

## DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into this 11th day of July, 2022 , by and between AVON, OHIO an Ohio Municipal Corporation, having a mailing address of 36080 Chester Road, Avon, Ohio 44011 (the “City”) and ISOMER GROUP, INC., an Ohio Corporation, having a mailing address of 211 Commerce Dr, Medina, OH 44256 (“Developer”).

### RECITALS:

**WHEREAS**, Developer is the owner or authorized representative of property located off of Nagel Road within the City of Avon, Lorain County, Ohio (the “Developer Property”), as more specifically set forth in the legal description or depiction attached hereto as Exhibit “A” and incorporated herein by reference; and known as Permanent Parcel Nos. 0400027101196; and

**WHEREAS**, the Developer Property is currently zoned as R-1 Single Family Residential (“R-1”); and

**WHEREAS**, Developer proposes to develop a general business district on the Developer Property (the “Development”), in accordance with Chapter 1270 of the City of Avon Codified Ordinances (“Chapter 1270”), requiring rezoning of 12.5 acres of the Developer Property from R-1 to be zoned C-4 General Business District (“C-4”) (the “Development Property”); and

**WHEREAS**, the City has determined that legitimate public interests will be served in the proposed Development, as further conditioned by this Agreement, by: providing commercial units meeting the purposes and criteria of the zoning code; by improving the value and usage of presently underutilized property; through controlled development that achieves a balance between the creation of usable lots and ensuring convenient and safe streets consistent with Avon land use and development policies; and

**WHEREAS**, the City desires to enter into this Agreement with Developer to ensure the public interest is protected and the Developer Property shall only be so used as set forth in this Agreement; and

**WHEREAS**, the parties desire to enter into this Agreement in order to set forth the respective rights, agreements and obligations of the parties as more fully provided herein.

### WITNESSETH:

For and in consideration of the covenants herein contained, and upon the terms and conditions herein set forth, the City and Developer hereby agree as follows:

1. **Council Approval.** Each party shall take such steps that are necessary and advisable to place the Development Agreement and rezoning of the Development Property from R-1 to C-4 on the City Planning Commission and City Council Agendas to permit them to act on all matters relating thereto as soon as their schedules of regularly scheduled meetings permit.
2. **Construction of Improvements.** Developer shall construct and install the Development, and if done in phases, any phase thereof, in a good and workmanlike manner, according to all applicable City codes and specifications and in substantial conformance with the approved General and Final Development Plans. All required applications shall be submitted and fees paid in accordance with applicable laws, rules, regulations, codes and ordinances, in effect at that time. All permits necessary for the Development shall be issued by the City, subject to Developer's qualifying therefor, as soon as practicable after submittal and in the usual course of business. This section is inclusive of any public improvements which will also be subject to a separate Developer's Agreement and ordinance to accept said public improvements upon completion.
3. **Development Terms, Conditions, and Deed Restrictions.**
  - a. The Development shall conform to all development regulations set forth in the City of Avon Codified Ordinances.
  - b. The Development shall be comprised of no more than four (4) sub-parcels none of which shall be less than one (1) acre. A conceptual site plan showing three (3) sub-parcels is attached hereto as Exhibit "B". All lot splits, now and in the future, are subject to the approval of the City Planning Commission City Engineer, and all relevant administrative Commissions and Boards.
  - c. Developer shall agree to limit the number of curb cuts into the Development to two (2) curb cuts on Nagel Road and one (1) curb cut on Middleton Road with the final locations to be agreed upon as part of the Final Development Pan approval process and subject to a traffic study. Developer acknowledges that if the traffic study recommends limited access to the Developer Property or the installation of a traffic signalization device, Developer shall comply with the recommended limited access to Developer Property and to contribute 50% of the cost of any recommended mechanical traffic signalization device.
  - d. Developer shall enter all necessary cross-access easements, reciprocal vehicle easements, reciprocal drainage easements, utility easements, stormwater easements, and other easement agreements in order to ensure the integrated operations of the 12 acre site whether or not the site is subdivided at some point in the future.
  - e. Developer shall coordinate with the City regarding implementation of an agreeable stormwater management plan for the entire 12 acre site to include appropriate

stormwater management ponds, bioswales, and basins, following and consistent with the recommendations of the final stormwater management studies.

