

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Agenda

July 17, 2017

6:00 PM

SPECIAL MEETING

City Council

*Steve Donahue- President
Will Bennett-Vice President*

Bob Clark

Bruce Jarvis

Bobbie Mershon

Mike Walker

Jim Wynkoop

A. Call To Order

B. Pledge of Allegiance - *Walker*

C. Roll Call

F. Public Comments - Five Minute Limit Per Person

H. ORDINANCES

First Reading

[ORD-17-027](#) AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AND SALE AGREEMENT FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 6725 LITHOPOLIS-WINCHESTER RD, CANAL WINCHESTER, OHIO OWNED BY KATHLEEN MCGILL AND DECLARING AN EMERGENCY

Attachments: [ORD-17-027 McGill Property Purchase](#)
[ORD-17-027 McGill Purchase Agreement Exhibit A](#)
[ORD-17-027 McGill Promissory Note Exhibit B](#)

[ORD-17-028](#) AN ORDINANCE TO AMEND THE 2017 APPROPRIATIONS ORDINANCE 16-033, AMENDMENT #4

Attachments: [ORD-17-028 Amend Appropriation Ord 2017-4](#)

Adjournment

ORDINANCE NO. 17-027

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A PURCHASE AND SALE AGREEMENT FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 6725 LITHOPOLIS-WINCHESTER RD, CANAL WINCHESTER, OHIO OWNED BY KATHLEEN MCGILL AND DECLARING AN EMERGENCY

WHEREAS, Council here finds and determines that it is in the best interest of the City of Canal Winchester to enter into an agreement for the purchase of the property located at 6725 Lithopolis-Winchester Rd, Canal Winchester, Ohio, Franklin County (PID 184-00839 and 184-00234) owned by Kathleen McGill; and

WHEREAS, the parties have reached an agreement on price and closing conditions;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, OHIO:

Section 1: That the Mayor is hereby authorized to enter into a purchase and sale agreement, in a form substantially similar to Exhibit A, on behalf of the City of Canal Winchester for the purchase of real property located at 6725 Lithopolis-Winchester Rd, Canal Winchester, Ohio, Franklin County (PID 184-00839 and 184-00234) as fully described in said agreement, in the amount of \$774,495.00.

Section 2: That this ordinance is hereby declared to be an emergency measure, necessary for the preservation of public health, safety and welfare, such emergency arising from the exigencies of the real estate purchase contract and the need to timely accept a pending offer sale and shall take effect and be in form from and after its passage.

DATE PASSED _____

ATTEST _____
CLERK OF COUNCIL

PRESIDENT OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

CLERK OF COUNCIL

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2017, by and between Kathleen McGill (“Seller”), and the City of Canal Winchester, an Ohio municipal corporation (“Purchaser”).

1. **PREMISES.** At the price and upon the terms, conditions and provisions herein contained, Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller certain real estate located at 6725 Lithopolis Winchester Road, in the City of Canal Winchester, County of Franklin, and State of Ohio (the “Property”), which Property is delineated on the map attached hereto as Exhibit “A” and incorporated herein by reference. Said Property is described as Franklin County Parcel Nos. 184-00083900 and 184-00023400.

2. **TERMS.** The purchase price (“Purchase Price”) for the Property shall be Seven Hundred and Seventy-Four Thousand, Four Hundred and Ninety-Five Dollars (\$774,495.00). Purchaser shall also pay all closing costs charged by the title company performing the closing. The purchase amount, along with interest, shall be paid over a ten-year period as delineated in the payment schedule set forth in the Note attached hereto as Exhibit “B” and incorporated herein by reference.

3. **POSSESSION.** Possession of the premises shall be granted and delivered to Purchaser at time of closing and transfer of title.

4. **CONVEYANCE OF TITLE.** Seller shall convey to Purchaser title in fee simple by a transferable and recordable General Warranty Deed.

5. **EVIDENCE OF TITLE.** Seller shall furnish and Purchaser shall pay for an owner’s title insurance commitment and policy issued by a title insurance company selected by the Seller, in the amount of the purchase price. The title evidence shall be certified within thirty (30) days prior to closing with an endorsement as of 8:00 a.m. on the business day prior to the date of closing, all in accordance with the standards of the Ohio State Bar Association, and shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created by or assumed by Purchaser; (b) those specifically set forth in this Contract; (c) zoning ordinances; (d) legal highways; and (e) covenants, restrictions, conditions and easements of record which do not unreasonably interfere with Purchaser’s intended use.

