

**DEFEATED**

**RESOLUTION NO.:** 2014-R24 (AMENDED MAY 13, 2014)  
**SPONSOR:** MAYOR NORTON  
**INTRODUCED:** MAY 13, 2014 **ASSIGNED TO:** FINANCE

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A COOPERATIVE AGREEMENT WITH 5430 SOUTHPARK, LLC TO SHARE THE COST OF CONSTRUCTING A WATERLINE TO SERVE THE NEW TWISTED OLIVE RESTAURANT AT 5430 MASSILLON ROAD AND THE CITY'S PARKS , MAKING AN APPROPRIATION, AND DECLARING AN EMERGENCY.**

WHEREAS, 5430 Southpark, LLC, purchased the real property located at 5430 Massillon Road from the City of Green and is proceeding to construct and open The Twisted Olive restaurant at that location; and

WHEREAS, 5430 Southpark, LLC, must install a new waterline to serve The Twisted Olive and has determined the cost of extending water to the new restaurant is approximately One Hundred Sixty Thousand Dollars (\$160,000.00); and

WHEREAS, the extension of the waterline to The Twisted Olive along the northwest corner of the parcel owned by 5430 Southpark, LLC will also provide water access to the City of Green for the care and maintenance, and future amenities at both Southgate Park and Boettler Park; and

WHEREAS, the City of Green also benefits from the extension of the waterline, as proposed, to the northwest corner of the property at 5430 Massillon Road; and

WHEREAS, the City Administration believes it is in the City's interest to share the cost of the installation of the waterline since it benefits the City of Green; and

WHEREAS, the City desires to contribute Eighty Thousand Dollars (\$80,000.00) to the cost of the waterline which equals approximately one-half of the cost for the new waterline; and

WHEREAS, it is necessary to appropriate funds for the contribution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO, THAT:**

**SECTION ONE:**

City Council approves a Cooperative Agreement, **attached as Exhibit "A"**, with 5430 Southpark, LLC, which will result in the City contributing no more than Eighty Thousand Dollars (\$80,000.00) towards the cost of a new waterline that will be extended from Massillon Road to the northwest corner of the parcel property owned by 5430 Southpark, LLC. ~~City Council requests the Law Director to prepare the appropriate Agreement to memorialize the contribution by the City towards the cost of this waterline.~~

Resolution 2014-R24 (AMENDED MAY 27, 2014)

SECTION TWO:

City Council authorizes an appropriation of Eighty Thousand Dollars (\$80,000.00) from the unappropriated balance of the General Fund to the Southgate Waterline Account (#100-1900-53633) for the City's contribution to the cost of the new waterline.

SECTION THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meeting of this Council and any deliberations of this City and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION FOUR:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
Molly Kapeluck, Clerk

\_\_\_\_\_  
Gerard Neugebauer, Council President

APPROVED: \_\_\_\_\_, 2014

\_\_\_\_\_  
Richard G. Norton, Mayor

COPIED \_\_\_\_\_  
SVCE ZONE PARK ROAD ENG  
LAW (FIN) (MAY) (PLAN) FIRE

ENACTED EFFECTIVE: \_\_\_\_\_, 2014

ON ROLL CALL: Ahlstrom *ray* Humphrey *ray* Knodel *ray* Neugebauer *ray*  
Reed *ray* Summerville *ya* Young *ray*

Suburbanite publication on June 22 and June 29, 2014  
m.k

*Defeated 1-6*

*Nicole Baldinger*  
\_\_\_\_\_  
~~Molly Kapeluck, Clerk~~ Pro Tem

*SP 5/19/14*

**COOPERATIVE AGREEMENT  
(share cost of new waterline)**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by 5430 Southpark, LLC ("5430") and the City of Green ("Green").

