

# CITY OF CLAYTON, OHIO

## ORDINANCE NO. O – 10 - 21 - 21

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A BINDING LETTER OF INTENT TO PURCHASE WITH MLH MSO HOLDCO, INC. AND/OR ITS ASSIGNEE WITH RESPECT TO REAL PROPERTY LOCATED AT 8243 N. MAIN STREET, CLAYTON, OHIO AND BEARING PARCEL I.D. NUMBER M60 03210 0035 WITH SPECIFIED CONTINGENCY AND DECLARING AN EMERGENCY**

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution permits Clayton to exercise its power of local self-government; and

**WHEREAS**, Clayton Codified Ordinance Section 117.01 provides, “Upon a vote of *two-thirds* of the members of Council, the sale, lease or other conveyance and transfer of an interest in real property no longer needed for municipal purposes may be approved on such terms as are deemed beneficial to the City and dispensing with any requirements for publication and/or competitive bidding.”; and

**WHEREAS**, the real property which is the subject of this sale, has been available for sale for years, but has been unused since being acquired by the City and in its current state is not needed for municipal purposes and therefore Council has determined that the property located at 8243 N. Main Street and bearing Parcel I.D. Number M60 03210 0035 owned by the City of Clayton, Ohio is no longer needed for municipal purposes.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That the City of Clayton hereby authorizes the City Manager to enter into the Binding Letter of Intent to Purchase in substantially similar form as appended hereto as *Exhibit A*, with MLH MSO Holdco, Inc. and/or its assignee, with such modifications as deemed appropriate by the Law Department, in order to effectuate the sale of City-owned real property no longer needed for municipal purposes and being located at 8243 N. Main Street, Clayton, Ohio and bearing Parcel I.D. Number M60 03210 0035 upon the following contingency: ***The sale of the property located at 8243 N. Main Street, Clayton, Ohio and bearing Parcel I.D. Number M60 03210 0035 Montgomery County, Ohio, is contingent upon MLH MSO Holdco, Inc. and/or its assignee successfully obtaining a license to process and/or dispense medical marijuana from the said real property from the State of Ohio.***

2. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.

3. That in accordance with Charter Section 4.031(B) the requirement that this ordinance be read on two (2) different days is dispensed with by affirmative vote of at least five (5) of the members of Council.

4. That, immediate approval of the sale of the real property located at 8243 N. Main Street, Clayton, Ohio, Parcel I.D. No. M60 03210 0035 is necessary and will result in enhancement to the economic health, safety and welfare of the Clayton Community at large. Additionally, in order for MLH MSO Holdco, Inc. and/or its assignee to appropriately demonstrate control of the subject property to the State of Ohio as part of the licensing application procedure, it is necessary for this Ordinance to take immediate effect. Accordingly, in accordance with Charter Section 4.033(A) this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City and shall therefore be in full force and effect from and immediately upon affirmative vote of at least five (5) of the members of Council.

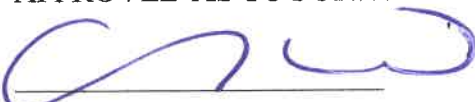
ADOPTED BY COUNCIL ON OCTOBER 7, 2021.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor (Presiding Officer of Council)

  
\_\_\_\_\_  
Clerk of Council

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Brookville Sbr

Date of publication

Oct 13, 2021

  
\_\_\_\_\_  
Clerk



**BINDING LETTER OF INTENT TO PURCHASE**

DATE: September 30, 2021

RE: **BINDING LETTER OF INTENT / OPTION TO PURCHASE 8243 N. Main St., Clayton, OH 45415**

This Binding Letter of Intent (“**LOI**”) is for the purchase of a property located at 8243 N. Main St., Clayton, OH 45415 (PARID# M60 03210 0035).

SELLER: City of Clayton

PURCHASER: MLH Ohio Dispensary III, LLC and/or its assignee.

PREMISES: The property located at 8243 N. Main St., Clayton, OH 45415 consisting of approximately 1.278 acres (the “**Premises**”).

EXCLUSIVE USE: Purchaser shall have the exclusive use of the Premises for the operation of a Medical Marijuana Dispensary, as the term is defined by Ohio Administrative Code 3796:2 et. seq. (“**Dispensary**”), or any other lawful purpose under state and local law.

TERM OF Purchase: Purchase price of \$120,000.

OPTION PERIOD: For a period of six (6) months following full execution of this LOI (the “**Option Period**”), Purchaser shall have the exclusive right and option to purchase the Premises from Seller (the “**Option to Purchase**”). Such Option to Purchase shall be exercised, if at all, upon written notice to Seller given prior to the expiration of the Option Period. During the Option Period, Purchaser shall use reasonable due diligence to obtain state and local approvals required to use the Premises as a Dispensary, or other lawful purpose under state and local law, and to conduct any due diligence reasonably necessary in Purchaser’s sole discretion. Seller agrees during the Option Period to not market the Premises to any other party or enter into any discussions to rent or sell the Premises during the exclusive Option Period.

OPTION TERMINATION: The Option to Purchase may not be cancelled during the Option Period other than by (i) Purchaser giving Seller 30 days written notice, or (ii) by written notice from the Seller after Purchaser has failed to pay an "Option Payment" (as defined below) for more than ten (10) business days after written notice from Seller.

