

RESOLUTION NO. R-13-23

A RESOLUTION DECLARING IT NECESSARY TO IMPROVE CHESTER ROAD BY THE CONSTRUCTION AND RECONSTRUCTION OF APPROXIMATELY 475 LINEAL FEET OF CHESTER ROAD, TOGETHER WITH ALL NECESSARY APPURTENANCES AND RELATED IMPROVEMENTS THERETO AND DECLARING AN EMERGENCY

WHEREAS, the owner of 100% of the lots and lands to be assessed for the public improvements described in Section 1 of this Resolution has executed and filed with this Council an affidavit and petition dated February 24, 2023, attached to this Resolution as *Exhibit A* (the "Petition") and *Exhibit B* (Cognovit Guaranty) requesting such public improvements.

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

Section 1 – That Council declares it necessary to improve Chester Road by the construction and reconstruction of approximately 475 lineal feet of Chester Road, including but not limited to widening that portion of Chester Road from a two-lane road to a three-lane road, water main and drainage improvements, and street improvements, as more particularly described in *Exhibit B to the Petition* (the "Public Improvements"), together with all necessary appurtenances and related improvements.

Section 2 – That the Public Improvements shall be constructed as shown on the plans and specifications referred to below and now on file in the office of the Clerk of Council.

Section 3 – That the Public Improvements are so situated in relation to each other that in order to complete the Improvements in the most practical and economic manner, they should be improved at the same time, with the same kind of materials and in the same manner and, accordingly, shall be treated as a single improvement in accordance with Revised Code Section 727.09.

Section 4 – That it is determined and declared that (a) the Public Improvements are conducive to the public health, convenience, and welfare of the City and the inhabitants of the City, and (b) the assessed lands, which consist of the Property described in the Petition, are specially benefitted by the Public Improvements.

Section 5 – That the plans, specifications, estimate of cost, and profiles of the Public Improvements, prepared by Ryan E. Cummins, P.E., Chagrin Valley Engineering, Ltd. (the "Design Engineer") and now on file in the office of the Clerk of this Council, are approved.

Section 6 – That the method of levying the Special Assessment shall be in proportion to the benefits received, allocated among the parcels constituting the Property, as set forth in the Petition.

Section 7 – That the total cost of the Public Improvements shall include: (a) the cost of preliminary and other surveys, plans, specifications, profiles, and estimates and of printing, serving and publishing notices, resolutions and ordinances; (b) the amount of damages resulting from the improvement assessment in favor of any owner of land affected by the improvement and the interest thereon; (c) the cost incurred in connection with the preparation, levy, and collection of the special assessments; (d) the cost of purchasing, appropriating, and otherwise acquiring therefor any required real estate or interests therein; (e) expenses of legal services including obtaining an approving legal opinion, if any, in connection with the issuance of bonds and notes to finance the Public Improvements; (f) the cost of labor and materials; (g) interest securities issued in anticipation of the levy and collection of the special assessments, if any; and (h) all other necessary and incidental expenditures.

The total estimated costs of the Public Improvements are set forth in *Exhibit C* attached to the Petition. The costs of the Public Improvements shall be assessed upon the Property and, as set forth in the Petition, the assessment for such purpose is estimated to be \$416,310.00 (the “Special Assessments”), which amount shall be paid as specified in the Petition.

Special Assessments shall be levied and collected even though the Project has not commenced. The provisions of the Petition are ratified, adopted, and approved, and incorporated into this Resolution as if set forth in full in this Resolution.

Section 8 – That the Design Engineer is authorized and directed to prepare and file in the office of the Clerk of Council the estimated assessments of the cost of the Public Improvements.

Section 9 – That as set forth in the Petition, the Special Assessments to be levied shall be paid in 20 annual installments (each annual installment to be payable semi-annually at the time real estate taxes in Lorain County, Ohio are payable), with interest on deferred payments at the rate that would be substantially equivalent to the fair market rate that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City.

Section 10 – That the City does not intend to issue securities in anticipation of the levy or the collection of the Special Assessments.

Section 11 – That each capitalized term not otherwise defined in this Resolution or by reference to another document has the meaning given to such term in the Petition, which Petition is hereby accepted.

Section 12 – 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 Resolution 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, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 13 – That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of

Resolution R-13-23 (Con't.)

Avon, the immediate emergency being the necessity of the City to begin construction as soon as possible within the current construction season and to assist the development of the lots and lands to be assessed; therefore, this Resolution shall be in full force and effect immediately upon its passage and approval of the Mayor.

PASSED: _____ DATE SIGNED: _____

By: _____
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Barbara Brooks, Clerk of Council

Posted: _____
Electronically and at City Hall
as Provided by Council

EXHIBIT A
to Resolution No. R-13-23
PETITION

**AFFIDAVIT
AND
PETITION FOR SPECIAL ASSESSMENTS**

Feb. 24, 2023

To the Council of the City of Avon, Ohio:

Avon Pointe Campus Association, Inc., an Ohio non-profit corporation (the "Property Owner") is the owner of 100% of the real property described on *Exhibit A* (the "Property") attached to this Affidavit and Petition for Special Assessments (this "Petition").

The Property Owner acknowledges that the Property will benefit from the construction and reconstruction of a portion of approximately 475 lineal feet of Chester Road, in the City of Avon, Ohio (the "City"), including but not limited to widening that portion of Chester Road from a two-lane road to a three-lane road, water main and drainage improvements, and street improvements, and all necessary appurtenances, as more particularly described on *Exhibit B* attached to this Petition (collectively, the "Public Improvements"), which will facilitate the development of the Property and increase accessibility to the Property.

