

**AFFIDAVIT
AND
PETITION FOR SPECIAL ASSESSMENTS
(PROJECT K)**

March 11th, 2016

To the Council of the City of Avon, Ohio:

WHEREAS, the property owner (the “*Property Owner*”), identified in the next succeeding recital clause of this Affidavit and Petition for Special Assessments (the “*Petition*”), is the owner of certain parcels of real property depicted on Exhibit A attached hereto, which consists of more than seventy-five percent of the lots and lands to be assessed for the Public Improvements (as defined below) (collectively, the “*Property*”); and

WHEREAS, the Property Owner, acting through its respective Authorized Representative identified below:

Property Owner

Authorized Representative

NWQ Jaycox/I-90 LLC

Douglas L. Miller

acknowledges that the Property will benefit from the construction and reconstruction of a portion of Chester Road, from a two (2) lane to a five (5) lane roadway, and related improvements in connection therewith, identified as Project K, as more particularly described on Exhibit B hereto (collectively, the “*Public Improvements*”), which will facilitate the development of the Property; and

WHEREAS, the Property Owner hereby petitions the City for the construction of the Public Improvements, requests that a portion of the cost of the Public Improvements be specially assessed against the Property, as set forth herein, and acknowledges and agrees that such assessments may include any amounts necessary to reflect any financing costs incurred by the City in connection with the issuance by the City of notes or bonds in anticipation of the collection of the special assessments and that such special assessments may be re-allocated among the benefited parcels comprising the Property on a per acre basis, as provided in Section 1 hereof; and

WHEREAS, the Property Owner acknowledges and agrees that the Property includes a portion of the real property to be specially assessed pursuant to this Petition, and that the Property will receive special benefits from the construction of the Public Improvements; and

WHEREAS, the Property Owner, acting through its respective Authorized Representative, further deposes and states that this Petition and the actions provided for herein impose burdens and obligations upon the Property and provide for special assessments to be levied upon the Property in accordance with this Petition, and that this Petition shall be placed on file and made available for public inspection at the office of the Clerk of Council of the City;

NOW, THEREFORE, the Property Owner hereby petitions the Council of the City of Avon, Ohio as follows:

1. Special Assessments. The Property Owner states that it is the sole owner of more than seventy-five percent (75%) of the lots and lands to be assessed and the sole owner of one hundred percent (100%) of its portion of the Property for which this petition is filed, as depicted on Exhibit A. Acting pursuant to Chapter 727, Ohio Revised Code, the Property Owner acknowledges that the City shall cause the Public Improvements to be acquired, constructed and reconstructed and acknowledges and agrees that the Property will receive special benefits from the Public Improvements, and respectfully requests that the actual cost of the Public Improvements, currently estimated to be \$9,208,947.33 (less any amounts that are to be excluded from the assessed cost of the Public Improvements, as set forth in Exhibit C hereto), shall be paid as specified in this Petition, be levied and assessed against the lots and lands constituting the Property on a per acre basis, be in the respective amounts, and be payable in the manner and number of installments, as set forth in the Special Assessment Certification List attached hereto as Exhibit D. The Property Owner acknowledges and agrees that the final assessments may exceed the current estimate. The Property Owner further acknowledges and agrees that in the event any parcel is subsequently sold, leased or subdivided in any way, the special assessments may be reallocated among the resulting parcels in a manner acceptable to the Property Owner and any subsequent transferee, with the prior consent of the City, in its reasonable discretion. The Property Owner further acknowledges and agrees that to the extent the Lorain County Auditor requires an alternate method of apportioning the assessments, the City will act in good faith to apportion the assessments in a manner which approximates the allocation percentages on a per acre basis as much as possible.

In connection with this Petition and in furtherance of the purposes hereof, the Property Owner acknowledges that a copy of the estimated cost of the Public Improvements is attached hereto as Exhibit C. In connection with this Petition and in furtherance of the purposes hereof, the Property Owner also acknowledges that it has reviewed or has caused to be reviewed the estimated costs of the Public Improvements and agrees that the special assessments will be levied in an amount equal to the final cost of the Public Improvements (less any amounts that are to be excluded from the assessed cost of the Public Improvements, as set forth in Exhibit C hereto).

In consideration of the Public Improvements project, the Property Owner agrees (A) that the special assessments do not exceed the benefit to be received by the Property as a result of the Public Improvements project, (B) that the Property Owner will pay promptly all installments of the special assessments levied against the Property as they become due, (C) that the determination by the Council of the special assessments against the Property pursuant to and in accordance with this Petition will be final, conclusive and binding upon the Property Owner, its successors and assigns and grantees of the Property, or any portion thereof, and (D) to include in each deed conveying all or any portion of the Property (or in a separate recorded declaration against the Property) (i) a reference to the special assessments allocable to the Property or

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portion being conveyed, as determined and approved by the City, and (ii) a covenant running with such property to be bound by the provisions of this Petition and to timely pay the installments of the special assessments as they become due.

