

ORDINANCE NO. 29-15

EXHIBIT A

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, ("Agreement"), is executed by and between **CITY CENTRE OF AVON RETAIL L.L.C.**, an Ohio limited liability company, ("Company"); and, the **CITY OF AVON**, an Ohio municipality, ("City").

RECITALS:

1. City is the fee simple owner of two parcels of real property, permanent parcel numbers 04-00-015-110-017 and 04-00-015-110-070 consisting of approximately 0.3904 acres more or less described and depicted within **Exhibit A-1**, which is attached hereto and is made part hereof, ("License Parcel"), pursuant to an instruments duly recorded in the office of the Lorain County Recorder.

2. Company is the fee simple owner of real properties situated to the west and to the east of the License Parcel and depicted within **Exhibit A-2**, permanent parcels numbers 04-00-015-110-278, -279, -038, -277, -044 and -273 pursuant to instruments recorded in the office of the Lorain County Recorder, ("Company Properties").

3. Company wants to obtain a license from the City, ("License"), encumbering the License Parcel and benefiting the Company Properties for Company's construction/installation (at Company's sole expense) of a fifty (50) space parking lot, ("Parking Lot"), at and upon the License Parcel as provided within and in accordance with the site plan for the Parking Lot, which is attached hereto as **Exhibit B** and is made part hereof, ("Site Plan").

4. City is willing to grant the License to Company upon and subject to the terms and conditions contained in this Agreement, ("Terms").

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which City and Company irrevocably acknowledge, and in further consideration of the Terms hereof, City and Company agree as follows:

1. Recitals: City and Company incorporate the foregoing recitals herein by reference and ratify and reaffirm the same.

2. Grant: City hereby grants the License to Company. The License will burden the License Parcel and benefit the Company Properties. The License will run with the License Parcel for ten (10) years or for so long as City is the record title owner thereof, whichever occurs first.

3. Parking Lot: Pursuant to and under the License:

- (a) Company may at Company's sole expense construct and install the Parking Lot consistent with and as provided for within the Site Plan;
- (b) If Company constructs/installs the Parking Lot, Company shall be responsible for maintaining, repairing and/or replacing the Parking Lot from time-to-time as and when reasonably required/necessary (unless the need for such maintenance, repair and/or replacement results from City's action(s)/activity in which event City will be responsible therefor);
- (c) The agents, employees, contractors, materialmen, laborers, invitees and/or licensees of Company and/or of Company's lessees/tenants at Company's Properties, ("Company Users"), may access and utilize the Parking Lot for parking purposes in common with the general public; and,
- (d) Company may readily access the License Parcel for the foregoing purposes.

4. License Fee: During and for the term of the License, Company will pay to City an annual License fee, ("Fee"). The Fee will equal Twelve Thousand Dollars (\$12,000.00) per year. The Fee will:

- (a) be paid from Company to City in two (2) equal semi-annual installments (each in the amount of one-half (1/2) of the applicable annual Fee) due and payable on or before January 15 and on or before July 15 of each calendar year starting with the calendar wherein Company has completed Company's construction/installation of the Improvements, ("Completion Date"); and,
- (b) prorated as and where applicable based upon the Completion Date and/or the Termination Date (as hereinafter defined).

5. License Term: The License shall continue in full force for so long as City is the record title owner of the License Parcel and Company is not in breach upon any term(s) of this Agreement (beyond any applicable cure period). In addition, if City requires the License Parcel for the purpose of constructing improvements thereon, City may elect to terminate the License upon providing Company with written notice, ("Notice"), stating therein a termination date which shall not be less than thirty (30) days after the Notice date. If the City duly terminates the License, City shall not be liable for or obligated to pay any reimbursement(s) to Company relating to the Parking Lot and/or any Parking Lot improvements, ("Improvements"). Company may likewise terminate the License upon providing City with advance written notice of termination not less than thirty (30) days prior to the termination date. Upon Company's termination, City will likewise not be liable for or obligated to pay any reimbursement(s) to Company.

6. Non-Exclusivity: The Parking Lot will be considered to be a municipal lot such that the same shall be open and available for use by the general public for parking purposes and such use shall not be exclusive to/for the Company Users.

