution cigarettes or other tobacco products |

| Section | New or amended matter regarding: |
|---|---|
| 636.23 | Failing to provide for functionally impaired person |
| 642.02 | Theft |
| 642.08 | Assaulting police dog or horse or assistance dog |
| 648.05 | Disturbing a lawful meeting |
| 648.07 | Inducing panic |
| 666.01 | Definitions |
| 666.05 | Voyeurism |
| 666.06 | Polygraph examinations for victims; restrictions |
| 672.04 | Improperly handling firearms in motor vehicle |
| 672.17 | Possession of object indistinguishable from firearm school safety zone |
| 672.18 | Concealed handgun licenses; revoked or suspended; restrictions; prohibiting |
| 698.02 | Penalties for misdemeanor |
| 698.03 | Imposing sentence for misdemeanor |

**EMERGENCY ORDINANCE NO. 2024-14**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A MASTER LEASE BY AND BETWEEN THE CITY OF MONROE AND THE MONROE AREA COMMUNITY IMPROVEMENT CORPORATION FOR THE LEASE OF A PORTION OF THE REAL PROPERTY LOCATED AT 601-685 SOUTH MAIN STREET AND DECLARING AN EMERGENCY.

WHEREAS, the City of Monroe ("City") and the Monroe Area Community Improvement Corporation ("MACIC") agree to cooperate in the redevelopment and improvement of a portion of real property located at 601-685 South Main Street ("Real Property"); and

WHEREAS, the Master Lease only applies to the portion of the Real Property not needed for municipal purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a Master Lease by and between the City of Monroe and the Monroe Area Community Improvement Corporation for the lease of a portion of the real property located at 601-685 South Main Street. The terms and conditions of said Master Lease shall be substantially similar to Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public, peace, health, safety and welfare for the reason that there is a potential financial impact to delaying in moving forward with this Master Lease. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: _____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

**MASTER LEASE**

**BETWEEN**

**CITY OF MONROE, OHIO,**
**a municipality and political subdivision of the State of Ohio**

**as Lessor**

**AND**

**MONROE AREA COMMUNITY IMPROVEMENT CORPORATION,**
**an Ohio non-profit corporation**

**as Lessee**

**FOR**
**PLAZA SOUTH SHOPPING CENTER**
**601 – 685 SOUTH MAIN STREET**
**MONROE, OHIO**

**DATED: _____ ___, 2024**

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**MASTER LEASE**

This Master Lease ("Lease") is entered into as of this _____ day of _____, 2024 (the "Effective Date") between the CITY OF MONROE, OHIO, a municipality and political subdivision of the State of Ohio ("Lessor") and the MONROE AREA COMMUNITY IMPROVEMENT CORPORATION, an Ohio non-profit corporation ("Lessee").

**WITNESSETH:**

WHEREAS, the Lessor acquired certain real property in the City of Monroe situated at 601-685 South Main Street in the City of Monroe, Ohio, which property is improved with a shopping center and related land and parking areas that is largely unoccupied, underutilized and in disrepair ("Shopping Center Site");

WHEREAS, the Lessor has located its police department in a portion of the Shopping Center Site, being that portion formerly occupied by an IGA grocery store;

WHEREAS, the Lessor and Lessee have agreed to cooperate in the redevelopment and improvement of the remaining portions of the Shopping Center Site not needed by the Lessor for the police department or other municipal purposes, being approximately 8,000 square feet of shopping center space in the building, together with those portions of the land and parking areas on the Shopping Center Site as are more particularly depicted and described on Exhibit A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Lessor and Lessee have agreed that the redevelopment and improvement of the Premises will be undertaken by the Lessor and Lessee consistent with a redevelopment plan set out on Exhibit B attached hereto (the "Plan") and that such redevelopment and improvement of the Shopping Center Site will promote the welfare of the citizens of the City of Monroe, Ohio ("City"), attract gainful employment for citizens of the City, and assist in the development of commercial activities in the City and revitalization of real property within the City; and

WHEREAS, the Lessor has designated Lessee as the City's community improvement corporation pursuant to Ohio Revised Code Chapter 1724.10; and

WHEREAS, the Lessor is authorized to lease property to Lessee;

WHEREAS, pursuant to Resolution No. _____ duly passed by the City Council of Lessor on _____, 2024, the Lessor authorized (i) the Plan, including the expenditure of funds required of Lessor thereunder, and (ii) the lease to Lessee the Premises on the terms set out herein; and

WHEREAS, it is anticipated that Lessee will sublease the Premises to various tenants from time to time consistent the implementation of the Plan; and

WHEREAS, pursuant to a resolution _____ duly passed by Lessee's Board of Directors on _____, 2024, this Lease was approved and its execution and delivery was authorized;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

## ARTICLE 1. DEMISE OF PREMISES

1.01 **Lease and Description of Premises**. Subject to the terms and conditions hereof, Lessor leases to Lessee, and Lessee rents and accepts from Lessor the Premises.

1.02 **Possession.** Lessor shall deliver full and complete possession of the Premises upon the Lease Commencement Date (as hereafter defined in Section 2.01), free and clear of any right of tenants or other occupants, except Cassano's Pizza ("Existing Sublessees"). Lessor and Lessee acknowledge that some of the Premises are also being used as temporary police storage. Lessor will notify the police department to remove their storage from the strip center with 30 days' notice upon securing project funding so that Lessee may have full use of the property as intended under this Lease.

1.03 **Sublease of the Leased Premises.** Lessee shall from time to time enter into subleases to third parties for the lease of store front units within the Premises, including subleases to the Existing Sublessees. All such subleases (the "Subleases") shall be generally in the form attached hereto as Exhibit C. Lessee agrees to promote occupancy in the Premises for community-focused uses that foster economic development, workforce, educational and cultural development, including such uses as commercial tenants, business incubator space, co-work offices, and conference room space. Lessee shall not allow the Premises to be leased to any sublessee for purposes of operating discount retail stores, sales of weapons or related items, tobacco stores, flea market/antique stores or similar vendor-based businesses, pet boarding or grooming, activities that are anticipated to cause site contamination, bail bonds or similar activities, medical marijuana, over-indexed uses according to reasonably available market data, or cell phone sales or repairs] ("Restricted Uses"). Lessee has the authority to set the terms of the sublease to reflect market conditions and/or development goals. This includes allowing reduced rental rates where needed to facilitate economic growth.

## ARTICLE 2. TERM AND RENT

2.01 **Term of Lease.** The term of this Lease shall be [thirty (30)] years ("Term"), commencing on June 1, 2024 (the "Lease Commencement Date") and expiring on May 31, 2054.

2.02 **Rent and Other Expenses.** Lessee shall pay Lessor, as base rent throughout the Term of this Lease, including all renewals, shall be One Dollar ($1.00) per year ("Base Rent"). Base Rent for the entire Term shall be paid by Lessee to Lessor in advance on a one-time basis in the amount of Thirty Dollars ($30.00). In the event that Lessee generates revenue through Subleases and other operations of the Premises, revenue from those sources is to be held solely by Lessee and Lessor acknowledges and agrees that such revenue may be used for all lawful purposes.

2.03 **Annual Operating Expenses and Building Improvements.** Lessor, as property owner, acknowledges and agrees to be financially responsible for repairs, replacements, and improvements that are necessary to ensure the safety, structural integrity, utility service, and related aspects of the Premises. Lessee hereby agrees to be financially responsible for the Annual

Operating Expenses and improvements that are intended to aesthetically enhance the Premises, such as façade improvements and landscaping. As a City-owned facility, all major improvements to the Premises will be coordinated with and overseen by the City's Public Works staff, regardless of the source of funding.

**a.** As used herein, the Annual Operating Expenses shall mean all expenses associated with the operation and general maintenance of the Premises, including, but not necessarily limited to, the costs associated with some capital improvements, maintenance, repairs and replacements to the Premises which are not otherwise paid for by sublessees, real property taxes and assessments (if applicable), and costs associated with casualty and liability insurance for the Premises.

**ARTICLE 3.** Amounts due from Lessee for Annual Operating Expenses shall be paid to the Lessor on or before the 15th day of December each year during the Term without demand, set-off or deduction unless agreed to in writing by Lessor.

## ARTICLE 4. CONDUIT OBLIGATIONS AND RIGHTS

4.01 **Statement of Intent.** Lessor and Lessee acknowledge and agree that Lessee will from time to time be obligated to undertake and perform certain obligations pursuant to Subleases, including obligations with respect to capital improvements to the Premises, maintenance and repair of common areas, payment of operating costs and costs associated with insurance (the "Lessee Sublease Obligations"). Lessor and Lessee acknowledge, agree and expressly state their mutual intent to create herein and hereby a conduit arrangement whereby the performance by Lessor of its obligations under Section 4.02 hereof (the "Lessor Conduit Obligations") will enable Lessee to perform the Lessee Sublease Obligations.

4.02 **Lessor Conduit Obligations.** As part of the Lessor Conduit Obligations, Lessor agrees to render to Lessee such performance as will enable Lessee to timely and fully perform each and all of the Lessee's Sublease Obligations as may from time to time be set out in Subleases approved by Lessor in writing prior to the effective date of any such Sublease if and to the extent that Lessee otherwise is not able to independently satisfy or perform such Lessee Sublease Obligations.

## ARTICLE 5. DEFAULT

5.01 **Events of Default.** The following events shall constitute a default under this Lease:

(a) Lessee's failure to pay Base Rent for a period of thirty (30) days after written notice from Lessor that such is past due; or

(b) Lessee's failure to observe or perform or cause to be observed or performed any other term, covenant, or agreement under this Lease, or Lessee's failure to observe or perform or cause to be observed or performed any term, covenant, or agreement under any Sublease, and continuation of such failure for a period of sixty (60) days after Lessor's written notice to Lessee specifying the nature of Lessee's

failure, shall constitute a default under this Lease. However, a failure as described in this subparagraph shall not constitute a default if it is curable but cannot with reasonable diligence be cured by Lessee within a period of sixty (60) days, and if Lessee commences the cure within said sixty (60) days and thereafter pursues such cure with reasonable diligence.

## ARTICLE 6. TERMINATION

6.01 **Simultaneous Termination.** If under any facts or circumstances this Lease shall be terminated by the parties in writing, then upon such termination Lessee shall return possession of the Premises to Lessor in good condition except for reasonable wear and tear and damage by casualty. There shall be no refund of any prepaid Base Rent to Lessor upon any such early termination.

6.02 **Financial Obligations.** In the event that Lessee determines there are not sufficient funding resources to make the project an economically viable improvement to the community, Lessee and Lessor shall evaluate the most appropriate course of action, which both parties acknowledge may involve terminating or modifying this Agreement.

## ARTICLE 7. GENERAL PROVISIONS

7.01 **No Waiver of Breach by Lessor's Actions.** The failure of Lessor to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition.

7.02 **Waiver of any Provision Must be Written.** No provision of this Lease shall be deemed to have been waived, unless the waiver is in writing and signed by the party against whom enforcement is sought.

7.03 **Notices.** Except as otherwise expressly provided to the contrary herein, all notices and demands of any kind that either party may be required or may desire to give to the other in connection with this Lease must be given by registered or certified mail, return receipt requested, with postage fully prepaid, or by independent courier service (with one day delivery and signature receipt), and addressed to the party to be served at the party's address as set forth below. Any notice shall be deemed received on first attempted delivery during normal business hours. Except for the party providing the notice, any notice hereunder shall be delivered to all the parties and other persons listed below or the same shall not be effective. Any party or other party listed below may change the address to which notices to that party or person are to be directed by notice given in the manner provided in this Section:

LESSOR:

City of Monroe, Ohio
233 South Main Street
Monroe, Ohio 45050-0330
Attn: City Manager

LESSEE:

Monroe Area Community Improvement Corporation
233 South Main Street
Monroe, Ohio 45050-0330
Attn: President

7.04 **Partial Invalidity or Unenforceability**. If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

7.05 **Individuals Benefitted by Lease.** This Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective successors, and assigns, except as otherwise provided in this Lease.

7.06 **Quiet Enjoyment.** Lessor covenants and agrees that Lessee shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term of this Lease without any interference from anyone claiming through or under Lessor.

7.07 **Nondiscrimination.** Lessee will not discriminate upon the basis of race, color, creed, national original, age or sex in the construction, use, occupancy or operation of the improvements erected on the Premises.

## ARTICLE 8. RECORDING MEMORANDUM OF LEASE

8.01 **Memorandum of Lease and Recording.** Lessor and Lessee shall execute a Memorandum of Lease and the Lessor shall cause (at Lessor's expense) the Memorandum of Lease to be recorded in the office of the Recorder of Butler County, Ohio.

## ARTICLE 9. HAZARDOUS MATERIALS

9.01 **No Additional Hazardous Materials.** Lessee will not knowingly introduce Hazardous Substances to the Premises or improvements thereon in violation of applicable laws. For purposes hereof Hazardous Substances shall mean: any "hazardous waste" or "hazardous substance", as those terms are defined in Section 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., as amended ("RCRA"), Section 101(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601

et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act, Public Law 99-499, October 17, 1986 ("SARA") or any comparable federal, state or local law (hereinafter collectively, the "Hazardous Substances").

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their duly authorized officials as of the date first above referenced.

| **LESSEE:** | **LESSOR:** |
|---|---|
| MONROE AREA COMMUNITY IMPROVEMENT CORPORATION, an Ohio non-profit corporation | CITY OF MONROE, OHIO, a county and political subdivision of the State of Ohio |
| By: _____ | By: _____ |
| Keith Funk, President | Larry Lester, City Manager |
| Date: _____ | Date: _____ |

## ACKNOWLEDGMENTS

STATE OF OHIO )
) SS:
COUNTY OF BUTLER )

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the ___President___ of the Monroe Area Community Improvement Corporation, an Ohio non-profit corporation, on behalf of said corporation.

_____
Notary Public
My Commission Expires: _____

STATE OF OHIO )
) SS:
COUNTY OF BUTLER )

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of the City of Monroe, Ohio, a municipality and political subdivision of the State of Ohio, on behalf of said City.

_____
Notary Public
My Commission Expires: _____

**EXHIBIT A**

**PREMISES**

## EXHIBIT B

## PLAN

Lessor and Lessee intend for the Premises to meet current zoning requirements for new construction to demonstrate the community's expectation of high-quality and well-maintained assets. To accomplish this and encourage viable commercial tenants, Lessor and Lessee acknowledge that building improvements and signage improvements will be necessary at the site. These improvements include, but are not limited to, roof repair or replacement, fire suppression system modifications, exterior façade improvements, landscaping, commercially appropriate signage for tenants and civic messages, installation or relocation of utilities, outdoor dining facilities, and parking lot enhancements. At the time of the execution of this lease, the estimated basic cost of these improvements is approximately $775,000. Lessor and Lessee acknowledge a mutual interest in pursuing grant funding, loans, capital budget planning, and similar creative financing opportunities to make this an economically productive building that supports businesses and the community.

This rendering illustrates the general overall vision for the future of the Premises and may be adjusted as needed to meet the needs of the tenants.

**EXHIBIT C**

**FORM OF SUBLEASE**

**LEASE AGREEMENT**

**BETWEEN**

**MONROE AREA COMMUNITY IMPROVEMENT CORPORATION,**
**AN OHIO NONPROFIT CORPORATION**

**as Landlord**

**AND**

**[TENANT]**

**as Tenant**

**FOR**

**[SHOPPING CENTER NAME]**
**SOUTH MAIN STREET**
**MONROE, OHIO**

**UNIT _____**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made as of the date of latest execution by the parties hereto ("Effective Date"), by and between MONROE AREA COMMUNITY IMPROVEMENT CORPORATION, an Ohio not-for-profit corporation ("Landlord"), having a notice address of _____, and _____ _____ , [a(n) _____ limited liability company] [a(n) _____ corporation] ("Tenant"), having a notice address of _____.

The terms and conditions set forth in this Lease are subject to and subordinate to that certain Master Lease dated as of _____ by and between the Landlord and the City of Monroe, a municipality and political subdivision of the State of Ohio (the "Master Lease"). In the event that any provision of this Lease shall conflict with the Master Lease Agreement, the conflicting provision in this Lease shall be severed and the Master Lease Agreement shall control. The severance of a provision for conflict with the Master Lease Agreement shall not affect the remaining provisions of this Lease.

