

## RECORD OF ORDINANCES

Ordinance No. 3789

Passed: December 10, 2024

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT WITH MORSE ROAD DEVELOPMENT, LLC., AN OHIO LIMITED LIABILITY COMPANY FOR THE SALE OF 1000 E. DIXIE DRIVE, WEST CARROLLTON, OHIO.**

WHEREAS, the City of West Carrollton, Ohio, owns the property at 1000 E. Dixie Drive (Parcel ID K48 00509 0002 and K48 00509 0035), and acquired the property for the expressed purpose of economic redevelopment; and

WHEREAS, the City has listed the parcel as available for purchase; and

WHEREAS, the City of West Carrollton has been in discussions with Morse Road Development, LLC. regarding their desire to develop a Sheetz Fuel Station on the approximately 2.2-acre property located at the southwest corner of East Dixie Drive and Manchester Road in the City of West Carrollton; and

WHEREAS, Morse Road Development, LLC. has offered a purchase price of Three Million Six Hundred Thousand and 00/100 Dollars (\$3,600,000).

**NOW, THEREFORE, THE MUNICIPALITY OF WEST CARROLLTON, STATE OF OHIO, HEREBY ORDAINS:**

Section 1: That the City Manager is hereby authorized to enter into a Purchase Agreement and sign all necessary documents to facilitate said sale of property located at 1000 E. Dixie Drive (Parcel ID K48 00509 0002 and K48 00509 0035) to Morse Road Development, LLC. to include the following terms and conditions as set forth in Exhibit A attached hereto and incorporated herein.

1. That the purchase price be Three Million Six Hundred Thousand and 00/100 Dollars (\$3,600,000)

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including but not limited to Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance shall take effect from and after the earliest period allowed by law.

Passed: December 10, 2024

  
Mayor

Attest:   
Clerk of Council

Effective Date: January 10, 2025

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made and entered into, effective on the date that both parties have executed this Agreement (the "**Effective Date**"), by and between **The City of West Carrollton, Ohio**, an Ohio municipal corporation ("**Seller**"), and **Morse Road Development, LLC**, an Ohio limited liability company ("**Buyer**").

### Background Information

A. Seller has the right, pursuant to that certain Land Bank Participation Agreement dated December 18, 2019 (the "**Land Bank Agreement**") between Seller, as Participant, and the Montgomery County Land Revitalization Corporation (the "**Land Bank**"), to have conveyed to it a certain tract of real property located at the southwest corner of E. Dixie Dr. and Crossover Street in West Carrollton, Ohio, containing approximately 2.05 acres, commonly known as Parcel I.D. Number K48 00509 0002, and being generally depicted on **Exhibit A**, attached hereto (the "**Primary Parcel**"). In addition, Seller owns or intends to acquire, as further provided in this Agreement (i) a parcel of land adjacent to the north side of the Primary Parcel containing approximately 0.163 acres as shown on **Exhibit A** and (ii) a portion of the vacated state highway adjacent to the south side of the Primary Parcel as shown on **Exhibit A** (the "**Additional Parcels**"). The Primary Parcels and the Additional Parcels, together with all appurtenances and hereditaments thereto, shall be collectively referred to as the "**Property**". **Exhibit A** is a map/site plan, setting forth a general depiction of the size, location and configuration of the Property (the "**Site Plan**"). The Property does not include the portion of the Additional Parcel adjacent to the south side of the Primary Parcel on which the Storm Water Facilities (as hereinafter described) are to be located, as shown on the Site Plan. A legal description of the Property is to be attached hereto as **Exhibit B** per Section 5.03 below.

B. The Property is located adjacent to other certain parcels of real property to be conveyed to Seller pursuant to the Land Bank Agreement, located on the west side of the Interstate 75 intersection along East Dixie Drive, including parcels on Manchester Road and Marina Drive, as identified on the Site Plan attached to this Agreement as **Exhibit A-1** ("**Seller's Residual**"). Seller also owns (either directly or via the Land Bank pursuant to the Land Bank Agreement) or in the future may acquire additional parcels in the area outlined on **Exhibit C** attached hereto (the "**Development Site Plan**"). The Property and Seller's Residual, together with such other parcels located in the area outlined in yellow on **Exhibit C** that the City, in its discretion, may elect to include, are collectively referred to as the "**Development**".

C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in the Property, at the price and on the terms and conditions hereinafter set forth.

### Statement of Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the foregoing Background Information and as follows:

## ARTICLE I PURCHASE AND SALE OF PROPERTY



1.01 Agreement. On the terms and conditions set forth below, and in consideration of Buyer's delivery of \$20,000.00 (the "**Earnest Money**"), within 10 business days after the Effective Date, to Stewart Title Company, 259 West Schrock Road, Westerville, Ohio 43081 (Phone: 614-818-6136), Attn: Emma Dean ("**Escrow Agent**"), Seller hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from Seller.

## **ARTICLE II** **PURCHASE PRICE**

2.01 Amount of Purchase Price. The purchase price for the Property shall be \$3,600,000.00 (the "**Purchase Price**"). The Purchase Price shall be payable to Seller at Closing (as hereinafter defined), in immediately available funds, adjusted by all prorations, credits, allowances and other adjustments specifically provided for herein.

## **ARTICLE III** **CONTINGENCIES**

3.01 Seller's Contingencies. This Agreement shall be contingent upon Seller's satisfaction of the contingencies set forth in Section 3.01(a) below on or before the date that is 120 days after the Effective Date (the "**Seller Contingency Period**"). Upon satisfaction of the Seller Contingencies, Seller shall notify Buyer ("**Notice of Seller Contingency Satisfaction**"). If Seller is unable to satisfy the Seller Contingencies prior to the expiration of the Seller Contingency Period, then, unless the Seller Contingency Period is extended by mutual agreement of Seller and Buyer, this Agreement may be terminated by Seller or Buyer at any time thereafter (unless Seller delivers to Buyer a Notice of Seller Contingency Satisfaction prior to the exercise of this right of termination by either party).

(a) The Seller Contingencies are as follows:

- (i) Seller is successful in obtaining fee simple title to the Additional Parcels, such that Seller is able to sell and convey to Buyer good and marketable, insurable title, to the Property. During the Seller Contingency Period, Seller will use good faith, commercially reasonable efforts to complete the acquisition of the Additional Parcels. Seller's Notice of Seller Contingency Satisfaction does not diminish Buyer's right to approve the condition of title as set forth in Article V, and Article V shall apply in addressing any Defects identified by Buyer.
- (ii) Seller shall have obtained (1) approval of the appropriate governmental agencies to rezone the Property as appropriate for Buyer's use and development of the Property as fuel station, convenience store and quick service restaurant and (2) amendments to the City's zoning code in relation to the uses and development of properties in the Center City District in which the Property is located. Such changes are not intended to prohibit or interfere with Buyer's intended use. Seller will initiate and pursue these zoning revisions. Buyer acknowledges, however, that the actions of City employees in pursuing the zoning changes for the Property are not binding upon public officials and Seller shall have no liability if any such approvals are not obtained or are unsatisfactory to Buyer; Buyer's sole remedy is to exercise its termination rights upon the failure of the Buyer Contingency, as hereinafter set forth.



- (iii) Seller shall have prepared, submitted for Buyer's review and comment, and obtained Buyer's approval of, pursuant to the provisions of Sections 3.06, 3.08 and 3.09, the NCA Documents, the TIF Service Agreement and the Stormwater Easement Agreement, including the passage of such legislation by Seller's city council as Seller deems appropriate.

### 3.02 Buyer's Contingencies.

- (a) Buyer's obligations under this Agreement shall be completely contingent upon Buyer's satisfaction of or Buyer's waiver (at Buyer's sole discretion) of (i) the inspection contingencies set forth in Section 3.03(a) below (the "**Inspection Contingencies**"), within 90 days after receipt of the Notice of Seller Contingency Satisfaction (the "**Due Diligence Period**") and (ii) the approval contingencies set forth in Section 3.03(b) below (the "**Approval Contingencies**"), within 180 days after the expiration of the Due Diligence Period (the "**Permitting Period**"; collectively, the Inspection Contingencies and the Approval Contingencies shall be referred to as the "**Buyer Contingencies**"). The date upon which all Buyer Contingencies are either satisfied or waived, pursuant to Section 3.04 or otherwise, shall be referred to as the "**Contingency Date**".
- (b) In the event that Buyer has not satisfied the Inspection Contingencies within the Due Diligence Period, then Buyer shall have the right to extend the Due Diligence Period for one (1) additional period of 30 days upon delivery to Seller of notice of such extension at any time on or prior to the expiration of the Due Diligence Period. If Buyer so elects to extend the Due Diligence Period, Buyer shall deposit an additional \$2,500.00 (which amount plus the interest accrued thereon, if any, is referred to as the "**Inspection Extension Deposit**") with the Escrow Agent. The Inspection Extension Deposit made by Buyer shall be non-refundable (but applicable to the Purchase Price) except in the case of (i) Seller's default hereunder, (ii) an uncured Defect in title (unless waived), or (iii) a taking pursuant to eminent domain. All references in this Agreement to the Due Diligence Period shall mean and refer to the Due Diligence Period as may be extended hereunder.
- (c) In the event that Buyer has not satisfied the Approval Contingencies within the Permitting Period, then Buyer shall have the right to extend the Permitting Period for up to 4 additional periods of 30 days each upon delivery to Seller of notice of such extension at any time on or prior to the expiration of the Permitting Period. If Buyer so elects to extend the Permitting Period, Buyer shall deposit an additional \$5,000.00 for each such extension (which amount plus the interest accrued thereon, if any, is referred to individually and collectively, as context requires, as the "**Approval Extension Deposit**") with the Escrow Agent. The Approval Extension Deposit made by Buyer shall be non-refundable (but applicable to the Purchase Price) except in the case of (i) Seller's default hereunder, (ii) an uncured Defect in title (unless waived), or (iii) a taking pursuant to eminent domain. All references in this Agreement to the Permitting Period shall mean and refer to the Permitting Period as may be extended hereunder.