The Property Owner hereby petitions the City for the construction of the Public Improvements, requests that one hundred percent (100%) of the costs of the Public Improvements be specially assessed against the Property, as set forth in this Petition, and acknowledges and agrees that such assessments may include any amounts necessary to reflect (a) 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, or (b) interest on funds advanced by the City to pay costs of the Public Improvements in anticipation of the levy and collection of the special assessments. The special assessments may be re-allocated among the benefited parcels comprising the Property on a per-acre basis, as provided below.

The Property Owner acknowledges and agrees that the Property includes all 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.

The Property Owner, acting through its authorized representative, further deposes and states that this Petition and the actions provided for in this Petition 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.

The Property Owner states that it is the sole owner of one hundred percent (100%) 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 described on *Exhibit A*. Acting pursuant to Chapter 727, Ohio Revised Code (the "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 \$416,310 (\$466,310 total estimated cost, less \$46,000 estimated engineering costs and \$4,000 estimated surveying costs, which will be paid by the City), 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. 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, consolidated, 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. 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.

In connection with this Petition and in furtherance of the purposes of this Petition, 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 of this Petition, 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.

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,
- (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 City 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 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.

The Property Owner further requests and agrees that the special assessments, including interest on those special assessments, 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. If the City does not issue notes or bonds in anticipation of the collection of the special assessments, the rate of interest on the funds advanced by the City to pay the costs of the Public Improvements will be computed at a rate or rates of interest determined by the Council of City in the assessing ordinance in accordance with Section 727.28(B) of the Revised Code. 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 may be capitalized to the extent permitted by law and included in the cost of the Public Improvements.

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 above), 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.

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.

If the City does not issue notes or bonds in anticipation of the collection of the 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.

The Property Owner, for itself and its successors and assigns, further agrees and consents to the Council of the City promptly proceeding with all actions necessary to facilitate the acquisition, construction, reconstruction, installing, and equipping the Public Improvements and to impose the Special Assessments, and further agrees and consents that all legislation required to be enacted to permit the Public Improvements to commence may, in the City Council's discretion, be enacted at one City Council meeting.

The Property Owner consents and requests that the special assessments shall be levied and collected without limitation as to the value of the Property. In addition, the Property Owner waives notice and publication of all resolutions, legal notices, and hearings provided for in the Revised Code with respect to the special assessments and Public Improvements, and consent to proceeding with the Public Improvements. Without limiting the foregoing, the Property Owner 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 right to file an objection to the special assessments under Section 727.15 of the Revised Code;

(d) 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;

(e) 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, 727.14, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

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

(g) 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;

(h) any right to seek a deferral of payments of special assessment under section 727.251 of the Revised Code; and

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

The Property Owner further waives any and all questions as to the constitutionality of the laws under which Public Improvements will be acquired, installed, equipped and improved or the proceedings relating to the acquisition, installation, equipment, and improvement of the Public Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, equipment, and improvement of the Public Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Public Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Revised Code Title 7, and specifically but without limitation, Revised Code Chapter 727, as well as all such similar rights under the Constitution of the State of Ohio and the Charter of the City. The Property Owner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Public Improvements, the estimated assessments, the final assessments, and any special assessments levied against the Property for the Public Improvements, or any other matters related to the foregoing.

To the fullest extent permitted by law, the Property Owner agrees to indemnify, hold harmless and defend the City, its officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable and documented fees and expenses of attorneys, consultants, accountants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) that the Indemnified Parties or any of them may incur, or to which the Indemnified Parties or any of them may become subject, under any statutory law (including federal or state securities laws) or at common law, or otherwise, arising out of or based upon or in any way relating to this Petition, the special assessments, and any proceedings related to the special assessments.

The Property Owner acknowledges and understands that the City will be relying upon this Petition in taking actions pursuant to it and expending resources. Accordingly, this Petition shall be irrevocable and shall be binding upon the Petitioner, any successors, assigns, or affiliates of the Petitioner, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

The Property Owner further deposes and states that this Petition and actions provided for in this Petition 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 is available for inspection at the office of the Clerk of Council of the City.

The Property Owner represents and warrants that it will cause one of its members, Brady-Cam I, LLC, an Ohio limited liability company, to provide to the City a Cognovit Guaranty in the form attached as ***Exhibit D*** to guarantee to obligations of the Property Owner to pay special assessments and other obligations related to this Petition and the Public Improvements.

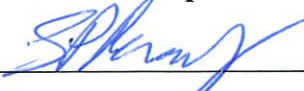
The Property Owner represents and warrants to the City that this Petition has been duly authorized, signed, and delivered by the Property Owner, and that this Petition is a valid and binding obligation against the Property Owner, enforceable in accordance with its terms.

The undersigned certifies that the undersigned is authorized to sign this Petition on behalf of the Property Owner.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned authorized representative of the Property Owner has duly executed this Petition on behalf of the Property Owner as of the date first above written.

Avon Pointe Campus Association, Inc.

By: 

Print Name: Shaun P. Brady

Title: President

STATE OF OHIO)
)
COUNTY OF LORAIN)

SS:

This is an acknowledgement clause. No oath or affirmation was administered to the signer with regard to the notarial act.