### ARTICLE I. GRANT AND TERM

Section 1.01 - Premises:

Landlord hereby leases to Tenant for the term and upon all of the terms and covenants set forth herein, approximately _____ (_____) square feet of ground floor area ("Premises") in the shopping center, commonly known as _____, or by such other name as Landlord may from time to time hereafter designate, and [being a portion of the real property described in][as described in] the legal description attached hereto as part of Exhibit A, [but excluding any part of such real property and improvements owned and occupied by the City of Monroe, Ohio for its police department and other uses] ("Shopping Center"). The Premises are identified on the site plan of the Shopping Center, also attached hereto as part of Exhibit A, and have the address of _____, Monroe, Ohio. The exact square footage in the Premises shall be determined by Landlord's architect. Such square footage shall be measured from the mid-line of interior walls and the exterior part of exterior walls, and shall include the totality of the area within such boundaries, including any mezzanines. The determination of Landlord's architect as to square footage shall be binding upon both parties hereto. In the event the square footage, as finally determined by Landlord's architect, differs from the square footage set forth above, the Base Rent to be paid by Tenant as set forth in Article II and any Construction Allowance to be paid to Tenant as set forth in any Construction Allowance Rider shall be adjusted by multiplying the revised square footage by the applicable amount(s) per square foot as set forth in Section 2.01 and the Construction Allowance Rider.

Section 1.02 - Site Plan:

Exhibit A sets forth the current planned general layout of the Shopping Center, but the layout of the Shopping Center is subject to change. Landlord does not warrant or represent that the Shopping Center will be or has been constructed exactly as shown thereon or that it will be completed by a specific date. Landlord may change or alter any of the stores, Common Areas (as defined in Section 5.01) or any other aspect of the Shopping Center, or may sell or lease

portions of the Shopping Center all without the consent of or notice to Tenant. This Lease is subject to all applicable building restrictions, planning and zoning ordinances, federal, state and local laws, codes and other governmental rules and regulations, and all other encumbrances, restrictions and easements, including the Master Lease, affecting the Shopping Center and the terms and provisions of any and all declarations and reciprocal easements and operating agreements now or hereafter affecting the Shopping Center (collectively, "Laws and Restrictions").

Section 1.03 - Term:

The term of this Lease shall be for a period of _____ (____) Lease Years commencing on the earlier to occur of:

(a) the expiration of a _____ (___) day period (the "Fixturing Period") after the "Delivery Date" (as defined in Section 3.02), or

(b) the date on which Tenant opens for business in all or any part of the Premises [the first of (a) or (b) to occur being the "Term Commencement Date"],

and expiring at midnight on the last day of the _____ (__th) Lease Year, unless sooner terminated in accordance with the provisions hereof and subject to extension to accommodate any properly exercised Option Term(s) under Section 1.04 ("Expiration Date"). The term "Lease Year" as used in this Lease means each successive twelve (12) full calendar month period commencing on the Term Commencement Date. If the term commences on a day other than the first day of the month, then the first Lease Year shall additionally include such fractional month, and each subsequent Lease Years shall continue for twelve (12) full calendar months thereafter. Upon the request of either party after the Term Commencement Date, Landlord and Tenant shall enter into a supplemental agreement prepared by the requesting party that affirms the Delivery Date, Term Commencement Date, Expiration Date, Base Rent, and any other matters reasonably requested by the requesting party.

Section 1.04 - Option to Renew:

Provided Tenant remains open and operating and is not in Default (hereinafter defined), Tenant shall have the right to extend the term of this Lease for _____ (__) additional period(s) of _____ (__) Lease Years each (each an "Option Term") upon the same terms, covenants, conditions and provisions of this Lease, with Base Rent adjusting as set forth in Section 2.01 of this Lease. The granting of an Option Term shall be null and void should Tenant be in Default upon either the Expiration Date or upon the date of exercise of an Option Term by Tenant. In order to exercise an Option Term, Tenant shall provide Landlord with written notice at least one hundred eighty (180) days prior to the then-current Expiration Date. Failure to so provide said notice shall render the Option Term and any subsequent Option Term null and void.

## ARTICLE II. RENT

Section 2.01 - Base Rent:

Commencing on the Term Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay to Landlord annual "Base Rent" for the Premises, without demand, deduction, counterclaim or set-off (except as may be expressly permitted under this Lease) in equal installments ("Monthly Base Rent") in advance, on or before the first (1st) day of each month, in the amounts set forth below:

| Lease Year | Annual Base Rent | Monthly Base Rent | Base Rent Per Sq. Ft. |
|---|---|---|---|

The first installment of Base Rent shall be paid on the Term Commencement Date. If the Term Commencement Date occurs on a date other than the first (1st) day of a calendar month, the Monthly Base Rent for that first partial month shall be prorated on a per diem basis using the actual number of days in the relevant calendar month. If, under applicable Laws and Restrictions, any sales tax or similar tax is imposed upon the Base Rent payable hereunder, then Tenant also shall pay such tax to Landlord simultaneously with Tenant's Monthly Base Rent payments.

Section 2.02 - Payments by Tenant:

Throughout the term of this Lease, Tenant shall pay to Landlord, without demand, deductions, counterclaims or set-offs, all "rent," which is hereby defined as the sum of the Base Rent, Additional Rent, and all other charges payable by Tenant hereunder, when and as the same shall become due and payable under this Lease. Unless otherwise stated in this Lease, all sums of money or charges payable to Landlord from Tenant under this Lease, other than Base Rent, shall constitute "Additional Rent" and, except as otherwise expressly provided in this Lease, shall become due ten (10) days after the rendering of an invoice therefor, and failure to pay such charges carries the same consequences as Tenant's failure to pay Base Rent. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in currency of the United States of America, at Landlord's notice address or such other address as Landlord may designate by written notice. No payment to or receipt by Landlord of a lesser amount than that amount then required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Landlord may accept such check in payment without prejudice to Landlord's right to recover the balance of any sums owed by Tenant hereunder. In the event Landlord bills Tenant for any charge hereunder and within ninety (90) days of receipt of the same Tenant does not provide Landlord with notice that it disputes such charge, then Tenant waives any further right to dispute such charge and that charge shall automatically become an account stated between Landlord and Tenant.

Section 2.03 - Security Deposit:

Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the sum of _____ and 00/100 Dollars ($_____.00), which sum shall be held by Landlord as security against a Default by Tenant, pursuant to the terms of this Lease. The deposit (which shall not bear interest to Tenant) may be applied by Landlord in order to cure any Default. The deposit shall be returned to Tenant by the Landlord after deducting therefrom any sums owed to Landlord pursuant to the provisions of this Lease upon the termination of this Lease (including, but not limited to, deductions for damages to the Premises or other failure by Tenant to return the Premises to the condition required by Section 17.01), provided such termination is not caused by Tenant. A mortgagee in possession of the Premises, or any interest therein, through public or private foreclosure or the acceptance of a deed in lieu thereof, shall have no liability to Tenant for return of all or any portion of the deposit, unless, and then only to the extent that, such mortgagee has acknowledged receipt of all or any portion of Tenant's deposit. In the event Landlord applies the deposit in whole or in part against a Default by Tenant, Tenant shall, upon demand by Landlord, deposit sufficient funds to maintain the deposit in the initial amount. Failure of Tenant to deposit additional funds as security shall constitute a Default hereunder and entitle Landlord to avail itself of the remedies as provided in this Lease for non-payment of Base Rent by Tenant. Upon the expiration of the term hereof, Landlord shall retain the deposit, or so much as has not been applied in accordance with the provisions hereof, until such time as all of Tenant's obligations to pay any Additional Rent have been fully paid and satisfied.

Section 2.04 - Late Charge:

In the event any sum required to be paid by Tenant under this Lease is not received by Landlord on or before the date the same is due, then Tenant shall immediately pay, as Additional Rent, a service charge equal to seven percent (7%) of the amount of rent or other sum not timely paid in full. In addition, interest shall accrue on all unpaid, overdue sums at an annual rate equal to fifteen percent (15%), but not in excess of the maximum legal rate. Such interest shall also be deemed Additional Rent. Notwithstanding the foregoing, this Section 2.04 shall be inapplicable each Lease Year until Landlord has provided Tenant with one (1) written notice of a delinquent payment and a five (5) day opportunity to cure. Thereafter, no notice shall be required for the remainder of that Lease Year to trigger application of the service and interest charges hereunder, regardless of whether Tenant cures within the aforesaid five (5) day cure period.

Section 2.05 - Returned Checks:

In the event that Tenant's check for rent or for any other charges is returned for any reason, Tenant agrees to pay Landlord the sum of One Hundred Dollars ($100.00) as a handling charge in addition to any applicable late charge. Returned checks must be redeemed by cashier's check. In the event more than one check is returned, Tenant agrees to pay all subsequent rents and charges by cashier's check.

## ARTICLE III. PREPARATION OF PREMISES

Section 3.01 - As Is:

Landlord shall deliver the Premises in “as is” condition, in condition thereof as of the Effective Date of this Lease. All work done by Landlord at Tenant's request and agreed to in writing by Landlord (“Landlord’s Work”), if any, shall be at Tenant's expense and shall be paid for by Tenant depositing with Landlord, prior to the commencement of such Landlord’s Work, a sum equal to the cost for such Landlord’s Work, as reasonably estimated by Landlord. Upon completion thereof, appropriate adjustment shall be made between Landlord and Tenant based upon the actual cost of the Landlord’s Work.

Section 3.02 - Delivery Date:

(a) The Premises will be delivered to Tenant on the Effective Date and the Premises will be available to Tenant for the performance of Tenant's Work as of the Effective Date. Tenant agrees (if requested by Landlord) to execute a confirmation of Delivery Date. Tenant agrees to take physical possession of the Premises and begin its work under Section 3.03 on the date Landlord tenders possession of the Premises to Tenant. The date on which the Premises are delivered to Tenant shall be the "Delivery Date", and from and after the Delivery Date Tenant agrees to diligently perform Tenant's Work to completion.

(b) Tenant hereby expressly agrees that the entry or occupancy of the Premises by Tenant or Tenant's agents or contractors prior to the date herein fixed for the Term Commencement Date shall be governed by and shall be subject to all of the terms and provisions of this Lease, and Tenant shall observe and perform all its obligations under this Lease, including, without limitation, its obligation to fulfill its maintenance obligations under Article VI and pay charges for temporary utilities, Tenant's insurance, and other charges, but excepting its obligations to pay Base Rent, Common Area Expenses, Taxes and Insurance Charges, from the date upon which the Premises are made available to Tenant for its work (or from the date when Tenant commences to perform Tenant's Work, if earlier) until the Term Commencement Date.

Section 3.03 - Tenant's Work:

All work necessary to prepare the Premises for Tenant’s occupancy and use (“Tenant’s Work”) shall be performed by Tenant at Tenant’s expense in accordance with the provisions hereof. All entry into the Premises and work done by Tenant shall be at Tenant's risk. All work performed by Tenant shall be subject to Landlord's prior written approval and shall be in accordance with good construction practices, all Laws and Restrictions, and Landlord's reasonable rules and regulations. Tenant shall obtain, at Tenant's sole expense, all certificates, permits, and government or other approvals that may be necessary for the performance of Tenant's Work, and Tenant agrees to make application for its building permit within ten (10) days after Landlord's approval of Tenant's plans and specifications and to thereafter prosecute the same with all diligence. A copy of Tenant's building permit (and any other necessary certificates or approvals) shall be delivered to Landlord prior to Tenant commencing Tenant's Work. No material deviations from the final plans and specifications, once approved by Landlord, shall be permitted. Landlord's review of Tenant's plans and specifications shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency, and shall in no event create an express or implied confirmation that Tenant's design and/or working drawings have been prepared in accordance with the requirements of applicable laws, codes, ordinances and regulations. Further, Landlord shall have no responsibility or liability for any loss or

damage to any property belonging to Tenant. Tenant agrees to pay for all the utilities used or consumed in the Premises by Tenant on and after the Delivery Date. Tenant shall obtain, at Tenant's sole expense, all certificates and approvals that may be necessary so that a certificate of occupancy for the Premises may be issued. Upon the issuance of the certificate of occupancy for the Premises, which Tenant shall obtain, a copy thereof shall be immediately delivered to Landlord, along with an executed lien release from Tenant's contractor. Except for Landlord's Work, Tenant shall ready the Premises for the opening of Tenant's business by the Term Commencement Date.

Section 3.04 - Alterations by Tenant:

(a) Tenant shall not make any exterior, mechanical or structural alterations to the Premises or the mechanical or utility systems serving the Premises without the prior written consent of Landlord. Any interior, non-structural alterations shall add value to the Premises, and shall be performed in a good and workmanlike manner and in accordance with all Laws and Restrictions and the terms and provisions of this Lease.

(b) In the event that any mechanic's lien is filed against the Premises or Shopping Center as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond off the same within thirty (30) days after the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity or merits of such lien, and Tenant shall pay to Landlord, as Additional Rent, all sums so advanced.

(c) Prior to the commencement of any work by Tenant, Tenant shall obtain or demonstrate to Landlord's reasonable satisfaction that Tenant's contractors have obtained public liability and workers' compensation insurance to cover every contractor to be engaged by Tenant, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval.

(d) If, in an emergency, it becomes necessary to make repairs required to be made by Tenant under this Lease, Landlord may reenter the Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay Landlord the costs of such repairs as Additional Rent.

Section 3.05 - Remodel:

[If the term of this Lease, as the same may be renewed or extended, extends beyond the date that is ten (10) years after the Effective Date, Tenant agrees to refurbish (carpet, paint, replace fixtures, etc.) the Premises as needed and required in order to maintain a first class operation. All such work shall be carried out in accordance with the provisions of this Lease, including the provisions of this Lease governing construction of, and alterations to, the Premises.]

## ARTICLE IV. CONDUCT OF BUSINESS

Section 4.01 - Use and Trade Name:

(a) Tenant shall use and occupy the Premises for the following purpose only, and for no other purpose whatsoever: _____ ("Preapproved Use"), to be operated under the trade name, and no other trade name, of _____. Notwithstanding the foregoing Preapproved Use and any specific uses described as being part of the Preapproved Use, Tenant shall not use the Premises for any use prohibited by Laws and Restrictions, nor shall Tenant use the Premises for any of those exclusive and prohibited uses described in Exhibit C attached hereto and made a part hereof. Tenant shall be entitled to exercise its option(s) to renew contained in Section 1.04 of the Lease only if Tenant's Preapproved Use of the Premises continues in an uninterrupted manner (except permitted interruptions as set forth herein).

(b) If any governmental license or permit is required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, or if a failure to procure such a license or permit might or would adversely affect Landlord's interest in the Shopping Center, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such a license or permit and submit the same for inspection by Landlord. Tenant, at Tenant's expense, shall, at all times, comply with the requirements of each such license or permit.

Section 4.02 - Utilities:

Tenant, at its expense, shall arrange and contract in its name for and pay all costs and charges arising out of, all utilities (but not tap fees or similar development fees, which shall be the responsibility of Landlord) and other services provided or used in or at the Premises, commencing with the Delivery Date and throughout the term of this Lease. In the event that Tenant fails to arrange for the availability of said utilities and services within seven (7) days after the Delivery Date, Tenant shall pay to Landlord One Hundred Dollars ($100.00) for each day thereafter that Tenant continues to fail to arrange for such utilities and services. Tenant shall pay directly to the applicable utility companies the cost of any utility installation required by Tenant and not included in Landlord's Work of any and all such utility services. In the event that Landlord supplies or pays for any such utilities, then as Additional Rent, Tenant shall reimburse Landlord for the same. If, for any reason whatsoever, any particular utility is not separately metered or submetered, then Tenant shall be responsible for its share of such utility based upon the formula that Landlord, in its reasonable discretion, deems appropriate. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of any additional utility services that are not installed as part of the Landlord's Work and from all costs and charges for utilities consumed on or by the Premises. Except if caused by Landlord's negligence or willful misconduct, Landlord shall not be liable to Tenant for damages or otherwise (i) if any utilities become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility service, or (ii) for any interruption in any utility service (including, but without limitation, utilities for heating and air conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a default, termination or an eviction.

Section 4.03 - Signage:

Tenant shall install and maintain signage affixed to the exterior of the Premises in a location, size and style approved by Landlord, in Landlord's reasonable judgment, and in

accordance with Landlord's signage criteria as set forth on Exhibit B. Notwithstanding Landlord's approval and conformity to the signage criteria and the terms of this Lease, Tenant's signage shall conform to all Laws and Restrictions. Tenant shall pay for all costs in connection with such signage and shall be responsible for the cost of proper installation and removal thereof and any damage caused to the Shopping Center or Premises thereby. In the event Landlord deems it necessary to remove Tenant's signage for Shopping Center maintenance purposes, then Landlord shall have the right to do so, provided, however, Landlord shall replace said signage as soon as practicable at Landlord's sole cost. No additional signs, visible from the exterior of the Premises, may be installed or displayed in, on or about the Premises without the prior written consent of Landlord. Any interior signs must be tasteful and shall be prepared in a professional manner (not hand-lettered). Any sign or display visible from the exterior of the Premises that does not meet the above criteria may be removed at any time by Landlord without incurring any liability therefor.