OPTION PAYMENT: Purchaser will pay an initial, nonrefundable payment of \$5,000 at the onset of the Option Period (the "**Option Payment**") in consideration of the Option Period. The Option Payment shall be due and payable on the first day of the Option Period. Payment will commence on November 1, 2021.

OPTION EXTENSION: Purchaser may, by giving Seller written notice before the expiration of the Option Period, extend the Option Period on a month-by-month basis for up to three (3) additional months ("**Extension Period**") by paying Seller non-refundable Option Payments of \$1,000 per month for the duration of the Extension Period, or until Purchaser either: (1) exercises the Option to Purchase at which point Seller and Purchaser (together, the "**Parties**") will enter into a purchase agreement; or (2) terminates this LOI, by providing written notice to Seller. Purchaser shall have the exclusive right and Option to Purchase the Premises during the Extension Period.

PURCHASE: Upon Purchaser's exercise of the Option to Purchase in accordance with the terms herein contained, Seller and Purchaser shall use good faith and due diligence to execute a purchase agreement, a draft of which shall be delivered by Seller within ten (10) days of Purchaser's exercise of the Option to Purchase, which shall contain all of the terms and conditions set forth in this LOI and such other customary and reasonable terms and conditions as agreed by the parties (the "**Purchase**"). Seller and Purchaser hereby agree to use good faith efforts to enter into the Purchase within thirty (30) days following Purchaser's exercise of the Option to Purchase.

If the Option to Purchase is exercised by Purchaser, the Purchaser shall provide for payment to be made by Purchaser to Seller in the amount of \$120,000 following the execution of a purchase agreement consistent with its terms.

CONDITION: "As Is".

ACCESS: During the Option Period and Extension Period, and prior to the execution of the Purchase, upon reasonable notice to Seller, Purchaser shall be permitted reasonable access to the Premises for the purposes of planning the layout of the space, measuring the Premises and preparing architectural drawings and security layout of the Premises or performing building or property condition assessments.

TERMS OF AGREEMENT: Seller and Purchaser hereby agree that this LOI shall be binding between the Parties. It is understood that final approval for a Dispensary from the State of Ohio Board of Pharmacy, and compliance with all applicant ordinances and bylaws of the city/town of Clayton (“**Necessary Permits**”), is required before construction on the Premises may commence.

FURNISHING OF DOCUMENTS: Upon request, Seller will supply any documents or information in Seller’s possession necessary for Purchaser to obtain all state and local approvals including the Necessary Permits and will provide signatures as required for approvals involving the Premises as required and during the normal course of business. Purchaser understands Seller cannot guarantee issuance of any required permits and cannot guarantee issuance of any state and local approvals which may be necessary. Purchaser shall be solely responsible for all costs associated with obtaining state and local approvals, licenses and permits.

EXCLUSIVITY: Seller will not offer the Premises for lease or sale to anyone other than Purchaser during the Option Period, or Extension Period, referenced in this LOI. Seller agrees to deliver the Premises exclusively to Purchaser immediately following the execution of the Purchase.

LIMITATION OF REMEDIES: Notwithstanding any provision of this LOI or subsequent Purchase, Seller hereby agrees that Seller’s rights and remedies following a default, breach, surrender or any other failure to perform under this LOI, or subsequent Purchase, shall not include the seizure of assets of any product containing any amount of marijuana. Seller shall not be entitled to a remedy that provides Seller a lien or security interest on inventory that contains any amount of marijuana, in any form, whether flower or infused product. Seller hereby forfeits any such remedy. In addition, Seller hereby agrees that remedies for Purchaser default under the Purchase shall not include a lien or other interest in Purchaser’s marijuana establishment license.

BROKER:

Mark R. Langdon – Henkle Schueler and Associates

CONFIDENTIALITY:

The Parties agree that the information set forth herein is intended to be private and confidential between the Parties executing this LOI and shall not be disclosed to third parties without the written consent of each Party to this transaction; provided, however, that the terms of this LOI may be disclosed in confidence to local and state government officials, prospective lenders, current or prospective business partners or joint venture partners, legal counsel and other consultants to and contractors for said Parties for purposes incidental to this agreement or to the conduct of business by said Parties. Notwithstanding the foregoing, Purchaser understands this Binding letter of Intent to Purchase constitutes a public record under the Ohio Public Records Act, O.R.C. 149.43 et seq. which mandates Seller disclose this document to requesters thereunder and Seller will abide by all requirements of the Ohio Public Records Act.

**[SIGNATURE PAGE FOLLOWS]**

If the terms and conditions are acceptable, please execute this LOI in the space provided below and return a copy by October 27, 2021.

AGREED & ACCEPTED: SELLER

Signature: *Amanda Zimmerlin*

Name: Amanda Zimmerlin

Date: 10/25/21

AGREED & ACCEPTED: PURCHASER / MLH Ohio Dispensary III, LLC AND/OR ASSIGNEE

Signature: *Alexander C. Chadwick*

Name: Alexander C. Chadwick

Date: 10/22/2021