

## RECORD OF RESOLUTIONS

Resolution No. 37-2024

Passed: December 10, 2024

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MD RESTAURANT GROUP, LLC. REGARDING THE RIVER DISTRICT PHASE IA SPINE ROAD CONSTRUCTION**

**Whereas**, the City of West Carrollton, Ohio is engaged in a development effort within the River District Development; and

**Whereas**, the City has entered into a purchase agreement to sell approximately 1.4 acres of land to MD Restaurant Group, LLC. to build a Culver's restaurant; and

**Whereas**, the City desires to enter into an agreement with MD Restaurant Group, LLC. to provide access to the site in order to facilitate its timely development; and

**Whereas**, under the terms of the Agreement the City will construct the Phase IA Spine Road providing access to the future Culver's restaurant site no later than June 1, 2025; and

**Whereas**, the City understands the timely completion of Phase IA is an express condition of MD Restaurant Group, LLC. purchasing the property; and

**Whereas**, should the City not meet the completion deadline and cause a delay in opening the restaurant, MD Restaurant Group may enact a penalty fee that cumulatively shall not exceed \$150,000;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO, THAT:

**Section 1:** The City Manager is hereby authorized to execute the Agreement with MD Restaurant Group in substantially the form as attached hereto and made a part hereof; with any changes or amendments thereto not inconsistent with this Resolution and said changes or amendments will not alter the material terms of the Agreement nor adversely impact the City as determined by the Law Director of the City and which are approved by the City Manager.

**Section 2:** The City Manager, or her designee, is further authorized to do all things necessary to comply with the terms and conditions of said Agreement.

**Section 3:** It is found and determined that all formal actions of the City Council relating to the adoption of this resolution were in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**Section 4:** This resolution shall be in full force and effect from and after its date of passage.

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\_\_\_\_\_  
Mayor

Attest:   
\_\_\_\_\_  
Clerk of Council

Effective Date: December 10, 2024

## AGREEMENT

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between:

- **City of West Carrollton**, an Ohio Municipality (hereinafter referred to as "City" or the "Contractor"); and
- **MD Restaurant Group, LLC**, a limited liability company (hereinafter referred to as "MD" or the "Owner" or "Culver's").

## RECITALS

A. Pursuant to a Real Estate Purchase Agreement effective October 15, 2024 (the "Purchase Agreement"), the City agreed to sell, and Owner agreed to purchase, certain real property at the southeast corner of East Dixie Drive and Manchester Boulevard in the City of West Carrollton.

B. Section 8.02 of the Purchase Agreement contemplates that the parties will agree upon a more specific scope of the "Seller's Work" described in Exhibit G to the Purchase Agreement. This Agreement is intended to serve as a supplement to the Purchase Agreement as contemplated by Section 8.02, and shall supersede anything to the contrary in Section 8.02 or Exhibit G, the Amendment to the Purchase Agreement will be presented by Ordinance to the West Carrollton City Council for approval.

The parties agree as follows:

### **1. Scope of Work**

City agrees to construct all aspects of the "Spine Road" as described in **Exhibit A** and the elements of Seller's Work as described in Exhibit G to the Purchase Agreement (hereinafter referred to as "City's Work"). City shall complete City's Work on or before **June 1, 2025** (the "Completion Date"), subject to the conditions set forth herein.

City reserves the right, at its sole discretion, to reduce the scope of City's Work to, at a minimum, providing MD access to the curb cut located near the southeast portion of their site and other elements of the City's Work necessary for Owner to open for business. Any such reduction in scope must ensure that MD has full, unobstructed access to a paved road connecting to Manchester Road.

### **2. Timely Completion**

City acknowledges that the timely completion of City's Work by the Completion Date is an express condition of MD purchasing land from the City of West Carrollton ("City") for a Culvers store. The parties recognize that completion of City's Work will be dependent upon factors such as weather and the seasonal reopening of Dayton asphalt plants.

### **3. Force Majeure**

This Agreement is subject to events of Force Majeure as defined below:

- **Force Majeure** means any event or circumstance beyond the reasonable control of either party, preventing or delaying performance of any of its obligations under this Agreement,



provided that the event is not caused by the fault or negligence of the party seeking relief. Such events include but are not limited to:

- Acts of God (such as floods, earthquakes, hurricanes, tornadoes, or other natural disasters)
- War, hostilities, invasion, acts of foreign enemies, or terrorism
- Civil unrest, riots, or large-scale labor strikes
- Government actions or orders, including embargoes, export restrictions, or changes in law
- Epidemics, pandemics, or widespread health emergencies
- Fires, explosions, or unforeseen accidents
- Delays in transportation or shortage of critical materials or labor due to the above events

If either party is prevented, hindered, or delayed from performing its obligations under this Agreement due to a Force Majeure, the affected party shall promptly notify the other party in writing, detailing the event and its impact on performance. The obligations of the affected party shall be suspended for the duration of the Force Majeure event.

Additionally, if the Dayton asphalt plants do not reopen for production by **April 7, 2025**, the Completion Date shall be extended on a day-for-day basis for the duration of the closure of the asphalt plants.

#### **4. Delay Penalty**

In the event City fails to complete the City's Work by the Completion Date (as extended under the provisions of Paragraph 3, if applicable), City agrees to pay MD a penalty as follows (the "Delay Penalty"):

- **1st week late:** \$10,000 per week, prorated on a daily basis.
- **2nd week late:** \$15,000 per week, prorated on a daily basis.
- **3rd week late:** \$15,000 per week, prorated on a daily basis.
- **4th week late:** \$20,000 per week, prorated on a daily basis.
- **Any week after late:** \$20,000 per week, prorated on a daily basis.

The Delay Penalty shall be due and payable on the last day of each calendar week that City's Work remains incomplete, or on the actual date of completion for any prorated week. However, the cumulative Delay Penalty shall not exceed a total of \$150,000. The full potential delay penalty of \$150,000 shall be held in escrow until the City has provided proper access to Culvers.

#### **5. Miscellaneous Provisions**

- **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- **Entire Agreement:** This Agreement constitutes the entire understanding between the parties with respect to the subject matter herein and supersedes all prior agreements or understandings.
- **Amendment:** No amendment, waiver, or modification of this Agreement shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

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**City of West Carrollton**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**MD Restaurant Group, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_