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Shaun P. Brady, as President of Avon Pointe Campus Association, Inc., LLC, who acknowledged that [he/she] did sign the foregoing instrument on behalf of Avon Pointe Campus Association, Inc. and that the same is his free act and deed both individually and as President.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 24th day of February 2023.


Official Signature of Notary

(Official Seal)



RONALD D YACOBOZI
Notary Public
State of Ohio
My Comm. Expires
June 21, 2026

Notary's printed or typed name

Exhibit A

The Property

Permanent Parcel Nos. 0400009000183, 0400009000184, and any additional parcels numbers (and as all such parcels may be consolidated, split, or re-numbered) that may comprise the private roadway located at American Way, Avon, Ohio 44011, as further depicted and highlighted on the site plan below.

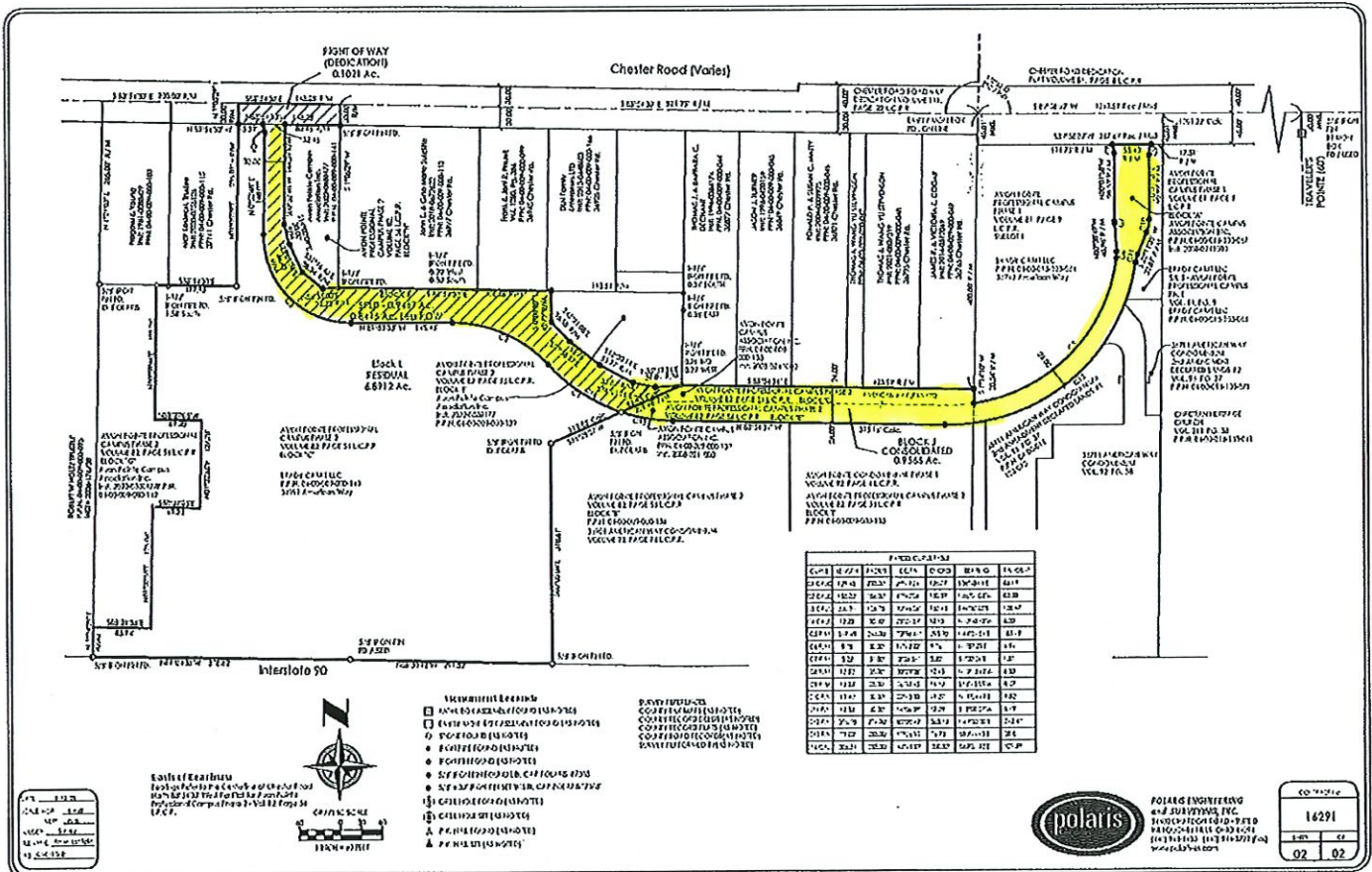


EXHIBIT B

DESCRIPTION OF THE PUBLIC IMPROVEMENTS

The Public Improvements shall consist of the construction and reconstruction of a portion of approximately 475 lineal feet of Chester Road, in the City of Avon, Ohio (the "City"), including but not limited to widening that portion of Chester Road from a two-lane road to a three-lane road, water main and drainage improvements, and street improvements, and all necessary appurtenances, all as a part of the complete widening of Chester Road from American Way West to American Way East to be undertaken by the City, including the widening of approximately 740 lineal feet of Chester Road in front of the Concord Village housing development.

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 Public Improvements will be coordinated with existing widening of Chester Road from American Way West to American Way East, including the portion of Chester Road fronting the Concord Village housing development.
- The Property Owner will donate approximately 10 feet of right-of-way along the frontage of American Way West to facilitate the Public Improvements.
- Temporary easement given to the City.