### 3.03 Buyer Contingencies. The Buyer Contingencies are as follows:

- (a) Inspection Contingencies:



- (i) Determination that the Property is not located within a flood plain and that the Property has drainage conditions acceptable to Buyer for the proposed development of the Property;
  - (ii) Determination that all utilities necessary for the proposed development are available at, or within the right-of-way adjacent to, the boundary lines of the Property, in locations acceptable to Buyer, with sufficient capacity, pressure and depth to service the proposed development;
  - (iii) Determination that the Property is free of underground storage tanks and Hazardous Substances (as defined herein);
  - (iv) Determination that there are no conditions or restrictions on Buyer's intended use and development thereof;
  - (v) Determination that the Property has soil conditions which without substantial corrective measures permit construction of the proposed development;
  - (vi) Review and approve the plans and specifications for any seller's site and building design obligations that are required under this Agreement; and
  - (vii) Review and approve any existing and proposed easements with covenants and restrictions, declaration or related document affecting the Property.
  - (viii) Review and determine in its sole judgment that the Seller Contingencies have been satisfied in a manner acceptable to Buyer.
- (b) Approval Contingencies:
- (i) Approval by the appropriate governmental agencies, Buyer's management, third parties (if any), the Architectural Review Committee established under the Master Development Plan approved by the City (the "**Master Development Plan**," a copy of which is attached hereto as **Exhibit D**), and utility companies of a site plan, elevations, architectural plans, landscaping plan, etc. for Buyer's intended use, including approval of curb cuts and any off-site traffic management improvements deemed necessary for Buyer's intended use;
  - (ii) Obtain all permits (for construction and signage), licenses and other necessary governmental and third-party approvals and agreements deemed necessary by Buyer; and
  - (iii) Obtain any and all easements and other agreements benefiting the Property and/or cancel any and all easements encumbering the Property, as may be necessary for Buyer's proposed development and use of the Property;
  - (iv) Approval by the applicable governmental authorities of a plat of survey and/or other documents necessary to convey the Property as a single, combined parcel (the "**Lot Combination Documents**").



3.04 Notice of Satisfaction or Waiver. The Inspection Contingencies above shall be deemed to have been satisfied or waived, unless on or before the expiration of the Due Diligence Period, Buyer delivers to Seller notice of Buyer's failure to satisfy the Inspection Contingencies and, consequently, termination of this Agreement (a "**Termination Notice**"). The Approval Contingencies above shall be deemed to have been satisfied or waived, unless on or before the expiration of the Permitting Period, Buyer delivers to Seller a Termination Notice indicating Buyer's failure to satisfy the Approval Contingencies. The determination whether the Inspection Contingencies and Approval Contingencies have been satisfied shall be made by Buyer in its sole discretion.

3.05 Earnest Money, Inspection Extension Deposit, and Approval Extension Deposit. The Earnest Money (and the Additional Deposit, if applicable) shall be held by Escrow Agent in accordance with the provisions of this Section 3.05:

- (a) If Buyer delivers a Termination Notice on or prior to the expiration of the Due Diligence Period, this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, the Earnest Money shall be immediately returned to Buyer, and the Inspection Extension Deposit (if applicable) shall be paid to Seller;
- (b) If Buyer delivers a Termination Notice after the expiration or waiver of the Due Diligence Period and on or prior to the expiration of the Permitting Period, this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, the Earnest Money shall be immediately returned to Buyer, and the Inspection Extension Deposit (if applicable) and Approval Extension Deposit (if applicable) shall be paid to Seller;
- (c) If Buyer or Seller delivers a notice electing to terminate this Agreement pursuant to Section 3.01 above on or prior to the expiration of the Seller Contingency Period, this Agreement shall terminate, in which case both parties shall be fully released from all further liability and obligations hereunder, the Earnest Money shall be immediately returned to Buyer;
- (d) If the transaction contemplated hereby is closed, the Earnest Money, the Inspection Extension Deposit (if applicable), and the Approval Extension Deposit (if applicable) shall be paid to Seller and credited to Buyer against the Purchase Price at Closing;
- (e) If the transaction contemplated hereby fails to close due to a Defect in title (Article V hereof that is not waived) or due to a taking pursuant to eminent domain (Article X hereof), the Earnest Money, the Inspection Extension Deposit (if applicable), and the Approval Extension Deposit (if applicable) shall be immediately returned to Buyer and neither party shall have any further liability hereunder, except as may be set forth in Section 5.04 hereof;
- (f) If the transaction contemplated hereby fails to close due to a default by Buyer, the Earnest Money, the Inspection Extension Deposit (if applicable), and the Approval Extension Deposit (if applicable) shall be paid to Seller as liquidated damages hereunder (and not as a penalty) as Seller's sole and exclusive remedy for such default, it being understood that Seller's actual damages in the event of such default are difficult to ascertain and that the Earnest Money, the Inspection Extension



Deposit (if applicable), and the Approval Extension Deposit (if applicable) represent the parties' best current estimate of the amount of such damages, and both parties shall be fully released from all further liability and obligations hereunder;

- (g) If the transaction contemplated hereby fails to close due to the default of Seller, Buyer shall have the right to either (i) commence an action for specific performance, or (ii) terminate this Agreement, receive an immediate return of the Earnest Money, the Inspection Extension Deposit (if applicable), and the Approval Extension Deposit (if applicable), and recover all actual out-of-pocket costs and expenses incurred by Buyer in connection with this Agreement, up to a maximum of \$150,000.00; and
- (h) If the transaction contemplated is terminated for any other reason permitted by this Agreement, but such reason is not set forth in items (a) – (g) above, the Earnest Money, the Inspection Extension Deposit (if applicable), and the Approval Extension Deposit (if applicable) shall be handled as set forth in the applicable section describing such termination event.

The provisions of this Section 3.05 shall survive the termination of this Agreement.

**3.06 NCA Commitments:** Seller intends to subject the Development to a New Community Authority to be created by the Seller (the "**NCA**"), or an agreement to submit the Development to a future NCA, or to execute a supplemental NCA petition, if necessary, and/or an NCA declaration ("**NCA Declaration**") concerning NCA community charges for the Development. The NCA will require a maximum of 2.0% additional sales tax for the retail sales occurring on the retail properties in the Development (such as the Property); other properties (not including the Property) in the Development, or those portions of the Development subject to the NCA, may be subjected to NCA charges based on millage or other factors. The matters described in this paragraph are referred to as the "**NCA Commitments**". Seller shall deliver to Buyer drafts, for Buyer's review and comment, the NCA petition and Declaration and any other documents which will affect Buyer's obligations with respect to the Property in connection with the NCA Commitments (such documents, the "**NCA Documents**") within 90 days after the date of the Effective Date. If Seller fails to deliver the NCA Documents to Buyer within such 90-day period, then the Due Diligence Period shall be tolled, beginning on such date and continuing until Seller so delivers to Buyer such documents. Buyer shall be afforded, in all instances, a reasonable period of time in which to review and provide comments to any of said NCA Documents. All such NCA Documents with respect to NCA Commitments shall be mutually agreed to prior to the expiration of the Seller Contingency Period, and if Buyer and Seller are unable to timely agree on the final terms and conditions of such NCA Documents, then Buyer shall have the option to terminate this Agreement by written notice delivered to Seller, in which case this Agreement shall terminate and be null and void and the Earnest Money (and the Inspection Extension Deposit, and Approval Extension Deposit, if and as applicable) shall be immediately returned to Buyer.

**3.07 Restriction Agreement.** During the Due Diligence Period, Buyer and Seller shall agree upon a mutually acceptable Restriction Agreement (the "**Restriction Agreement**"), the form of which shall be prepared by Buyer, to be executed and recorded at Closing, which shall contain certain restrictions on future uses of Seller's Residual as set forth on **Exhibit E**, attached hereto. If Buyer and Seller are unable to timely agree on the final terms and conditions of the Restriction Agreement, then Buyer shall have the option to terminate this Agreement by written notice delivered to Seller, in which case this Agreement shall terminate and be null and void and



the Earnest Money (and Inspection Extension Deposit, if applicable) shall be immediately returned to Buyer.

3.08 Tax Increment Financing. Seller represents to Buyer that: (a) Seller intends to adopt tax increment financing legislation pursuant to Ohio Revised Code Section 5709.41 to support the financing of the public infrastructure benefitting the Development and the Property (the "**TIF Exemption**"), and that Buyer, and all other owners and/or operators within the Development, will be required to make service payments in lieu of taxes in connection therewith and agree to a minimum service payment based on the anticipated assessed value of the Property, as improved, following construction of the building and related improvements on the Property (the "**Minimum Service Payments**"), as mutually agreed upon by Buyer and Seller. The obligation to make Minimum Services Payments will be set forth in a service agreement which such service agreement shall be subject to the prior written approval of Buyer, not to be unreasonably withheld, and executed by Buyer and Seller and recorded against the Property at Closing (the "**TIF Service Agreement**"). Seller shall deliver to Buyer, for Buyer's review and comment, the proposed TIF Service Agreement within ninety (90) days after the Effective Date. The TIF Service Agreement will establish the obligation to make Minimum Service Payments as a lien on the Property having the same priority as real estate taxes and assessments. The TIF Service Agreement shall also provide that neither Buyer nor any subsequent owner of the Property may, without the prior written consent of the Seller, file a complaint (including, without limitation, a complaint filed in accordance with Ohio Revised Code Sections 5715.13 or 5717.19) that seeks to reduce the real property tax valuation of any building, of any portion of any building, or of any other portion of the Property as such valuation is established by the Montgomery County Auditor until the date on which any TIF Exemption applicable to the building and/or related improvements, any portion of the building and/or related improvements, or the Property is no longer effective. The TIF Service Agreement shall be mutually agreed to prior to the expiration of the Seller Contingency Period, and if Buyer and Seller are unable to timely agree upon the final terms and conditions of TIF Service Agreement, then Buyer shall have the option to terminate this Agreement by written notice to Seller, in which case this Agreement shall terminate and be null and void and the Earnest Money (and the Inspection Extension Deposit, and Approval Extension Deposit, if and as applicable) shall be immediately returned to Buyer.

