

RECORD OF ORDINANCES

Ordinance No. 3832

Passed: May 26, 2026

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AN ACCESS EASEMENT AGREEMENT GRANTING A NON-EXCLUSIVE ACCESS EASEMENT TO MORSE ROAD DEVELOPMENT, LLC OVER PROPERTY THE CITY OF WEST CARROLLTON IS ACQUIRING BY EMINENT DOMAIN ALONG MANCHESTER ROAD FOR INGRESS AND EGRESS TO THAT CERTAIN TRACT OF REAL PROPERTY LOCATED AT THE SOUTHWEST CORNER OF E. DIXIE DR. AND CROSSOVER STREET IN THE CITY OF WEST CARROLLTON, OHIO AND DECLARING AN EMERGENCY

WHEREAS, the City has entered into an agreement with Morse Road Development, LLC, an Ohio limited liability company ("Grantee"), to sell to Grantee certain property located at the southwest corner of E. Dixie Drive and Manchester Road (aka Crossover Street) in West Carrollton, Ohio (the "Grantee Parcel"); and

WHEREAS, the City has, pursuant to Ordinance No. 3831 passed by the City Council of the City on April 28, 2026, appropriated .075 acres of vacated right-of-way to an abutting Manchester Road (aka Crossover Street) for a road widening project as described in Ordinance No. 3831 (the "Right of Way"); and

WHEREAS, in order to develop the Grantee Parcel for the purposes agreed to by Grantee, namely as a fuel station, convenience store and quick service restaurant, Grantee will be required to construct a driveway with access to Manchester Road (aka Crossover Street) over and across the Right of Way (the "Driveway"); and

WHEREAS, the Right of Way is not yet dedicated for public use; and

WHEREAS, so that Grantee may commence development of the Grantee Parcel as soon as possible, the City desires to grant to Grantee a temporary non-exclusive access agreement for vehicular and pedestrian access, and the construction and installation of the Driveway, across a portion of the Right of Way until the Right of Way is dedicated for public use (the "Easement"); and

WHEREAS, the City Council has determined that it is necessary and appropriate, in furtherance of the City's redevelopment activities, and in the best interest of the City, to grant the Easement to Grantee.

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

Section 1: The City Manager is hereby directed execute the Access Easement Agreement in substantially the same form as attached as Exhibit A hereto granting to Grantee a temporary non-exclusive access easement for the purposes set forth herein.

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.

RECORD OF ORDINANCES

Ordinance No. 3832

Passed: May 26, 2026

Section 3: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City for the reason that it is necessary for the development of the Grantee Parcel to proceed as quickly as possible in order to create new job opportunities and for the preservation of the public health, peace, property and safety of the City. Upon an affirmative vote of at least five (5) members of Council, this Ordinance shall take effect immediately upon passage.

Passed: May 26, 2026



Mayor

Attest: Tracy Moore
Clerk of Council

Effective Date: May 26, 2026

Exhibit A

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“**Agreement**”) is made as of _____, 2026 (the “**Effective Date**”), by and between THE CITY OF WEST CARROLLTON, OHIO, an Ohio municipal corporation (the “**Grantor**”) and MORSE ROAD DEVELOPMENT, LLC, an Ohio limited liability company (“**Grantee**”).

RECITALS

- A. Concurrently with the execution of this Agreement, Grantor has conveyed to Grantee fee simple ownership in that certain tract of real property located at the southwest corner of E. Dixie Dr. and Crossover Street in West Carrollton, Ohio, as described on Exhibit A attached hereto (herein, the “**Grantee Parcel**”).
- B. Grantor is in the process of acquiring by eminent domain, and has obtained a court order granting it possessory rights in, that certain tract of land directly to the east of the Grantee Parcel, as described on Exhibit B attached hereto (the “**Grantor Parcel**”).
- C. Grantee desires to receive from Grantor, and Grantor in the exercise of its right under the court order is willing to grant to Grantee, a non-exclusive easement across that portion of the Grantor Parcel labeled as the “New Access Easement” on the depiction attached hereto as Exhibit C (the “**Easement Area**”) for the purposes stated herein, in accordance with and subject to the conditions and limitations herein contained.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee each hereby agree as follows:

1. Easement Grant.

a. Subject to the conditions and limitations herein contained, Grantor hereby grants to Grantee a perpetual, non-exclusive easement over, across and upon the Easement Area for the following rights and uses only (collectively, the “**Easements**”): (a) for vehicular and pedestrian ingress and egress on, over and across the Easement Area, and (b) for installing, constructing, maintaining, repairing and replacing a paved driveway within the Easement Area (the “**Driveway**”). Notwithstanding anything herein to the contrary, Grantee shall not access or enter any portion of the Grantor Parcel lying outside the Easement Area, without the prior written

consent of Grantor, and Grantee will use commercially reasonable efforts to minimize any interference with the use, operation, and development of the Grantor Parcel, arising from the exercise of Grantee's rights hereunder.

2. Construction of Driveway.

a. Grantee shall design and construct the Driveway in accordance with plans and specifications approved by Grantor, which approval shall not to be unreasonably withheld. Upon completion of the Driveway, Grantee shall deliver to Grantor "as built" plans and specifications for the Driveway.

b. Within thirty (30) days after Grantee has completed the construction and installation of the Driveway, Grantee shall, at its sole cost and expense, repair and restore the any damage to the adjacent land or improvements caused by such installation to the same condition as they existed prior to Grantee's work.

3. Maintenance of Easement Area. Grantee shall be responsible, at its sole cost and expense, for the repair, maintenance, and replacement of the Easement Area, including, without limitation, keeping such area in a good state of repair, and reasonably free of surface water, ice and snow (collectively, "Maintenance").

