

CITY OF CLAYTON, OHIO

RESOLUTION NO. R - 02 - 22 - 18

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ASSET PURCHASE AGREEMENT WITH THE GRILL BY HERITAGE, LLC WITH RESPECT TO MEADOWBROOK AT CLAYTON AT A PURCHASE PRICE OF \$20,000.00 AND RELATED CLOSING COSTS

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

WHEREAS, via Charter Section 8.02(C)(3)(c) and Charter Section 8.02(C)(1) and Ordinance O-01-21-01 adopted February 18, 2021, the subject purchase is exempt from competitive bidding; and

WHEREAS, Council desires to authorize the City Manager to execute the *Asset Purchase Agreement* with the Grill By Heritage, LLC, in substantially similar form as appended hereto as *Exhibit A*.

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

1. That the City Manager is hereby authorized to execute an *Asset Purchase Agreement* with the Grill By Heritage, LLC, for the purchase price of \$20,000.00 plus closing costs, if any, not to exceed \$10,000.00 and in substantially similar form as appended hereto as *Exhibit A*. The City Manager is further authorized to execute all legal documentation necessary to consummate said asset purchase, including but not limited to, application(s) for transfer of ownership and location of liquor permits, and to take all necessary actions to close on said asset purchase transaction and obtain ownership of the assets which are the subject thereof.

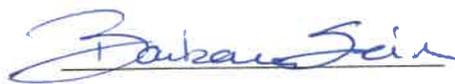
2. That this Resolution shall be effective as an exception to any ordinance, resolution, or other legislation of the City of Clayton, Ohio inconsistent with this Resolution or which imposes additional requirements for effectiveness or validity.

ADOPTED BY COUNCIL ON FEBRUARY 7, 2022.

AUTHENTICATION:

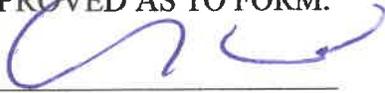


Mayor (Presiding Officer of Council)



Clerk of Council

APPROVED AS TO FORM:



Law Director

CERTIFICATION OF PUBLICATION

This shall certify that 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 Star

Date of publication

Feb 16, 2022



CLERK

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of the 1st day of March, 2022 by and between **Grill by Heritage, LLC**, an Ohio limited liability company ("Seller"), and **City of Clayton**, an Ohio corporation ("Purchaser"), under the following circumstances:

A. Seller is the holder of Liquor Permit #3388440 (D-1, D-2, D-3 and D-6) (the "Permit") for the bar and restaurant business located at Meadowbrook Country Club, 6001 Salem Avenue, Clayton, OH and entire golf course (the "Business"); and

B. Seller desires to sell the Business assets, and Purchaser desires to purchase the Business assets, on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter set forth, the parties hereto agree as follows:

1. Purchase and Sale. (a) Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, all assets of the Business (collectively, the "Assets"), including, without limitation, all furnishings, fixtures, inventory, and transfer of the Permit, and the assets listed on Exhibit A (the "Fixed Assets"), upon the terms and conditions set forth in this Agreement.

(b) Except as expressly provided in the Management Agreement, Purchaser is not assuming any obligations or liabilities of Seller or any owner of Seller, including, without limitation, any liabilities or obligations resulting from the breach of any obligations to third parties or from services provided prior to the Closing Date (defined below) with respect to the Business, and Seller shall retain full responsibility for all such obligations and liabilities.

2. Purchase Price. Subject to the terms and conditions set forth herein, Purchaser agrees to pay and Seller agrees to accept the sum of TWENTY THOUSAND and 00/100 DOLLARS (\$20,000.00) for the Assets (the "Purchase Price"), payable on the Closing Date, from Purchaser to Seller by wire transfer to the account(s) specified by Seller, which wires may also be made to pay fees and indebtedness of Seller on its behalf (the "Closing Payment");

The parties shall allocate the Purchase Price in accordance with the following allocation:

Equipment	\$ 20,000.00
Total:	\$ 20,000.00

3. **Closing.** (a) The Closing of the transactions contemplated by this Agreement shall take place on or before March 31, 2022 (the "Closing Date") at such time and location as determined by the Purchaser. The Closing shall be effective as the close of business on the Closing Date. At the Closing, the actions described in this Section shall be taken. All actions shall be deemed to have occurred simultaneously, and the effectiveness of any action taken at the Closing shall, unless otherwise agreed by Purchaser and Seller, be conditioned upon the taking of all other actions called for in this Section.