[Tenant shall have the right to install and maintain a panel on the pylon or monument sign for the Shopping Center. If Tenant installs a panel on a pylon or monument sign, Tenant shall pay all costs for the fabrication and installation of its panel and for its pro-rata share of all costs incurred by Landlord in constructing, operating and maintaining the pylon or monument sign. At any time during which Tenant is not exercising any right it may have to install a panel on a pylon or monument sign, Landlord may give written notice to Tenant of Landlord's election to offer such panel space on the sign to another Shopping Center tenant, and Tenant's right to install a panel on the pylon or monument sign shall expire and become null and void in the event that Tenant does not affirm in writing its election to exercise such right within fifteen (15) days after Landlord's notice.]

Section 4.04 - Tenant's Warranties:

Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term hereof it shall: (i) keep the Premises and any platform or loading dock used by Tenant in a neat and clean condition; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature; (iii) observe all rules and regulations established by Landlord for tenants in the Shopping Center; (iv) observe all Laws and Restrictions which are applicable to the Shopping Center; (v) not use the parking areas or sidewalks or any space outside the Premises for display, sale, storage, or any other similar undertaking; (vi) not use any advertising medium or sound devices inside the Premises that can be heard outside the Premises, or permit any objectionable odors to emanate from the Premises; (vii) keep the Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Premises; (viii) keep the temperature within the Premises at such levels as may be required by any federal, state or local laws, ordinances or regulations; (ix) not conduct any auction, distress, fire or bankruptcy sale (whether real or fictitious); (x) conduct its sales practices consistent with the standards and practices generally acceptable in first-class retail shopping centers, display and sell only first-quality merchandise in the Premises, and conduct its business in the Premises in a lawful manner and in good faith; (xi) not undertake any activities tending to injure the reputation of the Shopping Center as reasonably determined by Landlord; (xii) park Tenant's vehicles, and cause its employees to park their vehicles, only in such places as may be reasonably designated from time to time by Landlord as an employee parking area (and Landlord reserves the right to have towed, at Tenant's cost and expense,

any automobile parked in violation of the foregoing); and (xiii) not commit or suffer to be committed any waste upon the Premises, not place a load upon any floor of the Premises in excess of the floor load per square foot area that such floor was designed to carry, and not commit or suffer to be committed any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant or tenant of the Shopping Center.

Section 4.05 - Legal Requirements:

Tenant shall, at its own expense, comply with all Laws and Restrictions and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements, and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Premises, whether such orders or directions are directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

Section 4.06 - Hazardous Material:

Tenant agrees that it will not use, permit, hold, release or dispose of any Hazardous Material (defined hereinafter) on, under or at the Premises or the Shopping Center and that it will not use or permit the use of the Premises or any other portion of the Shopping Center as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material, other than De Minimis Amounts. The term "De Minimis Amounts" shall mean, with respect to any given level of Hazardous Material, that such level or quantity of Hazardous Material in any given form or combination of forms (i) does not constitute a violation of any applicable law, and (ii) is customarily employed in, or associated with, similar shopping centers and operations such as that of Tenant. Tenant further agrees that it will not cause or allow any asbestos to be incorporated into any improvements or alterations that it makes or causes to be made to the Premises. Tenant hereby holds Landlord harmless from and indemnifies Landlord against any and all losses, liabilities, damages, injuries, costs, expenses, fines, penalties, and claims of any and every kind whatsoever (including, without limitation, court costs and attorneys' fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord for, with respect to, or as a direct or indirect result of (i) a breach by Tenant of the foregoing covenants, or (ii) to the extent caused or allowed by Tenant or any agent, contractor, employee, invitee or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, onto or into the Premises, the Shopping Center, the atmosphere, or any watercourse, body of water or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material); and the provisions of and undertakings and indemnification set out in this paragraph shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever, subject to the applicable statute of limitations. The provisions of the preceding sentence shall govern and control over any

inconsistent provision of this Lease. For purposes of this Lease, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

Landlord agrees that the Premises shall not contain any Hazardous Material on the Delivery Date. If during Tenant's initial construction work in the Premises Tenant discovers any Hazardous Material in the Premises that was not caused by Tenant or Tenant's agents, employees, or contractors, and that was present in the Premises prior to Tenant first occupying the Premises, then Tenant shall promptly notify Landlord and Landlord will diligently remove and dispose of such Hazardous Material in compliance with all applicable Laws and Restrictions.

## ARTICLE V. COMMON AREA

### Section 5.01 - Definition:

The term “Common Areas” shall mean the interior and exterior areas and facilities within the Shopping Center that are by nature not leasable to a tenant for the purpose of the sale of merchandise or the rendition of services to the general public. Common Areas include, but are not limited to, all parking areas and facilities, roadways, driveways, entrances and exits, truck or delivery service areas, utility lines and facilities (except to the extent of utility lines and facilities required to be maintained by Tenant or other tenants), detention or retention ponds or basins, serving the Shopping Center from within or outside of the Shopping Center, retaining and exterior walls, roofs, sidewalks, open and enclosed walkways, outside courts, landscaped and planted areas, lobbies, hallways, public restrooms, stairways, elevators, service corridors, mechanical rooms, loading docks, community rooms or areas, Shopping Center signs, and any equipment or special services provided by Landlord for the common or joint use and benefit of all tenants in the Shopping Center, their employees, customers, or invitees.

### Section 5.02 - Use:

During the term of this Lease, Tenant is granted, subject to Landlord’s reasonable rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, customer parking areas (subject to any exclusive parking rights granted by Landlord), and the entrance and exit ways designated by Landlord for ingress and egress to and from the Shopping Center and the Premises from a public street or highway. Subject to applicable Laws and Restrictions and any limitations set forth in Section 1.02, the Common Areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and uniformly enforce reasonable rules and regulations with respect to the Common Areas and

the use thereof. Tenant agrees to abide by such rules and regulations on notice thereof and to cause its permitted concessionaires, invitees and licensees and its and their employees and agents to do the same.

Section 5.03 - Common Area Expenses:

Landlord agrees to maintain and keep in good service and repair the Common Areas, including, but not limited to commercially reasonable snow removal. The manner in which such areas and facilities shall be maintained, managed and operated, and the expenditures therefor, shall be at the reasonable discretion of Landlord, and the use of such areas and facilities shall be subject to such reasonable rules and regulations as Landlord may make from time to time. Starting with the Term Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of the total costs and expenses incurred by Landlord in operating, managing, maintaining, equipping, lighting, and providing sanitation and sewer, stormwater drainage, and other services to the Shopping Center and to pay for the maintenance of any appurtenant access drives or easement areas (collectively, "Common Area Expenses"). Tenant's proportionate share of Common Area Expenses, as reasonably estimated by Landlord on an annual basis (or as otherwise revised by Landlord from time to time during the year), shall be paid in advance, in equal monthly installments on or before the first day of each month. Landlord shall have the right to give Tenant notice of any reasonably estimated increase in the Common Area Expenses relative to the original estimate (or other prior revised estimate) provided by Landlord for that calendar year, and Tenant shall, on the first day of the ensuing calendar month, pay to Landlord such amount as may be necessary to bring current Tenant's estimated payments of its proportionate share of Common Area Expenses for that calendar year based on Landlord's revised estimate, and for the balance of that year (or until another revised notice is given), Tenant shall make its estimated monthly payments toward Common Area Expenses based on Landlord's revised estimate. The manner in which said payments shall be used shall be within the reasonable discretion and control of Landlord, and any potential Common Area Expenses enumerated herein shall not give rise to an obligation of Landlord to provide the specific service, except as otherwise expressly required under this Lease. Common Area Expenses include, but are not limited to, the following costs and expenses incurred or paid by Landlord for the Shopping Center: (i) gas, electricity, water, sewer and other utility charges of whatever nature, including lighting for the parking and drive areas and other Common Areas; (ii) property maintenance personnel costs, appropriately allocated to the Shopping Center on a proportional basis as reasonably determined by Landlord; (iii) costs of service and maintenance contracts, including, but not limited to, any heating and cooling for Common Areas, controls, windows, snow and ice removal, janitorial and general cleaning and security services; (iv) all other maintenance and repair expenses (including those payable by Landlord in fulfilling its obligations under Section 6.01 hereof) and supplies that may be deductible for such calendar year in computing federal income tax liability, including capital expenditures or improvements (other than any new buildings constructed in the Shopping Center) amortized over a useful life reasonably determined by Landlord in accordance with GAAP; (v) any other costs and expenses incurred by Landlord in operating and maintaining the Shopping Center; (vi) the cost of any additional services not provided to the Shopping Center at the Term Commencement Date but thereafter provided by Landlord in the prudent management of the Shopping Center; and (vii) a reasonable management or administrative fee.

Common Area Expenses shall not include (aa) principal payments or interest payments on any mortgages, deeds of trust or other financing encumbrances; (bb) leasing commissions payable by Landlord; (cc) deductions for depreciation of the improvements within the Shopping Center; (dd) the original cost of construction of the Common Areas, the cost of construction of new buildings in the Shopping Center or the cost of acquisition of additional land or additional buildings for the Shopping Center; (ee) amounts paid by Landlord as a result of personal injury or property damage; (ff) compensation for services rendered by personnel in connection with any other property owned by Landlord or its affiliates; or (gg) reserves for any expenses not yet incurred.

Tenant's proportionate share of Common Area Expenses shall be calculated by multiplying Common Area Expenses by a fraction, the numerator of which shall be the leasable square footage of the Premises, and the denominator of which shall be the total leasable square footage in the Shopping Center for the applicable billing period. Landlord shall deliver to Tenant within one hundred twenty (120) days after the end of each calendar year during the Lease term, a statement setting forth the total amount of Tenant's proportionate share of Common Area Expenses incurred by Landlord during the preceding year. Landlord and Tenant agree that Tenant shall pay Landlord or Landlord shall credit Tenant's account (or if such adjustment is at the end of the Lease term, Landlord shall pay to or collect from Tenant, as the case may be), within ten (10) days after the receipt of such statement, such amount as may be necessary to effect reconciliation between the estimated amounts paid by Tenant to Landlord during such year versus Tenant's proportionate share of Common Area Expenses actually incurred by Landlord during such year.

## ARTICLE VI. REPAIRS AND MAINTENANCE

### Section 6.01 - Landlord's Obligations:

In addition to Landlord's obligation to keep in good service and repair the Common Areas, as outlined in Section 5.03, Landlord shall keep in good repair the sewer and water lines outside the Premises, to the point of connection with the Premises, along with the exterior walls (but not Tenant's signage or specific storefront elements), foundation and structural supports of the Premises.

### Section 6.02 - Tenant's Obligations:

Except as required of Landlord pursuant to Section 6.01, Tenant, at its expense, shall (i) make all repairs and replacements and perform all maintenance work necessary to keep the Premises and the systems and equipment exclusively servicing the Premises, including but not limited to all plate glass and all utilities and the heating, ventilating, and air conditioning unit(s), in good order and repair and in a safe and dry, tenantable condition and in compliance with all Laws and Restrictions; (ii) install and maintain such fire protection devices as may be required by any governmental body or insurance underwriter for the Shopping Center; (iii) provide trash storage and removal services for the Premises, except that if Landlord, in its sole discretion, elects to provide trash storage and removal services, then, in such event, Tenant shall be obligated to use and pay Landlord for the same as Additional Rent (with Tenant's proportionate share of such trash storage and removal service costs being determined, at Landlord's option,

either (aa) by multiplying such trash storage and removal costs by a fraction, the numerator of which shall be the leasable square footage of the Premises, and the denominator of which shall be the total leasable square footage in the Shopping Center for the applicable billing period, or (bb) on the basis of a separate metering or monitoring of Tenant's use of such services or facilities or such other reasonable allocation of the share of trash removal costs as Landlord may determine in its reasonable discretion); and (iv) change the air conditioning filter for the HVAC unit(s) serving the Premises as necessary, but not less than four (4) times a year, and have Tenant's HVAC system serviced as necessary, but not less than two (2) times per year, pursuant to a service and maintenance agreement. Tenant shall provide to Landlord a copy of the service and maintenance agreement for the HVAC system within fourteen (14) days after the Delivery Date. Without limiting the scope of Tenant's indemnification of Landlord under Article VIII, the provisions of Section 8.04(b) shall apply to Tenant's failure to fulfill its obligations under this Section 6.02. Tenant shall receive the benefit of any warranty held by Landlord on the HVAC unit(s), provided Tenant complies with its obligations under this Section and with all servicing and maintenance and other obligations under the applicable warranty, compliance with which is necessary to maintain the warranty in full force and effect, and Landlord shall make known those warranty obligations to Tenant upon Tenant's request therefor. Subject only to the provisions of 8.04(a) of this Lease, and notwithstanding any contrary provision of this Article VI, Tenant, at its expense, shall make any and all repairs to the Premises as may be necessitated by any break-in, forcible entry or other trespass into or upon the Premises, regardless of whether or not such entry and damage is caused by the negligence or fault of Tenant or occurs during or after business hours. If Tenant fails, refuses or neglects to properly maintain the Premises or to diligently commence or complete any of the repairs or replacements required to be made by Tenant hereunder promptly and adequately after receipt of written notice, Landlord may, in addition to any other remedy Landlord may have, but shall not be required to, make or complete said maintenance, repairs or replacements, and Tenant shall pay the cost and expense thereof, plus a charge of fifteen percent (15%) thereof, to Landlord upon demand as Additional Rent.

## ARTICLE VII. REAL ESTATE TAXES

### Section 7.01 - Liability:

Starting with the Term Commencement Date and continuing throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined, for each tax bill due and payable during the term of this Lease, prorated as appropriate for any partial calendar year at the beginning and upon the conclusion of the Lease term (the fact that Ohio's real estate taxes are paid a year in arrears shall be disregarded, resulting in Tenant paying Landlord throughout the term of the Lease for taxes actually due and payable during the term of the Lease notwithstanding the tax year for which said taxes are assessed). The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, real and personal, foreseen and unforeseen, including payments in lieu of taxes or other assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Shopping Center, any tax or surcharge of any kind or nature with respect to the parking areas or the number of parking spaces in the Shopping Center and, if applicable, any tax on rents and receipts. For purposes of determining Taxes, the term Shopping Center shall be deemed to include any land upon which off-site parking facilities, berms, landscaping, lighting, and off-site

sewer and utility systems (including drainage and flood control and retention ponds) serving the Shopping Center are located, with all improvements situated thereon, provided however that once any such area, or portion thereof, is sold or leased by Landlord, then such area, or portion thereof, would no longer be so included. The term "Taxes" also includes all costs reasonably incurred in any proceeding brought by Landlord to reduce said Taxes. If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of or in addition to the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon or imposed upon any personalty used in connection therewith or upon the collection of rents or other sums due hereunder, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Shopping Center, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof.

Tenant's proportionate share of Taxes shall be calculated by multiplying Taxes by a fraction, the numerator of which shall be the leasable square footage of the Premises, and the denominator of which shall be the total leasable square footage in the Shopping Center for the applicable billing period.

Section 7.02 - Method of Payment:

Beginning from the Term Commencement Date, Tenant shall pay its proportionate share of Taxes by paying one-twelfth (1/12) of the Taxes estimated by Landlord to come due and payable during the then-current calendar year (including any reasonably anticipated increases relative to the most recent tax bill), which amount, as reasonably updated and revised by Landlord from time to time, shall be payable monthly throughout the term with Tenant's payment of Base Rent. If Landlord gives Tenant notice of any reasonably estimated increase in Taxes relative to the most recent estimate provided by Landlord for that year, Tenant shall, on the first day of the ensuing calendar month, pay to Landlord such amount as may be necessary to bring current Tenant's estimated payments of its proportionate share of Taxes for that calendar year based on Landlord's revised estimate, and, until a subsequent revised notice is given, Tenant shall thereafter make its estimated monthly payments toward Taxes based on Landlord's revised estimate. Landlord shall deliver to Tenant within one hundred twenty (120) days after the end of each calendar year during the Lease term, a statement setting forth the total amount of Tenant's proportionate share of the Taxes actually paid by Landlord during the preceding calendar year, and Tenant shall pay Landlord or Landlord shall credit Tenant's account (or if such adjustment is at the end of the Lease term, Landlord shall pay to or collect from Tenant, as the case may be), within ten (10) days after the receipt of such statement, such amount as may be necessary to effect reconciliation between the estimated amounts paid by Tenant to Landlord during the preceding calendar year and Tenant's proportionate share of Taxes actually incurred by Landlord during such year.

## ARTICLE VIII. INSURANCE

Section 8.01 - Landlord's Obligations:

(a) Landlord shall obtain and maintain during the term of this Lease, "broad form" causes-of-loss property and casualty insurance, insuring the building(s) of the Shopping Center for one hundred percent (100%) of the replacement value thereof. Landlord may also obtain rent loss insurance. Such insurance shall be issued by an insurance company licensed to do business in the jurisdiction in which the Shopping Center is located.