7. Maintenance/Repair: Company will at Company's sole expense maintain and repair the Improvements as and when reasonably necessary consistent with Company's maintenance/repair activities at and/or upon Company's Properties (and the interior drive/lanes servicing the same); provided, however, that City will be responsible for any damage(s) to any Improvements that City causes thereto in excess of what otherwise would reasonably constitute ordinary wear and tear. If Company fails to so maintain and/or repair the Improvements as required hereunder, City may, after furnishing Company with written notice identifying the claimed failure and affording Company with a reasonable time period to cure the same, effect such maintenance/repair whereupon Company will reimburse to City the reasonable cost(s) thereof.

8. Liability Insurance: During the operation and effect of this Agreement, Company will maintain a policy of liability insurance, ("Policy"), with limits of at least Two Million Five Hundred Thousand Dollars (\$2,500,000.00) as to personal injury and One Hundred Thousand Dollars (\$100,000.00) as to property damage to cover personal injury or property damage sustained on the License Parcel. City will be named on the Policy as an "other insured." Proof of payment must be submitted to City on an annual basis. The City must be notified of any lapse in coverage. Company's failure to obtain/maintain the Policy will constitute grounds upon which City may terminate this License.

9. Clear Access Right: If and when necessary to enable City to get access for heavy machinery/equipment to the water tower improvements presently situated near to the License Parcel (and the Parking Lot) as identified on the Site Plan, City may upon not less

than twenty-four (24) hours prior notice to Company, ("Access Notice"), have full, clear and exclusive access to that area of the Parking Lot identified as "Area A" upon the Site Plan, ("Clear Access Right"), such that:

- (a) no vehicle(s) shall be parked at or within Area A for and during the period for which City exercises City's Clear Access Right, ("Access Period"), which such Access Period City will reasonably specify within the Access Notice (any vehicle(s)/obstruction(s) which at that time prevent City's access to Area A may be removed/relocated by City at Company's expense); and,
- (b) City may set flags, cones and/or tape at or around Area A to ward off or prevent any parking access thereto during and for the Access Period.

City's exercise and/or implementation of the Clear Access Right shall not, however, affect any portion(s) of the Parking Lot (and/or the use(s) thereof consistent with this Agreement) other than Area A.

10. Obstruction: Subject to City's Clear Access Right, neither City nor Company shall at any time(s) unreasonably obstruct and/or enable/permit the obstruction of the Parking Lot. The City may, however, otherwise have full access to the License Parcel.

11. Real Estate Taxes: If as a result of the existence and operation/effect of this Agreement City loses tax-exempt status relative to the License Parcel, Company will pay the real estate taxes, ("Taxes"), assessed relative and allocable to the License Parcel during/ for the term of the License as and when the taxes become due and payable. In that event, Company shall have the right to contest and/or appeal the imposition and/or the amount of the Taxes.

12. Miscellaneous: This Agreement and the Terms hereof:

- (a) shall extend to and be binding upon City and Company and the successor(s)/assign(s) of City and Company;
- (b) shall be governed by/under Ohio law;
- (c) shall not be amended/modified absent a written instrument (prepared and signed in recordable form) which City and Company must each execute; and,

- (d) represent and constitute the entire understanding and agreement between City and Company.

IN WITNESS WHEREOF, City and Company have signed this Agreement on the date(s) set forth hereinbelow.

CITY OF AVON, an Ohio municipality,
("City"),

By:_____

Its:_____

Dated:_____

CITY CENTRE OF AVON RETAIL
L.L.C., an Ohio limited liability
company, ("Company"),

By:_____

Its:_____

Dated:_____

[illegible]

Before me, a notary public in and for Lorain County, Ohio, personally appeared the above-named **City of Avon** an Ohio municipality, ("City"), by _____, its _____, who acknowledged that he/she did sign the foregoing License Agreement and that the same is the free act and deed of the City and his/her free act and deed both personally and as the duly authorized _____ of/for the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Lorain County, Ohio, this _____ day of _____, 2015.

Notary Public

[illegible]

Before me, a notary public in and for Stark County, Ohio, personally appeared the above-named **City Centre of Avon Retail L.L.C.**, an Ohio limited liability company, (“Company”), by _____, its _____, who acknowledged that he did sign the foregoing License Agreement and that the same is the free act and deed of the Company and his free act and deed both personally and as the duly authorized _____ of the Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Stark County, Ohio, this _____ day of _____, 2015.

Notary Public

This License Agreement prepared by:
John A. Gasior, Law Director
City of Avon
36815 Detroit Road
Avon, OH 44011
440-934-7676