Exhibit C to Petition

Updated January 12, 2023

CHESTER ROAD WIDENING IMPROVEMENTS (AMERICAN WAY WEST TO AMERICAN WAY EAST) ESTIMATE OF PROJECT COSTS AND DEVELOPER COST SPLITS

Prepared By: Chagrin Valley Engineering, Ltd., 36839 Detroit Rd., Avon, Ohio 44011, Ryan Cummins, P.E., City Engineer

Project Description: The following is a breakdown of the Preliminary Estimate of Project Costs for the Complete Chester Road Widening from American Way West to American Way East and the separate Chester Road widening sections at American Way West and Concord Village. Each of these projects assume that any needed property rights along the frontage of the American Way West and Concord Village Properties will be donated to the City of Avon. The Complete Chester Road Widening Project will be approximately 1,625 feet in length. While the extent of the improvements need to complete each section vary, the American Way West section is approximately 395 feet in length and the Concord Village section is approximately 468 feet in length. This proposed project will consist of asphalt pavement widening, asphalt pavement planing, resurfacing with a 3-inch asphalt pavement overlay, reconfiguration of intersection turn-outs, removal and replacement of curb, pavement repairs as needed, 6' wide concrete multi-purpose trail, storm sewer and catch basin reconfigurations, structure adjustments, 12-inch water main replacement, traffic signage upgrades and pavement markings. The existing 22-foot-wide roadway will be widened to a 37-foot-wide roadway. The project will provide (2) - 12 foot through lanes and an 11-foot center left turn lane to reduce the current left-hand turning gaps in both directions along Chester Road. A left-turn-only lane will be provided for the American Way (West)/Chester Road intersection. This roadway widening will meet the current (3) lane Chester Road at the east end of the project.

CHESTER ROAD WIDENING IMPROVEMENTS (AMERICAN WAY WEST TO AMERICAN WAY EAST)	
SUBTOTAL CONSTRUCTION COSTS	\$1,950,936.00
CONTINGENCY @ 10%	\$191,000.00
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$2,141,936.00
SURVEYING	\$12,500.00
CONSTRUCTION STAKING	\$30,000.00
GEOTECHNICAL INVESTIGATIONS	\$3,600.00
ENGINEERING	\$133,000.00
CONSTRUCTION INSPECTION @ 6%	\$117,000.00
TOTAL PROFESSIONAL SERVICES	\$296,100.00
TOTAL PROPERTY EASEMENT COSTS PAID	\$164,000.00
TOTAL ESTIMATE OF PROJECT COSTS	\$2,602,036.00
CVE ADJUSTED CONCORD VILLAGE - CHESTER RD. WIDENING IMP. - Settlement Memorialized in Ord. No. 24-21	
SUBTOTAL CONSTRUCTION COSTS	\$275,822.25
CONTINGENCY @ 10%	\$27,000.00
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$302,822.25
	Items below were costs already incurred by the developer (in parentheses)
SURVEYING	\$4,000.00 (\$4,000.00)
CONSTRUCTION STAKING	\$5,000.00
GEOTECHNICAL INVESTIGATIONS	\$3,000.00
ENGINEERING	\$40,700.00 (\$40,700.00)
CONSTRUCTION INSPECTION @ 6%	\$16,500.00
TOTAL PROFESSIONAL SERVICES	\$69,200.00
	Revised Total less Completed Items
TOTAL ESTIMATE OF PROJECT COSTS	\$372,022.25 \$327,322.25
AMERICAN WAY WEST - CHESTER ROAD WIDENING IMPROVEMENTS - Estimated Costs for Polaris Eng. Layout Extents	
SUBTOTAL CONSTRUCTION COSTS	\$353,310.00
CONTINGENCY @ 10%	\$35,000.00
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$388,310.00
	Items below were costs already incurred by the developer (in parentheses)
SURVEYING	\$4,000.00 (\$4,000.00)
CONSTRUCTION STAKING	\$5,000.00
GEOTECHNICAL INVESTIGATIONS	\$3,000.00
ENGINEERING	\$46,000.00 (\$46,000.00)
CONSTRUCTION INSPECTION @ 6%	\$20,000.00
TOTAL PROFESSIONAL SERVICES	\$78,000.00
	Revised Total less Completed Items
TOTAL ESTIMATE OF PROJECT COSTS	\$466,310.00 \$416,310.00
Note: The costs shown represent an estimate of probable construction costs prepared in good faith and reasonable care.	
Chagrin Valley Engineering, Ltd. has no control over the costs of construction labor, materials or equipment, nor over competitive bidding.	

EXHIBIT C

ESTIMATED COST OF THE PUBLIC IMPROVEMENTS

Exclusions: The incremental costs incurred by City to cause Chagrin Valley Engineering, Ltd. to prepare plans and specifications.

Construction	\$353,310
Contingency	35,000
Construction Staking	5,000
Geotechnical Investigations	3,000
Construction Inspection	<u>20,000</u>
Total Estimated Costs:	<u>\$416,310</u>

Certain estimated surveying costs (\$4,000) and engineering costs (\$46,000) are not included, as those costs will be paid by the City and not be subject to the special assessments.

