

**ORDINANCE NO. 100-23**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN  
OPTION TO PURCHASE AGREEMENT TO ACQUIRE REAL ESTATE LOCATED  
ALONG THE WESTSIDE OF STONEY RIDGE ROAD AT THE WESTERN  
TERMINUS OF MILLS ROAD IN THE CITY OF AVON,  
PERMANENT PARCEL NOS. 04-00-012-101-023 & 04-00-012-101-077  
FROM MARILYN MIKULIC, SUCCESSOR TRUSTEE OF THE  
JOHN J. MIKULIC TRUST DATED APRIL 28, 2009  
AND DECLARING AN EMERGENCY**

**WHEREAS**, the City continues to grow and so does its need to acquire additional lands for public use; and

**WHEREAS**, the Mayor seeks authorization from Council to enter into an Option to Purchase Agreement with Marilyn Mikulic, Successor Trustee of the John J. Mikulic Trust dated April 28, 2009, to acquire two parcels of land, (Permanent Parcel Nos. 04-00-012-101-023 & 04-00-012-101-077 consisting of approximately 33.93 acres located along the west side of Stoney Ridge Road at the western terminus of Mills Road in the City of Avon; and

**WHEREAS**, Council has had an opportunity to meet with the Mayor and discuss the purchase of the subject properties, including the terms of the transaction as set forth in the proposed Purchase Agreement; and

**WHEREAS**, Council deems it to be in the best interests of the health, safety and welfare of the community that the City enter into the Option to Purchase the land being offered for sale along the west side of Stoney Ridge Road at the western terminus of Mills Road for use as public property and authorize the Mayor to execute said Option in furtherance of said acquisition.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:**

Section 1 - That the Mayor is hereby authorized to enter into an Option to Purchase Agreement with Marilyn Mikulic, Successor Trustee of the John J. Mikulic Trust dated April 28, 2009, to acquire two parcels of land located along the west side of Stoney Ridge Road at the western terminus of Mills Road in the City of Avon, Permanent Parcel Nos. 04-00-012-101-023 & 04-00-012-101-077 (33.93 acres). Said Option Agreement, in substantially the form set forth in Exhibit A, is attached hereto and incorporated herein by reference.

Section 2 - Council hereby authorizes the payment of funds from the General Fund No. 101 in an amount equal to that set forth in the Option to Purchase Agreement, together with any costs of closing in the event the Mayor elects to exercise the Option. Payment is to be made pursuant to the directives of the Finance Director who is authorized to increase the appropriation by a reasonable amount to cover any engineering, legal and closing fees associated with this purchase.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open

meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity for the City to enter into the Option to Purchase Agreement in time to submit its application for possible funding to Clean Ohio Grant Program; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: September 5, 2023 DATE SIGNED: September 5, 2023

By: Brian Fischer  
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: September 5, 2023

[Signature]

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior  
John A. Gasior, Law Director

ATTEST:

Barbara Brooks  
Barbara Brooks, Clerk of Council

Posted: September 7, 2023  
Electronically and at City Hall as  
Provided by Council

Prepared By:

John A. Gasior, Esq.  
Law Director, City of Avon

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 100-23, passed by the Council of said City on September 5, 2023.

IN WITNESS WHEREOF, I have on this 6th day of September, 2023, affixed my signature and official seal.

Barbara J. Brooks  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio

## **REAL ESTATE OPTION AGREEMENT**

This Option Agreement ("Agreement") is made and entered into as of the date of last execution hereof (the "Effective Date") by and between Marilyn Mikulic, Successor Trustee of the John J. Mikulic Trust dated April 28, 2009, ("Seller"), and the City of Avon, Ohio, an Ohio municipal corporation, (the "Buyer" or "City").

### **Witnesseth:**

Whereas, Seller is the owner of a parcel of real property consisting of 33.93 acres of land located in the City of Avon, Ohio and designated by the Lorain County Auditor as Permanent Parcel Nos. 04-00-012-101-023 and 04-00-012-101-077, hereinafter referred to as "Seller's Property"; and

Whereas, the City desires to acquire an option to purchase Seller's Property consisting of approximately 33.93 acres.

In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

**1. Grant of Option.** In consideration of payment set forth below (the "Option Fee"), Seller hereby gives and grants to the City the exclusive right, privilege and option ("Option") during the Option Period (defined below) to purchase the Property for the total sum ONE MILLION TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,200,000.00), (the "Purchase Price).