(b) Landlord shall obtain and maintain during the term of this Lease, commercial general liability insurance covering the Common Areas, which policy is to be on an occurrence basis with minimum limits of not less than Three Million Dollars ($3,000,000.00) per occurrence. Such limit may be achieved through umbrella coverage.

Section 8.02 - Tenant's Contribution Towards Landlord's Insurance:

Tenant's proportionate share of Insurance Charges shall be calculated by multiplying Insurance Charges by a fraction, the numerator of which shall be the leasable square footage of the Premises, and the denominator of which shall be the total leasable square footage in the Shopping Center for the applicable billing period. Landlord shall deliver to Tenant, within one hundred twenty (120) days after the end of each calendar year during the Lease term, a statement setting forth the total amount of Tenant's proportionate share of Insurance Charges incurred by Landlord during the preceding year. Landlord and Tenant agree that Tenant shall pay Landlord or Landlord shall credit Tenant's account (or if such adjustment is at the end of the Lease term, Landlord shall pay to or collect from Tenant, as the case may be), within ten (10) days after the receipt of such statement, such amount as may be necessary to effect reconciliation between the estimated amounts paid by Tenant to Landlord during the preceding calendar year and Tenant's proportionate share of Insurance Charges actually incurred by Landlord during such year.

Section 8.03 - Tenant's Obligations:

(a) Tenant, at Tenant's sole cost and expense, shall obtain and maintain throughout the term of this Lease, insurance policies providing the following coverage: (i) "broad form" causes-of-loss property and casualty insurance covering all of Tenant's Work, leasehold improvements, fixtures, equipment, furnishings, merchandise and other contents in the Premises, with coverage at full replacement value; (ii) one (1) full year business income/business loss coverage; (iii) plate glass insurance; (iv) commercial general liability insurance naming Landlord, the mortgagee(s) of the Shopping Center, any ground lessor, and Landlord's property manager as additional insureds (with the additional insured endorsement issued on ISO Form CG 20 11 Additional Insured or the equivalent thereof), written on an occurrence basis, which policy is to be in the minimum amount of One Million Dollars ($1,000,000.00) per occurrence; (v) product liability insurance for merchandise offered for sale or rental from the Premises, including liquor liability coverage (if applicable to Tenant's business) and coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Premises (if this Lease covers Premises in which food or beverages are sold or consumed), with coverage of at least Two Million Dollars ($2,000,000.00) per occurrence for personal injury, wrongful death, and property damage; and (vi) workers' compensation coverage as required by law. The minimum limits hereinbefore set forth shall, at Landlord's option, be increased from time to time in accordance with industry standards, but not more frequently than once in any five (5) year period. Neither the issuance of any insurance policy required hereunder, nor the minimum limits

specified herein with respect to Tenant's insurance coverage, shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease. With respect to each and every one of the insurance policies herein required to be procured by Tenant, on or before the commencement of Tenant's Work (or Tenant's occupancy of the Premises, if earlier) and before any such insurance policy shall expire, Tenant shall deliver to Landlord a duplicate original or certified copy of each required policy or a certificate of the insurer, certifying that the applicable policy has been issued, providing the coverage required by this Section and containing provisions specified herein, together with evidence of payment of all applicable premiums.

(b) The policies described in this Section 8.03 shall: (i) be acceptable to Landlord in form and content, (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees, and mortgagees and ground lessors, (iii) contain a provision that it shall not be canceled and that it shall continue in full force and effect, unless Landlord has received at least thirty (30) days prior written notice of such cancellation or termination, and (iv) not be materially changed without at least thirty (30) days prior written notice to Landlord.

(c) Tenant shall not permit to be done any act that will invalidate or be in conflict with Landlord's insurance policies covering the Shopping Center or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

Section 8.04 - Covenants to Hold Harmless:

(a) Landlord and Tenant each hereby releases, and waives all rights of subrogation against, the other party and its officers, members, directors, employees and agents, with respect to any and all claims and liability for any loss or damage to property and loss of business covered by any insurance policy carried by the releasing and waiving party or required to be carried pursuant to this Lease, even if the fire or other casualty giving rise to the loss or damage has been caused by the fault or negligence of the other party or anyone for whom such party may be responsible. Each party shall cause its applicable insurance policies to be so endorsed.

(b) Tenant hereby indemnifies and agrees to hold harmless Landlord, Landlord's officers, directors, employees, and agents, and any mortgagee and ground lessor of the Shopping Center (collectively, the "Protected Parties"), from and against all claims, losses, liabilities, damages, and expenses (including but not limited to attorneys' fees) that arise from occurrences within the Premises (except to the extent caused by Landlord or its agents) or that arise from or in connection with (i) Tenant's possession, use, occupancy, repairs, maintenance, or control of the Premises, or any portion thereof, (ii) any negligent act or omission of Tenant, its employees, agents, contractors, licensees, or invitees, or (iii) any violation, breach, or default of this Lease by Tenant. Tenant shall, at its own cost and expense, defend any and all actions which may be brought against any of the Protected Parties with respect to the foregoing. Tenant shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against any of the Protected Parties in connection with the foregoing. This Section 8.04(b) shall be inapplicable to events caused by the negligence or willful misconduct of Landlord, or Landlord's agents or employees.

(c) Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury, or damage to property or business, or for business interruption, that may be occasioned by or through the acts, omissions or negligence of any other persons, or any other tenants or occupants of any portion of the Shopping Center.

Section 8.05 - Liability of Landlord to Tenant:

Subject to the provisions of Section 8.04, Landlord shall indemnify and hold harmless Tenant against and from any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any grossly negligent or intentional act of Landlord or any officer, agent, or employee of Landlord, and from all costs, reasonable attorneys' fees, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding is brought against Tenant by reason of such claim, Landlord upon notice from Tenant shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

## ARTICLE IX. DESTRUCTION OF PREMISES

Section 9.01 - Continuance of Lease:

In the event the Premises are partially or totally destroyed by fire or other casualty insured under the provisions of Section 8.01 above, so as to become partially or totally untenantable, then the damage to the Premises shall be promptly repaired, unless Landlord elects not to rebuild or repair as hereinafter set forth. Except in the case of termination, Base Rent and Additional Rent shall be abated in proportion to the amount of the Premises rendered untenantable until so repaired. In no event shall Landlord be required to repair or replace Tenant's merchandise, trade fixtures, furnishings or equipment. If more than twenty-five percent (25%) of the Premises or of the floor area of the Shopping Center are damaged or destroyed by fire or other casualty, then Landlord may elect that the Shopping Center and/or the Premises, as the case may be, be repaired or rebuilt or, at its sole discretion, terminate this Lease by giving written notice to Tenant of its election to so terminate, such notice to be given within thirty (30) days after the occurrence of such damage or destruction. If Landlord is required or elects to repair or rebuild the Premises as herein provided, Tenant shall repair or replace its merchandise, trade fixtures, furnishings and equipment in a manner and to at least a condition equal to that immediately prior to its damage or destruction. In the event of such casualty, if rebuild or repair of the same cannot with reasonable diligence be completed within two hundred ten (210) days after the date of said casualty, then Landlord or Tenant may terminate this Lease upon written notice to the other party, which notice must be given, if at all, within thirty (30) days of the date of such casualty.

Section 9.02 - Reconstruction; Rent Abatement:

If all or any portion of the Premises is damaged by fire or other casualty and this Lease is not terminated in accordance with Section 9.01, then all insurance proceeds however recovered shall be made available for payment of the cost of repair, replacing and rebuilding. Landlord shall use the proceeds from the insurance as set forth herein to repair or rebuild the Premises to

its condition as existed on the Delivery Date, and Tenant shall, using the proceeds from the insurance provided for in Section 8.03, repair, restore, replace or rebuild that portion of the Premises constituting Tenant's Work as defined herein, together with any additional improvements installed by Tenant, such that the Premises are restored to their condition as of immediately prior to the occurrence of such casualty. All of the aforesaid Tenant's insurance proceeds shall be deposited in escrow and shall be disbursed as work on repair, replacement or restoration progresses upon the certification of Landlord's architect that the balance in the escrow fund is sufficient to pay the estimated costs of completing the repair and restoration. If Tenant's insurance proceeds are less than Tenant's obligation hereunder, Tenant shall pay the entire excess cost. Base Rent and Additional Rent, which is payable hereunder during the existence of such damage and until such repair or rebuilding is substantially completed by Landlord, shall be equitably abated. Equitable abatement shall terminate upon the earlier of (i) the date upon which Tenant commences to use substantially all of the Premises for business with the public or (ii) the date upon which Landlord substantially completes its repair or rebuilding work plus the expiration of a period equal in duration to the Fixturing Period.

## ARTICLE X. CONDEMNATION

### Section 10.01 - Eminent Domain:

If twenty-five percent (25%) or more of the Premises is taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date on which such title vests in the authority. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, Landlord or Tenant may elect to terminate this Lease by giving notice within one hundred twenty (120) days after such taking; however, in the event of such termination by Tenant, Landlord shall be afforded a reasonable opportunity to meet code requirements or obtain a variance therefrom. In the case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which under the terms of this Lease would not have become the property of Landlord; further provided, that any such award to Tenant shall not be in diminution of any award to Landlord.

## ARTICLE XI. ASSIGNING, SUBLETTING AND ENCUMBERING LEASE

### Section 11.01 - Assigning, Subletting and Encumbering Lease:

(a) Except as expressly permitted herein, Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed: (i) assign or otherwise transfer, or mortgage or otherwise encumber, this Lease or any of Tenant's rights hereunder, (ii) sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by any persons other than Tenant or its agents, or (iii) permit the assignment or other transfer of this Lease or any of Tenant's rights hereunder by operation of law. Any attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest hereunder and any attempted or purported subletting or grant of a right to use or

occupy all or a portion of the Premises in violation of this Article XI shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee, sublessee or occupant.

Landlord and Tenant agree that Landlord may consider any reasonable factor in determining whether or not to grant its consent. Landlord and Tenant agree that the following factors, and any other reasonable factors, will constitute reasonable grounds for Landlord to consider:

(1) The proposed subtenant/assignee must possess adequate financial strength, as evidenced by audited financial statements and as further evidenced by such other information that Landlord may reasonably request.

(2) The use of the Premises (a) must not violate or create any potential violation of any laws or agreements affecting the Premises or Shopping Center (including exclusive use agreements), (b) must complement the tenant mix at the Shopping Center and otherwise be consistent with uses being conducted by reputable and creditworthy tenants leasing similar space in similar shopping centers, (c) must not constitute a nuisance or disturb or endanger other tenants of the Shopping Center, (d) must not be a use that is prohibited pursuant to Exhibit C hereof, and (e) must not violate any provision of the Master Lease.

(3) There must be no existing or uncured Default by the existing Tenant.

(4) The proposed subtenant/assignee must not be a party with whom Landlord is currently negotiating for space in the Shopping Center or an existing tenant of the Shopping Center.

(5) The proposed subtenant/assignee must not be in default in any other agreement with the Landlord, nor have a history of defaults with the Landlord.

(6) The managerial and operational skills of the proposed subtenant/assignee must be sufficient for Landlord to reasonably conclude that such assignee/subtenant will operate the Premises in a reputable manner.

(b) In the event Tenant desires to assign or transfer this Lease, or sublet (or permit occupancy or use of) the Premises, or any part thereof, Tenant shall give Landlord thirty (30) days prior written notice of Tenant's desire to so assign or transfer or sublet all or any part of the Premises (which notice shall include all information necessary for Landlord to evaluate Tenant's proposal). For thirty (30) days following receipt of said notice, Landlord shall have the right, exercisable by sending written notice to Tenant, to (i) refuse to permit such assignment, sublet or transfer, (ii) permit such assignment, or (iii) terminate this Lease, but only if Tenant desires to assign or transfer this Lease or sublet the entire Premises. In the event that Landlord elects to terminate the Lease as provided above, Tenant may void said termination by notifying Landlord within ten (10) days after receipt of Landlord's termination notice that it withdraws its proposed assignment/sublease. Tenant may assign or transfer this Lease, or sublet such space if Tenant has obtained the prior written consent of Landlord. In the event Tenant is in Default hereunder, Tenant hereby assigns to Landlord the rent due from any subtenant of Tenant and hereby

authorizes each such subtenant to pay said rent directly to Landlord. The consent by Landlord to any assignment, transfer or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant of any covenant or obligation contained in this Lease, nor shall any such assignment, transfer or subletting be construed to relieve Tenant from giving Landlord said thirty (30) days' notice or from obtaining the consent in writing of Landlord to any further assignment, transfer or subletting. The consent by Landlord to any assignment, transfer or subletting proposed by Tenant may be conditioned upon the joint and several assumption of Tenant's obligations by such assignee, transferee or sublessee in a written assumption agreement acceptable to Landlord in form and content.

(c) In the event Landlord gives Tenant its written consent to assign, transfer or sublet all or a portion of the Premises to a third party, one-half of any monthly rent or other payment accruing to Tenant (less Tenant's reasonable transaction costs) as the result of any such assignment, transfer, or sublease, including any lump sum or periodic payment in any manner relating to such assignment, transfer or sublease, which is in excess of the rent then payable by Tenant under this Lease shall be paid by Tenant to Landlord monthly as Additional Rent. Landlord may require a certificate from Tenant specifying the full amount of any such payment of whatsoever nature.

(d) Any reasonable costs and expenses, including attorneys' fees (which shall include the cost of any time expended by Landlord's in-house counsel), incurred by Landlord in connection with reviewing, negotiating and/or approving any proposed or purported assignment, transfer or sublease shall be borne by Tenant and shall be payable to Landlord as Additional Rent.

## ARTICLE XII. SUBORDINATION AND FINANCING

### Section 12.01 - Subordination:

This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of Landlord and the Premises. Tenant also agrees that any mortgagee or trustee may elect to have this Lease a prior lien to its mortgage or deed of trust, and in the event of such election, and upon notification by such mortgagee or trustee to Tenant to that effect, this Lease shall be deemed prior in lien to the said mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said mortgage or deed of trust. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee or trustee subordinating this Lease to the lien of any present or future mortgage or deed of trust, or as may be otherwise required to carry out the intent of this Section. In the event that Tenant is requested to execute any such instrument subordinating this Lease to the lien of any future mortgage or future deed of trust, then such instrument shall contain a provision stating that Tenant's rights under this Lease and its use, possession, and enjoyment of the Premises pursuant to this Lease shall not be diminished or disturbed provided Tenant is not in default of this Lease.

### Section 12.02 - Attornment:

If, and so long as this Lease is in full force and effect, then at the option of the mortgagee: (a) this Lease shall remain in full force, notwithstanding (i) a default under the mortgage by Landlord, (ii) failure of Landlord to comply with this Lease, (iii) a defense to which Tenant might be entitled against Landlord under this Lease, or (iv) any bankruptcy or similar proceedings with respect to Landlord; (b) if any such mortgagee becomes possessed of the Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease; and (c) if any mortgagee or purchaser, at a private or public sale shall become possessed of the Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under this Lease. Tenant agrees that in the event Landlord is in default under this Lease, any mortgagee or trustee under a deed of trust of Landlord's interest in the Premises shall be permitted (but not required) to enter the Premises for the purpose of correcting or remedying such default, and Tenant agrees to accept performance by such mortgagee or trustee in lieu of performance by Landlord. Tenant further agrees that, from and after written notice from Landlord of the name and address of any mortgagee or trustee, Tenant will contemporaneously deliver notice to any such mortgagee or trustee of a default by Landlord under the Lease. Notwithstanding any provision of this Lease, Tenant agrees that no termination of the Lease or abatement or reduction or rent or any other amounts under this Lease shall be effective unless and until such mortgagee or trustee has received notice and fails within thirty (30) days of the date on which Landlord's cure period expires to cure the default of Landlord in question, or if the default cannot be cured within said thirty (30) days, fails to commence and diligently prosecute the cure of such default.

Section 12.03 - Financing:

In the event the construction lender, ground lessor or the permanent lender for the Shopping Center requires, as a condition to financing, modifications to this Lease, provided such modifications are reasonable, do not adversely affect Tenant, do not materially alter the approved working plans and do not increase the rent and other sums to be paid hereunder, Landlord shall submit to Tenant a written amendment with such required modifications and if Tenant fails to execute and return within ten (10) days thereafter the amendments that have been submitted, then Landlord shall have the right to terminate this Lease upon written notice to Tenant.

Section 12.04 - Estoppel:

From time to time and upon five (5) days' notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Shopping Center may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby appoints Landlord as its attorney-in-fact, irrevocably, to execute and deliver such certificate for Tenant.