3.09 Stormwater Easement. Within 90 days after the Effective Date, Seller shall deliver to Buyer, for Buyer's review and comment, a draft easement agreement (the "**Draft Stormwater Easement**") providing for: (a) a grant to Buyer of a perpetual, non-exclusive easement over, across, through, and/or under portions of the Development for the benefit of the Property for the purposes of using, maintaining, repairing, and replacing storm water pipes, connections and related improvements connecting the Property to storm drainage pipes and a detention pond to be constructed by Seller, at Seller's sole cost and expense, as part of Seller's Site Obligations (collectively, the "**Storm Water Facilities**"), together with the right of inflow into and outflow out of such Storm Water Facilities; (b) the allocation of responsibility for performing maintenance and repairs with respect to the Storm Water Facilities; (c) the allocation of the actual, reasonable, third-party costs of maintaining and repairing the Storm Water Facilities, which such costs shall be shared by all owners of parcels within the Development, pro-rata, based on the relative acreage of each such parcel (or the acreage of the portion of each parcel that drains into the Storm Water Facilities); and (d) the stormwater easement right provided therein shall terminate upon and to the extent of any dedication of any all of the Storm Water Facilities, including any areas necessary for Buyer's connections to the same, to city, county or state authorities, as applicable, except that, if the Storm Water Facilities are designated as a community facility under the NCA Documents, the Stormwater Easement shall remain in effect and the cost of maintaining and repairing the Storm Water Facilities will be borne by the NCA and funded



through the NCA charges. The Draft Stormwater Easement as approved by Buyer and Seller (with each party acting reasonably and in good faith) is referred to herein as the "**Stormwater Easement Agreement**". Buyer acknowledges that the Stormwater Easement Agreement may be set forth in a reciprocal easement agreement encumbering the Development ("**REA**") so long as the only restrictions, covenants, obligations and/or liabilities of Buyer thereunder relate solely to the maintenance, repair, replacement, and operation of the Storm Water Facilities. Accordingly, all references to the "Draft Stormwater Easement" or the "Stormwater Easement Agreement" in this Agreement shall mean and refer to any such REA complying with this Section 3.09. Buyer's obligations under this Agreement are conditioned on approval of the final form of the Stormwater Easement by Buyer and Seller. If the Stormwater Easement Agreement (or, if applicable, the REA) is not mutually agreed to prior to the expiration of the Seller Contingency Period, and if Buyer and Seller are unable to timely agree on the final terms and conditions of such document, then Buyer shall have the option to terminate this Agreement by written notice delivered to Seller, in which case this Agreement shall terminate and be null and void and the Earnest Money (and the Inspection Extension Deposit, and Approval Extension Deposit, if and as applicable) shall be immediately returned to Buyer.

3.10 Transfer of Title Under Land Bank Agreement. On or before the date of Closing, Seller shall direct the Land Bank to convey title to the Primary Parcel to Seller in accordance with the terms of the Land Bank Agreement. The approval of this Agreement by Seller's City Council shall be deemed authorization for the City Manager to take all appropriate action to exercise the rights of the City under the Land Bank Agreement with respect to the Primary Parcel, without necessity of further action by City Council.

#### **ARTICLE IV** **SUBMISSION MATERIALS**

4.01 Seller's Cooperation. Seller agrees to submit to Buyer, within 5 days after the Effective Date, information and/or materials, to the extent the same is available to Seller, for Buyer's use in preparation for the purchase of the Property, including: (a) surveys, site plans, topographical studies, plat maps, property descriptions, zoning maps and engineering drawings for the utilities and public services servicing the Property; (b) soils reports for the Property; (c) environmental studies of the Property; (d) a copy of the title insurance policy (or other form of title evidence) issued upon Seller's acquisition or financing of the Property; and (e) any existing declarations, easements, and/or restriction agreements encumbering the Property. All materials provided to Buyer pursuant to this Article IV shall be deemed conditionally delivered. If this transaction is not closed in accordance with the terms hereof such materials shall be returned to Seller upon demand. Seller hereby agrees to cooperate with Buyer in all respects during the term of this Agreement, including Seller's joining in the execution of any and all reasonable applications, instruments, licenses and documents contemplated pursuant hereto.

#### **ARTICLE V** **EVIDENCE OF TITLE**

5.01 Title Commitment. Buyer shall obtain from a title insurance company chosen by Buyer, a commitment (the "**Title Commitment**") to issue an American Land Title Association Owner's Title Insurance Policy (ALTA Form B, Rev. 2006) (the "**Title Policy**"), certified to at least the Effective Date, in the full amount of the Purchase Price. To be acceptable to Buyer, the Title Commitment shall show in Seller good and marketable title to the Property, and shall commit to insure said title free and clear of the standard printed exceptions (to the extent that the same may



be removed by a seller's affidavit or similar actions within Seller's control) and free and clear of all liens, charges, encumbrances, tenancies and clouds of title, whatsoever, except the following:

- (a) Those created or assumed by Buyer;
- (b) Zoning ordinances, legal highways and public rights-of-way which do not interfere with Buyer's proposed development and operation of the Property;
- (c) The Master Development Plan, NCA Documents, the TIF Service Agreement;
- (d) Real estate taxes which are a lien on the Property but which are not yet due and payable; and/or
- (e) Easements and restrictions of record acceptable to Buyer which do not interfere with the Buyer's proposed development and operation of the Property. Seller anticipates establishing a restrictive covenant in favor of Culver's that prohibits the sale or lease of property to a person or entity whose "Primary Use" is the sale of hamburgers or frozen desserts/treats, with "Primary Use" being defined as representing sales of 20% or greater derived from that use. Such restrictive covenant shall terminate if Culver's ceases to operate for the Primary Use of the sale of hamburgers or frozen desserts/treats within the Seller's Residual for more than one (1) year other than as a result of Force Majeure, remodeling, alterations, renovation, casualty, condemnation, or other circumstances beyond the control of the operator of the property.

For title to the Property to be acceptable to Buyer, the Title Commitment must (i) commit to insure that all parcels of land are contiguous, if the legal description for the Property includes more than one parcel, and that there are no gaps nor gores among such parcels; (ii) commit to insure that on the Closing Date, the Property shall have direct access (or access pursuant to the REA) to dedicated public highways and/or roads that abut the Property; (iii) fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress or any other appurtenances to the Property and provide insurance coverage in respect to all of such appurtenant rights; and (iv) include the results of a special tax search and examination for any financing statements filed of record which may affect the Property.

5.02 Endorsement at Closing. At the Closing and as a condition of Closing, Buyer may obtain an endorsement to the Title Commitment updating the Title Commitment to the Closing Date and showing no change in the state of the title to the Property. After Closing, a final Title Policy that comports with the foregoing terms and conditions shall be issued in the amount of the Purchase Price.

5.03 Survey. Buyer shall have the right, at its sole cost and expense, to obtain a current ALTA survey of the Property (the "**Survey**"), prepared by a surveyor registered in the State of Ohio. Seller shall provide current surveys of the Primary Parcel and the two Additional Parcels for Buyer's use in obtaining the Survey. The Survey shall comport with the depiction of the Property set forth on **Exhibit A**, shall include a legal description of the Property and shall be certified by the surveyor to Buyer and the title insurance company. Subject to the approval of the title insurance company, the legal description included in the Survey shall be used in the Title Commitment and Title Policy and in all documents of transfer contemplated hereby and shall be inserted as **Exhibit B** hereto. To convey the Property as a single, combined parcel, Buyer at its expense shall provide a plat of survey combining the parcels.



5.04 Defects. In the event that an examination of either the Title Commitment (including any endorsements) or the Survey obtained hereunder discloses any matter adversely affecting title to the Property, or if title to the Property is not marketable, or if the Property is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Survey (the foregoing collectively referred to as "**Defects**"), Seller shall have a reasonable time, not to exceed 30 days after written notice thereof, within which to cure or remove any such Defects. In the event Seller is unable or unwilling to cure or remove the Defects within said 30-day period, Seller shall immediately give notice of Seller's inability to Buyer and thereafter, Buyer shall have 30 days after receipt of such notice within which to make its election either:

- (a) To accept title to the Property subject to such Defects;
- (b) To extend the time period for curing the Defects for such additional time as the parties may mutually agree; or
- (c) To withdraw from this transaction and terminate this Agreement, in which event the Earnest Money and any Extension Deposits shall be returned to Buyer and the parties shall be released from all further obligations hereunder.

Notwithstanding anything to the contrary contained herein, all of the following shall be deemed Defects without Buyer's need to object to the same, and Seller shall cause all of the same, with respect to the Property, to be satisfied and/or terminated, removed or recorded and removed from the Title Policy at or prior to Closing (collectively "**Required Cure Items**"): (i) all mortgages, deeds of trust, and other matters evidence liens encumbering the Property; (ii) all mechanic's, materialmen's and professional services liens, (including, without limitation, mechanic's, materialmen's and professional services liens incurred in connection with Seller's Site Obligations (defined in Section 8.02 below) commenced before Closing); and (iii) all leases, occupancy agreements, and any other agreements giving any party a right to acquire or possess the Property.

## **ARTICLE VI** **DEED AND OTHER DOCUMENTS**

6.01 Limited Warranty Deed. Seller shall, at the Closing, convey fee simple title to the Property to Buyer by a duly and validly executed, recordable limited warranty deed (the "**Deed**"), free and clear of all liens and encumbrances, except those permitted pursuant to the provisions of Section 5.01 hereof. Without limiting the foregoing, all tenancies shall be terminated prior to Closing.

6.02 Other Documents. Buyer and Seller agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party at Closing. Such documents shall include, but not be limited to the Restriction Agreement, the Lot Combination Documents, the TIF Service Agreement, the NCA Documents, the Stormwater Easement Agreement/REA, a closing statement, the most recent real estate tax bill(s), a certificate as to Seller's status under the Foreign Investment in Real Property Tax Act, a commercially reasonable owner's affidavit, Seller's affidavit regarding liens (mechanics' or other), unrecorded matters and parties in possession and, if requested, Seller's certification regarding the warranties and representations set forth in Article XI hereof.



**ARTICLE VII**  
**POSSESSION AND INSPECTION**

7.01 Possession at Closing. Buyer shall be entitled to full and exclusive possession of the Property as of the Closing Date.

7.02 Inspection. For and during the continuance of this Agreement, Seller shall afford all representatives of Buyer free and full access to the Property, for inspection and examination, at reasonable times. This privilege shall include the right to make surveys, site plans, renderings, soil tests, environmental inspections, borings, percolation tests and other tests to obtain any relevant information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Property for use and development by Buyer. Buyer shall indemnify and hold harmless Seller for any loss, cost or liability incurred by Seller due to Buyer's entry onto the Property pursuant to this Section 7.02. The foregoing indemnity obligation shall survive the termination of this Agreement for a period of 2 years.

7.03 Disclaimer of Warranties. Except as otherwise specifically provided in this Agreement, the Deed, and/or other documents delivered by Seller at Closing, Seller has made no representations or warranties to Buyer concerning the Property, and Buyer will be relying upon its own inspections in regard to the condition and state of repair of the Property and agrees to take the Property in its present condition, "as is," as of the Effective Date and as of the Closing Date.

**ARTICLE VIII**  
**CLOSING**

8.01 Closing Date. The purchase and sale of the Property shall be closed (the "**Closing**") within 30 days after the later of the Work Completion Date (defined in Section 8.02 below) or the Contingency Date, but in no event prior to December 31, 2024, which Closing date may be extended by agreement of the parties and shall be extended by such time, if any, as is necessary to cure Defects Seller has elected to cure, as set forth in Section 5.04 hereof. The date upon which the Closing occurs is referred to herein as the "**Closing Date**". The Closing shall be completed with the use of electronic mail and overnight courier services through the Escrow Agent and without the need of either party actually attending the Closing in person.

