

RECORD OF ORDINANCES

Ordinance No. 3790

Passed: December 10, 2024

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO THE PURCHASE AGREEMENT WITH MD RESTAURANT GROUP LLC., AN ILLINOIS LIMITED LIABILITY COMPANY FOR THE SALE OF A PORTION OF 1100 E. DIXIE DRIVE, WEST CARROLLTON, OHIO, AND DECLARING AN EMERGENCY

WHEREAS, the City of West Carrollton, Ohio, owns the property at 1100 E. Dixie Drive (Parcel ID K48 00509 0037) and acquired the property for the expressed purpose of economic redevelopment; and

WHEREAS, the City entered into a Purchase Agreement with MD Restaurant Group, LLC., which intends to develop a Culver's restaurant on an approximately 1.4-acre portion of the subject property located at the southeast corner of East Dixie Drive and Manchester Road in the City of West Carrollton; and

WHEREAS, it is critical to the timely development of the Culver's restaurant that the City provide access to the site through the construction of Phase 1A, the Spine Road; and

WHEREAS, the City is entering into an agreement with MD Restaurant Group, LLC. through Resolution 37-2024 to provide the terms and conditions for the construction and completion of Phase 1A, the Spine Road; and

WHEREAS, specific terms and conditions under the original Purchase Agreement now require an amendment thereto in order to accomplish the construction of Phase 1A, the Spine Road to the satisfaction of the City and MD Restaurant Group, LLC.

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

Section 1: That the City Manager is hereby authorized to enter into an Amendment to the Purchase Agreement with MD Restaurant Group, LLC, and sign all necessary documents to facilitate the timely construction of Phase 1A, the Spine Road, and said sale of property located at 1100 E. Dixie Drive (Parcel ID K48 00509 0037) to MD Restaurant Group, LLC. to include the terms and conditions as set forth in the attached Exhibit A.

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 is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the Municipality and its inhabitants to

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expedite the execution of the Purchase Agreement to ensure the timely development of said property, and this ordinance shall take effect immediately upon passage.

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Mayor

Attest: Tracy Moore
Clerk of Council

Effective Date: December 10, 2024

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Exhibit A

AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (this "Amendment") is made and entered into, effective on the date that both parties have executed this Amendment, by and between THE CITY OF WEST CARROLLTON, OHIO, an Ohio municipal corporation ("Seller") and MD RESTAURANT GROUP, LLC, an Illinois limited liability company ("Buyer"), under the following circumstances:

A. Pursuant to Real Estate Purchase Agreement with an effective date of October 15, 2024 (the "Purchase Agreement"), Seller agreed to sell to Buyer, and Buyer agreed to Purchase, a parcel of real property located at the southeast corner of East Dixie Drive and Manchester Boulevard in West Carrollton, Ohio, being part of Parcel I.D. No. K48 00509 0037, as more particularly described therein.

B. Seller and Buyer entered into an Agreement dated December __, 2024 (the "Supplemental Agreement"), under which the parties supplemented Section 8.02 of the Purchase Agreement in regard to the timing and scope of the performance of the "Seller's Work" described in the Purchase Agreement.

C. In order to formalize the effectiveness of the Supplemental Agreement as an amendment to the Purchase Agreement, Seller and Buyer desire to enter into this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Amendment and in the Supplemental Agreement, Seller and Buyer agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the meanings set forth in the Purchase Agreement.

2. Amendment. The Supplemental Agreement is incorporated herein by reference and made a part hereof. All terms of the Supplemental Agreement that conflict with the Purchase Agreement shall be deemed to amend the Purchase Agreement, including, but not limited to, the following: (a) the change in the Completion Date to June 1, 2025; (b) the modification of the scope of the Seller's Work (referred to in the Supplemental Agreement as the City's Work); (c) the establishment of the definition of Force Majeure and other terms that permit the extension of the Completion Date; and (d) the establishment of the Delay Penalty as defined in the Supplemental Agreement, along with Seller's agreement to escrow a portion of the Purchase Price in the amount of \$150,000.00 as assurance of Seller's obligation to pay any Delay Penalty.

3. Ratification. Except as amended hereby, the Purchase Agreement is ratified and confirmed and remains in full force and effect.

4. Miscellaneous. This Amendment shall be governed by and construed in accordance with the laws of the State of Ohio. This Amendment constitutes the entire understanding between

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the parties with respect to the subject matter herein and supersedes all prior agreements or understandings. No amendment, waiver or modification of this Amendment shall be effective unless in writing and signed by both parties. This Amendment may be executed in separate counterparts which may be combined to form a single original. Facsimile and/or electronic mail transmissions of signed copies and/or electronically signed copies (such as by way of DocuSign) of this Amendment shall be deemed to be as valid and effective as original signatures.

[Signature Page Follows]

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

SELLER:

BUYER:

CITY OF WEST CARROLLTON, OHIO,
an Ohio municipal corporation

MD RESTAURANT GROUP, LLC,
an Illinois limited liability company

By: _____
Amber Holloway, City Manager

By: _____
Name:
Title:

Date: _____

Date: _____

APPROVED AS TO FORM:

Lori Denlinger, Law Director