If title to all or part of the real estate is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association’s Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted in any such defect, lien, encumbrance, easements, condition, restriction or encroachment or obtain title insurance without exception therefor. At closing, Seller shall sign an affidavit with respect to off-record title matters in accordance with the community custom.

6. **TAXES AND ASSESSMENTS.** Seller and Purchaser acknowledge and agree that there exist no delinquent taxes (including penalty and interest), assessments which are a lien on the date of Contract, nor other unpaid real estate taxes that are a lien for years prior to closing or.

Seller shall pay or credit at closing:

- (a) all delinquent taxes, including penalty and interest;
- (b) all assessments which are a lien on the premises as of the date of the contract;
- (c) all other unpaid real estate taxes and community development charges imposed pursuant to Chapter 349 of the Ohio Revised Code which are a lien for years prior to closing; and
- (d) a portion of such taxes and community development charges for the year of closing shall be prorated through the date of closing based on a 365-day year. If taxes are undetermined for the year of closing, the proration shall be based on the most recent available tax rate and valuation, giving effect to the applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified.

Buyer shall pay all agricultural use tax recoupments on the Property.

These adjustments shall be final, except for the following: (none if nothing inserted)_____.

7. **INTEREST.** Seller shall pay interest on the principal Purchase Price set at 3% over the course of the ten-year term and in accordance with the payment schedule set forth in the Note attached hereto as Exhibit B.

The parties hereto intend that the interest payable by the City hereunder be exempt from federal income taxation and taxation by the State of Ohio, and the City covenants that it will, to the extent possible, comply with all applicable laws to obtain and maintain the Federal and State of Ohio tax exemptions for such interest, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. Without limiting the generality of the foregoing, the City covenants that it will restrict the use of any "proceeds" (as defined in the Internal Revenue Code) in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the City's obligation is incurred, so that neither this Agreement nor the payment obligation will constitute an "arbitrage bond" under Sections 103(b)(2) and 148 of the Internal Revenue Code and will timely file an IRS Form 8038-G.

8. **CONDITION PRECEDENT TO SELLER'S AND PURCHASER'S OBLIGATION TO CLOSE.** The obligations of Buyer and Seller to consummate the transaction provided for herein are subject to City Council approval and the passage of all necessary and appropriate legislation by City Council to permit and authorize the sale and/or conveyance of the subject property.

If City Council does not provide the necessary approvals, this Agreement shall become null and void and neither party shall have any further liability to the other.

9. **CLOSING**. The closing and conveyance of title to the property (the “Closing”) shall take place on a date mutually agreeable to Seller and Purchaser, not later than _____, 2017, unless extended by mutual agreement of the parties.

10. **NOTICES**. Any notices provided for in this Agreement shall be in writing and shall be either delivered personally or by United States Certified or Registered Mail, Postage Prepaid, Return Receipt Requested addressed as follows:

To Seller:

Kathleen McGill
128 Academy Woods Drive
Gahanna, Ohio 43230

and

To Purchaser:

Mayor Michael Ebert
City of Canal Winchester
36 South High Street
Canal Winchester, Ohio 43110

and

Eugene L. Hollins
Frost Brown Todd LLC
One Columbus, Suite 2300
10 West Broad Street
Columbus, Ohio 43215

or at such other address as either party may designate in writing as above provided. Said notices shall be deemed given (a) if mailed as aforesaid, when duly deposited in the United States Mail; or (b) if personally delivered, on the date delivered.

10. **BINDING EFFECT**. This Agreement shall be binding upon the legal representatives, successors and assigns of the parties hereto.

11. **MODIFICATIONS**. This Agreement may not be amended, modified or changed except by an instrument in writing and signed by the party against whom

enforcement of any such waiver, amendment, modification, change or discharge is sought.

12. **ENTIRE AGREEMENT.** Seller and Purchaser agree that all the terms and conditions of this Agreement are contained herein and declare that no promises, representations or agreements other than those herein contained and in the attached Note have been made or relied upon by any of the parties hereto.