8.02 Seller's Site Obligations. As part of the consideration for Buyer's purchase of the Property, Seller shall, at its sole cost and expense, perform the scope of work set forth in the plans and specifications set forth on Exhibit F attached hereto (the "**Seller's Plans**") (collectively, "**Seller's Site Obligations**") within 60 days after the Contingency Date. In addition to the scope set forth on Exhibit F, Seller's Site Obligations shall also include the construction and installation, at Seller's sole cost and expense, of (i) a right-in curb cut and access point from Crossover Street, and (ii) a right-in, right-out curb cut and access point to and from E. Dixie Drive (such portions of the Seller's Site Obligations are collectively referred to herein as the "**Access Obligations**"). Seller's Site Obligations shall be deemed completed on the date that both of the following conditions are satisfied: (a) Buyer receives a certificate from Seller's civil engineer certifying to Buyer that Seller's Site Obligations have been completed and performed in accordance with the Seller's Plans; and (b) Buyer inspects Seller's Site Obligations to determine if they are complete and were performed in accordance with the Seller's Plans. If Buyer fails to inspect Seller's Site Obligations within 10 business days following its receipt of the above-described certificate, then Seller's Site Obligations shall be deemed complete. The date upon which Seller's Site Obligations are completed (or deemed completed) pursuant to this Section 8.02 is referred to herein as the



**"Work Completion Date"**. In lieu of Seller's obligations to perform and complete solely the Access Obligations, Seller shall provide to Buyer a credit against the Purchase Price in an amount equal to \$25,000.00.

## **ARTICLE IX**

### **APPORTIONMENTS AND ADJUSTMENTS**

9.01 Adjustments at Closing. On the Closing Date, Buyer and Seller shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:

- (a) Real Estate Taxes and Assessments. Seller shall pay all delinquent real estate taxes, together with penalties and interest thereon; all assessments which are a lien against the Property as of the Closing Date (both current and reassessed, whether due or to become due and not yet payable); all real estate taxes for years prior to the Closing Date; real estate taxes for the year of Closing, prorated through the Closing Date; and all agricultural use roll back taxes or tax recoupments, if any, for years through the year of Closing. The proration of undetermined taxes (if any; the Property is believed to be exempt from real estate taxes) shall be based upon a 365-day year and on the last available tax rate, giving due regard to applicable exemptions, recently voted millage, change in tax rate or valuation (as a result of this transaction or otherwise), etc., whether or not the same have been certified. It is the intention of the parties in making this tax proration to give Buyer a credit as close in amount as possible to the amount which Buyer will be required to remit to the County Treasurer (or other applicable government agency or body) for the period of time preceding the Closing Date hereof. Seller warrants and represents that to Seller's knowledge all assessments now a lien are shown on the County Treasurer's (or other applicable government agency or body) records and that to the best of Seller's knowledge, no site or area improvement has been installed by any public authority, the cost of which is to be assessed against the Property in the future. Seller further warrants and represents that neither Seller nor any of its agents, employees or representatives have received notice, oral or written, or have knowledge of any proposed improvement, any part of the cost of which would or might be assessed against the Property, except that, with respect to flood control assessments of Miami Conservancy District, notice has been given that all properties within the flood control area within its jurisdiction may be subjected to increased assessments for proposed improvements of flood control facilities.
- (b) Seller's Expenses. Seller shall, at the Closing (unless previously paid), pay by credit against the Purchase Price the following:
  - (i) The cost of preparing the Deed;
  - (ii) The cost of any transfer tax, deed stamps or conveyance fees required to be paid in connection with the recording of the Deed from Seller to Buyer;
  - (iii) The cost of all municipal services and public utility charges (if any) due through the Closing Date;
  - (iv) The recording fees for filing any NCA Documents; the TIF Service Agreement; the Stormwater Easement Agreement, and other development-related documents contemplated by this Agreement;



- (v) ½ the recording fees required for recording the Restriction Agreement; and
  - (vi) ½ of the fee charged by Escrow Agent for conducting the Closing.
- (c) Buyer's Expenses. Buyer shall, at the Closing (unless previously paid), pay the following:
- (i) The cost of any lender title policy or lender endorsement;
  - (ii) ½ the recording fees required for recording the Restriction Agreement;
  - (iii) ½ of the fee charged by Escrow Agent for conducting the Closing;
  - (iv) The cost of the Survey; and
  - (v) The cost of obtaining the Title Commitment (including, without limitation, any title exam or search fees) and the cost of the Title Policy.
- (d) Brokers. Seller and Buyer each hereby warrants and represents to the other that it has not, with the exception of Apex Commercial Group, representing Buyer, and Ascent Real Estate Advisors, representing Seller, engaged or dealt with any broker or agent in regard to this Agreement. Seller hereby agrees to pay all commissions and/or fees due to such brokers pursuant to a separate agreement. Except with respect to the brokers set forth above, Seller and Buyer shall indemnify and hold harmless the other from and against any other claim by any party claiming through Seller or Buyer, respectively, for any real estate sales commission, finder's fee, consulting fee, or other compensation in connection with the sale contemplated hereby and arising out of any act or agreement of such party. The indemnity obligations set forth above in this section shall survive both the Closing of the sale contemplated hereby and any termination of this Agreement.

## **ARTICLE X**

### **EMINENT DOMAIN**

10.01 Taking By Eminent Domain. If, prior to the Closing, eminent domain proceedings shall be threatened or commenced against the Property, or any part or portion thereof, Buyer shall have the option (a) to elect to proceed with this transaction, in which event any compensation award paid or payable as a result of such eminent domain proceedings shall be the sole property of Buyer, or (b) to terminate this Agreement, in which event Seller shall retain such award. Seller agrees that it shall give to Buyer written notice of any such threatened or actual eminent domain proceedings within 10 days after Seller first becomes aware thereof (or in any event, prior to Closing), and upon the giving of such notice, Buyer shall then have 30 days within which to exercise the options granted in this Section 10.01. If Buyer fails to exercise such options within said 30-day period, this Agreement shall terminate, the Earnest Money (and the Additional Deposit, if applicable) shall be immediately returned to Buyer and thereafter both parties shall be released from further liability or obligation hereunder.

## **ARTICLE XI**

### **WARRANTIES AND REPRESENTATIONS OF SELLER**



11.01 Warranties and Representations. In addition to any other representation or warranty contained in this Agreement, Seller hereby represents, warrants, covenants, and agrees as follows:

- (a) Seller has not received, with respect to the Property, any notice or notices, either orally or in writing, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected;
- (b) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Property, under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound;
- (c) Seller has not received any notice, either orally or in writing, of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, which would prevent, limit or in any manner interfere with the proposed use of the Property; Seller has advised Buyer, however, of its intent to modify the zoning for the district in which the Property is located as set forth in Section 3.01;
- (d) Except for (i) the ownership interest of the Land Bank that Seller has the right to acquire pursuant to the Land Bank Agreement, and (ii) the fact that Seller's acquisition of the Additional Parcels is not yet complete, no other person or entity other than Seller currently owns or has any legal or equitable interest in the Property, and no other person or entity other than Buyer has or will have any right to acquire the Property, or any portion thereof; provided, however, that if Buyer identifies Defects in Seller's title, the rights and remedies set forth in Section 5.04 shall govern the handling of those Defects;
- (e) All taxes payable with respect to the operation, ownership or control of the Property which are allocable to the period ending on the Closing Date, and all prior periods, shall be or have been paid by Seller, and Seller shall be responsible for the timely filing of all returns or other documents required by any taxing authority claiming jurisdiction with respect to any such taxes;
- (f) There are no unrecorded leases, options, rights of refusal or related rights of third parties pertaining to the Property
- (g) To the best of Seller's knowledge, except as disclosed in that certain Phase I Environmental Site Assessment prepared by MAK Solve, LLC dated December 16, 2016, delivered by Seller to Buyer, there are no underground storage tanks and no Hazardous Substances located in, on or about or generated from the Property which may require removal or remediation or which may result in penalties under any applicable law. The terms "**Hazardous Substance**" and "**Hazardous Substances**" shall mean and refer to any substance, whether solid, liquid or gaseous in nature, which is or contains (i) any "hazardous substance" as now or in the future defined by the CERCLA or any regulations promulgated under CERCLA, (ii) any "hazardous waste" as now or in the future defined under RCRA



or any regulations promulgated under RCRA, (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), (iv) gasoline, diesel fuel or other petroleum hydrocarbons or petroleum byproducts or derivatives, including crude oil or any fraction thereof (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable, (vi) polychlorinated biphenyls, (vii) radon gas, (viii) urea formaldehyde foam insulation, (ix) mold, radon, lead paint, nuclear fuel or materials, radioactive materials, explosives or known carcinogens, and (x) any additional substances, materials, or wastes which are now or in the future classified or considered to be hazardous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, contaminating or polluting, or dangerous, or otherwise are or become regulated in any manner by any federal, state or local governmental agency under applicable environmental laws, the common law, or any other applicable laws related to the Property. Hazardous Substances shall include without limitation, any substance, whether solid, liquid, or gaseous in nature, the presence of which on the Property (i) requires reporting, investigation, or remediation under applicable environmental laws (ii) causes or threatens to cause a nuisance on the Property or to adjacent or neighboring properties, (iii) poses or threatens to pose a hazard to health or safety of persons on, in, at or about the Property, including without limitation vapor intrusion into the indoor air of any existing or future structures on the Property, (iv) which, if emanated or migrated from the Property constitute a trespass, or (v) which could give rise to a claim for damages or injunctive relief resulting from personal injury, or property or natural resource damages;

- (h) Through and until the Closing Date, Seller shall not enter into any covenant, restriction, encumbrance, right of lien, easement, lease or other contract pertaining to the Property, except as otherwise specifically permitted by this Agreement;
- (i) Seller shall not, without the prior written consent of Buyer (which may be granted or withheld by Buyer for any reason or no reason), alter the natural topography and vegetation currently existing on, in or about the Property, including, but not limited to the cutting, burning or removal of any trees, removing any minerals or topsoil, dumping of any soil, fill or other matter, or altering the natural flow of any water courses located on the Property, except as necessary to perform Seller's Site Obligations;
- (j) To the best of Seller's knowledge, except as provided in this Agreement (including, but not limited to, Seller's rezoning of the Property as contemplated by Section 3.01(a) and Buyer's compliance with the zoning and approval process contemplated hereby), there are no laws, ordinances, regulations, covenants, conditions or restrictions pertaining to or encumbering the Property which would, in any way, impair, interfere with or prevent Buyer's intended use of the Property;
- (k) Seller is not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act;
- (l) There is no litigation and are no other proceedings pending or threatened in any way relating to the Property;
- (m) The execution, delivery and performance by Seller of this Agreement and the performance by Seller of the transactions contemplated hereunder, and the



conveyance and delivery by Seller to Buyer of possession and title to the Property have each been duly authorized by such persons or authorities as may be required, and on the Closing Date, Seller shall provide Buyer and Escrow Agent with certified resolutions, or other instruments, in form satisfactory to Buyer, evidencing such authorization; and/or

- (n) The Land Bank Agreement is in full force and effect; there are no defaults by either party thereto nor is Seller aware of any facts or circumstances, which with the passage of time and/or giving of notice, will result in a default thereunder; there are no terms or conditions of the Land Bank Agreement that would prevent either Buyer or Seller from performing all of its respective obligations or exercising all of its respective rights under this Agreement. Seller shall use diligent good faith efforts to satisfy all of the conditions, contingencies and obligations under the Land Bank Agreement and to complete the transfer of the Primary Parcel to Seller in accordance with the Land Bank Agreement.