2. *Duration of Special Assessments.* The Property Owner further requests and agrees that the special assessments, including interest thereon, will be payable in twenty (20) annual installments of principal and interest (each annual installment to be payable semi-annually at the time real estate taxes in Lorain County, Ohio are payable), that the interest on the special assessments will be computed at the same interest rate as is applicable to the notes or bonds to be issued by the City in anticipation of collection of the special assessments, and that the annual amounts for principal and interest will be computed utilizing a methodology which produces an amount equal to, or approximately the same as, the principal and interest due each year on the notes or bonds to be issued by the City in anticipation of the collection of such special assessments. The Property Owner acknowledges and agrees that the City will certify the special assessments and interest thereon to the Lorain County Auditor for collection as soon as practicable after the completion of the Public Improvements and ascertainment of the final costs of those Public Improvements. The Property Owner further acknowledges and agrees that the interest payable with respect to notes, if any, issued in anticipation of the levy and collection of special assessments will be capitalized to the extent permitted by law and included in the cost of the Public Improvements.

3. *Payment of Special Assessments.* In consideration of the Public Improvements, the Property Owner, for and on behalf of itself and its grantees, successors, and assigns with respect to the Property, agrees to pay promptly all special assessments levied against the Property as they become due (as provided in Section 2 hereof), and agrees that the determination by the City of the amount and apportionment of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon Property Owner and the Property. In further consideration of the Public Improvements, the Property Owner covenants and agrees to disclose, upon the conveyance of the Property or any portion of the Property to any transferee, the existence of any outstanding or potential special assessments for the Public Improvements.

4. *Prepayment of Special Assessments.* The special assessments may be prepayable at the time and in the manner as may be agreed to by and between the City and the Property Owner prior to the issuance of bonds issued by the City in anticipation of the collection of the Special Assessments. The Property Owner agrees that the special assessments may be prepaid by the Property Owner (a) on or after the earliest date on which the bonds to be issued by the City in anticipation of collection of the special assessments are subject to optional redemption according to their terms (the "*Earliest Optional Redemption Date*"), by paying to the City, in immediately available funds, an amount equal to the sum of all installments of those assessments payable and to be payable with respect to the Property to the Earliest Optional Redemption Date; or (b) prior to the Earliest Optional Redemption Date, with the consent of the City, which consent shall not be unreasonable withheld, by either (i) paying to the paying agent for the bonds sufficient moneys, or (ii) depositing with the paying agent for the bonds, in trust for and irrevocably committed thereto, noncallable direct obligations of or obligations guaranteed as to full and timely payment by the United States of America which are certified by an independent public accounting firm of national reputation reasonably satisfactory to the City to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys to which reference is made in clause (i) above, without further

investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of the assessments to be prepaid plus accrued interest on such special assessments to the Earliest Optional Redemption Date.

5. Action by Council. The Property Owner, for itself and its successors and assigns, further consents and requests that all legislation required to be enacted to permit the Public Improvements to commence immediately shall be enacted at one (1) Council meeting.

6. Waivers. The Property Owner consents and requests that the special assessments shall be levied and collected without limitation as to the value of the Property, and waives all of the following relating to the Public Improvements and the special assessments:

(a) any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision of the Revised Code restricting the special assessments to 33-1/3% of the actual improved value of the Property as enhanced by the Public Improvements to be made;

(b) any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision of the Revised Code limiting special assessments for re-improvement when a special assessment has been levied and paid previously;

(c) any and all damages or claims for damages of whatsoever kind, character or description resulting from the Public Improvements or the making of the Public Improvements, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(d) any and all resolutions, ordinances and notices required for the making of the Public Improvements, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over the estimated cost, and the passage of the assessing ordinance, including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(e) any limitation on the addition of interest to the special assessments specified by Section 727.301 of the Revised Code;

(f) any limitation or restriction on the levy and collection of special assessments against the Property for the Public Improvements as specified in Section 929.03 of the Revised Code; and

(g) any and all irregularities and defects in the proceedings.

IN WITNESS WHEREOF, each Authorized Representative has duly executed this Petition on behalf of the Property Owner as of the date first above written.

NWQ JAYCOX/I-90 LLC

By: Kristine M. McGivney

Printed: Kristine M. McGivney

Title: Treasurer

STATE OF OHIO)
) SS:
COUNTY OF Cuyahoga)

On this 11th day of March, 2016, before me a Notary Public personally appeared Kristine M. McGivney, the Treasurer of NWQ Jaycox/I-90 LLC, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of NWQ Jaycox/I-90 LLC and the voluntary act and deed of NWQ Jaycox/I-90 LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Rebecca S. Rigby
Notary Public

REBECCA S. RIGSBY
Notary Public - State of Ohio
Recorded in Lorain County
My Commission Expires 3/13/2018

EXHIBIT B

DESCRIPTION OF THE PUBLIC IMPROVEMENTS

The Public Improvements shall consist of the reconstruction of approximately 3,000 lineal feet of Chester Road in the City, between the east property lines, respectively, of a proposed Menard's store and a proposed Cabela's store and the Jaycox Road intersection ("Project K"), including construction and reconstruction of Project K from a two lane to a five lane roadway, excluding that portion of Project K consisting of the construction of the two outside traffic lanes (i.e. the fourth and fifth lanes) and the incremental costs incurred by the City to cause Chagrin Valley Engineering, Ltd. to prepare plans and specifications for the two outside traffic lanes of Project K (i.e. the fourth and fifth lanes).