EXHIBIT D

FORM OF COGNOVIT GUARANTY

[See Exhibit B to Resolution R-13-23 for actual Cognovit Guaranty]

EXHIBIT B
to Resolution No. R-13-23
COGNOVIT GUARANTY

COGNOVIT GUARANTY

This Cognovit Guaranty (this "Guaranty") is issued this 24 day of Feb., 2023 by Brady-Cam I, LLC, an Ohio limited liability company, hereinafter "Guarantor", in favor of the City of Avon, Ohio, an Ohio municipal corporation, hereinafter the "City", to guaranty the obligations of Avon Pointe Campus Association, Inc., an Ohio non-profit corporation, hereinafter "Avon Pointe," as further described below.

WITNESSETH:

Whereas, Avon Pointe is the owner of 100% of the real property described on *Exhibit A* attached hereto (the "Property"); and

Whereas, Avon Pointe has submitted an Affidavit and Petition for Special Assessments (the "Petition") to the City, whereby Avon Pointe petitioned the City for the construction and reconstruction of a portion of approximately 475 lineal feet of Chester Road, in the City, including but not limited to widening that portion of Chester Road from a two-lane road to a three-lane road, water main and drainage improvements, and street improvements, and all necessary appurtenances, as more particularly described on *Exhibit B* attached hereto (collectively, the "Public Improvements"); and

Whereas, per the terms of the Petition and the City's legislative and administrative proceedings undertaken pursuant to Chapter 727 of the Ohio Revised Code (the "Special Assessment Proceedings"), one hundred percent (100%) of the costs of the Public Improvements shall be levied and specially assessed against the Property, 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 is payable) (the "Special Assessments"); and

Whereas, the City has agreed to perform the Public Improvements only if the Special Assessments and related obligations are guaranteed by Guarantor as set forth herein.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees the full and punctual payment of the Special Assessments and the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to be observed and performed or paid or reimbursed by Avon Pointe under or relating to any of the Petition, the Special Assessments, the Special Assessment Proceedings, and the Public Improvements (collectively, the "Underlying Agreement"), plus all costs, expenses and fees (including the reasonable fees and expenses of City's counsel) in any way relating to the enforcement or protection of City's rights hereunder (collectively, the "Obligations").

2. Guarantor shall remain liable under this Guaranty in the event of any assignment or transfer of the Property by Avon Pointe. Guarantor agrees to promptly cure any default by Avon Pointe in the non-payment of the Obligations. If Avon Pointe fails to pay and perform all or any part of the Obligations when due, whether by default or otherwise, the undersigned immediately upon the demand of the City will pay to the City the amount due and unpaid by Avon Pointe as if such amount constituted the direct and primary obligation of the undersigned. The City shall not be required prior to any such demand on or payment by the undersigned to make any demand upon or pursue or exhaust any of its rights or remedies

against Avon Pointe or any other person obligated with respect to the Obligations or to pursue or exhaust any of its rights or remedies with respect this Guaranty. The City may enforce this Guaranty against the undersigned without any obligation to resort to Avon Pointe for the payment or to any other guarantor or any collateral, security, liens or other rights or remedies of the City.

3. Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) Any illegality, invalidity or unenforceability of any Obligation or the Underlying Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.

(b) Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the Underlying Agreement.

(c) Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.

(d) Any default, failure or delay, willful or otherwise, in the performance of the Obligations.

(e) Any change, restructuring or termination of the corporate structure, ownership or existence of Guarantor or Avon Pointe or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Avon Pointe or its assets or any resulting restructuring, release or discharge of any Obligations.

(f) Any failure of City to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Avon Pointe now or hereafter known to City, Guarantor waiving any duty of City to disclose such information.

(g) The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of Guarantor or any other guarantor or surety with respect to the Obligations.

(h) The failure of City to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Underlying Agreement or otherwise.

(i) The existence of any claim, set-off, counterclaim, recoupment or other rights that Guarantor or Avon Pointe may have against City (other than a defense of payment or performance).

(j) Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering the Underlying Agreement or any existence of or reliance

on any representation by City that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Guarantor.

4. Certain Waivers; Acknowledgments. Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) This Guaranty is a guaranty of payment and performance and not of collection. City shall not be obligated to enforce or exhaust its remedies against Avon Pointe or under the Underlying Agreement before proceeding to enforce this Guaranty.

(c) This Guaranty is a direct guaranty and independent of the obligations of Avon Pointe under the Underlying Agreement. City may resort to Guarantor for payment and performance of the Obligations whether or not City shall have resorted to any collateral therefor or shall have proceeded against Avon Pointe or any other guarantors with respect to the Obligations. City may, at City's option, proceed against Guarantor and Avon Pointe, jointly and severally, or against Guarantor only without having obtained a judgment against Avon Pointe.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty and any requirement that City protect, secure, perfect or insure any lien or any property subject thereto.

(e) Notwithstanding anything contained herein to the contrary, the Obligations of Guarantor shall be limited to the maximum amount so as to not constitute a fraudulent transfer or conveyance for purposes of the United States Bankruptcy Code or any applicable state law or otherwise to the extent applicable to this Guaranty and the Obligations of Guarantor hereunder.

(f) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by City upon the insolvency, bankruptcy or reorganization of Avon Pointe.

5. The obligations of the undersigned hereunder shall not be released, discharged or in any way affected nor shall the undersigned have any rights or recourse against the City by reason of any action the City may take or omit to take. Until the Obligations have been paid in full, the obligations of the undersigned hereunder shall not be released, discharged or in any way affected by reason of the fact that any of the Obligations may be invalid or unenforceable for any reason; nor by any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor.