The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder for a period of 365 days. Except for matters arising due to causes beyond Seller's reasonable control, all representations and warranties set forth in this Article XI shall be true and correct as of the date hereof and as of the Closing Date, and at Closing, if requested by Buyer, Seller shall so certify, in writing, in form reasonably requested by Buyer.

11.02 Breach of Warranties Prior to Closing. If, during the pendency of this Agreement, Buyer determines that any warranty or representation given by Seller to Buyer under this Agreement shall be untrue, incorrect or misleading, in whole or in part, the same shall constitute a default by Seller hereunder. In such event, Buyer may give written notice thereof and shall thereafter have its rights and remedies under Section 3.05(g).

## **ARTICLE XII**

### **Default**

12.01 Default. Before any party pursues a remedy for an alleged default, the non-defaulting party, as a condition precedent to exercise of its remedies, must give the defaulting party written notice detailing the alleged default. The defaulting party shall have 10 business days from receipt of such notice to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect as if no default occurred. Seller's remedies for an event of default by Buyer under this Agreement are as set forth in Section 3.05(f) above. Buyer's remedies for an event of default by Seller under this Agreement are as set forth in Section 3.05(g) above.

## **ARTICLE XIII**

13.01 Notice Procedure. Any notices required hereunder shall be in writing, shall be deemed effective upon transmittal, may be transmitted by the parties' respective legal counsel, and shall be transmitted by (a) personal service, (b) reputable overnight delivery service, (c) facsimile (confirmed receipt), (d) email transmission, or (e) certified mail, postage prepaid, return receipt requested, and shall be addressed to the parties as follows:

- (a) If intended for Seller, to:



City of West Carrollton  
300 Central Avenue  
West Carrollton, Ohio 45449  
Attn: City Manager  
Email: aholloway@westcarrollton.org

With a copy to:

Thompson Hine LLP  
10050 Innovation Dr., Suite 400  
Dayton, Ohio 45342  
Attn: Arik A. Sherk, Esq.  
Email: arik.sherk@thompsonhine.com

(b) If intended for Buyer, to:

Morse Road Development, LLC  
4270 Morse Road  
Columbus, Ohio 43230  
Attn: Tony King, Real Estate Manager  
Email: tking@skilkengold.com

With a copy to:

Kayne Law Group, CO., P.A.  
612 Park Street, Suite 100  
Columbus, Ohio 43215  
Attn: Jacob Worrel, Esq.  
Email: jworrel@kaynelaw.com

And for default notices, with a copy to:

Morse Road Development, LLC  
4270 Morse Road  
Columbus, Ohio 43230  
Attn: Drew Janitzki, General Counsel  
Email: ajanitzki@skilkengold.com

#### **ARTICLE XIV** **GENERAL PROVISIONS**

14.01 Governing Law. This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts of Montgomery County.

14.02 Entire Agreement. This Agreement constitutes the entire contract between the parties hereto, and may not be modified except by an instrument in writing signed by the parties hereto, and supersedes all previous agreements, written or oral, if any, of the parties. Exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.



14.03 Time of Essence. Time is of the essence of this Agreement in all respects. Any time period providing for the performance of the parties' obligations herein which would otherwise end on a Saturday, Sunday or national holiday shall be extended to the next succeeding business day.

14.04 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

14.05 Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

14.06 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the party making the waiver.

14.07 Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

14.08 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same document. Facsimile and/or electronic mail transmissions of signed copies and/or electronically signed copies (such as by way of DocuSign) of this Agreement shall be deemed to be as valid and effective as original signatures.

14.09 Like-Kind Exchange. Buyer may exchange fee title to the Property for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder. Buyer expressly reserves the right to assign its rights but not its obligations hereunder to a "Qualified Intermediary" as provided in IRC Reg. 1.1031(k)-(g)(4) in connection with such an exchange at any time on or before the Closing Date. Seller hereby agrees to cooperate with Buyer (at no cost to Seller) in effectuating any such exchange.

14.10 Assignment. Buyer hereby reserves the right to assign this Agreement to any affiliate, subsidiary, or related entity of Buyer, or to Sheetz, Inc. Buyer shall notify Seller of any such assignment at least 5 days prior to the Closing Date by delivery of notice in the manner otherwise required hereunder. Other than as specifically set forth in this Section 14.10, the Property shall not be transferred to any third party by Seller and this Agreement shall not be assigned by Seller.

14.11 Confidentiality. Seller agrees that, to the extent permitted by law, it shall keep the transaction evidenced by this Agreement and each of its terms confidential and shall release no information to any third party concerning this Agreement without the express written consent of Buyer which may be given or withheld in Buyer's sole and absolute discretion. Buyer understands that Seller is a municipality and therefore cannot guarantee confidentiality; for example, when the negotiation of this Agreement is concluded, approval by the City will be required in a public meeting.



14.12 Seller's and Buyer's TIN. Buyer's and Seller's tax identification numbers shall be provided to Escrow Agent at Closing.

14.13 Agreement to Remove from Market. Upon the Effective Date, and for so long as this Agreement remains in effect, Seller agrees not to market the Property for sale or lease, and refrain from publicizing, marketing, listing or other promotion of availability of the Property.

14.14 No Presumption Against Drafter. This Agreement is an agreement between parties who are experienced in sophisticated and complex matters similar to the transaction contemplated under this Agreement, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Buyer and Seller were each given opportunity to consult with independent legal counsel of such party's choice competent in advising them of their obligations and liabilities hereunder.

14.15 No Offer. The submission of a draft of this Agreement or a summary of some or all of its provisions does not constitute an offer to purchase the Property. Neither Buyer nor Seller shall be legally obligated with respect to a purchase of the Property unless and until this Agreement has been executed by both Buyer and Seller and fully executed copies have been delivered to each party.

14.16 Buyer's Development of the Property. Buyer's purchase of the Property is subject to the following agreements which shall be established as covenants running with the land until such time as the Minimum Improvements (defined below) have been completed:

(a) Commencement Deadline & Completion Deadline.

- (i) Subject to Force Majeure, Buyer agrees, by no later than 540 days after the Closing Date (the "**Commencement Deadline**") to commence construction of the building and related improvements on the Property for which Buyer has received approval from the applicable governmental authorities pursuant to Section 3.02(b) above (collectively, the "**Minimum Improvements**") and prosecute the same to completion no later than 540 days after the commencement of construction (the "**Completion Deadline**") (recognizing that stoppage during the winter months may be appropriate).
- (ii) If, subject to Force Majeure, Buyer fails to commence construction of the Minimum Improvements by the Commencement Deadline, or to complete the Minimum Improvements by the Completion Deadline, and such failure continues for a period of 60 days following Buyer's receipt of written notice from Seller, then Seller shall have the right, at its option and as Seller's sole and exclusive remedy (in either such event), to repurchase the Property (under the terms provided in subsection (ciii)); provided, however, that Seller shall not have the right to exercise such right to repurchase the Property if Buyer is then diligently and continuously in good faith attempting to commence or complete, as applicable, the Minimum Improvements.
- (iii) In the event Seller exercises its right to repurchase as provided above, Seller and Buyer shall arrange a closing date within 45 days after the date



that Buyer receives Seller's notice; and at the closing, Buyer will re-convey the Property to Seller by limited warranty deed, free of liens and encumbrances except those in existence at the time Buyer acquired the Property or subsequently created by Seller and/or by Buyer or any other third-party with Seller's consent (and specifically free of any mortgages or liens created by Buyer, other than the TIF Service Agreement and any NCA Declaration). The purchase price for the Property shall be 90% of the Purchase Price set forth herein and Seller shall pay all costs associated with closing. In addition, Buyer shall reasonably cooperate (at no cost or expense to Buyer) with Seller in releasing the Property from any agreements or encumbrances that relate to the Minimum Improvements.

(b) Insurance Requirements. From the time that construction associated with the Minimum Improvements commences, until such time as all construction work associated with the Minimum Improvements has been completed, Buyer shall maintain, or cause to be maintained the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Buyer, its agents, representatives, employees or subcontractors:

(i) Commercial General Liability ("CGL") insurance with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01, covering CGL on an occurrence basis, including products-completed operations, with limits no less than \$1,000,000 per occurrence for bodily injury, property damage, and personal. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

(A) The policy(ies) shall cover, or be endorsed to cover, the City of West Carrollton, its officials, employees, agents, and volunteers as additional insureds with respect to any liability, including products-completed operations liability, arising out of work or operations performed by, on or on behalf of, Buyer, including material, parts, or equipment furnished in connection with the Minimum Improvements. The CGL coverage shall be primary as respects the City of West Carrollton, its officials, employees, agents, and volunteers.

(B) Buyer may satisfy the minimum limits required above under an Umbrella or Excess Liability policy. Buyer agrees to endorse the City of West Carrollton, its officials, employees, agents and volunteers as additional insureds on the Umbrella or Excess Liability policy, unless the Umbrella or Excess Liability policy provides coverage on a "Follow Form" basis and such fact is disclosed on the certificate of insurance.

(ii) Builder's Risk (Course of Construction) insurance using an "All Risk" coverage form, with limits no less than one-hundred percent (100%) of the value of the improvements then being constructed as part of Buyer's Improvements.

(iii) Worker's Compensation insurance in such amount as required by law, and Employers Liability insurance with a limit of not less than \$1,000,000 per accident for bodily injury.

