

Resolution No. 04-16

RESOLUTION:

To authorize execution of an agreement for certain conditions of annexation of the Property of 355 Partners, LLC

WHEREAS, a petition for annexation has been presented to the Mayor and Council of Rockville proposing to enlarge the corporate boundaries of the City of Rockville so as to include land owned by 355 Partners, LLC; and

WHEREAS, the Mayor and Council of Rockville desires to grant the petition, subject to certain conditions contained in an agreement between 355 Partners, LLC, owner, and Frederick Road, LLC, (contract purchaser) and which agreement is to be executed prior to the effective date of the annexation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that the City Manager is hereby authorized to execute on behalf of the Mayor and Council of Rockville an agreement with 355 Partners, LLC, owner, and Frederick Road, LLC, contract purchaser, which agreement will be in the form attached hereto as Exhibit "A" and made part hereof.

* * * * *

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Mayor and Council of Rockville at its meeting of February 8, 2016.


Sara Taylor-Ferrell, Acting City Clerk

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”), made this ____ day of _____, 2016, by and among 355 PARTNERS, LLC (“Owner”), FREDERICK ROAD, LLC, (“Contract Purchaser”) (Owner and Contract Purchaser herein collectively referred to as “Applicant”), and the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation of the State of Maryland (hereinafter referred to as “Rockville”) (collectively the “Parties”).

WITNESSETH:

WHEREAS, Owner is the fee simple owner of the subject property consisting of one parcel, being recorded in Liber 16995 at Folio 098, known as Parcel N, Derwood, recorded in Plat Book 179, Plat 20049, and also referred to as Parcel N-244 on tax map GS 12 situated in the southeast quadrant of the intersection of MD Route 355 and the entrance road to the Shady Grove Metro Station, consisting of 175,627 square feet or 4.0318 acres of land, more particularly described in the ALTA Survey attached hereto and made a part hereof as Exhibit A and described by metes and bounds in Exhibit B attached hereto (the “Property”). The tax account number for the Property is 09-03146564; and

WHEREAS, Frederick Road, LLC is the Contract Purchaser of the Property and is seeking annexation of the Property with the consent of the Owner, as evidenced by Exhibit “B”, and

WHEREAS, the Property is currently located within the jurisdictional boundaries of Montgomery County, Maryland; and

WHEREAS, Applicant petitioned Rockville to annex the Property, pursuant to annexation petition ANX2015-00145 (the “Annexation Petition”); and

WHEREAS, the Property is contiguous to and adjoins the existing corporate boundaries of Rockville and is identified as an Urban Growth Area in the 2002 Approved and Adopted City of Rockville Comprehensive Master Plan; and

WHEREAS, there are no registered voters for county elections residing upon the Property; and

WHEREAS, pursuant to the provisions of Annotated Code of Maryland Local Government Article, Section 4-402, a resolution has been introduced to annex the Property; and

WHEREAS, the annexation of the Property will promote Rockville's goal of annexation within Rockville's urban growth areas; and

WHEREAS, the Property is currently classified in the CRT 1.5, C 0.5, R 1.25, H 100 Zone under the zoning regulations of Montgomery County, Maryland; and

WHEREAS, on February 8, 2016, the Mayor and Council of Rockville adopted Resolution No. _____ expanding the boundaries of the City to encompass the Property (the "Annexation Agreement") and on February 8, 2016 adopted Ordinance No. _____ placing the Property within the MXTD (Mixed-use Transit District) Zone, which annexation and zoning shall take effect forty-five days following the approval of Resolution No. _____ in accordance with the provisions of the Annotated Code of Maryland, Local Government Article, Section 4-407.

WHEREAS, on December 1, 2015, the Montgomery County Council expressly approved the reclassification by the City of the Property from CRT 1.5, C 0.5, R 1.25, H 100 in Montgomery County to MXTD in Rockville by adoption of Resolution No. 18-337 attached hereto as Exhibit "C"; (the "County Council Resolution") if the City's Annexation Agreement

limits the allowable development on the property to 458,225 square feet of floor area for five (5) years; and

WHEREAS, the Parties desire to execute this Annexation Agreement to establish the conditions under which the Property shall be annexed and zoned.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which shall be deemed a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. Upon annexation of the Property into Rockville, the Property shall be classified in the MXTD Zone.

2. The Parties agree that upon annexation the development of the Property shall be limited to a maximum of 458,225 square feet of floor area, for five (5) years after the effective date of the annexation.

3. The Parties agree to execute any and all such documents and/or to take such actions necessary to carry out the terms and conditions of this Agreement.

4. This Agreement shall not become effective until the Annexation Resolution becomes effective pursuant to the Annotated Code of Maryland, Local Government Article, Section 4-407, (hereinafter "Effective Date of Annexation"). At any time prior to the Effective Date of Annexation, Applicant may petition for a referendum on the Annexation in accordance with Annotated Code of Maryland, Local Government Article, Sections 4-408 and 4-413, the result of which shall be to suspend the effectiveness of the Annexation resolution.

5. This Agreement does not preclude any other use allowed by the Zoning Ordinance in the MXTD zone as long as the required site plan, site plan amendment, or special exception applications are approved.

6. The provisions of this Agreement are and shall be deemed to be covenants running with the land and shall be binding upon Owner and its respective successors and assigns with an interest in the Property.

7. This Agreement shall be amended only in writing, signed by (or on behalf of) the parties hereto.

8. This Agreement shall be recorded in the Land Records of Montgomery County, subsequent to the approval of the annexation resolution.

9. The Recitals and Exhibits set forth above are hereby incorporated by reference and made a part of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has executed and delivered this Annexation Agreement as of the date first set forth above, as evidenced by their respective signatures and acknowledgements on the following pages.

[SIGNATURE PAGES FOLLOW]

ATTEST

MAYOR AND COUNCIL OF
ROCKVILLE

By _____
Barbara Matthews, City Manager

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I hereby certify that on this _____ day of _____, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared Barbara Matthews, who acknowledged herself to be the City Manager of the Mayor and Council of Rockville, a municipal corporation, and that she, as City Manager, being authorized to do so, executed the foregoing instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation, by signing the name of the Mayor and Council of Rockville by _____ herself _____ as City Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public

My commission expires:

355 Partners, LLC, a Maryland limited liability company

By: _____
Raymond J. Sherbill, Its Attorney in Fact

Frederick Road, LLC, a Virginia limited liability company

By: _____

STATE OF _____)
)
COUNTY OF _____)

I HEREBY CERTIFY that on the ____ day of _____, 2016, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared _____, the _____ of _____ a _____, who acknowledged himself/herself to me, and that he/she executed the foregoing instrument for the purposes therein contained by signing his/her name on behalf of said _____.

Witness my hand, at office, this _____ day of _____, 2016.

Notary Public

My commission expires: _____

[Notarial Seal]

STATE OF MARYLAND

COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 2016, before the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____, who is the _____ of Frederick Road, LLC known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument in such capacity, appeared before me this day in person and acknowledged that he signed and delivered said instrument as the free and voluntary act and deed of said Frederick Road, LLC for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT “C”

County Council Resolution