- f. Developer shall work with the City Engineer to ensure adequate drainage in the Development, including bio-swales, and so as to not disturb or decrease drainage in the surrounding areas.
  - g. Developer shall include in the Final Development plan, landscaped areas along Nagel Road in compliance with the City's Zoning Code and as approved by the Planning Commission and the requirements of the final stormwater management plan.
  - h. Developer shall be entitled to one (1) sign on Nagel Road, in compliance with with the City's Zoning Code, and zero (0) signs on Middleton Road. The sign may be a menu board consisting of no more than 4 business trade names.
  - i. The Development shall include landscaping and buffers along the east side of the Development to protect the Development from future R-1 uses to the east and to provide a harmonious transition between the Development and other properties within Avon. This buffer area shall include, among other things, natural and/or constructed mounding, landscaping and possibly a 6 foot high privacy fence. In addition, Developer will use commercially reasonable efforts to retain existing trees within the buffer area as part of the development, subject to review and recommendations by Developer's and the City's arborists.
4. **This Agreement shall run with the land.** Upon completion of the Development Agreement and acceptance thereof by the City and all other obligations of Developer hereunder or in the event of termination of this Agreement in connection with paragraph 7 below, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement. It is also explicitly understood and agreed that in the event the re-zoning of the Development Property to C-4 is not approved and effective by December 10, 2022, this Agreement shall automatically terminate.
5. **Default.** In the event that Developer fails to comply in any material respect with any term, condition and/or deed restriction contained herein, the City may declare a default and terminate this Agreement.
6. **Entire Agreement.** This Agreement and the exhibits attached hereto, set forth the complete understanding and agreement of the parties with respect to the Development. No oral statements, representations or agreements other than this Agreement shall have any force or effect and the City and Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.

## 7. Miscellaneous.

**a. City Council.** This Agreement and all terms and provisions hereof are subject to and conditioned upon the approval of the Avon City Council and the passage of the rezoning by the City's electors at the November 8<sup>th</sup>, 2022 election per Article VII, Section 2(e)(3).

**b. Approvals of the City.** Provisions of this Agreement may require future approval of the City or evidence of satisfaction from the City regarding certain regulations or certifications by the City where the opinion of the City shall be interpreted as requiring action by the Mayor, Planning Commission, Zoning Board of appeals, or City Council. This may also include other applicable official(s) the Mayor may from time to time appoint or designate to act on behalf of the City.

**c. Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

**d. Estoppel Certificate.** Each party agrees that within thirty (30) days after receipt of written request from the other party, it will issue to such party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of such party's knowledge that as of such date:

- i) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;
- ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- iii) whether this Agreement is in full force and effect; and
- iv) any other reasonable matters relating to this Agreement.

**e. Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

**f.** This Agreement shall be legally enforceable by the City and both parties to this Agreement consent to its enforceability. This Agreement shall also be binding on the future fee simple owners, tenants, commercial property owners, and subdivision owners.

**g. Notices.** All notices herein authorized or required to be given to the Developer shall be sent by certified mail, registered mail or overnight express, postage prepaid to:

City of Avon, Ohio  
36080 Chester Road  
Avon, Ohio 44011  
Attn: Mayor

with a copy to:  
John A. Gasior  
Law Director, City of Avon  
36080 Chester Road  
Avon, Ohio 44011

or such other address as the City may from time to time designate in accordance with this paragraph. All notices herein authorized or required to be given to Developer shall be sent by certified mail, registered mail or overnight express, postage prepaid, to:

Isomer Group, Inc.  
211 Commerce Dr  
Medina, OH 44256  
Attn: Tom Lunt

with a copy to:

Walter | Haverfield LLP  
Attn: Joshua E. Hurtuk, Esq.  
1301 E. 9<sup>th</sup> Street, Suite 3500  
Cleveland, Ohio 44114

**h. Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents or instruments as may be reasonable and appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

**i. Survival.** All agreements, representations, warranties and indemnifications hereof shall be considered to have been relied upon and shall survive the execution and delivery of this Agreement and any conveyance which is the subject of this Agreement.

**j. Assignment.** No party may assign this Agreement or any of its rights, interests, or obligations hereunder. For the purposes of this Agreement, any change in ownership of Developer by merger, consolidation, sale of assets, or other means of transferring ownership and/or control of Developer and its business shall be deemed an assignment. Notwithstanding the foregoing, Developer shall be permitted to assign this agreement, in whole or in part, to a purchaser of all or any portion of the Developer Property with respect to the portion of the Developer Property so purchased so long as such purchaser agrees to be bound by the terms of this Agreement as they relate to the purchased portion of the Developer Property.