The Public Improvements are subject to the assumptions set forth in Exhibit B-1, attached hereto and made a part hereof.

EXHIBIT B-1

ASSUMPTIONS

- The proposed road reconstruction (Project K) will be coordinated with existing intersection improvements at Jaycox Road on the east and with the proposed Developer Projects (Menards and Cabela's) roadway improvements on the west.
- The proposed road reconstruction right of way will be 100' total width, as defined by the City of Avon Typical Arterial Roadway Section.
- The proposed road reconstruction design section will be based on the City of Avon Typical Arterial Roadway Section, with an added continuous center turning lane for a build-out of a 5-lane section, including construction of the outside traffic lane on each side, curb and gutter, and sidewalks.
- Utility installations and relocations will be substantially as shown on the Typical Section, with easements adjacent to the right of way for private utilities. Project K will include relocation of the public watermain. Project K will include extension of a public sanitary sewer from Jaycox Road west to the eastern boundaries of the Developer Projects, and will coordinate respective modification of the City sewer district map boundary. Project K will coordinate relocation of private utilities.
- The City of Avon will support Project K in communications with other stakeholders, agencies, and utility companies.

EXHIBIT C

ESTIMATED COST OF THE PUBLIC IMPROVEMENTS

Exclusions: The incremental costs incurred by City to (a) cause Chagrin Valley Engineering, Ltd. to prepare plans and specifications for the two (2) outside traffic lanes of Project K (i.e. the 4th and 5th lanes of Project K) and (b) cause the two (2) outside traffic lanes of Project K to be constructed.

City of Avon Costs:			
Chester Road (East) and Jaycox Road Widening and Resurfacing not including Chester/Jaycox Road Traffic Signal			\$471,527.52
Chester Road/Jaycox Road Traffic Signal			\$248,000.00
3 Lane to 5 Lane Widening - Project K less Inspection Allowance	3 Lane Costs - \$4,019,452.48	5 Lane Costs - \$4,998,621.48	\$979,169.00
Chagrin Valley Engineering - Roadway Design Fees (\$362,807)	Calculated as a 17% increase in the Engineer's Estimate of Construction Costs from the 3 Lane to 5 Lane Roadway Costs as defined above for Project K		\$61,677.19
Construction Administration/ Construction Inspection Fees (\$312,000)	Calculated as a 17% increase in the Engineer's Estimate of Construction Costs from the 3 Lane to 5 Lane Roadway Costs as defined above for Project K		\$53,040.00
Street Lighting/ Electrical Engineering Fees			\$6,051.00
TMS Engineers - Traffic Design Engineering Fees			\$14,725.00
Total City Cost:			\$1,834,189.71

EXHIBIT C

ESTIMATED COST OF THE PUBLIC IMPROVEMENTS

Assessment Costs:		
Roadway Improvements - Project K less Inspection Allowance (3 Lane Widening)		\$4,019,452.48
Project K Costs Incurred with Project J Construction		\$346,578.72
Utility Relocation Costs:		
	Century Link (Telephone)	\$5,932.04
	Columbia Gas	\$585,619.75
	FirstEnergy	\$1,036,066.75
	Time Warner Cable	\$9,211.32
Property Acquisition Costs		
	Parcels A - E	\$308,800.00
	Parcel F	\$39,000.00
	Parcels G & H	\$114,350.00
	Parcels I & J	\$65,750.00
	Total	\$527,900.00
		\$527,900.00
Stream/Wetland Mitigation Costs		
	Stream Mitigation	\$61,545.00
	Wetlands Mitigation	\$21,500.00
	Total	\$83,045.00
		\$83,045.00
OEPA - Sanitary Sewer Permit to Install (PTI) Application		\$3,281.00
OEPA - Storm Water Construction Notice of Intent (NOI) Application		\$260.00
Appraisal and Acquisition Fees		\$10,000.00
Project Financing Costs		\$83,000.00
Legal Review and Coordination Fees		\$75,000.00
Environmental Engineering Fees		\$20,970.75
Geotechnical Investigation Fees		\$7,500.00
Sanitary Televising/Inclinometer Analysis Fees		\$850.00
Chagrin Valley Engineering - Roadway Design Fees (\$362,807)	Calculated as 83% of the Engineer's Estimate of Construction Costs for the 3 Lane to 5 Lane Roadway Costs as defined above for Project K	\$301,129.81
Construction Administration/ Construction Inspection Fees (\$312,000)	Calculated as 83% of the Engineer's Estimate of Construction Costs for the 3 Lane to 5 Lane Roadway Costs as defined above for Project K	\$258,960.00
Total Assessment Value:		\$7,374,757.62
Total Project Cost:		\$9,208,947.33

Notes: Sanitary Sewer and Water Main Improvement Costs through the 327.26 foot frontage of the Kopf Construction Corporation Parcel J (04-00-021-000-252) are \$47,061.94.