## ARTICLE XIII. DEFAULTS

Section 13.01 - Events of Default:

If any one or more of the following events occur, said event or events shall hereby be classified as a "Default":

(a) If Tenant fails to pay Base Rent, Additional Rent or any other charges required to be paid by Tenant when same shall become due and payable, and such failure continues for five (5) days following written notice of the delinquent payment; provided, however, once Landlord has given one (1) such written notice of delinquent payment during any Lease Year (whether or not Tenant cures the delinquency within the five (5) day period), Landlord shall not be required to give written notice of delinquent payment for the balance of that Lease Year, and a Default shall arise immediately, without notice, if any sum payable by Tenant under this Lease remains unpaid for five (5) days after such sum became due and payable (in that same Lease Year);

(b) If Tenant fails to perform or observe any terms and conditions of this Lease, and such failure continues for ten (10) days after written notice from Landlord (except that such ten (10) day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such Default, if such Default cannot be cured within such period, provided Tenant commences the process of curing the same within said ten (10) day period and diligently pursues such cure to completion);

(c) If Tenant refuses to take possession of the Premises at the Delivery Date, or fails to open its doors for business on the Term Commencement Date as required herein, vacates the Premises and permits the same to remain unoccupied and unattended or substantially ceases to carry on its normal activities in the Premises;

(d) If Tenant fails to conduct its business for the use as set forth in Section 4.01;

(e) If Tenant is a corporation, limited liability company or partnership, if any part or all of its ownership interests representing effective control of Tenant is transferred so as to result in a change in the present effective control of Tenant and such change is not consented to in writing by Landlord;

(f) If Tenant, or any guarantor of Tenant's obligations hereunder, shall: (i) convey or assign any substantial portion of its assets for less than fair value, or (ii) make distributions to its owners other than in the ordinary course of business, or (iii) make an assignment for the benefit of creditors or file a petition, in any state court, in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property;

(g) If any petition is filed under state law against Tenant or any guarantor of Tenant's obligations hereunder in any bankruptcy, reorganization or insolvency proceedings, and said proceedings are not dismissed or vacated within thirty (30) days after such petition is filed;

(h) If a receiver or trustee is appointed under state law for Tenant or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship is not set aside within thirty (30) days after such appointment;

(i) If any execution, levy, attachment or other legal process of law occurs upon Tenant's goods, fixtures, or interest in the Premises; or,

(j) If Tenant is given two (2) notices of Default within one (1) Lease Year under Section 13.01(a), (b), (c), or (d) notwithstanding any subsequent cure of the Default identified in such notices.

Section 13.02 - Landlord's Remedies:

Should a Default occur, Landlord may pursue any combination or all of the following:

(a) Landlord may terminate this Lease by giving five (5) days written notice of such termination to Tenant, whereupon this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit the Premises. Any other notice to quit or notice of Landlord's intention to reenter the Premises is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or the time of recovery of possession by Landlord, whichever is later, plus all other losses or damages due to such default, as set forth in this Section 13.02.

(b) With or without termination pursuant to Section 13.02(a), Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Shopping Center is located, or by such other proceedings, including reentry and possession, as may be applicable.

(c) Should this Lease be terminated before the expiration of the term of this Lease by reason of Default, or if Tenant abandons or vacates the Premises before the expiration or termination of the term of this Lease without having paid the full rental for the remainder of such term, then at the time of such termination or abandonment Tenant shall be liable for all damages sustained by Landlord, including, without limitation, all rent through the remainder of the term of this Lease, including Base Rent, Additional Rent and reasonable attorneys' fees. Furthermore, Landlord shall have the option to relet the Premises for such rent and upon such terms as are not unreasonable under the circumstances, and Tenant shall be liable for all damages sustained by Landlord in reletting or attempting to relet the Premises, including, without limitation, brokerage fees and expenses of placing the Premises in first class rentable condition. Landlord, in putting the Premises in good order or preparing the same for rerental may, at Landlord's option, make such alterations, repairs or replacements in the Premises as Landlord, in its sole judgment, considers advisable and necessary for the purpose of reletting the Premises, and the making of such alterations, repairs or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable by Tenant to Landlord hereunder. In determining Landlord's damages, (aa) all sums which are past due at the time of the award shall include an interest charge, as set forth in Section 2.04 of this Lease, from the due date as set forth herein until the time of the award, (bb) while all sums which would not have accrued at the time of the award but for Tenant's Default or abandonment or vacating of the Premises shall be discounted at the rate of two percent (2%) per annum, after first being reduced by the fair market rental value of the Premises, which sum shall also be discounted at the rate of two percent (2%) per annum.

The word "award" means a judgment issued or rendered in a proceeding or action to recover damages from Tenant, or at the time of Tenant's voluntary payment of the same.

(d) If Tenant fails to pay any monthly installment of rent pursuant to the terms of this Lease, or any Additional Rent due under this Lease, when each such payment is due, for two (2) consecutive months, or three (3) times in any period of six (6) consecutive months, then Landlord may, by giving written notice to Tenant, exercise any of the following options as a condition of Tenant's curing such Default: (i) declare the rent reserved under this Lease for the next six (6) months (or at Landlord's option for a lesser period) to be due and payable within ten (10) days of such notice; or (ii) require an additional security deposit to be paid to Landlord within ten (10) days of such notice, in an amount not to exceed six (6) months' rent. Landlord may invoke any of the options provided for herein at any time during which Default remains uncured.

(e) If Tenant is in Default, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Default for the account of and at the expense of Tenant. No such notice shall be required for emergency repairs.

(f) Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive reletting, or at Landlord's option in a single proceeding deferred until the expiration of the term of this Lease (in which event Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said term) or in a single proceeding prior to either the time of reletting or the expiration of the term of this Lease.

(g) Nothing contained herein shall prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach by Tenant of any of the covenants or provisions hereof, and Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude Landlord from any remedy otherwise available to Landlord under law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or other use.

(h) Landlord shall not be obligated to mitigate any damages it incurs hereunder as a result of Tenant's default under the terms of this Lease; however, in the event that Landlord does undertake reasonable efforts to mitigate, to the extent that such mitigation of damages involves attempting to relet the Premises and there are other vacancies in the Shopping Center, then Landlord may give preference to reletting those other vacant spaces.

Section 13.03 - Additional Remedies and Waivers:

The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law and all such rights and remedies shall be

cumulative. No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is in writing, signed by Landlord.

Section 13.04 - Default by Landlord:

Landlord shall in no event be in default hereunder unless Landlord fails to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such default shall be deemed to have been cured if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

## ARTICLE XIV. RESERVED

## ARTICLE XV. RIGHT OF ACCESS

Section 15.01 - Right of Access:

Landlord may enter upon the Premises for the purpose of inspecting, making repairs, replacements or alterations, and showing the Premises to prospective purchasers, lenders or lessees. During the last three (3) months of the term, Landlord shall have the right to display one (1) or more "For Rent" signs on or about the Premises.

## ARTICLE XVI. DELAYS

Section 16.01 - Delays:

If Landlord or Tenant is delayed from performing any of their respective obligations during the term of this Lease because of weather, strikes, delays in the permitting or governmental administrative process, acts of God or other cause beyond their control, then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder or any obligation of Landlord or Tenant that can be satisfied by the payment of money. Subject to the foregoing, time is of the essence with respect to all obligations to be performed by Tenant pursuant to the terms of this Lease.

## ARTICLE XVII. END OF TERM

Section 17.01 - Return of Premises:

Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Premises to Landlord, in good order, broom clean, normal wear and tear and acts of God excepted. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Premises not wanted by Landlord, and repair damage

caused by such removal and return the Premises to the condition in which they were prior to the installation of the articles so removed.

Section 17.02 - Holding Over:

If Tenant holds possession of the Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month at one hundred fifty percent (150%) of the Base Rent in effect during the last Lease Year immediately preceding such holdover, and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.

## ARTICLE XVIII. COVENANT OF QUIET ENJOYMENT

Section 18.01 - Covenant of Quiet Enjoyment:

Landlord covenants that if and so long as Tenant pays in full all the rent and all other charges provided for herein and performs all of its obligations set forth herein, Tenant shall at all times during the term hereof peaceably have, hold and enjoy the Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof, and any mortgages to which this Lease is subordinate.

## ARTICLE XIX. MISCELLANEOUS

Section 19.01 - Interpretation:

This Lease contains the entire agreement between the parties hereto with respect to the subject matter of this Lease, and there are no promises, agreements, conditions, undertakings, or warranties or representations, oral or written, between them other than as set forth in this Lease, and the express terms of this Lease shall supersede and shall be deemed to have integrated any and all prior agreements or understandings of the parties with respect to the subject matter of this Lease, and any prior agreement or understanding or representation of any kind relating thereto shall not be binding upon either party except to the extent incorporated into this Lease. Further, any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in a writing and signed by the party against whom enforcement is sought.

Section 19.02 - Notice:

No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid, or delivered via over-night courier, addressed: (1) if to Landlord, at the address set forth on page 1 of this Lease, or to such other address as Landlord shall designate by giving notice thereof to Tenant, or (2) if to Tenant, at the address set forth on page 1 of this Lease, or such other address as Tenant shall designate by giving notice thereof to Landlord. Any such notice, statement, certificate, request or demand shall, in the case of registered or certified mailing, be deemed to have been given on the date mailed as aforesaid in any post office or branch post office regularly maintained by the United States Government,

and in the case of delivery by nationally recognized overnight courier service, shall be deemed to have been given upon the date of delivery to an authorized agent of such courier service, except in each case for notice of change of address or revocation of a prior notice, which shall be effective only upon receipt.

Section 19.03 - Applicable Laws:

It is the intent of the parties hereto that all questions and/or disputes with respect to the construction of this Lease and the rights and the liabilities of the parties hereto shall be determined in accordance with the laws of the State of Ohio. Any and all such disputes shall be filed either in the court of competent jurisdiction in the jurisdiction in which the Shopping Center is located.

Section 19.04 - Successors:

This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

Section 19.05 - Limitation on Landlord's Personal Liability:

There shall be no personal liability on Landlord, its officers, members, partners, employees, shareholders, agents, beneficiaries, or any successor in interest with respect to any provisions of this Lease, or amendments, modifications or renewals hereof. Tenant shall look solely to the interest of the then-owner of the Shopping Center for the satisfaction of any remedies of Tenant in the event of a breach or default by Landlord of any of its obligations hereunder. Further, in no event shall Landlord be liable to Tenant for any special, consequential, or punitive damages with respect to any claim arising under or in relation to this Lease.

Section 19.06 - Brokers:

Tenant and Landlord warrant and represent to each other that there was no broker or agent instrumental in consummating this Lease other than [Landlord's broker, _____]. Tenant and Landlord each agrees to indemnify and hold the other harmless from and against any claims for brokerage or other commissions arising from a breach by the indemnifying party of this representation and warranty.

Section 19.07 - Landlord Assignment:

Landlord hereunder shall have the right to freely assign this Lease without notice to or consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer, including, but not limited to, any obligation to Tenant with respect to the security deposit referred to in Section 2.03 of this Lease upon assignment of the same to the transferee, provided that the interest of the transferor, as Landlord, in any funds then in the hands of Landlord in which Tenant has an interest shall be turned over, subject to such interest, to the then-transferee. Upon the termination of any Lease in a sale-leaseback transaction prior to termination of this Lease, the

former lessee thereunder shall become and remain liable as Landlord hereunder until a further transfer. No holder of a mortgage or deed of trust to which this Lease is or may be subordinate shall be responsible in connection with the security deposited hereunder, unless such mortgagee or holder of such deed of trust of lessor has actually received the security deposited hereunder.

Section 19.08 - Relationship of the Parties:

The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint venturers.

Section 19.09 - Waiver of Right of Redemption:

Tenant hereby expressly waives for itself and all persons claiming by or through it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Tenant shall be dispossessed for any cause.

Section 19.10 - Waiver of Jury Trial:

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises and/or any claim of injury or damage.

Section 19.11 - Invalidity of Particular Provisions:

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

Section 19.12 - Strict Performance:

No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

Section 19.13 - Execution in Counterparts:

This Lease may be executed in duplicate counterparts, all of which shall constitute but one agreement. Execution and delivery of this Lease by a party via scanning/e-mailing to an agent of the other party shall be treated as the equivalent of delivery of a signed original counterpart.

Section 19.14 - Execution of Lease by Landlord:

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or an option for, the Premises, and this document shall be effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

Section 19.15 - Security Agreement:

Tenant hereby grants to Landlord a security interest in all inventory, equipment, fixtures, trade fixtures, improvements, and merchandise now or hereafter located in the Premises, and all proceeds and accounts receivable therefrom (the "Collateral"), to secure the payment and performance of Tenant's obligations set forth in this Lease. Tenant hereby appoints Landlord its true and lawful attorney-in-fact in its name or otherwise to execute and file any financing statement(s) on behalf of Tenant and to do any and all acts and to execute and file any and all documents which may be necessary to realize, perfect, continue, preserve and protect the security interest upon the Collateral. Upon the occurrence of any Default, Landlord shall be entitled to exercise all of the rights and remedies of a secured party under the Uniform Commercial Code. Reasonable attorneys' fees of Landlord in enforcing any right or exercising any remedy pursuant to this Section 19.15 shall be deemed a part of the obligation secured hereby. Notwithstanding anything to the contrary contained herein, Tenant may encumber or grant a security interest or other interest in any signs, inventory, personal property, trade fixtures, and equipment (excluding permanent leasehold improvements) that Tenant may install in the Premises to a *bona fide* mortgagee, lender or secured creditor, to whose rights Landlord's interest shall be subordinate. Landlord may charge back to Tenant as Additional Rent any reasonable legal fees incurred by Landlord in the review, negotiation and/or approval of any consent/subordination/waiver documents requested by Tenant or its mortgagee, lender or secured creditor.

Section 19.16 - Effect of Captions:

The captions or legends in this Lease are inserted for convenient reference or identification of the particular paragraphs. They are in no way intended to describe, interpret, define or limit the scope, extent or interest of this Lease, or any paragraph or provision thereof.

Section 19.17 - Recording:

Upon Tenant’s request, Landlord shall execute and deliver a recordable memorandum of this Lease setting forth the term hereof, the names and addresses of the parties and such other information as may be mutually agreeable to Landlord and Tenant or required for recording of the memorandum.

Section 19.18 - Confidentiality:

Tenant covenants to not disclose any part of this Lease to anyone other than its attorneys, accountants, employees, or lenders who need to know of its content in order to perform their duties for Tenant. Any other disclosure will be a Default.

Landlord and Tenant shall be obligated to act in good faith in the performance and enforcement of their rights and obligations hereunder, and shall have an obligation to deal fairly and reasonably with each other, having due regard for all relevant facts and circumstances.

Section 19.19 - Landlord Relocation Right:

At any time after execution hereof, Landlord may require that Tenant relocate the Premises to other space within the Shopping Center (the "Relocation Space"). Landlord shall notify Tenant thereof specifying in such notice the Relocation Space Landlord proposes; the area of the Relocation Space shall not be more than 25% larger or smaller than the area of the Premises. Within 60 days after receipt of such notice, Landlord and Tenant shall meet and if such Relocation Space is acceptable to Tenant, then Landlord shall relocate Tenant to Relocation Space as provided below. If Tenant objects to the proposed Relocation Space and Tenant and Landlord are unable to mutually agree on satisfactory Relocation Space within such 60 day period, then Tenant may terminate this Lease by notifying Landlord in writing within 15 days after expiration of such 60 day period, whereupon this Lease shall terminate and Tenant shall vacate the Premises within a further period of 15 days; provided, however that Landlord may void such election if within 15 days after receipt of Tenant's notice to terminate this Lease Landlord notifies Tenant that Landlord has rescinded its election to relocate Tenant. In such event, this Lease shall continue in full force and effect as if Landlord had not given such notice of its intention to relocate Tenant to the Relocation Space. If Tenant does not exercise such termination right, then Landlord shall be free to relocate Tenant to the Relocation Space described in Landlord's notice (or as otherwise agreed) as provided below. Landlord, at its expense, shall improve the Relocation Space to a condition comparable to the condition of the existing Premises at the time of the relocation notice and shall pay all costs of moving Tenant to the Relocation Space. At such time as Landlord has completed work in the Relocation Space it shall notify Tenant thereof and Tenant shall move from the existing Premises to the Relocation Space within 30 days thereafter, and Landlord and Tenant shall execute an amendment to this Lease substituting the Relocation Space for the Premises hereunder, but otherwise continuing this Lease in full force and effect. Landlord shall pay all costs and expenses reasonably incurred by Tenant in connection with such relocation, including moving costs, printing costs, and similar items, provided Landlord has approved the expenditure in question prior to its having been made.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed as of the Effective Date. In the event that a fully executed original of this Lease has not been returned to Landlord by Tenant within twenty (20) days after Landlord's execution thereof, Landlord's offer to lease the Premises shall be deemed withdrawn and of no further force or effect.

| LANDLORD: | TENANT: |
| --- | --- |
| MONROE AREA COMMUNITY IMPROVEMENT CORPORATION, an Ohio not-for-profit corporation | _____ an Ohio limited liability company |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| | Tenant EIN: _____ |

Acknowledgment of Landlord

STATE OF OHIO )
) ss:
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, the _____ of the Monroe Area Community Improvement Corporation, an Ohio not-for-profit corporation, on behalf of the corporation.