**2. Description of the Property and Property Split.** The Property consists of 33.93 acres by the Lorain County Auditor as Lorain County Permanent Parcel Nos. 04-00-012-101-023 and 04-00-012-101-077. (See Exhibit A)

**3. Option Period; Exercise.** The Option shall be exercisable at any time during the Option Period. The "Option Period" shall commence on the Effective Date and shall expire on October 1, 2025, subject however to earlier termination as provided below.

**4. Option Fees and Purchase Price.** On or before October 1, 2023, the City shall pay directly to Seller the sum Twenty-Five Thousand Dollars (\$25,000.00) as an option fee. In order to preserve the Option, the City shall thereafter pay the following additional option fees at the following times:

- a. On or before January 1, 2024, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00); and
- b. On or before April 1, 2024, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00); and
- c. On or before July 1, 2024, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00); and
- d. On or before October 1, 2024, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00).

- e. On or before January 1, 2025, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00).
- f. On or before April 1, 2025, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00).
- g. On or before July 1, 2025, an additional option fee of Twenty-Five Thousand Dollars (\$25,000.00).

Each option fee listed above shall be **NON-REFUNDABLE**, and paid directly to Seller. If any of the installments of the option fee are not made within thirty (30) business days of the date payment is required, the Option and this Agreement may be terminated and the City will have no other or further right or option to purchase the Premises. Notice of termination shall be in writing and comply with Paragraph 11, below. Each option fee is applicable to the Purchase Price. Accordingly, if all of the above option fees are paid, the City will be credited and the Seller shall be charged the total sum of Two Hundred Thousand Dollars (\$200,000.00) on account of payment of these option fees. If the City shall exercise the Option prior to the time the City pays the remaining scheduled option fee(s), the City shall be credited and the Seller shall be charged with an amount that is equal to the sum of option fees paid as of the date of exercise of the Option.

The City may elect to pay an amount which is more than the amount set forth above from time to time or at any time and in such case, shall be credited and the Seller will be charged with the amount of any such additional payment.

**5. Environment Reports.** On or before March 1, 2024, City may obtain at its expense a current Phase I and/or Phase II environmental report as to the Property. In the event City is not satisfied with the Phase I/Phase II report, City may terminate the Agreement.

**6. Terms of Sale.** If the City exercises the Option, then this Agreement shall constitute an agreement of purchase and sale for the Premises, to be consummated in accordance with the following terms and conditions:

- (a) The balance of the Purchase Price shall be paid in cash at Closing.
- (b) Transfer of the Premises shall be by limited warranty deed (the "Deed"), conveying to the City fee simple title, free and clear of all liens and encumbrances, except (i) real estate taxes and assessments not due and payable; (ii) zoning and building ordinances and governmental regulations; (iii) easements, restrictions, conditions, limitations, reservations, rights of way and other encumbrances of record. Seller shall discharge, at Seller's sole cost and expense, at or prior to the Closing, any and all mortgage, mechanic or judgment liens caused by Seller ("Monetary Liens").
- (c) At Closing or sometime prior thereto, the Escrow Agent shall furnish the City with an ALTA Fee Policy of Title Insurance (the "Title Policy") issued by Network Land Title Agency, (the "Title Company") in an amount equal to the Purchase Price, insuring the City that title to the Premises is in the condition required by this Agreement.

The escrow agent and title agent for this transaction shall be Network Land Title Agency, 105 Cleveland Street, Elyria, Ohio 44035 (440) 322-5300, (the "Escrow Agent"). Once the City obtains the title commitment for the Property, it will forward the same to Seller. If the Commitment discloses any exceptions to title, other than the Title Company's standard exceptions, liens for current real estate taxes and installments of assessments, to which Buyer objects, then Buyer shall have sixty (60) days after the date of Seller's acceptance of this offer to notify Seller of Buyer's objection. In such event, Seller shall have sixty (60) days after such notice from Buyer to remedy such defects. If Seller does not cure such defects within such sixty-day period, then (i) Buyer may elect to terminate this Agreement (in which event all money paid by Buyer or deposited in escrow shall be returned to Buyer) or (ii) Buyer may accept such title as Seller is able to convey without reduction of the Purchase Price. Buyer's failure to notify Seller of Buyer's election within five (5) days after the expiration of such sixty-day period shall be deemed to be an election by Buyer to accept such title as Seller is able to convey.