(b) Items to be Delivered by Seller. At the Closing, Seller shall deliver (or cause to be delivered) to Purchaser:

i. A bill of sale and assignment in the form attached hereto as Exhibit B "Bill of Sale"), duly executed by Seller, and such other certificates of title and other documents of transfer as shall be necessary to effectively vest in Purchaser good and marketable title to the Assets free and clear of all encumbrances;

ii. A management agreement in the form of Exhibit C (the "Management Agreement")), duly executed by Seller;

iii. Such other certificates, documents, and instruments as may be reasonably requested by Purchaser in connection with the transactions contemplated by this Agreement.

(c) Items to be Delivered by Purchaser. At the Closing, Purchaser shall deliver to Seller:

i. The Closing Payment in cash;

ii. The Management Agreement, duly executed by Purchaser;

iii. Such other certificates, documents, and instruments as may be reasonably requested by Seller in connection with the transactions contemplated by this Agreement.

4. **Transfer of Permit.** Seller and Purchaser shall, contemporaneously with or as soon as practical after the execution of this Agreement, execute a standard Application for Transfer of Ownership (the "Application") for the Permit. Thereafter, Purchaser shall promptly file the Application with the Agency together with all other documents and instruments necessary or appropriate to accomplish the transfer of the Permit to Purchaser. Seller further agrees to fully cooperate with Purchaser and with the Agency in connection with, and shall take any and all further actions necessary or appropriate to accomplish, the transfer of the Permit to Purchaser, as approved by the Agency. Purchaser shall use its reasonable best efforts to complete the transfer of the Permit as expeditiously as possible.

5. **Delivery of Possession of Assets; Management Agreement.** On the Closing Date, Seller shall deliver possession of the Assets to Purchaser, which assets shall be managed pursuant to the terms of the Management Agreement until the Permit is transferred to Purchaser, after which the Assets shall be the sole and exclusive property of Purchaser as the owner thereof.

6. **Representations and Warranties.**

(a) Seller hereby represents and warrants to Purchaser as follows:

(i) **Organization; Authorization.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio, with full power and authority to execute and deliver this Agreement and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary company action on the part of Seller. This is the valid and binding obligation of Seller, enforceable against Seller, in accordance with its terms.

(ii) **Title to Assets; Sufficiency.** Seller has good and defensible title to all of the Assets, free and clear of all liens and encumbrances. Seller hereby conveys to Purchaser the ownership of the Assets free and clear of all liens and encumbrances. To Seller's knowledge, the Fixed Assets are in usable condition, reasonable wear and tear excepted. The Assets together with the Permit and the Current Lease constitute substantially all of the assets necessary to operate the Business as it is being operated as of the date of this Agreement.

There is no indebtedness or other obligation of Seller or the Business arising from operations prior to the Closing Date that will require payment by Purchaser after the Closing Date. Seller's accounts with all business supply sources, including alcohol and food distributors, shall be current as of the Closing Date, and Seller shall hold Purchaser harmless from any and all collection proceedings initiated by business supply sources and accounts for the collection of past due funds.

(iii) **Consents.** No authorization, consent, approval, order or filing with or notice to any court, governmental agency, instrumentality or authority, or another entity or person, is necessary for the execution and delivery of this Agreement or any other agreement or document to be delivered by Seller or the consummation by Seller of the transactions contemplated hereby, except in connection with the transfer of the Permit.

(b) Purchaser hereby represents and warrants to Seller that (i) Purchaser is a Municipal corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, with full power and authority to execute and deliver this Agreement and to carry out the transactions contemplated hereby; (ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary company action on the part of Purchaser; and (iii) this is the valid and binding obligation of Purchaser, enforceable against Purchaser, in accordance with its terms.

7. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.

8. **Non-Waiver.** The failure of any party hereto to insist on one or more instances upon strict compliance with or performance of any of the provisions of this Agreement or to take advantage of any of the rights hereunder shall not be construed as a relinquishment of such rights in other instances, but the same shall continue and remain in full force and effect.

9. **Understanding.** This Agreement contains the complete understanding of the parties and may not be modified or terminated otherwise and in accordance with its terms except by written agreement duly executed by the parties.

10. **Contingencies.** This Agreement and the transactions contemplated hereby are contingent upon the successful transfer of the Permit from Seller to Purchaser by the Agency, and the payment in full of all sales taxes owed by Seller with respect to the Business to the State of Ohio.