_____
(Notary Public)

Acknowledgment of Tenant

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, the _____ of _____ , an Ohio limited liability company, on behalf of the company.

_____
(Notary Public)

EXHIBIT A – LEGAL DESCRIPTION AND SITE PLAN

EXHIBIT B - SIGNAGE CRITERIA

# EXHIBIT C - PROHIBITED USES

Pursuant to Section 4.01 of the Lease and this Exhibit C, which is hereby incorporated and made a part of the Lease, Tenant shall not use the Premises for any use prohibited by Laws and Restrictions, nor shall Tenant use the Premises for any of the following prohibited uses:

1. conduct of the type of business commonly referred to a “dollar stores” or “discount stores”;
2. the sale, rental, display or operation of amusement, electronic video machines, slot machines; or other gambling equipment;
3. activities that are likely to cause site contamination;
4. medical marijuana dispensaries or
5. bail bonds or similar activities;
6. the sale of firearms, ammunition, or explosives;
7. over-represented uses according to reliable third party data;
8. the sale of cell phones, cell phone accessories, or cell phone service plans as the primary use of the Premises;
9. the sale of tobacco and tobacco related products as the primary use of the Premises;
10. conduct of flea market or swap market type business or any other use by which tenant rents booths, tables, or display areas for the use of vendors; and
11. pet boarding or grooming.

**RESOLUTION NO. 29-2024**

A RESOLUTION APPROVING A THEN-AND-NOW CERTIFICATE IN THE AMOUNT OF $14,798.51 TO POWERDMS.

WHEREAS, the invoice was received prior to the purchase order being opened.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: A Then-and-Now Certificate in the amount of $14,798.51 to PowerDMS is hereby approved.

SECTION 2: This measure shall take effect immediately upon passage pursuant to Section 7.08 (C) of the Charter.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

**RESOLUTION NO. 30-2024**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR, ACCEPT, AND ENTER INTO A COOPERATIVE AGREEMENT FOR CONSTRUCTION OF THE SOUTH MAIN STREET WATER MAIN REPLACEMENT PROJECT BETWEEN THE CITY OF MONROE AND THE OHIO WATER DEVELOPMENT AUTHORITY.

WHEREAS, the City of Monroe, a municipal corporation, (hereinafter referred to as the "LGA") deems it necessary to replace and upsize a water main from Carson Road and Mason Avenue on South Main Street and known as the South Main Street Water Main Replacement Project; and

WHEREAS, the LGA desires to obtain a loan from the Ohio Water Development Authority (hereinafter referred to as the "OWDA") to finance costs of the planning of such facilities on the terms set forth in the Cooperative Agreement (defined below); and

WHEREAS, the OWDA has indicated its willingness to make a loan for that purpose and on those terms.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: That the LGA hereby approves the planning of the aforesaid South Main Street Water Main Replacement Project in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for State Planning Project" as set forth in Exhibit "A" (the "Cooperative Agreement") and hereby authorizes the City Manager and the Director of Finance of the LGA to execute the Cooperative Agreement with the OWDA substantially in the forth set forth in Exhibit "A".

SECTION 2: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08 (C) of the Charter.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

# COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I - DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

### DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) "Approved Application" means the application of the LGA dated as of the dated specified on the Term Sheet as the "LGA Application Date," submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the "OWDA Application Approval Date," together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

(d) "System" means the facilities of the LGA specified as the "System" on the Term Sheet.

### DEFINITIONS RELATING TO COSTS

(e) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or $400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances, satisfactory to the OWDA, as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(i) "Contract Period of Years" means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(k) "Pledged Revenues" means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

## ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

## ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the "Operational Date."

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.

(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (l) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs.

Section 3.9. The LGA represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA. The LGA acknowledges that the OWDA may inform potential and actual investors of bonds issued by the OWDA regarding the details of this Agreement, and that such investors may make an investment decision based on this Agreement.

Section 3.10. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

## ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges

pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount.

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this

Section are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 ("Rule 15c2-12") each promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board ("MSRB") through the EMMA System (as defined below), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA's incorporation by reference into OWDA official statements or other OWDA filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, "EMMA System" shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the website address for EMMA is emma.msrb.org. The LGA acknowledges that the OWDA is not responsible for any of the LGA's required filings under Rule 15c2-12 related to other indebtedness of the LGA, including, but not limited to, as to whether this Agreement is considered a "Financial Obligation" under Rule 15c2-12.

## ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project

Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of $500,000 for the death of or personal injury to one person and $1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and $500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

## ARTICLE VI - REPRESENTATIONS AND AGREEMENTS OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS; EVENTS OF DEFAULT AND REMEDIES THEREFOR; INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;

(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default under this Agreement if the LGA demonstrates both of the following to the satisfaction of the OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof is intended to be exclusive of any other right or remedy given herein, by law or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law or otherwise.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the System, the Project Facilities, or the use thereof; provided that such

indemnity under this Section shall not be effective for damages that result from negligent or intentional acts of the OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

## ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. The LGA acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet OWDA's obligations with regard to funding the applicable program and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the LGA's compliance with the provisions of this Agreement. Accordingly, the LGA agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund this Agreement (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

(i) The LGA shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the OWDA hereunder (the "OWDA Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the OWDA Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The LGA shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the LGA, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the LGA hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the LGA referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or

transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the LGA shall have any question about the application of Section 7.1., in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

## ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority
480 South High Street
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

_____
OWDA General Counsel

OHIO WATER DEVELOPMENT AUTHORITY

By:_____
OWDA Executive Director

APPROVED AS TO FORM

_____
LGA Legal Officer or Counsel

LGA: _____

By:_____

By:_____

Schedule I

TERM SHEET

*NOTE: The term sheet will be generated by OWDA after the loan is approved at the board meeting.*

**Exhibit A**

PROJECT FACILITIES DESCRIPTION

**Exhibit B**

CONSTRUCTION CONTRACT(S)

Ohio Water Development Authority
480 South High Street
Columbus, OH 43215

Re: Cooperative Agreement between the Ohio Water Development Authority and the City of Monroe, Ohio, dated May 28, 2024.

Executive Director:

The undersigned is the duly appointed and serving Director of Law for the City of Monroe, Ohio and as such has examined the documents, or copies thereof certified to his/her satisfaction, referred to in the following paragraphs. As said Director of Law, the undersigned advises you that:

1. Resolution No. 30-2024 adopted on May 28, 2024, by the Council of the City of Monroe, Ohio, (the "Legislative Authority") authorizing the execution and delivery of the Cooperative Agreement was duly and lawfully adopted by the Legislative Authority on said date, is in full force and effect and has not been withdrawn or repealed as of this date.

2. All formal actions of the Legislative Authority concerning or relating to the enactment of the legislation described in paragraph 1 were taken in an open meeting of the Legislative Authority and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including section 121.22 of the Ohio Revised Code.

3. The Cooperative Agreement has been duly executed and delivered and constitutes a valid, legal and binding obligation of the Legislative Authority enforceable in accordance with its terms, subject to the provisions of federal bankruptcy laws and other laws affecting creditor's rights.

Very truly yours,

_____
K. Philip Callahan, Director of Law

GENERAL CERTIFICATE
TO BE DELIVERED TO
OHIO WATER DEVELOPMENT AUTHORITY

The undersigned, being the Clerk of Council of the City of Monroe, Ohio (the "Local Government"), hereby certifies that:

I. At the times of the enactment of the Loan Legislation (as defined below) and the execution of the Cooperative Agreement (as defined below), the following were the incumbents of the listed offices:

| | Title | Name |
|---|---|---|
| Chief Executive Officer: | City Manager | Larry Lester |
| Chief Fiscal Officer: | Director of Finance | Jake Burton |
| Chief Legal Officer: | Law Director | K. Philip Callahan |
| Officer Responsible for Records: | Clerk of Council | Angela S. Wasson |

Legislators: John Centers, Kelly Clark, Keith Funk, Michael Graves, Tom Hagedorn, Christina McElfresh, and Ben Wagner

II. The regular meetings of the City of Monroe, Ohio (the "Legislative Body") of the Local Government are held on the second and fourth Tuesday per month.

III. Attached hereto is (a) a true and exact copy of Resolution No. 30-2024 (the "Loan Legislation"), approved by the Legislative Body on May 28, 2024, authorizing the Local Government to enter into a Cooperative Agreement with the Ohio Water Development Authority in the form attached to the Legislation as Exhibit A (the "Cooperative Agreement"), including a description of the Project Facilities being financed under the Cooperative Agreement, and (b) a copy of the Cooperative Agreement executed by the official or officials of the Local Government authorized by the Loan Legislation to execute the Cooperative Agreement on behalf of the Local Government. The undersigned hereby certifies that the Legislation remains in full force and effect and has not been repealed, rescinded, amended or modified.

IV. Attached hereto is a true and exact copy of Ordinance No. 2022-05 (the "Rate Legislation"), approved by the Legislative Body on May 10, 2022, authorizing the current rates or tap-in fees of the utility of the Local Government to which the Cooperative Agreement relates, and of any special assessment legislation related to any special assessments of the Local Government referred to in the Cooperative Agreement.

V. All meetings of the Legislative Body and of its committees and any other public bodies, at which the formal actions referred to in Sections III or IV above were taken, or at which deliberations that resulted in such formal actions were held, were open meetings, and such formal actions were taken and any such deliberations took place while such meetings were open to the public, in compliance with all legal requirements including (if applicable) Section 121.22, Revised Code. Notice and notification of the aforementioned meetings were given Section 121.22, in compliance with all legal requirements including (if applicable) Section 121.22, Revised Code and the rules of the Legislative Body.

_____

Angela S. Wasson, Clerk of Council

_____

(Date)

**RESOLUTION NO. 31-2024**

A RESOLUTION ACCEPTING THE LOWEST AND/OR BEST BID FOR THE SOUTH MAIN STREET WATER MAIN REPLACEMENT PROJECT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MAJORS ENTERPRISES INC. FOR SAID PROJECT.

WHEREAS, after advertising and receiving bids according to law, it is hereby determined that Majors Enterprises Inc. is the lowest and/or best bidder for the South Main Street Water Main Replacement Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The bid submitted by Majors Enterprises Inc. in the amount of $818,621.10 is hereby accepted to the be the lowest and/or best bid for the South Main Street Water Main Replacement Project.

SECTION 2: The City Manager is hereby authorized to enter into a contract by and between the City of Monroe and Majors Enterprises Inc. for the within described project pursuant to the terms and conditions set forth on the bid documents submitted on March 21, 2024.

SECTION 3: This measure shall take effect and be in full force from and after its passage pursuant to 7.08 (C) of the Charter.

PASSED: _____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

South Main Street Water Main Replacement
2024-Water-01
3/22/2024

| | Item | Item Description | Units | Quantity | Unit Price | Ext |
|---|---|---|---|---|---|---|
| 1 | 201 | CLEARING AND GRUBBING | LS | 1 | $ 2,000.00 | $2,000.00 |
| 2 | 202 | ASPHALT PAVEMENT REMOVED | SY | 368 | $ 15.00 | $5,520.00 |
| 3 | 202 | CURB AND GUTTER REMOVED | FT | 12 | $ 25.00 | $300.00 |
| 4 | 202 | VALVE BOX REMOVED | EA | 13 | $ 250.00 | $3,250.00 |
| 5 | 204 | SUBGRADE COMPACTION | SY | 600 | $ 3.00 | $1,800.00 |
| 6 | 302 | ASPHALT CONCRETE BASE, PG64-22, 8" | CY | 134 | $ 375.00 | $50,250.00 |
| 7 | 304 | CRUSHED LIMESTONE AGGREGATE BASE, 12" (3 LIFTS) | CY | 200 | $ 65.00 | $13,000.00 |
| 8 | 407 | TACK COAT, 0.060 GAL/SY | GAL | 36 | $ 15.00 | $540.00 |
| 9 | 442 | ASPHALT CONCRETE SURFACE COURSES, TYPE A (448), 1.5" | CY | 25 | $ 550.00 | $13,750.00 |
| 10 | 442 | ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE A, (448), 2.5" | CY | 42 | $ 375.00 | $15,750.00 |
| 11 | 614 | MAINTAINING TRAFFIC | LS | 1 | $ 20,000.00 | $20,000.00 |
| 12 | 623 | CONSTRUCTION LAYOUT STAKES AND SURVEYING | LS | 1 | $ 10,000.00 | $10,000.00 |
| 13 | 624 | MOBILIZATION | LS | 1 | $ 10,000.00 | $10,000.00 |
| 14 | 638 | 12" WATER MAIN, D.I. PIPE ANSI CLASS 53 | FT | 1751 | $ 195.00 | $341,445.00 |
| 15 | 638 | 8" WATER MAIN, D.I. PIPE ANSI CLASS 53 | FT | 69 | $ 175.00 | $12,075.00 |
| 16 | 638 | 6" WATER MAIN, D.I. PIPE ANSI CLASS 53 | FT | 51 | $ 165.00 | $8,415.00 |
| 17 | 638 | 3/4" COPPER SERVICE BRANCH | LF | 746 | $ 125.00 | $93,250.00 |
| 18 | 638 | 1" COPPER SERVICE BRANCH | LF | 10 | $ 155.00 | $1,550.00 |
| 19 | 638 | METER BOX, LID AND COMPONENTS (PER CITY STD 800-10) | EA | 14 | $ 1,200.00 | $16,800.00 |
| 20 | 638 | 6" GATE VALVE | EA | 2 | $ 1,800.00 | $3,600.00 |
| 21 | 638 | 8" GATE VALVE | EA | 2 | $ 2,500.00 | $5,000.00 |
| 22 | 638 | 12" GATE VALVE | EA | 6 | $ 4,500.00 | $27,000.00 |
| 23 | 638 | CONNECT TO EX 6", 8" & 12" WATER MAIN(S) | EA | 7 | $ 3,500.00 | $24,500.00 |
| 24 | 638 | FIRE HYDRANT, COMPLETE FROM MAIN TO FH, W/ VALVE & VALVE BOX, AS PER PLAN | EA | 6 | $ 9,500.00 | $57,000.00 |
| 25 | 638 | FIRE HYDRANT REMOVED | EA | 3 | $ 500.00 | $1,500.00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 26 | 638 | REMOVE & RETURN TO CITY OF MONROE, (3 TOTAL) 12" GATE VALVES & SURFACE RESTORATION | LS | 1 | $ 3,000.00 | $3,000.00 |
| 27 | 659 | TOPSOIL, 4" | CY | 46 | $ 45.00 | $2,070.00 |
| 28 | 659 | SEEDING AND MULCHING, CLASS 1 | SY | 418 | $ 2.00 | $836.00 |

| | |
|---|---|
| Subtotal | $744,201.00 |
| 10% Contingency | $74,420.10 |
| **Total** | $818,621.10 |

| | Company Name | Primary Bid | Alternate Bid | Bid Bond Received |
|---|---|---|---|---|
| 1 | Ford Development Corp. | 864,003.80 | / | yes |
| | | | | |
| 2 | Queen City Mechanicals Inc. | 925,435.50 | / | yes |
| | | | | |
| 3 | Smith Corp. | 959,410.10 | / | yes |
| | | | | |
| 4 | KT Holden Construction | 1,149,324.00 | / | yes |
| | | | | |
| 5 | Majors Enterprises Inc. | 818,621.10 | / | yes |
| | | | | |
| 6 | | | | |
| | | | | |
| 7 | | | | |
| | | | | |
| | | | | |

**RESOLUTION NO. 32-2024**

A RESOLUTION REPEALING RESOLUTION NO. 69-2018 WHEREIN COUNCIL ACCEPTED A $650,000 GRANT FOR THE GREAT MIAMI TRAIL MONROE SECTION PROJECT.

WHEREAS, Monroe applied for and received approve for grant funding for the Great Miami Trail Monroe Section Project; and

WHEREAS, due to circumstances beyond the City's control, Monroe has not been able to meet the time limits set forth in the grant agreement; and

WHEREAS, it is in the best interest to not accept the award of the grant and re-apply at a later date.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Resolution No. 69-2018 is hereby repealed in its entirety.

SECTION 2: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08 (C) of the Charter.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

**RESOLUTION NO. 33-2024**

A RESOLUTION REPEALING RESOLUTION NO. 67-2020 WHEREIN COUNCIL ACCEPTED A $500,000 GRANT FOR THE CONSTRUCTION OF A 2.3 MILE LONG TRAIL ALONG THE GREAT MIAMI RIVER.