Buyer's insurance policies shall (l) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business



in Ohio, and that have an A.M. Best rating of A:VII or better, and (II) not be canceled or modified without at least 30 days prior written notice to the City.

Promptly following receipt of written request from Seller, Buyer shall send a certificate of insurance, and applicable additional insured endorsement(s) and/or policy language verifying the additional insured coverage required above to Seller at such address as may be specified by Seller from time to time. Seller reserves the right to require complete, certified copies of all policies, including endorsements, required by these specifications at any time (but not more frequently than once per calendar year).

Subcontractors, Buyer shall require and verify that all subcontractors maintain insurance meeting all the requirements herein, and Buyer shall ensure Seller is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage, subcontractors shall provide coverage at least as broad as ISO Form CG 20 38 04 13. Buyer shall require architects, engineers, and others providing professional services to carry Professional Liability (Errors & Omissions) coverage with limits no less than \$1 million per claim or occurrence.

Notwithstanding the foregoing or anything contained herein to the contrary, Seller acknowledges and agrees that Buyer shall have the right to maintain high deductible insurance policies and/or carry self-insurance retentions for any coverages required herein.

(c) Force Majeure. If Buyer is delayed or hindered in or prevent from the performance of any obligation required under this Section 14.16 by Force Majeure (regardless of whether or not any such obligation in this Agreement includes a specific reference to Force Majeure), the time for performance of such obligation shall be extended for the period of the delay. The term "**Force Majeure**" means a delay beyond the reasonable control of Buyer, including (without limitation), delays caused by labor strikes, lock outs, shortages of materials, extraordinary restrictive governmental laws or regulations (such as gas rationing), delays caused by Seller or any governmental or quasi-governmental entity (including, but not limited to, delays in approving plans, entitlements, and/or permitting), mass riots, war, military power, sabotage, material fire or other material casualty, a Pandemic Event (defined below), weather, or an extraordinary and material act of God (such as a tornado or earthquake), or other circumstance beyond the reasonable control of the delayed party. The term "**Pandemic Event**" means any of the following: state of emergency or public health emergency or pandemic (including, without limitation, Covid-19), government mandated quarantine or travel bans, government mandated closures, disruption, breakdown, delayed production or interruption for any period of time, interruptions to transportation, or the use of equipment, labor, or materials, including, without limitation, the closure of government buildings, airports, harbors, railroads, or pipelines, or other infrastructure due to worldwide or regional pandemic or other health related event disruptions.

(d) Casualty. If, during initial construction, the Minimum Improvements are damaged or destroyed by fire or other casualty during construction, Buyer shall repair and restore the affected property and shall diligently proceed with the completion of construction.

(e) Memorandum of Agreement. At the Closing under this Agreement, the provisions set forth in this Section 14.16 shall be incorporated into a memorandum of agreement (the "**Memorandum of Agreement**") that shall be recorded as an encumbrance on the Property, in a form and substance mutually acceptable to Buyer and Seller (with both parties acting reasonably). The Memorandum of Agreement also may memorialize Buyer's NCA obligations if the NCA is not established prior to the Closing. Upon the date that the Minimum Improvements are completed,



Seller shall execute and deliver to Buyer a termination of the Memorandum of Agreement in form and substance reasonably acceptable to Buyer. Notwithstanding the foregoing, the Memorandum of Agreement shall automatically terminate on the fourth anniversary of the Closing Date, and the absence of any amendment executed by both Buyer and the Seller and filed of record extending the termination of the Memorandum of Agreement shall be conclusive evidence that no such extension has occurred.

(f) Performance by Tenant. Seller acknowledges and agrees that all or any of the obligations of Buyer set forth in this Section 14.16 may be performed by Buyer's tenant (the "**Tenant**") and/or the Tenant's contractor(s) and/or subcontractor(s), and that Seller shall: (i) accept the Tenant's performance of Buyer's obligations pursuant to this Section 14.16 with the same force and effect as though performed by Buyer; and (ii) recognize the Tenant as though it were Buyer for all purposes, including, but not limited to, any obligations running to the benefit of Buyer.

(g) Survival. The provisions of this Section 14.16 shall survive the Closing until all obligations of Buyer and Seller set forth in this Section 14.16 have been satisfied.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

*[Signature Page Follows]*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the dates set forth below, respectively.

**SELLER:**

**City of West Carrollton,**  
an Ohio non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**

**Morse Road Development, LLC,**  
an Ohio limited liability company

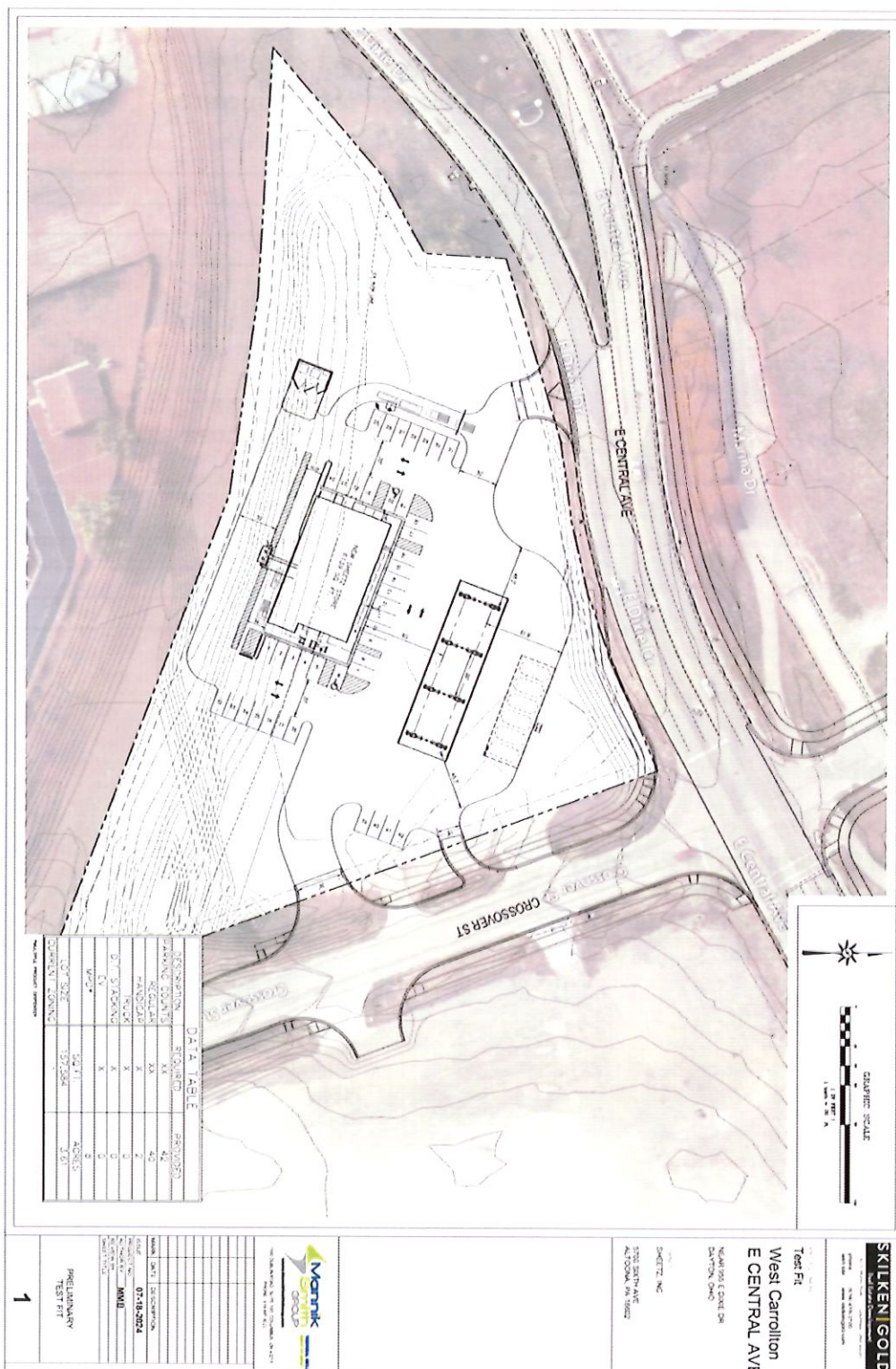
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Index of Exhibits:**

- A.     **Site Plan**
- B.     **Legal Description of Property**
- C.     **Development Site Plan**
- D.     **Master Development Plan**
- E.     **Use Restrictions**
- F.     **Seller's Plans**