4. Indemnification. Grantee hereby indemnifies and agrees to defend and hold harmless Grantor from and against all claims, damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, court costs and expenses (collectively, "Claims") arising from Grantee's use of the Easement Area or the exercise by Grantee of the rights granted under this Agreement.

5. Rights Reserved. Grantor hereby reserves and retains (a) the right to use the Easement Area for all purposes not inconsistent with the beneficial use and enjoyment of the rights granted to Grantee hereunder; and (b) the right to convey easements to such persons or entities as Grantor may deem proper for any purpose so long as such easements do not materially interfere with the use by Grantee of the easement granted herein for the purposes stated.

6. Miscellaneous.

a. Incorporation of Recitals and Exhibits. All of the recitals set forth at the beginning of this Agreement, and all Exhibits attached hereto, are hereby incorporated into and made a part of this Agreement.

b. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the matters set forth herein and supersedes all prior negotiations, discussions, writings and agreements between them in connection therewith. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by all parties to this Agreement, which is recorded in the Official Records of Montgomery County, Ohio.

c. Covenants Running with the Land. The rights herein granted and the agreements herein contained shall be rights and covenants running with the land, and shall run to the benefit of the Grantee Parcel and burden the Grantor Parcel, and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

d. Successors and Assigns. This Agreement will bind and inure to the benefit of the parties hereto, and their respective successors (including their respective grantees) and assigns.

e. Dedication. In the event Grantor desires to dedicate the Easement Area to the public, Grantee agrees to cooperate, at Grantors' request, in executing any documents necessary to effect the dedication.

f. Termination. Notwithstanding anything to the contrary set forth herein, Grantor and Grantee acknowledge and agree that this Agreement shall automatically terminate upon Grantor's dedication of the Easement Area for public use.

g. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

h. Partial Invalidity. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby unless as a result the purpose and intent of this Agreement will thereby be substantially and essentially impaired. In such event, the parties will diligently proceed to revise this Agreement in order to re-memorialize such purpose and intent.

i. Mechanic's Liens. In the exercise of the easement rights granted herein, Grantee will not permit or suffer any mechanic's liens claims to be filed or otherwise asserted against the Grantor Parcel and will discharge the same in case of the filing of any claims for liens or proceedings for the enforcement thereof within fifteen (15) calendar days after receipt of notice of the existence thereof.

j. Estoppel Certificates. At any time within fifteen (15) days after written notice from any party hereto (the "**Requesting Party**") to the other party hereto (the "**Recipient**"), the Recipient shall execute, acknowledge, and deliver to the Requesting Party an estoppel certificate in a form reasonably satisfactory to Requesting Party and Recipient certifying: (a) that this Agreement is unmodified and in full force or, if there have been modifications, that this Agreement is in full force, as modified, together with the date and nature of each modification, (b) that no notice has been received by Recipient of any default that has not been cured, except defaults specified in the estoppel certificate, (c) that no default of Requesting Party is claimed by Recipient, except defaults specified in the estoppel certificate, and (d) other matters as may be reasonably requested by Requesting Party. Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust or mortgage on the Grantor Parcel or the Grantee Parcel, as applicable.

k. Notices. Any notice required or permitted to be given by any party upon the other will be given by nationally recognized overnight courier, or by personal delivery, addressed as follows:

If to Grantor:

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

If to Grantee:

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

All notices will be deemed given one (1) business day following deposit if delivered to an overnight courier guaranteeing next business day delivery and on the same day if sent by personal delivery. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

l. Construction. As used herein, the term “including” or any variation thereof shall mean “including, without limitation” and shall not be construed to limit any general statement that follows.

m. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Pages Follow]

Exhibit A

Description of Grantee Parcel

Situated in the City of West Carrollton, County of Montgomery and State of Ohio, and being Lot 4603 of the consecutive number of lots on the revised plat of the City of West Carrollton, as set forth on the Record Plan, Replat of Lot 2500, recorded at Plat Volume __, Page ____ [or Instrument No. _____] of the plat records of Montgomery County, Ohio.

Montgomery County Permanent Parcel No.: _____

Exhibit B

Description of Grantor Parcel

SITUATE IN PART LOT 2500 OF THE CONSECUTIVE NUMBERS OF LOTS ON THE REVISED PLAST OF THE CITY OF WEST CARROLLTON, MONTGOMERY COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Commencing for reference at the northeast corner of said Part Lot 2500 and being on the intersection of the southerly right-of-way line of East Dixie Drive and the west right-of-way line of Manchester Road;

thence, South 20°07'19" East, 24.65 feet, along the west right-of-way line of Manchester Road to a point and being the principal place of beginning of the area to be vacated hereon;

thence, on a curve to the right with a radius of 39.00 feet, an arc distance of 27.14 feet, a delta angle of 43°11'24", and a chord bearing South 41°56'25" East, 26.50 feet, to a point;

thence, South 20°20'43" East, 288.48 feet, to a point;

thence, South 17°35'30" West, 17.94 feet, to a point on the west right-of-way line of Manchester Road;

thence, North 20°07'19" West, 327.27 feet, along the west right-of-way line of Manchester Road to the principal place of beginning.

Containing 0.075 acres more or less and all being subject to any legal highways and easements of record. The bearing of North 20°20'43" West along the centerline of Manchester Road was based on NAD 83 CORS 2011 adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a field survey performed under his direct supervision and dated November 7, 2024.


Wesley D. Goubeaux, PS #8254



11/07/2024
Date

Montgomery County Permanent Parcel No.: _____

Exhibit C

Diagram of Easement Area