11. **Indemnification.** Seller shall indemnify, defend and hold Purchaser and its owners, agents and advisors harmless from and against all Losses imposed upon or incurred by Purchaser or its owners to the extent resulting from: (i) any misrepresentation or inaccuracy of a representation or warranty on the part of Seller contained in this Agreement, (ii) all liabilities and obligations of Seller not specifically assumed by Purchaser hereunder, (iii) any claims by the occupant of the Premises who was occupying the Premises as of the date of this Agreement; (iv) all sales and other taxes due and owing related to the Permit or the operation of the Business prior to the Closing Date, and (v) all actions, suits, proceedings and judgments incident to any of the foregoing.

12. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered personally, (ii) the next business day, if sent by a nationally-recognized overnight delivery service (unless the records of the delivery service indicate otherwise), or (iii) three business days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

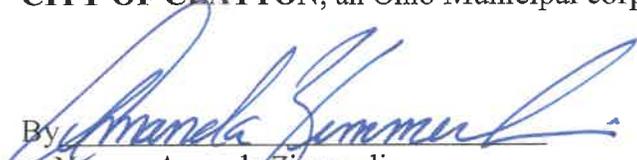
If to Purchaser: Amanda Zimmerlin, City Manager
 City of Clayton
 6996 Taywood Road
 Englewood, Ohio 45322

If to Seller: Adrian Jaqua
 Grill by Heritage, LLC
 9422 Tahoe Drive
 Dayton, Ohio 45458

13. **Expenses.** Each party shall pay all costs and expenses attributable to the performance of, and compliance with, all agreements and conditions to be performed or complied with by such party under this Agreement (including, without limitation, all fees and expenses of their respective legal counsel).

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

CITY OF CLAYTON, an Ohio Municipal corporation

By 
Name: Amanda Zimmerlin
Title: City Manager

Grill by Heritage, LLC,
an Ohio limited liability company

By 
Name: Adrian Jaqua
Title: Member

EXHIBIT A

Fixed Asset List

Drink Cooler for Ballroom

Cooler for Grill

Keerator

Keg Taps

25 coolers for golfers

All Pepsi Equipment

Television on Patio

All warmers

Desks and chairs in front office

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT is made effective as of the 29th day of March, 2022 by **Grill by Heritage, LLC**, an Ohio limited liability company ("Seller"), pursuant to that certain Asset Purchase Agreement, dated March 1, 2022, between Seller and Purchaser (the "Purchase Agreement"). All capitalized terms used herein but not defined herein shall have the meanings given them in the Purchase Agreement.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser, the Assets, free from all claims and encumbrances; Seller warrants that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first written above.

Grill by Heritage, LLC, an Ohio limited liability company

By 
Name: Adrian Jaqua
Title: Member

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT made as of the 29th day of March 2022, by and between **Grill by Heritage, LLC**, an Ohio limited liability company ("**Seller**"), and **City of Clayton**, an Ohio corporation ("**Manager**"), under the following circumstances:

A. Pursuant to an Asset Purchase Agreement, dated March 1, 2022, between Seller and Manager (the "**Purchase Agreement**") Seller is selling all of the business assets of the Seller's restaurant located at 6001 Salem Avenue, Clayton, Ohio 45315 (the "**Business**") to Manager, contingent upon the approval of the transfer of the Liquor Permit #3388440 (D-1, D-2, D-3 and D-6) (the "**Permit**");

B. The parties are entering into this Agreement, as contemplated by Section 5 of the Purchase Agreement; and

C. Manager has agreed to manage and operate the Business pending the approval of the transfer of the Permit by the Ohio Department of Liquor Control (the "**Agency**").

NOW, THEREFORE, the parties agree as follows:

1. **Engagement.** Seller hereby engages Manager under this Management Agreement to take charge and manage the Business under the existing Permit at 6001 Salem Avenue, Clayton, Ohio 45315 and entire golf course (the "**Premises**").

2. **Term of Management.** The term of this Agreement shall commence on the Closing Date (as defined in the Purchase Agreement), and Manager shall operate and conduct the Business under the terms of this Agreement until the earliest of (i) such time as the transfer of the Permit from Seller to Manager has been approved or denied by the Agency, or (ii) mutual agreement of the parties hereto to terminate this Management Agreement and on the terms of such termination.