(d) This Agreement shall serve as escrow instructions, subject to the Escrow Agent's standard conditions of acceptance to the extent not contrary to any of the terms hereof.

(e) All documents and funds pertaining to the purchase of the Premises shall be deposited in escrow with the Escrow Agent in time to permit the Closing to occur on a date (the "Closing Date") which is no later than October 1, 2025. The term "Closing" means the recording of the Deed and the disbursement of funds by the Escrow Agent in accordance with the terms hereof. Closing Date means the date the Deed is recorded.

(f) If and when the Title Company will issue the above-required evidence of title and the Escrow Agent has received all funds and documents to be deposited hereunder, the Escrow Agent shall cause the Deed to be filed for record and the funds to be disbursed in accordance with this Agreement. The Escrow Agent also shall timely file all forms, notices and documents required to be filed with the Internal Revenue Service in connection with the sale of real property.

(g) On the Closing Date, real estate taxes and assessments shall be apportioned as of the Closing Date according to the calendar year, using the last available County Treasurer's tax duplicate.

(h) Sole and exclusive possession of the Premises shall be tendered by Seller to the City at Closing, except as provided herein.

(i) The Escrow Agent shall charge Seller with any transfer tax and any amounts due to the City on account of prorations. The Escrow Agent shall charge the Buyer with the full cost of escrow, title examination, title insurance policy, (title commitment), recording fees, and all other traditional costs of closing.

6. **Naming.** Buyer agrees to use the real property as a park and not a housing development. Furthermore, Buyer agrees to incorporate the Mikulic name into the name of the park.

7. **Representations.** Seller represents and warrants to the City that Seller owns the Property in fee simple absolute and has the right to sell the Property to the City in accordance with the terms of this Agreement. Except as specifically set forth in this Agreement, no representation or warranty concerning the Premises, its condition or its fitness for the City's purpose is made hereunder. The City acknowledges that it has had the unrestricted ability to inspect and conduct field testing and surveying and that it has inspected the Premises and that it is not relying on any representation or warranty of Seller concerning the Premises. The sale resulting from exercise of the Option granted herein is made on an absolute "as-is" basis.

8. **Default.** If Buyer fails to close this sale and is in default hereunder, Seller may terminate this Agreement. Buyer shall pay all escrow fees and title examination charges and the cost of any title insurance commitment issued by Title Company, and thereafter both parties shall be relieved of all further obligations under this Agreement, other than those that are specifically stated to survive the termination of this Agreement. If Seller fails to close this sale and is in the default hereunder, Buyer may demand specific performance of this agreement or terminate this Agreement, and thereafter both parties shall be relieved of all further obligations under this Agreement, other than those that are specifically stated to survive the termination of this Agreement.

9. **Broker.** The City and Seller hereby represent and warrant to each other that no real estate broker or salesman is involved in this transaction.

10. **Foreign Person.** Seller represents and warrants that Seller is not a "non-resident alien," "foreign person" or "foreign entity," and Seller agrees to provide the Escrow Agent at Closing with an appropriate affidavit in the form required by the Internal Revenue Service.

11. **Notices.** Any notification provided for herein must be in writing and shall be deemed to have been given when sent via overnight courier to the parties as follows:

If to Seller: Amanda Cooke-Szczepanski  
Attorney for Marilyn J. Mikulic, Successor Trustee of  
the John J. Mikulic Trust dated April 28, 2009  
5320 Hoag Drive, Suite C  
Sheffield Village, Ohio 44035

Marilyn J. Mikulic, Successor Trustee of  
the John J. Mikulic Trust dated April 28, 2009  
4790 Stoney Ridge Rd.  
Avon, Ohio 44011

If to the City: Brian K. Jensen, Mayor  
The City of Avon, Ohio  
36080 Chester Road  
Avon, Ohio 44011

With copy to:

John Gasior, Esq.  
Law Director  
The City of Avon, Ohio  
36080 Chester Road  
Avon, Ohio 44001

**11. Assigns.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns. Buyer reserves the right to assign this Agreement and to take title to the Property in the name of such nominee or assignee, provided that such nominee or assignee shall assume in writing all of Buyer's obligations hereunder. Such assignment and assumption shall not relieve Buyer of Buyer's obligations under this Agreement.