6. Guarantor consents to and approves any and all amendments and/or modifications to the Special Assessments, the Special Assessment Proceedings or other part of the Underlying Agreement to

which Avon Pointe and the City shall agree from time to time, without limitation as to the number or nature of any such amendment and/or modification and irrespective of whether Guarantor is provided with notice of same.

7. Neither the City's forbearance from or delay in the exercise of any of the City's rights or remedies under the Underlying Agreement or Chapter 727 of the Ohio Revised Code, nor the City's insistence upon the strict performance of this Guaranty, shall be construed as a waiver by the City, unless expressed in writing and signed by City.

8. This Guaranty binds Guarantor and its permitted successors and assigns and inures to the benefit of the City, its successors and assigns; provided, however, that Guarantor may not, without the prior written consent of City, assign any of its rights, powers or obligations hereunder. City may assign this Guaranty and its rights hereunder without the consent of Guarantor. Any attempted assignment in violation of this section shall be null and void.

9. Guarantor represents and warrants to the City that:

(a) Guarantor is a duly organized and validly existing limited liability company in full force and effect in the State of Ohio;

(b) Guarantor has reviewed and understands this Guaranty;

(c) this Guaranty has been duly authorized by Guarantor, and is valid and legally binding upon Guarantor in accordance with its terms;

(d) the execution, delivery and performance of this Guaranty will not result in the violation by Guarantor of any contract, agreement, lease, loan, credit agreement, or instrument to which it is bound or any applicable law, rule, or regulation or any order, judgment or decree to which Guarantor or any of its assets may be subject;

(e) Guarantor is not in default in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing such indebtedness and no event has occurred which by notice, passage of time or otherwise would constitute such event of default;

(f) no action, temporary restraining order, injunction, suit or proceeding, or any inquiry or investigation, at law or in equity or before or by any court, public board, regulatory agency or body, pending or threatened against or affecting or involving the properties or businesses or any securities of such Guarantor or, to the knowledge of the Guarantor, any basis for any such action, temporary restraining order, injunction, suit, proceeding, investigation or inquiry, in each case that would prohibit the execution, delivery, validity or enforceability of any of the provisions of this Guaranty, or have a material adverse effect on the ability of each Guarantor to perform any of Guarantor's obligations under this Guaranty or materially and adversely affect the financial condition of such Guarantor;

(g) no statement contained in any certificate, schedule, list, financial statement or other instrument furnished by or on behalf of the Guarantor in connection with the Public Improvements, the Special Assessments, or the Underlying Agreements contains any untrue statement of any

material fact or omits to state any material fact necessary to make the statements contained herein or therein not misleading;

(h) any and all financial statements of Guarantor delivered to the City or the City's municipal advisors or counsel are true and correct in all material respects, have been prepared in accordance with sound accounting principles consistently applied, and fairly present the financial condition of the Guarantor as of the dates thereof. No materially adverse change has occurred in the financial condition of Guarantor reflected therein since the respective dates thereof; and

(i) Guarantor is currently solvent and the execution of this Guaranty shall not render the Guarantor insolvent or unable to pay its debts as they become due.

10. During the term of this Guaranty and so long as any of the Obligations are outstanding, the Guarantor shall, unless the City otherwise consents in writing:

(a) preserve and maintain its limited liability company existence and in good standing in the jurisdiction of its formation.

(b) keep adequate records and books of account, in which complete entries will be made and be consistently applied, reflecting all financial transactions of Guarantor.

(c) comply in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all material taxes, assessments and governmental charges imposed upon it or upon its property, except to the extent the same are being contested in good faith and adequate reserves for the payment thereof have been established.

11. During the term of this Guaranty and so long as any Obligations are outstanding, the Guarantor shall not, unless the City shall otherwise consent in writing, wind up, liquidate or dissolve itself, reorganize, merge or consolidate into any individual or corporation, limited liability company, partnership, agency, trust, estate, joint venture or other entity (each, a "Person"), or convey, sell, assign, transfer, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets or this Guaranty (whether now owned or hereafter acquired) to any Person.

12. This Guaranty shall be deemed to have been executed and delivered in the County of Lorain and State of Ohio. This Guaranty shall be governed by and construed under and in accordance with the laws of the State of Ohio.

13. In the event that any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal and unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. This Guaranty shall continue in full force and effect until all Obligations have been paid and performed in full.

15. The Guarantor shall make all payments required hereunder, free of any deductions, and without abatement, deduction or set-off.

16. Each right, remedy and power hereby granted to City or allowed it by applicable law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by City at any time or from time to time.

17. This Guaranty constitutes the sole and entire agreement of Guarantor and City with respect to the subject matter hereof and supersedes all previous agreements or understandings, oral or written, with respect to such subject matter. No amendment or waiver of any provision of this Guaranty shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective. Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guaranty. Delivery of this Guaranty by facsimile or in electronic (i.e., pdf or tif) format shall be effective as delivery of a manually executed original of this Guaranty.