WHEREAS, Monroe applied for and received approve for grant funding for the construction of a 2.3 mile long trail along the Great Miami River; and

WHEREAS, due to circumstances beyond the City's control, Monroe has not been able to meet the time limits set forth in the grant agreement; and

WHEREAS, it is in the best interest to not accept the award of the grant and re-apply at a later date.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Resolution No. 67-2020 is hereby repealed in its entirety.

SECTION 2: This measure shall take effect and be in full force from and after its passage pursuant to Section 7.08 (C) of the Charter.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

**ORDINANCE NO. 2024-15**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND GRAND COMMUNITIES, LLC/FISCHER HOMES FOR THE STONYBROOK SUBDIVISION.

WHEREAS, pursuant to Section 1203.05 of the Planning and Zoning Code a Development Agreement must be approved by City Council before proceeding with any improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Council hereby accepts and approves the Development Agreement with Grand Communities, LLC/Fischer Homes for the Stonybrook Subdivision. The terms and conditions of said Development Agreement are set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED:_____

ATTEST: APPROVED:

_____ _____

Clerk of Council Mayor

# STONYBROOK SUBDIVISION
# DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), executed on this ___ day of _____, 2024, by and between the City of Monroe, Ohio, a municipal corporation organized and existing under the laws of Ohio and its charter, with an address of 233 South Main Street , Monroe, Ohio 45050 (the "City"), and Grand Communities, LLC/Fischer Homes, a limited liability company organized and existing under the laws of the Commonwealth of Kentucky, with an address of 3940 Olympic Boulevard #400, Erlanger, KY 41018 (collectively known herein as the "Developer"); pursuant to the approved construction drawings (hereinafter referred to as the "Development Plan") now on file with the Development Department of the City for the completion of the public and other improvements associated with the residential development known as "Stonybrook."

## Witness

**WHEREAS**, the Developer proposes to develop a subdivision which shall be situated upon 126,63 acres of real property within the City of Monroe, County of Butler, State of Ohio, located upon 126.23 acres more or less, and more particularly described as County Auditor's Designation Parcel Number #D700001100003 [21.636 acres] and Parcel Number #D700001100004 [104.600 acres];

**WHEREAS**, the Development Plan was approved by the City on _____, a copy of which is on file in the office of the City's Development Department; and

**WHEREAS**, the said subdivision, known as "Stonybrook" contemplates the construction and installation of certain improvements some of which shall be dedicated by the Developer to public use and accepted for the public and maintained on its behalf by the City, which said dedication and acceptance shall be evidenced by the execution and recordation of a Record Plat of the Subdivision; and

**WHEREAS**, such dedicated and accepted improvements as shown on the Development Plan and labeled as "Public" (the "Public Improvements") include, but are not necessarily limited to:

a. Improvements within the City right-of-way (the area between the back of the curb and the back of the sidewalk);
b. Intersection points between existing public improvements;
c. Water main(s);
d. Sanitary sewer main(s); and
e. Storm water conveyance system

**WHEREAS**, the City and the Developer wish to provide for the construction of the Public Improvements and other site improvements (which shall be shown on the Development Plan) such as any required detention/retention areas, street lighting, water and sewer lines, water and sewer mains and connectors, pursuant to provisions of the City of Monroe Codified

Ordinances, the City's Development and Design Standards, and the City's Subdivision Standards, desire to enter into an Agreement concerning the said construction:

**NOW, THEREFORE IT IS AGREED**:

1. Planned Unit Development Agreement. Developer and the City shall comply with the terms of the Stonybrook Planned Unit Development (PUD) agreement made and entered into on August 10, 2023, by and between the Developer and the City (as the same may be amended and supplemented, the "Planned Unit Development Agreement"). The Planned Unit Development Agreement is attached hereto as Exhibit A.

2. Construction and Maintenance Obligations. The Developer does herewith agree to construct, install and provide the Public Improvements and other improvements shown on the Development Plan.

   Notwithstanding anything in this Agreement to the contrary:

   (a) Water Facilities. Developer shall construct a twelve (12) inch diameter water line extending from Mason Road and Pierson Sayer Road along Butler Warren Road to reach the subdivision and connect through the subdivision to Kyles Station Road.

      i. In accordance with the City Code, the Developer is required to pay a water-tap in fee for each residential dwelling unit constructed within the Development in the amount of $2,952.38/unit (or such amount as is then in effect in the City) for water. The City agrees to reduce the water-tap in fee for each residential dwelling unit constructed within the Development to the amount of $953.41/unit. The purpose of the reduced water-tap in fee is exclusively to reimburse the Developer for the upsizing cost of increasing the diameter size of the water line from eight (8) inch to twelve (12) inch.

      ii. Developer shall construct all water lines or facilities related thereto as shown on the Development Plan and the City shall have no obligations whatsoever, including without limitation, maintenance, with respect to the Water facilities. Water lines and facilities, include but are not limited to:

         I. A water line extension from Mason Road and Pierson Sayer Road that shall be designed to accommodate the future widening of the storm water culvert located at approximately Miller's Creek on Butler-Warren Road;

         II. A water facilities easement for the installation of a pressure regulating valve (PRV) vault and an eight (8) inch pressure regulating valve to serve as an emergency connection on Butler Warren Road.

The Developer shall make a good faith effort to locate water easements outside of the right-of-way. If the water line cannot reasonably be located outside the right-of-way, the City agrees to approve the location as presented, provided that the Developer agrees to indemnify the City against any extra cost or liability associated with such location;

III. A water line connection "loop" encompassing the interior diameter of the subdivision with a twenty (20) foot public water line easement extending from Brookfield Lane across Miller's Creek to Waterbend Court, as referenced in the approved preliminary plat;

IV. A water main "loop" shall be installed around the Brookfield Lane "eyebrow" and connect into the water main service on Brookfield Lane; and

V. A twenty (20) feet water line easement on Kyles Station Road extending from Interstate 75 to Stonybrook Way. The water line easement shall be located behind the proposed right-of-way.

The water line and any required infrastructure is not required to be fully installed in the first phase of the Development Plan and can otherwise be installed within the associated phase(s). For example, the water line loops will be partially installed with the associated phases, as they are developed.

(b) Storm Water Facilities. Any storm water lines and facilities related thereto shown on the Development Plan and labeled as Public, shall be maintained by the City and any storm water lines and facilities related thereto and shown on the Development Plan and labeled as Private shall be maintained by the Developer or pursuant to the terms of any declaration governing the Stonybrook subdivision.

(c) Sanitary Sewer Facilities. Any sanitary sewer lines and facilities related thereto shown on the Development Plan and labeled as Public, shall be maintained by Butler County and any sanitary sewer lines and facilities related thereto and shown on the Development Plan and labeled as Private shall be maintained by the Developer or pursuant to the terms of any declaration governing the Stonybrook subdivision.

(d) Connectivity. Developer shall construct a ten (10) foot wide multi-use asphalt pathway along the exterior of the subdivision fronting Kyles Station Road and Butler- Warren Road. All other multi-use pathways or walking trails shall be constructed in a manner consistent with the approved amenities plan. All multi-use pathways or walking trails shall be wholly contained within either:

1) A properly recorded Easement, which title is vested in the Homeowners Association (HOA); or
2) Located within the public right-of-way.

All maintenance burdens of said multi-use paths or trails shall be borne by the HOA including any portions of the multi-use pathway or walking trail that encroaches upon the public right-of-way. Should the HOA dissolve and cease to exist, the City, at their option and/or discretion, may make any necessary repairs to the multi-use path and authorize property assessments for the remuneration of any and all necessary maintenance and repairs.

(e) Sidewalks. All sidewalks part of the Project area shall conform to the sidewalk specifications of Monroe Planning and Zoning Code Chapter 1208.07: Sidewalks. In addition, Developer shall install all common area sidewalks and all ADA ramps at the required locations.

(f) Right-of-way Dedication. Developer agrees to dedicate right-of-way on Butler-Warren Road and Kyles Station Road for the future expansion of Butler-Warren Road and Kyles Station Road. Developer also agrees to dedicate right-of-way at the intersection of Butler-Warren Road and Kyles Station Road for future improvements to the intersection, including a proposed roundabout as illustrated in the Butler County Thoroughfare Master Plan. Dedication of right-of-way for the future expansion Butler-Warren Road and Kyles Station Road shall be shown on the Development Plan. Dedication of right-of-way for the future improvements to the intersection at Butler-Warren Road and Kyles Station Road, including a proposed roundabout as illustrated in the Butler County Master Thoroughfare Plan shall be shown on the Development Plan.

(g) Access. Access to the Development will be through two access drives. A full access drive shall be installed on Kyles Station Road west of Butler-Warren Road. The second full access drive shall be installed on Butler-Warren Road north of Kyles Station Road. All internal streets shall be constructed in accordance with the City of Monroe's Standard Detail.

All improvements to be made to Butler-Warren Road and Kyles Station Road shall be completed following the standards published by the City of Monroe's Standard Detail, Butler County Engineer's Standards, and the Ohio Department of Transportation; and shall be designed and constructed in conformance with the approved development plan, construction drawings, and in accordance with the recommendations of the October 10, 2023, updated Millan Residential Development Traffic Impact Study [Exhibit XX] and as follows:

*Butler-Warren Road*
The eastbound approach shall be built with a single inbound and a single outbound lane. The eastbound approach shall be bult with a stop control.

*Kyles Station Road*
The southbound approach shall be built with a single inbound and a single outbound lane. The southbound approach shall be built with a stop control. An approximately two-hundred and eighty-five (285) foot eastbound left turn lane shall be built on Kyles Station Road as part of the access drive.

*Proposed Future Roundabout at the intersection of Butler-Warren Road and Kyles Station Road*
2034 Build traffic volumes show that the intersection at Butler-Warren Road and Kyles Station Road warrant a single lane roundabout. Butler and Warren Counties will begin to implement improvements once the intersection starts to show deterioration in the flow of traffic at the intersection. Due to the impacts to the intersection resulting from the Development, the Developer shall be responsible for a portion of the construction of a single lane roundabout.

An analysis conducted by the Butler County Engineers Office (BCEO) estimated a construction cost in the amount of One Million Five-Hundred Thousand Dollars ($1,500,00.00) for the proposed future roundabout (the "Roundabout Project"). As a result of the impact the Development will have on the traffic management system, BCEO and the Warren County Engineers Office (WCEO), the Developer agrees that it shall reserve the sum of $225,000 (being approximately 15% of the estimated construction cost of the Roundabout Project) (the "Roundabout Sum"), to be used by the WCEO and/or BCEO to pay costs of the Roundabout Project in connection with an agreement or agreements ("Roundabout Agreement") to be entered into by the Developer and either BCEO and WCEO with respect to the Roundabout Project, such Roundabout Agreement to be in form and substance reasonably satisfactory to BCEO and/or WCEO. Developer agrees that it shall provide the Roundabout Sum to WCEO and/or BCEO at the times and under the conditions stated in the Roundabout Agreement.

It is the intention of BCEO, WCEO, and Developer that a fee in-lieu agreement be entered into by and between each of the above referenced jurisdiction as security for the future construction of the proposed.

(h) Other. The City hereby grants Developer an easement to, install, plant, maintain, and repair any lighting or landscaping shown on the Development Plan and located within a public right of way; provided, however, that any such installation, planting, maintaining and repair shall be at the sole cost of the Developer and the City shall have no obligation whatsoever to repair, maintain, or replace any of said lighting or landscaping.

3. Approval/Recording of the Record Plat. Developer, as a condition of beginning work under this contract and the Development Plan, further agrees to perform, complete, and undertake all things necessary and required to permit the recording of the record plat and to record the plat of said subdivision with the Recorder of Butler County, Ohio.

4. Construction Sequencing. Developer agrees to construct, install or otherwise make all Public Improvements and other site improvements such as, but not limited to: the installation of erosion control measures; the construction of the temporary sedimentation basins and other appropriate storm water and erosion controls both inside and outside of the public right-of-way areas as more fully detailed in the approved Development Plan which shall include the engineering drawings and specifications filed with the Development Plan in the office of the Development Director or as may be required by law; erect and maintain the appropriate on site security measures, including a detailed construction route and plan that will be used for the duration of construction; such security measures and construction plan shall be submitted as soon as possible but prior to, or in conjunction with, the initial site clearing and grading activities; construct all other infrastructure improvements in accordance with the Development Plan and applicable laws, including, but not necessarily limited to the installation of all utilities, including water and sewer mains, taps and services, storm water and detention systems, the streets, curbs and gutters, and final right-of-way grading, all prior to the commencement of the construction of any of the above grade improvements associated with the residential structures on the property that will utilize such utilities, with the exception of two model display home.

   The balance of the site improvements shall be completed as more fully detailed in the approved Development Plan. Developer shall complete phase one of construction of public streets and open it to traffic as soon as is reasonably possible but in no case later than the occupancy of the first residential unit within this development.

5. Work Conduct. Developer hereby agrees to perform, or to cause all work to be performed, in a professional, responsible, workmanlike manner, and to keep the streets, sidewalks, curbs and gutters, all right-of-way areas, and all other areas within and outside of the Development, reasonably free from any object, material, or condition that is unsafe or unsanitary or that, is unsightly or otherwise undesirable, to a reasonable person, when such condition results from Developer activity on the subject site or that is otherwise associated therewith. Additionally, the Developer shall clear any mud, litter or debris created or caused by any of its employees, contractors, subcontractors, materialmen, laborers or agents. Developer further agrees to install and maintain in proper working order and throughout the Development and construction process, the required erosion control and sediment control measures. In the event that Developer fails, in the reasonable determination of the City, to meet its obligations under this paragraph the City may notify the Developer with respect to such failure, and in such event the Developer shall take such

steps as to cure any failure within 24 hours of receiving such notice. In the event the Developer fails to cure such failure, the City may take such measures, including dispatching City personnel to remove debris or sediment, and the cost of any such actions by the City shall be borne by the Developer.

6. Acceptance. Developer further agrees to do all that is necessary to accomplish the acceptance of all Public Improvements as shown on the Development Plan, within the time limits specified in Section 1203.05(G): Timing of Approvals. The City shall not consider acceptance of public streets until all Public Improvements and other improvements as required by the Development Plan are completed and Certificates of Occupancy have been issued for at least eighty percent (80%) of the residences within a phase of the Development. The City will only consider this phased acceptance if this action would be in the best interest of the City and the residents of the Subdivision.

7. As-Built Drawings. The Developer shall, upon completion of installation and construction of the Public Improvements, submit to the City reproducible copies and electronic files of the "as-built drawings" (the "As-Built Drawings") for those Public Improvements constructed in accordance with the Development Plan and the construction drawings and specifications in compliance with all applicable laws, along with copies of the construction notes and records from which the As-Built Drawings were made. The As-Built Drawings shall contain, at a minimum:

   i. The centerline profile;
   ii. The water distribution system;
   iii. The sanitary sewer system;
   iv. The storm water system including pipe invert elevations and any detention/retention areas as delineated within the City of Monroe Subdivision Regulations;

   As-Built drawings shall be submitted in electronic format and accepted by the City prior to the release of any final bonds. All such drawings shall be the property of the City.

8. Maintenance and Use of Roads. The Developer shall clean and keep all public ways, sewers and drains reasonably free from snow, mud, debris and trash or other extraneous materials prior to acceptance and within the guarantee period of Public Improvements by the City. Prior to acceptance of the Public Improvements by the City, and during the construction of the Public Improvements, the Developer shall be responsible for ensuring the provision, through contractors or otherwise, of any traffic control devices, flaggers and police officers required to properly and safely maintain the safe and reasonable flow of traffic on the public roadways within the Subdivision or otherwise affected by such construction at all times unless otherwise approved by the City and in such a manner as not to unduly impede or restrict the flow of traffic to or from the adjoining properties or businesses.

9. Inspections. The Developer shall, prior to such construction, and installation of the Public Improvements arrange with the City's Engineering Division for the inspection of such construction and installation of all on-site construction inspections and any necessary laboratory testing of material.

   Developer agrees that said work as set forth in the Development Plan shall be performed, completed and done pursuant to inspection by the City and other regulatory agencies as required, and in accordance with the approved Development Plan adopted by the Council of the City, and under the supervision and direction of a qualified geotechnical engineer employed by Developer who shall be on site as needed to monitor and evaluate all cuts, fills, compacting and other earth moving operations associated with the development of the site by Developer. Such geotechnical engineer shall provide a written report and copies of the field notes to the City upon completion of the same.

   Before starting the construction of any improvements, the Developer shall ascertain from the City Engineer what inspections are required and the amount of notification desired in each case. In no event shall notice to the City Engineer be less than twenty-four (24) hours prior to a desired inspection.

   Regardless of contracts, agreements or inspections performed, final responsibility for the installation of all Public Improvements in accordance with the Development Plan and all applicable laws and regulations rests with the Developer, except where the City has inspected and approved in writing the Public Improvements. Provided, however, that after such inspection and approval it shall be the Developer's continuing responsibility to repair any Public Improvements where there is a failure of any Public Improvement as the result of faulty workmanship, change in conditions or any other circumstances or occurrence which is reasonably attributable to the work performed by or for which the Developer is responsible in the Agreement.