**12. Definitions; Binding Effect.** Each person signing this Agreement in a representative capacity individually warrants his or her authority to do so. However, the Mayor's signature is not valid until City Council has authorized execution of this agreement by ordinance. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

**13. Entire Agreement.** This Agreement contains the entire agreement between Seller and the City with respect to the subject matter hereof, and the parties hereto are not bound by any agreements, understandings and conditions except those stipulated herein. This Agreement may only be amended by written instrument executed by each party hereto.

**14. Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart, electronic copy or photocopy may be appended to any other counterpart and when so appended will constitute an original.

Marilyn J. Mikulic, Trustee of the  
John J. Mikulic Trust

By: Marilyn Mikulic  
Trustee

Dated: 8/30/2023

Instrument Prepared by:

John A. Gasior, Esq.  
36815 Detroit Rd.  
Avon, Ohio 44011  
440-934-7676  
jagasior@ssgavonlaw.com

The City of Avon, Ohio

By: [Signature]  
Bryan K. Jensen, Mayor

Dated: 9/5/23

## EXHIBIT A

### Parcel No. 1:

Situated in the City of Avon, County of Lorain and State of Ohio, and known as being part of Original Avon Township Section No. 12 and bounded and described as follows: Beginning in the Westerly line of said Section No. 22 at the Northwest corner of land conveyed to Mike Evko and Kata Evko by deed dated October 10, 1940, and recorded in Volume 307, Page 314, Lorain County Records of Deeds; thence Easterly in the Northerly line of said land so conveyed to Mike Evko and Kata Evko, a distance of about 1310.75 feet to the Westerly line of land conveyed to Wilson L. Moore and Barbara Moore by deed dated February 20, 1908, and recorded in Volume 434, Page 195, Lorain County Records of Deeds; thence Northerly in the Westerly line of land so conveyed to Wilson L. Moore and Barbara Moore to the Southeast corner of land conveyed to Joseph Holowecki and Arm Holowecki by deed dated February 4, 1947, and recorded in Volume 406, Page 477, Lorain County Records of Deeds; thence Westerly in the Southerly line of land so conveyed to Joseph Holowecki and Ann Holowecki to the westerly line of said Section No. 22; thence Southerly in the Westerly line of said Section No. 12, to the place of beginning, and containing within said bounds about 13.89 acres of land, be the same more or less.

Permanent Parcel No. 04-00-012-101-023

### Parcel No. 2:

Situated in the County of Lorain in the State of Ohio and in the city of Avon: And known as being part of Original Avon Township Section No. 12 and bounded and described as follows: Beginning at a railroad spike set at the intersection of the centerline of Ridgeville-Lorain Road and the South line of Section No. 12 of the the South line of Avon Village; thence North 87 deg. 33' West along the South line of said Section No. 12 a distance of 1578.78 feet to an iron pin found set in the Southwest corner of said Section No. 12; thence North 2 deg. 49' East along the Westerly line of said Section No. 12 a distance of 605.12 feet to the South line of land now or formerly owned by Katie Leonard and others; thence South 86 deg. 47' East along Leonard's South line, a distance of 1310.75 feet; thence South 2 deg. 24' West a distance of 175.31 feet to the Southwesterly corner of land conveyed to John Joseph Mikulic by deed recorded June 6, 1979 in Deed Volume 1236, Page 208 of Lorain County Records; thence South 87 deg. 40' 00" East along the Southerly line of said John Joseph Mikulic land a distance of 360.52 feet to a point in the centerline of Stoney Ridge Road; thence South 18 deg. 22' 00" West along the centerline of Stoney Ridge Road a distance of 166.48 feet to the Northeast corner of landed conveyed to John Mikulic and Mary Mikulic by deed dated January 26, 1988 and recorded in Official Records Volume 49, Page 651 of Lorain County Records; thence North 87 deg. 40' 00" West 400.00 feet to an iron pin; thence South 2 deg. 20' 00" West 114.00 feet to an iron pin; thence South 87 deg. 40' 00" East 367.24 feet to a point in the centerline of Stoney Ridge Road; thence South 18 deg. 22' 00" West in said centerline a distance of 144.40 feet to the place of beginning, and containing within said bounds about 20.06 acres of land, be the same more or less, but subject to all legal highways.

Permanent Parcel No. 04-00-012-101-077