18. **CONFESSION OF JUDGEMENT.** Guarantor hereby authorizes any attorney at law to appear in any court of record in the State of Ohio or any other state or territory of the United States, after the Obligations become due, and waive the issuance and service of process, enter an appearance and confess a judgment against Guarantor in favor of the City, for the amount then appearing due, together with costs of suit, and thereupon to release all errors and waive all rights of appeal and stays of execution. Guarantor hereby expressly (a) waives the conflict of interest if an attorney is retained by the City, confessing judgment against Guarantor on this Guaranty, and (b) consents to the attorney retained by the City receiving a legal fee from the City for legal services rendered for confessing a judgment against Guarantor upon this Guaranty. A copy of this Guaranty, certified by the City, may be filed in each such proceeding in place of the filing of the original as a warrant of attorney. Guarantor expressly acknowledges that the within warrant of attorney shall be deemed a continuing warrant of attorney and shall not be extinguished or terminated by reason of its having been utilized once or more than once against Guarantor and that the within warrant of attorney shall survive the entry of any judgment hereon and shall remain in effect as long as any amounts due hereon remain unpaid. The liquidation or dissolution of Guarantor shall not impair the authority or rights herein granted. Notwithstanding the foregoing, no such action may be taken unless Guarantor has failed to pay and perform the Obligations within ten (10) after receipt of the written demand referenced in Section 2 above.

[signature page follows]

Executed as of the date first written above.

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

Brady-Cam I, LLC

By: _____

Print Name: Shaun P. Brady

Title: Manager

STATE OF OHIO :
COUNTY OF LORAIN : SS

Before me a Notary Public, in and for said County and State, personally appeared Shaun P. Brady, who is the Manager of Brady-Cam I, LLC, an Ohio limited liability company, who acknowledged that he executed the foregoing Guaranty and the same is his free act and deed and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Lorain County, Ohio this 24th day of February, 2023.

Notary Public



RONALD D YACOBOZZI
Notary Public
State of Ohio
My Comm. Expires
June 21, 2026

Signature Page to Guaranty

Exhibit A

The Property

Permanent Parcel Nos. 0400009000183, 0400009000184, and any additional parcels numbers (and as all such parcels may be consolidated, split, or re-numbered) that may comprise the private roadway located at American Way, Avon, Ohio 44011, as further depicted and highlighted on the site plan below.

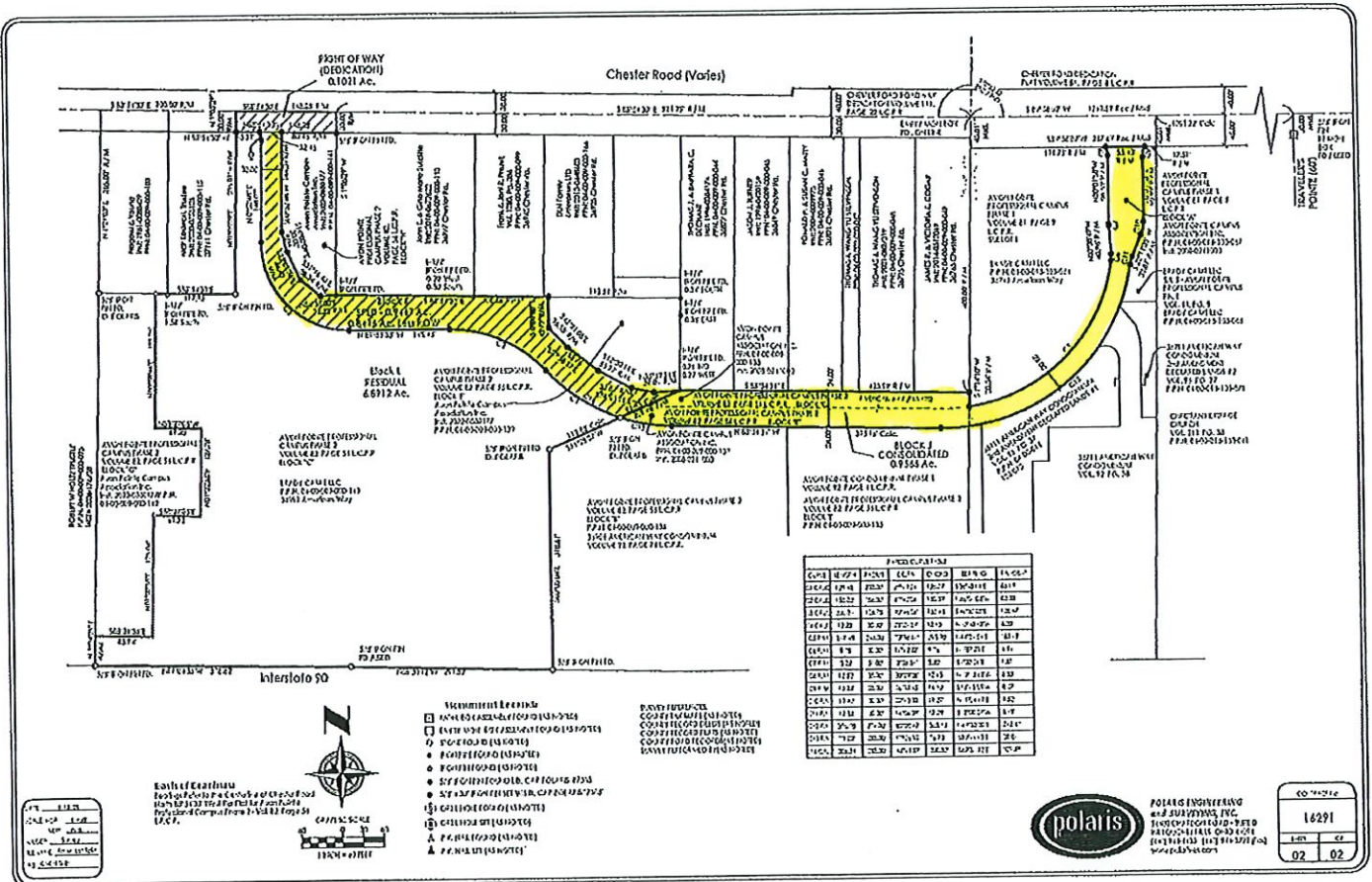


Exhibit B

Description of the Public Improvements

The Public Improvements shall consist of the construction and reconstruction of a portion of approximately 475 lineal feet of Chester Road, in the City of Avon, Ohio (the "City"), including but not limited to widening that portion of Chester Road from a two-lane road to a three-lane road, water main and drainage improvements, and street improvements, and all necessary appurtenances, all as a part of the complete widening of Chester Road from American Way West to American Way East to be undertaken by the City, including the widening of approximately 740 lineal feet of Chester Road in front of the Concord Village housing development.