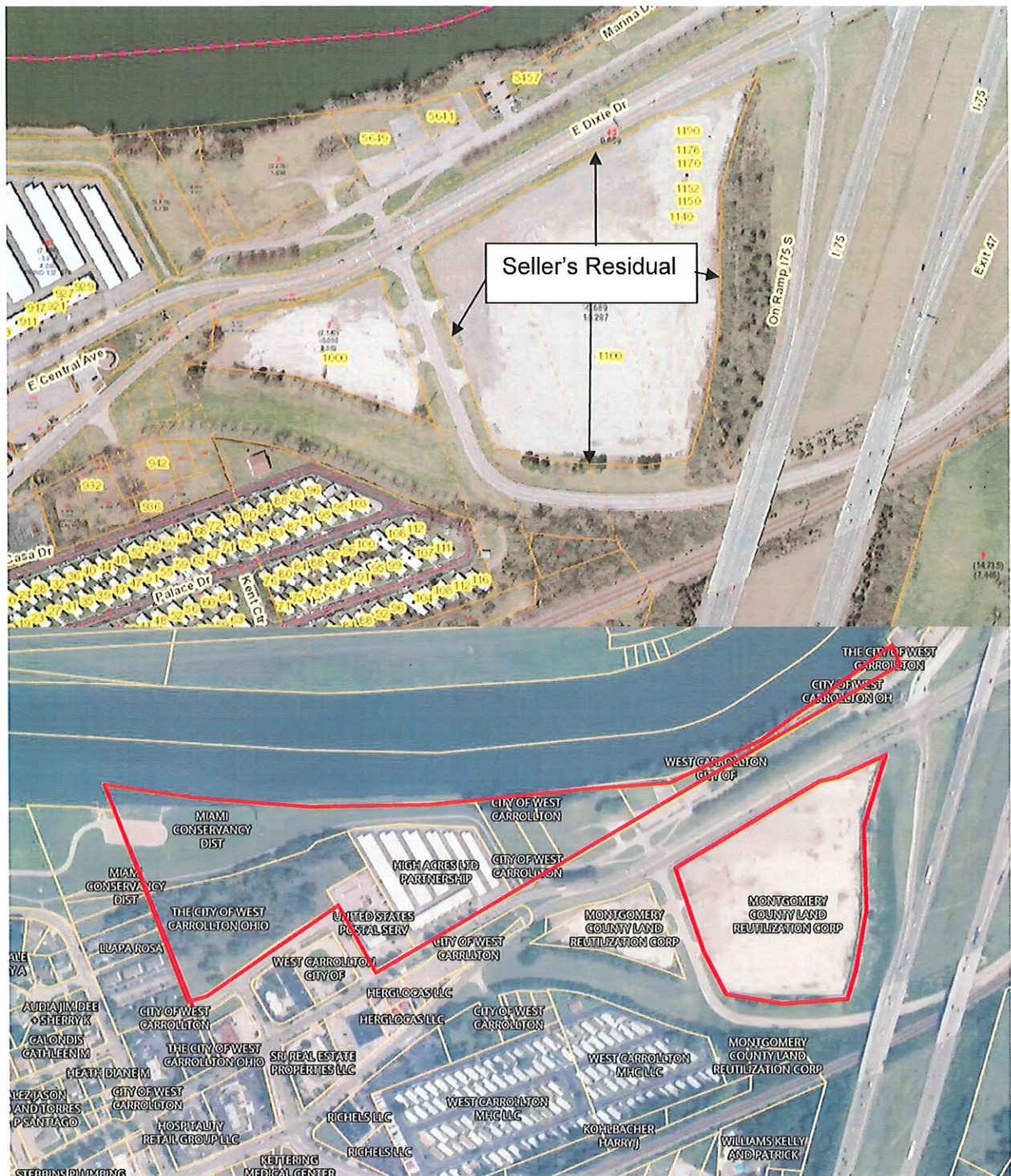


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**EXHIBIT A-1**  
**SELLER'S RESIDUAL**





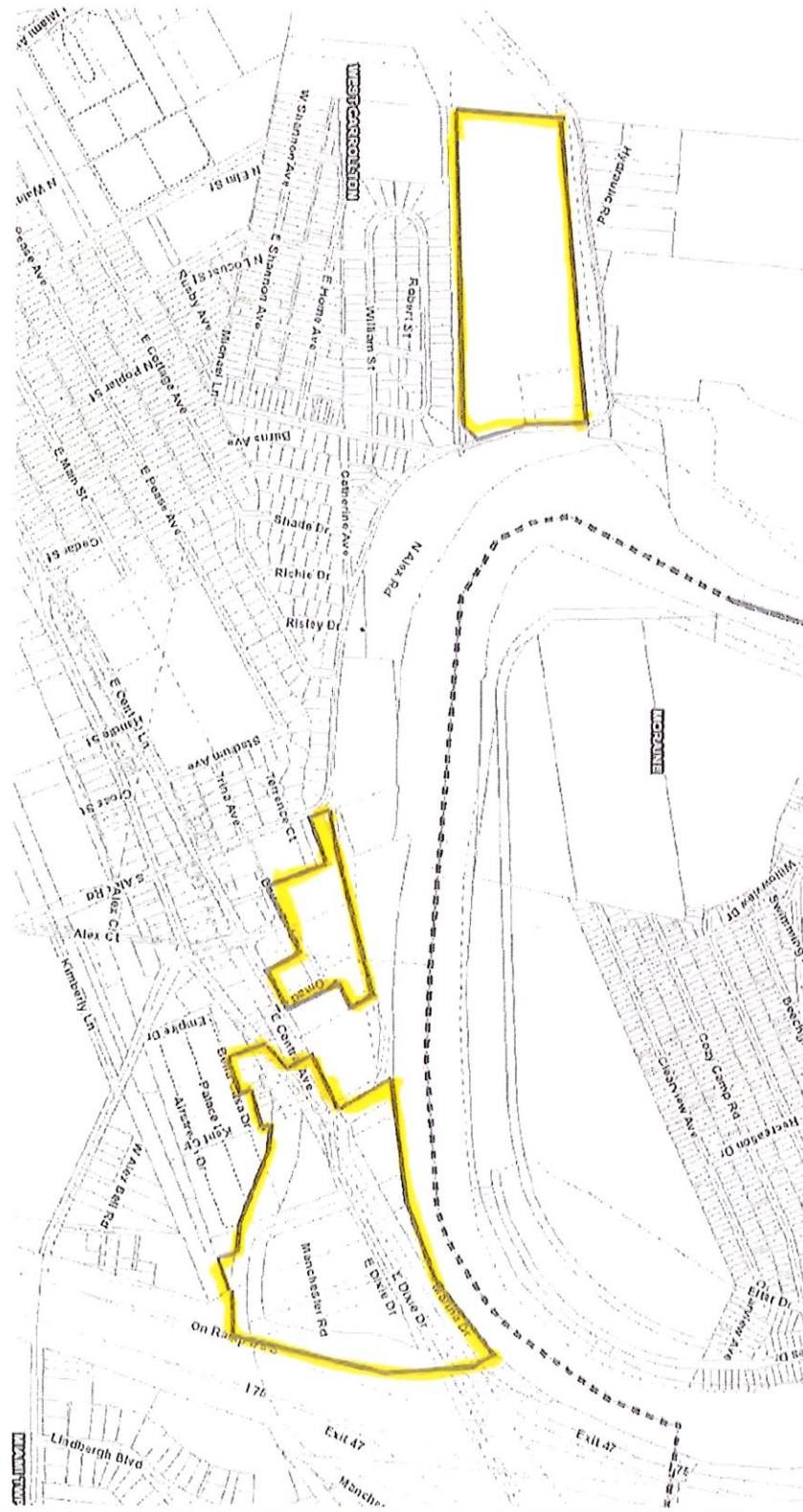
**EXHIBIT B**  
**LEGAL DESCRIPTION OF THE PROPERTY**

[To be inserted pursuant to Section 5.03 above]



**EXHIBIT C**  
**DEVELOPMENT SITE PLAN**





**EXHIBIT D**  
**MASTER DEVELOPMENT PLAN**



**SITE DEVELOPMENT AND DESIGN STANDARDS**  
**West Carrollton, Ohio**  
**Revised March 10, 2023**

**DECLARATION OF**  
**SITE DEVELOPMENT AND DESIGN STANDARDS**

This Declaration is adopted as of the day of \_\_\_\_, 20\_\_\_\_, by and among the Master Developers (defined below) and **THE CITY OF WEST CARROLLTON, OHIO**, an Ohio municipal corporation (the "City"). The Master Developers and City shall also be referred to herein each as a "Party", and collectively as the "Parties".

**WHEREAS**, the City is the owner of certain real estate located in the City of West Carrollton, Montgomery County, Ohio, and more specifically described on Exhibit A-1 attached hereto (the "Property," also referred to as (\_\_\_\_)); and

**WHEREAS**, Dillin Corporation and Woodard Development are joint venture partners to direct and oversee the construction and operation of the Development; and

**WHEREAS**, each Party desires to establish for its own benefit and the benefit of all future owners or occupants of all or any part of the development and adjacent parcels in the present commercial development zone, to be constructed and operated on the Property (the "Development"), certain restrictions as to the use, improvement, and enjoyment of the Development as a retail/commercial/residential subdivision; and

**WHEREAS**, the development standards and zoning of the Property are governed by the City of West Carrollton's Zoning Code which was adopted by Ordinance 3248, passed September 9, 2003; and

**WHEREAS**, all of the Property is located and governed by the CC City Center District; and

**NOW, THEREFORE**, in consideration of these premises and of the enhancement in value of the Property, and to afford purchasers protection in the use and occupancy thereof and to provide a general plan for the improvement and development of the Property as an architecturally harmonious, artistic, and desirable subdivision. Master Developers and the City hereby declare and stipulate that the Property hereafter will be sold, conveyed, or transferred subject to the covenants, conditions, agreements, and restrictions contained herein. Set forth below are the standards and procedures that shall apply to all development within the Property.



**ARTICLE ONE**  
**RELATIONSHIP TO ZONING CODE & GLOSSARY**

**Section 1. Design Standards and City Zoning**

The Site Development and Design Standards serve as supplemental guidelines to the existing West Carrollton's CC City Center District application submission, review, and approval process for the Property.

**Section 2. Glossary**

**All terms shall have the meanings ascribed to them in the West Carrollton Zoning Code, except the terms below not defined in the Zoning Code. The following words when used in these Standards or any supplement hereto (unless the context shall prohibit) shall have the following meaning:**

1. "DECLARATION" shall mean this Declaration of Site Development and Design Standards and shall include without limitation all restrictions, covenants, conditions, and agreements referred to herein.
2. "DEVELOPER" see Master Developers.
3. "DEVELOPMENT PLAN" shall mean a site plan, landscaping plan and building elevation(s).
4. "MASTER DEVELOPERS" shall mean Dillin Corporation, Woodard Development and the Planning Director for the City of West Carrollton, their successors and permitted assigns.
5. "OWNER" shall mean and refer to the owner of record, whether one or more persons or entities of the fee simple title to any Lot which is a part of the Property but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

For additional definitions and terms reference the City of West Carrollton Zoning Code, Section 154.02.01.

**ARTICLE TWO**  
**APPLICATION AND REVIEW PROCEDURES**

**Section 1. Letter of Intent/Contract**

It is highly recommended, but not required, that an Owner submit a Site Plan and Building Elevation as a part of their letter of intent or purchase contract. The City and Master Developers may, but are not obligated to, provide some preliminary feedback and design recommendations to the Owner at this stage. However, the City's approval of the letter of intent or purchase contract is NOT an approval by the Master Developers or City of any plans submitted at the letter of intent or purchase contract stage. Additionally, any preliminary feedback and/or design

recommendations are NOT to be construed as a comprehensive list and the Owner may receive additional feedback once the formal submittal is made.

### **Section 2. Master Developers Review**

Prior to submission of Development Plans to the City, Development Plans shall first be submitted to the Master Developers for review, to assure the general compliance and adherence with the guidelines set forth in this Declaration. The Master Developers reserve the right to charge a submittal fee in an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_.00) for each Development Plan submission. The Master Developers reserves the right to waive the Master Developers review requirement and submittal fee.

Master Developers recommendation to the City of approval, denial, approval with conditions, or request revisions or further clarifications of the Owner shall be given within fourteen (14) days following the complete submission of Development Plans. Failure by the Master Developers to issue notice of a decision of the Development Plans within fourteen (14) days shall be deemed an approval of the Development Plans.

### **Section 3. Submission to City**

Following the Master Developers recommendation, the application and review procedures of the Development Plans will follow the process identified in the City of West Carrollton Zoning Code, Section 154.10.472 for the CC City Center District.