10. Bonds. To ensure the developer's performance, the Developer hereby agrees to post performance and maintenance bonds as described below.
    These bond descriptions are provided to help explain and prepare your engineers estimated costs per project. Pursuant to Section 1203.05(H) and Section 1028.11, the following bonds may be necessary for any development project. When supplying the items requested within the engineers estimated cost, the following items are required:

    1. ITEM NUMBER
    2. ODOT NUMBER
    3. DESCRIPTION
    4. QUANTITY
    5. UNITS
    6. UNIT COST, and

7. TOTAL COST.

Failure to provide all information within this document will result in a non-review. Until all requested information is received, a full and complete review of the estimate is not possible. All appropriate bonds shall be in-place with the City of Monroe, including all original copies, before matching phases of construction may begin.

The City of Monroe allows three types of bonds, they are as follows.

1) **Cash Bond**: A cashier's check made payable to the City of Monroe in the amount approved by the Public Works Director.
2) **Surety Bond:** A surety bond issued by a surety company authorized representative must sign the security agreement which will serve as the bond. A power of attorney from the surety authorizing the signature on behalf of the surety company must accompany the security agreement**.**
3) **Surety Obligation of a National Bank:** A national bank may bind itself as surety to indemnify the City should the Developer default in the installation of the development improvements if it has a segregated deposit sufficient to cover the bank's total potential liability. Therefore, an authorized representative of the national bank must sign the security agreement, which signature shall also constitute a certification that the national bank has a segregated deposit sufficient in amount to cover the bank's total potential liability.

**Stormwater Pollution Prevention Plan Bond (SWP3)**.
The Stormwater Pollution Prevention Plan performance bond shall be posted before the developer may begin construction of any type. The only work allowable on the site prior to this bond being in place is surveying. An original copy of the bond shall be on file with the City of Monroe. This performance bond shall be one-hundred and thirty (130) percent of the total cost of the engineers' estimated cost (see the checklists below for items that shall be required in the engineers estimated cost). This bond shall stay in place through the duration of the project. If the SWP3 plan is a phase of a larger project and this plan will impact through the entirety of the project, the bond shall stay in-place through completion. At the judgement of the Public Works Director, this may be reduced if certain provisions exist. It is solely at the discretion of the City to determine said provisions. No Maintenance Bond is required for this bond.

Construction of SWPP3. Construction of storm water facilities shall include all costs necessary to properly construct the approved design of Stormwater Pollution Prevention Plan (SWP3), including but not limited to, silt fence, straw waddles, check dams, concrete waste management, dike, and slope protection, catch basin protection, manhole protection.;

**Earthwork Performance Bond.**

The earthwork performance bond shall be posted before the developer may begin construction of any type. The only work allowable on the site prior to this bond being in place is surveying. An original copy of the bond shall be on file with the City of Monroe. This performance bond shall be one -hundred and thirty (130) percent of the total cost of the engineers' estimated cost (see the checklists below for items that shall be required in the engineers estimated cost). This bond shall not be reduced. It shall only be released when a minimum of seventy (70) percent of the total disturbance area is covered by growing (rooted) vegetation (seed and straw coverage is not considered vegetation). No Maintenance Bond is required for this bond.

Construction Surveying. Developer shall conduct all survey work necessary to layout the subdivision limits, public roadway system, location of all public utilities easements, conservation easements and utilities within the easement and rights-of-way; and lot layout, including permanent markers (pins) for all lots.

Construction of Earthwork. Developer shall complete all earthwork, including items such, as but not limited to, clearing and grubbing, topsoil stripping, excavation, trench spoils, embankment, sub-base compaction of roadways, and any other items necessary to complete the earthwork portion of the project.

**Storm Water Open Channel and Detention Quality Performance Bond & Maintenance Bond.**

The storm water open channel and detention quality performance bond shall be posted before the City will release the Earthwork Performance Bond. The purpose of this bond is to cover the cost of repairs for any open channel erosion or detention basin erosion and/or sedimentation through the completion of the subdivision or any section of subdivision which may drain into the bonded channels or basins. The original copy of the bond shall be on file with the City of Monroe. This performance bond shall be one-hundred and thirty (130) percent of the total cost of the engineers' estimated cost (see the checklists below for items that shall be required in the engineers estimated cost).

Once all work has been accepted by the City and the performance bond for Storm Water Open Channel and Detention Quality is ready for release, a one (1) year maintenance bond shall be posted in the amount of ten (10) percent of the original storm water open channel and detention quality performance bond A final inspection shall trigger the release of the maintenance bond.

Re-construction of Storm Water Management Basin(s). The design engineer shall provide a cost for the re-construction of all basins within the scope of the project. Assuming medium to heavy sedimentation removal and medium to severe slope erosion, the cost should be figured to restore the basin to original design standards. Upon review and before issuance of the bond, the City could raise or lower the

estimated amount, if in the opinion of the City Engineer, the submitted costs seem unreasonable

Re-construction of Open Channels. The design engineer shall provide a cost for the re-construction of all open channels within the scope of the project. Assuming medium to heavy sedimentation removal and medium to severe slope erosion, the cost should be figured to restore the channels to original design standards. Upon review and before issuance of the bond, the City could raise or lower the estimated amount, if in the opinion of the City Engineer, the submitted costs seem unreasonable.

**Storm Water Infrastructure and Street Appurtenance Performance and Maintenance Bond**.

The storm water infrastructure and street appurtenance bond shall be posted before the developer may begin construction of the stormwater conveyance system and street. The original copy of the bond shall be on file with the. This performance bond shall be one-hundred and thirty (130) of the total cost of the engineers estimated cost (see the checklists below for items that shall be required in the engineers estimated cost). The City will allow a one-time reduction of this bond no sooner than a recording of the plat with the appropriate County agency. Once recording documentation is received, the Public Works Director may, at that time, consider a reduction of the street and stormwater infrastructure bond. The reduction shall be as follows: based off the engineers' estimated cost, all items completed will be reduced to a total of twenty-five (25) percent of the completed work. All non-completed work within this estimate shall continue to be held at the one-hundred thirty (130) percent value. The sum of these two lines shall determine the new bond amount. This new performance bond shall remain in place until a minimum of eighty (80) percent of the lots under said bond are complete. Complete shall mean that all exterior construction of the applicable infrastructure is complete and ground cover is fully established per individual lot throughout eighty (80) percent of the sub-division or section of subdivision.

Once all work has been accepted by the City and the performance bond is ready for release, a one (1) year maintenance bond shall be provided to the City by Developer in the amount of 10% of the original storm water infrastructure and street appurtenance bond. A final inspection shall trigger the release of the maintenance bond.

Construction of Roadway(s). Developer shall properly place granular materials, construct continuous concrete curb including all handicap ramps as required by federal standards and place asphalt pavement and all other unforeseen improvements necessary to complete the construction of public roadways per the City's Engineering Standards. All poor soil conditions, whether or not recognized during the design phase, shall be the responsibility of the developer to mitigate, including, but is not

limited to, items such as street lighting, street trees, street signage, pavement markings, and 4" conduits.

Construction of Storm Water Conveyance System. This shall include all storm water collection pipe, manhole structures, catch basin structures, six (6) inch sump main lines, four (4) inch by six (6) inch sump drain tees, four (4) inch sump service lines to three (3) feet behind back of sidewalk to low side of individual lots and all other appurtenances necessary to complete the construction of the storm water conveyance system per the City's Engineering Standards.

**Sidewalk Performance and Maintenance Bond.**

The sidewalk bond shall be posted before the developer may begin construction of any sidewalk. The original copy of the bond shall be on file with the City of Monroe. This performance bond shall be seventy-five (75) percent of the total cost of the engineers' estimated cost. Developments which require sidewalks. The Director of Public Works may, at his discretion, allow a one-time reduction of this bond to twenty-five (25) percent when the subdivision or section of subdivision is eighty (80) percent built out with sidewalk. If eighty (80) percent of the development has been issued occupancy and no construction activities have occurred in twenty-four (24) months the developer will be required to pour remaining sidewalk across all open lots at six (6) inches thick to account for unknown drive location of future home. A completed sidewalk system providing complete connectivity is the only way to fully release this bond, unless otherwise approved by the Public Works Director.

Once all work has been accepted by the City and the performance bond for sidewalk is ready for release, a one (1) year maintenance bond shall be posted in the amount of ten (10)_percent of the original sidewalk bond. A final inspection shall trigger the release of the maintenance bond

Sidewalk Estimate Checklist. Sidewalk construction shall include the following: total linear feet (L.F.) of sidewalk, total cubic yard (C.Y.) of 304 aggregate base, total number of handicap ramps, total number of truncated domes, total linear feet (L.F.) of common sidewalk and all other miscellaneous concrete that may be required within the development, including USPS approved CBU tenant door pedestal mailboxes.

**Water System and Appurtenances Infrastructure Maintenance Bond**.

The Water System and Appurtenances Infrastructure Maintenance Bond shall be posted before the system is allowed to be opened for public use. Once the water main and all appurtenances have been installed per the City of Monroe Engineering Standards and passed pressure testing and purity testing, the City of Monroe shall require a cash or surety bond in the amount of ten (10) percent of the engineers estimated cost and shall be held as a maintenance bond for a period of twelve (12) months.

Construction of Water Distribution Infrastructure Estimate Checklist. This shall include all properly sized Class 53 ductile iron water main(s), gate valves, fire hydrants, tapping valves and sleeves at connection to existing mains, services to all buildable lots shall including, corporation stop(s), three and a quarter (¾) inch copper line, curb stop(s), meter pit and all other appurtenances necessary to complete the construction of the water distribution system per the City of Monroe Engineering Standards. Bonds shall not be released until all As-Built drawings have been received and accepted by the City.

Developer is permitted to separately post bond(s) for any and all offsite improvements, including but not limited to the water line extensions on any adjacent properties with the right-of-way and the turn lane within the right-of-way, from the first phase/the associated phase. Any bonds posted for offsite improvements are not otherwise tied to or associated with any of the above-mentioned bonds and shall be released upon the completion of the offsite improvement(s) for which such bond(s) has been posted.

11. Completion. Developer will complete the project in separate phases, with plat recording for each individual phase. All work within the Development, as reflected in the approved Development Plan shall be completed pursuant to code section 1203.05. This length of time is hereby fixed by the City as a reasonable period of time to complete the development, but if requested by the Developer for good cause, a written extension may be granted by the City in the City's sole discretion.

12. Insurance. At all times during construction and installation of the Public Improvements and completion of the remainder of the Development Plan, Developer shall maintain insurance protecting the Developer and the City (naming the City as an additional insured) with companies authorized to do business in Ohio, of the following types and with the following minimum coverages:

a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;

b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:

i. General Aggregate Limit:
$2,000,000 each occurrence;

ii. Each Occurrence Limit:
$1,000,000 each occurrence; and

c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than $1,000,000.

The Developer shall provide the City with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of

insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the City.

Prior to commencement of any portion of the work with respect to the Public Improvements by any contractor or subcontractor, such contractor or subcontractor, as the case may be, shall provide to the Developer and an original certificate of insurance as proof of such insurance coverage.

13. Indemnity. The Developer shall indemnify, defend and hold harmless the City and its agents and employees from and against any and all suits, claims, damages, losses and expenses, including reasonable attorney fees, arising or allegedly arising out of, or resulting from performance of the Work, provided that any such suit, claim, damage, loss or expense is:

    (a) caused in whole or in part by any negligent act or omission of the Developer; its contractors, subcontractors, agents, employees or representatives; or anyone directly or indirectly employed by any of the foregoing for whose acts any of the foregoing may be liable, regardless of whether or not it is caused in part by the City or its agents or employees; or

    (b) attributable to the Developer's failure to perform its obligations in connection with the construction of the Public Improvements or any contracts relating thereto.

The Developer shall require that all contractor agreements, and shall require all contractors to require that all subcontractor agreements, include indemnification language as found above. The Developer shall promptly reimburse the City and its successors and assigns, for any cost, expense or attorney's fees incurred on account of any such suit or claim incurred in enforcing the terms of this Agreement. This indemnification provision is agreed to by the Developer to expressly waive the Developer's immunity, if any, as a complying employer under Section 35, Article II of the Ohio Constitution and Worker's Compensation laws of the Ohio Revised Code from indemnifying and holding the City harmless from claims by employees, agents or contractors of the Developer, provided that such waiver shall apply solely for actions brought by the City hereunder and shall not be construed to benefit third parties. This indemnity does not cover (a) any loss, expense, claim, suit, injuries or damages occurring after the completion of construction of the improvements by the Developer, or (b) any loss, expense, claim, suit, injuries or damages arising out of the actions or inactions of the City or its agents or employees.

This Section shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that otherwise exists as to part or person described in this Section.

14. Default; Remedies. If either party hereto shall be in breach or default of its obligations hereunder, the other party shall be entitled to pursue any and all rights and/or remedies it may have at law or in equity; provided, however, that, for clarity, the parties acknowledge their understanding and agreement that the City's decision, duly made, to not authorize

the Final Development Plan or any particular provision anticipated to appear therein shall in no event be deemed to be a default by City under this Agreement.

15. Assignment. Developer may not assign this Agreement without the specific written permission of the City, and upon any assignment such assignee shall have all of the rights, remedies, and obligations as if it were the original Developer hereunder.

16. Prevailing Wage. The City and Developer acknowledge and agree that construction of the Public Improvements, including those that are to be reimbursed (or credited) under the terms and conditions of this Agreement, are subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed in constructing those Public Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115 and in accordance with Ohio law. The Developer shall require compliance by all contractors, and shall require all contractors to require all subcontractors working on the (reimbursable) Public Improvements, to comply with all applicable requirements of that Chapter 4115.

17. City Income Tax Withholdings. The Developer shall withhold and pay, shall require all contractors to withhold and pay, and shall require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to taxation by the City.

18. Authority. Developer and City represent and warrant to the other that each has the legal right, power, capacity and authority to enter into and perform its obligations under this Agreement subject to any contingencies contained herein.

19. Entire Agreement; Counterparts. This Agreement contains the entire agreement between the parties hereto and no modification or amendment shall binding upon any party unless made in writing and signed by each of the parties hereto. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts..

20. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be construed in accordance with the laws of the State of Ohio, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors in interest, and/or designees or permitted assigns.

21. Effective Date. The effective date of this Agreement shall be the date set forth below.

[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

**IN WITNESS WHEREOF**, the parties have hereunto set their hands this _____ day of _____, 2024.

**DEVELOPER**

Grand Communities, LLC,
A Kentucky limited liability company

By: _____
Name: _____
Title: _____

**CITY OF MONROE**

**By:_____**
**Larry Lester, City Manager**

**WITNESS:**

_____

**APPOVED AS TO FORM:**

**By: _____**
**Phillip Callahan, City Attorney**

.FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2024 under the foregoing Agreement ($0) have been appropriated lawfully for that purpose, and is in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Date: _____, 2024

_____

Director of Finance
City of Monroe, Ohio

NOTICE TO LEGISLATIVE AUTHORITY

OHIO DIVISION OF LIQUOR CONTROL
6606 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)644-2360 FAX(614)644-3166

TO

| | | |
|---|---|---|
| 2738398 PERMIT NUMBER | TRFO TYPE | FIRSTBARANDGRILL LLC<br>DBA FROGGYS BAR AND GRILL<br>SUITE A & PATIO<br>10 S AMERICAN WAY<br>MONROE OH 45050 |
| 06 01 2023 ISSUE DATE | | |
| 05 10 2024 FILING DATE | | |
| D5 D6 PERMIT CLASSES | | |
| 09 TAX DISTRICT / 066 / A / F31296 RECEIPT NO. | | |

FROM 05/14/2024

| | | |
|---|---|---|
| 9250518 PERMIT NUMBER | TYPE | VEOS MEDIA GROUP LLC<br>DBA FROGGYS<br>SUITE A & PATIO<br>10 S AMERICAN WAY<br>MONROE OHIO 45050 |
| 06 01 2023 ISSUE DATE | | |
| 05 10 2024 FILING DATE | | |
| D5 D6 PERMIT CLASSES | | |
| 09 TAX DISTRICT / 066 / RECEIPT NO. | | |

MAILED 05/14/2024 RESPONSES MUST BE POSTMARKED NO LATER THAN. 06/14/2024

**IMPORTANT NOTICE**

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES A TRFO 2738398
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.

WE DO NOT REQUEST A HEARING. ☐
DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature) (Title)- ☐ Clerk of County Commissioner (Date)
☐ Clerk of City Council
☐ Township Fiscal Officer

CLERK OF MONROE CITY COUNCIL
233 S MAIN ST
P O BOX 330
MONROE OHIO 45050