WHEREAS, on September 17, 2013, Green sold the parcel of property located at 5430 Massillon Road ("Property") to 5430; and

WHEREAS, by Resolution 2013-R37, Green approved a Special Use Permit and General Development Plan for the Property; and

WHEREAS, 5430 has commenced a plan, designed, and is constructing a new restaurant on the Property which will be known as The Twisted Olive; and

WHEREAS, 5430 has approached the City of Green to discuss the sharing of cost for the installation of a new waterline to be installed to provide water to The Twisted Olive from the waterlines on Massillon Road to the northeast corner of the Property which adjoins Green's Southgate Park; and

WHEREAS, the new waterline will provide a valuable, future benefit to Green for the care and maintenance of and future amenities to Green's Southgate Park and Boettler Park; and

WHEREAS, Green desires to share the cost of the new waterline installation with 5430.

1. **Agreement- Cost Sharing.**  
Green agrees to contribute one-half of the total cost of the new waterline on the Property up to a maximum contribution of Eighty Thousand Dollars (\$80,000.00).
2. **Obligations of Green.**  
Green shall contribute funds and cooperate to obtain all necessary approvals for the installation of the new waterline. Green shall also obtain all necessary approvals from Green City Council for their contribution.
3. **Obligations of 5430.**  
5430 shall be fully responsible for the planning, design and construction of the new waterline, including:
  - a. 5430 shall obtain all necessary permits and pay any and all fees associated with tapping into the water system of Aqua Ohio for the new waterline.
  - b. 5430 shall be fully responsible for obtaining the necessary engineering plans and specifications for the new waterline.
  - c. 5430 shall be fully responsible for obtaining bid proposals and hiring a contracting firm to construct and install the new waterline.

- d. 5430 shall be fully responsible for managing and inspecting the construction and installation of the new waterline.
- e. 5430 shall provide Green with copies of all permits, construction plans and specifications, all bid proposals, and all contracts for the new waterline.
- f. 5430 shall provide Green with an itemized, detailed invoice and accounting, identifying all cost associated with the construction of the new waterline.

4. **Payment.**

Green and 5430 agree that Green shall pay 5430 their share of the cost of the final itemized construction cost within thirty (30) days of receipt of an itemized, detailed invoice and accounting.

5. **Amendments.**

5430 and Green agree that any amendments to this Agreement shall be in writing and signed by both parties.

6. **Applicable Law.**

This Agreement shall be interpreted and enforced pursuant to the laws of the State of Ohio.

7. **Authority.**

The individual executing this Agreement on behalf of 5430 and Green warrant and represent that they have full and complete authority to bind the respective parties to the terms of this Cooperative Agreement.

8. **Assignment.**

5430 and Green agree that their rights or obligations under this Agreement may not be assigned to any other individual or entity without the express written consent of the other party.

9. **No Waiver.**

5430 and Green agree that the failure of either party to require strict performance of any term of this Agreement shall not be considered a waiver of the performance of any other term.

10. **Counterparts.**

The Agreement may be executed in any number of identical counterparts which, taken together, shall constitute collectively one (1) Agreement.

11. **Full Understanding.**

5430 and Green have read this Agreement, understand its terms, and acknowledge the opportunity to seek legal advice from their counsel.

12. **Entire Agreement.**

This instrument contains the entire Agreement between 5430 and Green. No promises, terms, warranties, conditions or obligations, express or implied, other than those set forth in this Agreement, shall be binding upon 5430 or Green.

13. **Notices.**

Any notices required by this Agreement shall be provided by email, facsimile transmission, or United States Mail to the parties as follows:

5430 Southpark, LLC  
Attention: Mr. Theodore V. Swaldo  
7170 Farmdale Avenue, N.W.  
North Canton, Ohio 44270

City of Green  
Attention: Mayor and Service Director  
P.O. Box 278  
Green, Ohio 44232-0278

With copy to:

Mr. James G. Mannos  
Tzangas Plakas Mannos, Ltd.  
220 Market Avenue South, Eighth Floor  
Canton, Ohio 44702

With a copy to:

Stephen J. Pruneski  
Law Director  
P.O. Box 278  
Green, Ohio 44232-0278

5430 SOUTHPARK, LLC

THE CITY OF GREEN

\_\_\_\_\_  
By: Theodore V. Swaldo  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: Richard G. Norton  
Its: Mayor

Approved as to form:

\_\_\_\_\_  
Stephen J. Pruneski, Law Director