EXHIBIT C
to Resolution No. R-13-23
ENGINEER'S ESTIMATE

Exhibit "C" to R-13-23

Updated January 12, 2023

CHESTER ROAD WIDENING IMPROVEMENTS (AMERICAN WAY WEST TO AMERICAN WAY EAST) ESTIMATE OF PROJECT COSTS AND DEVELOPER COST SPLITS

Prepared By: Chagrin Valley Engineering, Ltd., 36839 Detroit Rd., Avon, Ohio 44011, Ryan Cummins, P.E., City Engineer

Project Description: The following is a breakdown of the Preliminary Estimate of Project Costs for the Complete Chester Road Widening from American Way West to American Way East and the separate Chester Road widening sections at American Way West and Concord Village. Each of these projects assume that any needed property rights along the frontage of the American Way West and Concord Village Properties will be donated to the City of Avon. The Complete Chester Road Widening Project will be approximately 1,625 feet in length. While the extent of the improvements need to complete each section vary, the American Way West section is approximately 395 feet in length and the Concord Village section is approximately 468 feet in length. This proposed project will consist of asphalt pavement widening, asphalt pavement planing, resurfacing with a 3-inch asphalt pavement overlay, reconfiguration of intersection turn-outs, removal and replacement of curb, pavement repairs as needed, 6' wide concrete multi-purpose trail, storm sewer and catch basin reconfigurations, structure adjustments, 12-inch water main replacement, traffic signage upgrades and pavement markings. The existing 22-foot-wide roadway will be widened to a 37-foot-wide roadway. The project will provide (2) - 12 foot through lanes and an 11-foot center left turn lane to reduce the current left-hand turning gaps in both directions along Chester Road. A left-turn-only lane will be provided for the American Way (West)/Chester Road intersection. This roadway widening will meet the current (3) lane Chester Road at the east end of the project.

CHESTER ROAD WIDENING IMPROVEMENTS (AMERICAN WAY WEST TO AMERICAN WAY EAST)

SUBTOTAL CONSTRUCTION COSTS	\$1,950,936.00
CONTINGENCY @ 10%	\$191,000.00
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$2,141,936.00
SURVEYING	\$12,500.00
CONSTRUCTION STAKING	\$30,000.00
GEOTECHNICAL INVESTIGATIONS	\$3,600.00
ENGINEERING	\$133,000.00
CONSTRUCTION INSPECTION @ 6%	\$117,000.00
TOTAL PROFESSIONAL SERVICES	\$296,100.00
TOTAL PROPERTY EASEMENT COSTS PAID	\$164,000.00
TOTAL ESTIMATE OF PROJECT COSTS	\$2,602,036.00

CVE ADJUSTED CONCORD VILLAGE - CHESTER RD. WIDENING IMP. - Settlement Memorialized in Ord. No. 24-21

SUBTOTAL CONSTRUCTION COSTS	\$275,822.25	
CONTINGENCY @ 10%	\$27,000.00	
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$302,822.25	Items below were costs already incurred by the developer (in parentheses)
SURVEYING	\$4,000.00	(\$4,000.00)
CONSTRUCTION STAKING	\$5,000.00	
GEOTECHNICAL INVESTIGATIONS	\$3,000.00	
ENGINEERING	\$40,700.00	(\$40,700.00)
CONSTRUCTION INSPECTION @ 6%	\$16,500.00	
TOTAL PROFESSIONAL SERVICES	\$69,200.00	
		Revised Total less Completed Items
TOTAL ESTIMATE OF PROJECT COSTS	\$372,022.25	\$327,322.25

AMERICAN WAY WEST - CHESTER ROAD WIDENING IMPROVEMENTS - Estimated Costs for Polaris Eng. Layout Extents

SUBTOTAL CONSTRUCTION COSTS	\$353,310.00	
CONTINGENCY @ 10%	\$35,000.00	
SUBTOTAL CONSTRUCTION COSTS & CONTINGENCY	\$388,310.00	Items below were costs already incurred by the developer (in parentheses)
SURVEYING	\$4,000.00	(\$4,000.00)
CONSTRUCTION STAKING	\$5,000.00	
GEOTECHNICAL INVESTIGATIONS	\$3,000.00	
ENGINEERING	\$46,000.00	(\$46,000.00)
CONSTRUCTION INSPECTION @ 6%	\$20,000.00	
TOTAL PROFESSIONAL SERVICES	\$78,000.00	
		Revised Total less Completed Items
TOTAL ESTIMATE OF PROJECT COSTS	\$466,310.00	\$416,310.00

Note: The costs shown represent an estimate of probable construction costs prepared in good faith and reasonable care.

Chagrin Valley Engineering, Ltd. has no control over the costs of construction labor, materials or equipment, nor over competitive bidding.