3. **Compensation.** Manager shall receive no compensation for carrying out its obligation under this Agreement, but shall receive any and all profits from the operations provided that it pays all bills and taxes arising from Manager's operation of the Business after the Closing Date.

4. **Duties of Manager.** Manager hereby agrees and Seller authorizes Manager as an independent contractor to do the following:

(a) To operate the Business in a business-like manner and in a manner that is at least similar to the manner which the Business was previously operated by Seller; to pay all expenses of the Business in the ordinary course of business; to employ and compensate necessary personnel to operate the Business; to maintain all proper accounting records of the Business; and to do any and all other things as shall be necessary and required to be done in the operation of the Business.

- (b) To maintain the Premises, which are necessary to the operation of the Business, in a good and safe condition.
- (c) To provide accounting records to Seller upon reasonable request as to the operation of the Business and the maintenance of the Premises.
- (d) All expenses shall be pro-rated at the Closing Date (as defined in the Purchase Agreement), including utility bills, telephone bills, and other monthly costs. Seller shall pay, or cause to be paid, all bills through the Closing Date and Purchaser shall pay all bills after the date of the Closing Date.

The Manager agrees to perform all of the duties specified under this Management Agreement to the satisfaction of the Seller in accordance with the laws of the State of Ohio.

5. Transfer of Liquor Permit. Upon execution of this Agreement, the parties hereto shall make application to the Agency for the transfer of ownership of the Permit to Purchaser. Purchaser shall be responsible for paying any application fees and costs required for such transfer. The parties agree to cooperate and complete all things that are reasonably necessary to process the application for such transfer.

6. Seller's Warranties.

- (a) Seller has good and marketable title to the Assets free and clear of any security interests, liens, claims and encumbrances whatsoever.
- (b) Seller has complied with all agreements, laws, rules and regulations relating to the Assets.
- (c) Seller has paid or otherwise discharged or confirmed payment or discharge of all personal property taxes, social security, withholding, sales and unemployment taxes, and all workers' compensation premiums which have become due and payable through the Closing Date.
- (d) There is no litigation, claim, governmental action or other proceeding or investigation, pending or threatened, with respect to the Assets or the Business.

7. Conditions. This Agreement and the consummation of the transactions contemplated hereby are conditioned upon (i) the transfer of the Permit to the Purchaser, and (ii) the payment in full of all current and prior sales taxes owed by Seller (or any other individual or entity relating to the operation of the Business) to the State of Ohio, including any interest and or penalties on or before the Closing Date. Any taxes that relate to the operation of the Business prior to the Closing Date but are not due and payable until after the Closing Date shall be promptly paid by or on behalf of Seller when due.

8. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered personally, (ii) the next business day, if sent by a nationally-recognized overnight delivery service (unless the records of the delivery service indicate otherwise), or (iii) three business days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows

If to Purchaser:

Amanda Zimmerlin, City Manager
City of Clayton
6996 Taywood Road
Englewood, Ohio 45322

If to Seller:

Adrian Jaqua
Grill by Heritage, LLC
9422 Tahoe Drive
Dayton, Ohio 45458

9. Miscellaneous.

(a) Assignment; Parties in Interest. Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. This Agreement shall inure to the benefit of and shall constitute a binding obligation upon the parties, their respective legal representatives, successors and permitted assigns.

(b) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties, supersedes any and all prior oral or written negotiations and communications by or on behalf of the parties, and no variance or modification hereto shall be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

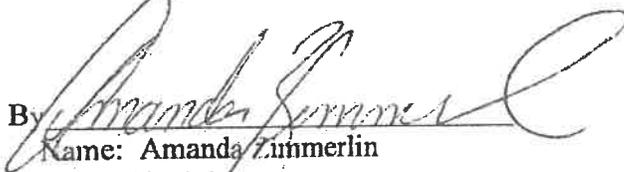
(c) Waiver. The waiver of any party of any breach of any provision of this Agreement shall not be construed as or constitute a continuing waiver or a waiver of any other breach of any provision of this Agreement.

(d) Governing Law. This Agreement shall be construed in accordance with and the legal relations among the parties shall be governed by the laws of the State of Ohio as applicable to agreements executed and fully performed in the State of Ohio.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement effective as of the date and year first written above.

CITY OF CLAYTON, an Ohio Municipal corporation

By 
Name: Amanda Zimmerlin
Title: City Manager

Grill by Heritage, LLC,
an Ohio limited liability company

By 
Name: Adrian Jaqua
Title: Member