**k. Headings.** The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

**l. Exhibits.** The Exhibits attached hereto are made a part of this Agreement.

**m. Applicable Law and Binding Effect.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**n. Counterparts.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

[Signature Page to Immediately Follow]

EXECUTED on the date first written above.

DEVELOPER:

ISOMER GROUP, INC., an Ohio  
corporation

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Its:

CITY:

CITY OF AVON, an Ohio municipal  
corporation

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By: BRYAN K. JENSEN, Mayor

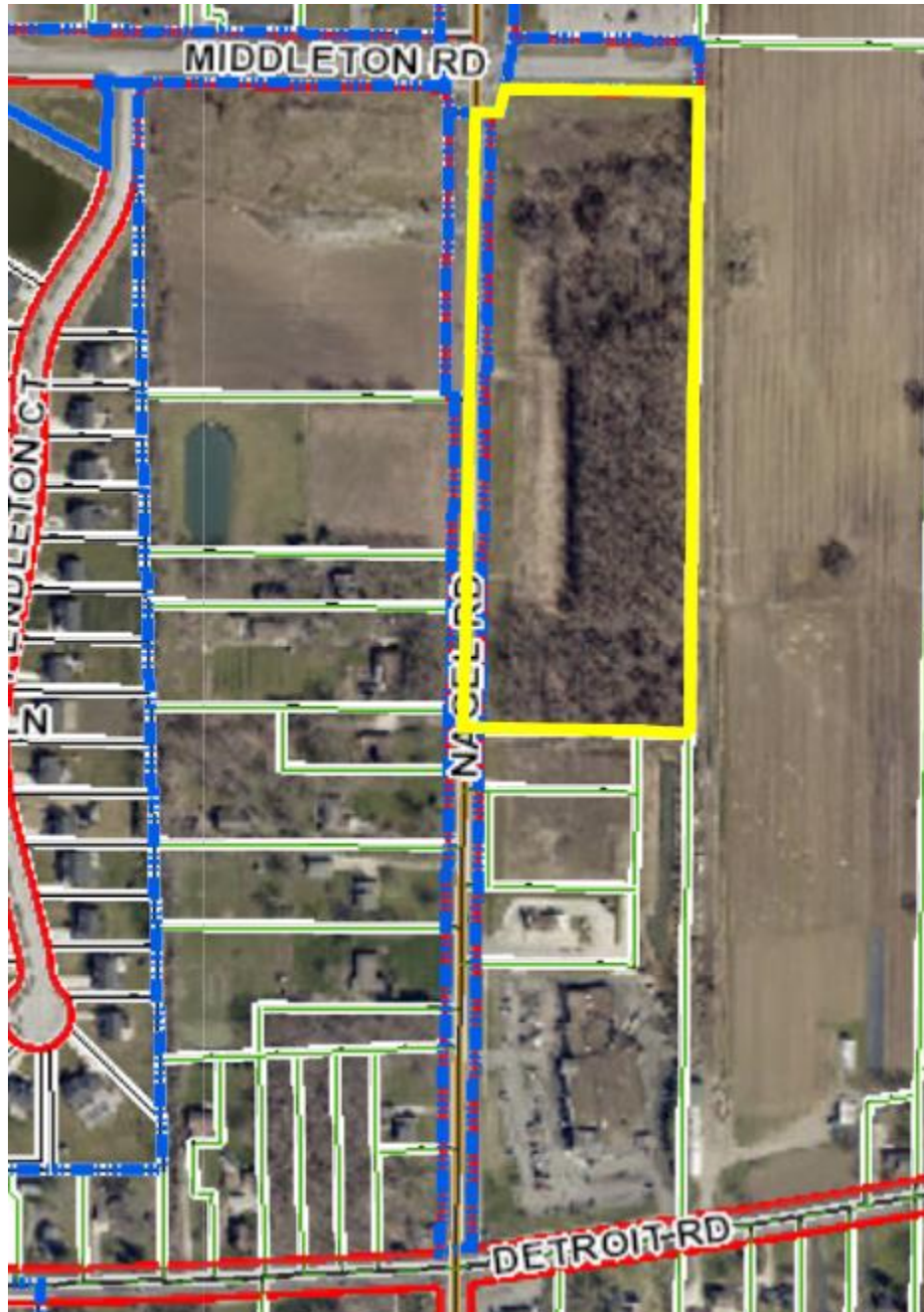
Exhibits:

Exhibit "A": Developer Property

Exhibit "B": The Plans

**EXHIBIT "A"**

**DEVELOPER PROPERTY**





**EXHIBIT "B"**

**THE PLANS**

NORTH



SOUTH