## **ARTICLE THREE** **DESIGN STANDARDS**

### **Section 1. General Requirements**

The purpose of this Article is to allow for flexibility that will allow for the overall development site to become a walkable, integrated development with the following emphases:

1. Cohesive architectural, site and landscaping design ideal that allows for creative and high-quality construction, that also reflects 'best-in-class' design ideals for the various end land uses. Each Owner will work with end-users to achieve well-scaled massing and aesthetically stylish details, materials and colors that reflect the historic and/ or innovative character of the SW Ohio region. These can also be applied to more contemporary motifs provided that certain key/specific details within any one design, as outlined in the sections forward, are generally reflected in the final submitted concept;
2. A unified architectural design with the potential to accommodate more contemporary design vernaculars, motifs, and building materials, provided that the final design creates a visually complementary, integrated urban environment;
3. Neighborhoods, activity areas, and open space(s) around a well-designed transportation/circulation network where pedestrian activity is strongly supported, and integrated vehicular streetscapes, service, or parking areas;
4. Retailing, cafés, restaurants, personal and/or business services placed and located where



they can generate high pedestrian activity, along ground floor locations and below potential office space, hospitality, or residential units on upper floors;

5. A design where commercial/retail, office, hospitality, institutional and public single lot uses can be incorporated into the overall development fabric;
6. Residential areas that are built above/intermixed or adjacent within close/ walkable proximity of new commercial uses, places of work or dedicated public open spaces and/or amenities;
7. An emphasis on developing new residential neighborhood(s) where residents may achieve a live, work and play lifestyle;
8. A design where open space(s), streetscapes with dedicated sidewalks, pathways, public and/or institutional uses, and recreational uses are interwoven to create an overall cohesive development;

All Development Plans for the Property shall be consistent with the goals and objectives of the CC City Center District identified in the City of West Carrollton Zoning Code, Section 154.10.471 (A)(B).

#### **Section 2.**

Each grantee of any Owner, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations created or reserved by these Standards, and all rights, benefits, and privileges of every character hereby granted, created, reserved, or declared.

#### **Section 3.**

The several restrictions, covenants, conditions, agreements, and other provisions herein contained shall run with the land in the Property and shall be binding upon all persons (either natural, corporate, or otherwise), their heirs, executors, administrators, successors and assigns, who hold any interest whatsoever in the Property or any Lots therein, regardless of how or in what manner said interest is acquired.

#### **Section 4.**

Except as otherwise set forth herein, this Declaration may only be amended by the City of West Carrollton through the approval of the City Council.

#### **Section 5.**

No restrictions imposed hereby shall be abrogated or waived by any failure to enforce the provisions hereof, regardless of the frequency and number of violations or breaches that may occur.

**Section 6.**

Lot Owners shall be solely responsible for compliance with local, state, and federal laws, ordinances, rules, and regulations regarding the use of the Lots in addition to compliance with these Standards.

**Section 7.**

The invalidity of any restrictions hereby imposed, or of any provisions hereof, or of any part of such rules, regulations, or provision, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of these Standards.

**Section 9.**

Neither the Master Developers nor or their respective successors or assigns, shall be liable for damages to anyone or any entity submitting plans to them for approval, or to any Owner or land-owner interest affected by this Declaration, by reason of mistake in judgment, negligence of nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every person or entity who submits plans to the Master Developers for approval agrees, by submission of such plans and specifications, and every Owner or tenant of any of such building site within the Property agrees, by acquiring title thereto, or securing an interest therein, that he/she will not bring any action or suit against the Master Developers to recover any such damages.



Exhibit A-1  
Legal Description





**EXHIBIT E**  
**USE RESTRICTIONS**

Seller, for itself, its successors and/or assigns, covenants and agrees that:

- (i) No portion of the property now or hereafter owned or controlled by Seller referred to herein and depicted on the Site Plan as the "**Restricted Area**"), shall be occupied or used, nor shall Seller permit the occupancy or use of the Restricted Area, in whole or in part, for or in support of:
  - (a) the retail sale of gasoline and other motor fuels;
  - (b) a store which derives 50% or more of its income from the sale of tobacco, e-cigarettes, cannabidiol (CBD) containing substances, cannabis containing substances (to the extent the sale thereof is legally permissible) or related products; and/or
  - (c) a "**Convenience Store**", defined as a retail business with a primary emphasis on providing the public a convenient location to quickly purchase a wide variety of products (predominantly food, beverage, gasoline or tobacco products) and services, such as, by way of example only, and without limitation, a BP Express, WAWA, 7-Eleven, Hess, Rutter's, Speedway, QT, Kangaroo, Murphy Oil, Circle K, or similar retail operators; grocery and other stores more than 15,000 square feet in size shall not be deemed Convenience Stores so long as such grocery or other store does not sell gasoline and/or other motor fuels; and/or
- (ii) No portion of the Restricted Area shall be used, nor shall Seller permit the use of any portion of the Restricted Area, for or in support of:
  - (a) any of the uses set forth in subsections (i)(a)-(c) above;
  - (b) a quick serve restaurant which derives 50% or more of its income from the sale of submarine sandwiches, such as, by way of example only, and without limitation, Subway, Jimmy John's, or Jersey Mike's; provided, however, that the restriction in this item (b) shall expire on the date that is 365 days after the date that a Sheetz branded fuel and convenience store opens for business on the Property;
  - (c) a Dunkin Donuts (a/k/a Dunkin);
  - (d) a car wash;
  - (e) off-track betting establishment;
  - (f) adult book store or any form of adult entertainment;
  - (g) an establishment selling or exhibiting pornographic materials;
  - (h) a distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
  - (i) a junk yard, stock yard or animal raising operation;

- (j) a dump or disposal, or any operation for the incineration or reduction of garbage of refuse; and/or
- (k) an operation whose principal use is a massage parlor and/or exotic dancing, provided this shall not prohibit massages in connection with a beauty salon or health club or athletic facility.

Seller will have no obligation to enforce compliance on sites no longer owned by Seller that violate the use restrictions.

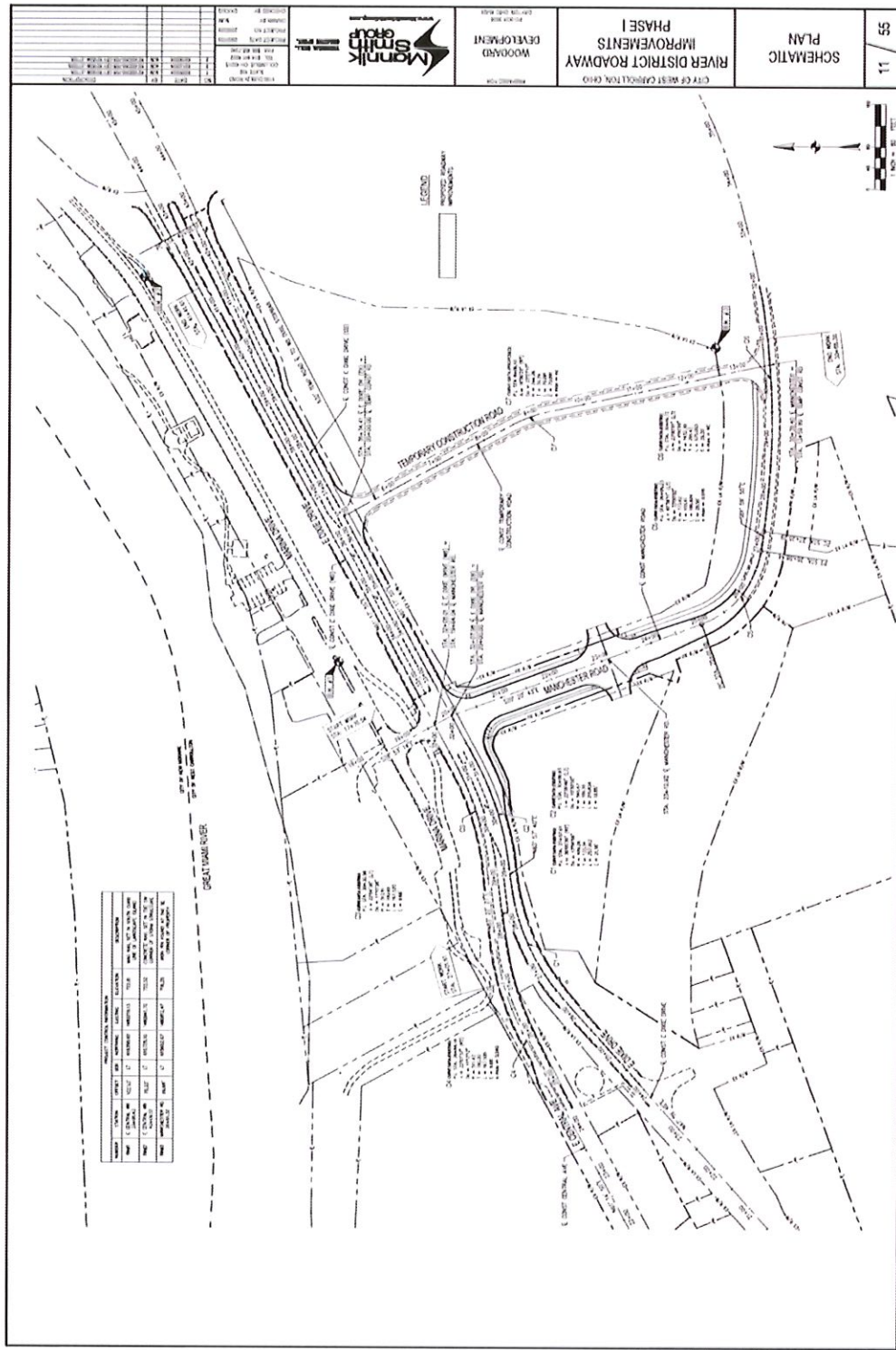
To the extent that the use restrictions benefit the Property, following the expiration of the fifth year of the operation of a fuel station and convenience store on the Property, such restrictions shall terminate if the Property ceases to be used as a fuel station and convenience store for more than 365 consecutive days other than as a result of Force Majeure, alterations, remodeling, renovation, casualty, condemnation, or other circumstance beyond control of the operator of the Property.



**EXHIBIT F**  
**SCOPE OF SELLER'S SITE OBLIGATIONS & SELLER'S PLANS**

- (a) Complete the River District Roadway improvements Phase I as shown on the plan attached hereto as Exhibit F-1
- (b) Complete the utility improvements (including stormwater drainage facilities) shown on the Overall Utility Plan for the River District Roadway Improvement Phase I as shown on the plan attached hereto as Exhibit F-2

# EXHIBIT F-1





**EXHIBIT F-2**