13. **REAL ESTATE BROKERS.** Each party represents that it has not had any dealings with any real estate broker, finder or other person with respect to this Agreement. Each party shall indemnify and hold harmless the other from all damages or claims that may be asserted by any other broker, finder or other persons with whom the indemnifying party has purportedly dealt with in respect to this Agreement.

14. **CONDITION OF PROPERTY.** Purchaser has examined the property prior to entering into this Agreement and is relying solely upon such examination and the results of any tests and engineering studies which Purchaser obtains pursuant to the provisions herein and based thereon, with reference to the character, condition and size of the land and any improvements, Purchaser is buying the premises in strictly "as is" condition.

15. **DURATION OF OFFER.** This Agreement shall not be binding upon the parties until such time as all parties hereto have executed this Agreement. In the event this Agreement has not been executed by Purchaser and Seller on or before 5:00 p.m. on the _____ day of _____, 2017, this Agreement shall be considered to be an Offer made by the party first executing it and shall be deemed to have expired.

IN WITNESS WHEREOF, Purchaser and Seller have entered this Agreement as of the date set opposite their names.

SELLER:

KATHLEEN MCGILL

Date: _____

PURCHASER:

CITY OF CANAL WINCHESTER, OHIO

Date: _____

By: _____

Michael Ebert, Mayor

0128850.0615530 4829-4752-8775v2

PROMISSORY NOTE

INTEREST RATE:
3.00% per year

MATURITY DATE:
July ____, 2027

DATED:
July __, 2017

SELLER/LENDER: KATHLEEN MCGILL

PURCHASER/BORROWER: CITY OF CANAL WINCHESTER

PRINCIPAL AMOUNT: SEVEN HUNDRED AND SEVENTY-FOUR THOUSAND, FOUR HUNDRED AND NINETY-FIVE AND 00/100 DOLLARS (\$774,495.00)

1. **AGREEMENT TO PAY.** For value received, principally the Property located at 6725 Lithopolis Winchester Road, in the City of Canal Winchester, County of Franklin, and State of Ohio, the undersigned Purchaser **Canal Winchester, Ohio**, an Ohio municipal corporation (hereinafter referred to as "Purchaser"), whose mailing address is 36 S. High Street, Canal Winchester, Ohio 43110, hereby agrees and promises to pay to the order of **Kathleen McGill**, a resident of _____ (herein together with its successors and assigns referred to as "Seller"), at her principal mailing address _____ or such other address as Seller may from time to time designate; the principal sum of Seven Hundred and Seventy-Four Thousand, Four Hundred and Ninety-Five and 00/100 Dollars (\$774,495.00), together with interest on the unpaid principal balance on the date such funds were disbursed by Seller until said amounts shall have been paid in full at the rate provided for herein and all other sums due as provided herein, payable in lawful money of the United States of America, which shall be legal tender for public and private debt at the time of payment (the "Loan").

2. **INTEREST RATE.** The principal balance hereof shall bear interest at the rate of three percent (3%) per annum (the "Regular Rate") computed on the assumption that each month contains thirty (30) days and each year contains three hundred sixty (360) days. The parties hereto intend that the interest payable by the City hereunder be exempt from federal income taxation and taxation by the State of Ohio, and the City covenants that it will, to the extent possible, comply with all applicable laws to obtain and maintain the Federal and State of Ohio tax exemptions for such interest, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. Without limiting the generality of the foregoing, the City covenants that it will restrict the use of any "proceeds" (as defined in the Internal Revenue Code) in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the City's obligation is incurred, so that neither this Agreement nor the payment obligation will constitute an "arbitrage bond" under Sections 103(b)(2) and 148 of the Internal Revenue Code and will timely file an IRS Form 8038-G.

3. **QUARTERLY PAYMENT.** Principal and interest upon this Note shall be paid as follows:

(a) The first payment in the sum of \$22,483.71 shall be made on the date of Closing, _____, 2017. Thereafter, beginning on the first (1st) day of October, 2017, and continuing on the first (1st) day of each quarter thereafter through and including the first (1st) day of January, 2027, payments shall be made in thirty-eight (38) consecutive equal quarterly installments of \$22,483.71 each, based on a ten (10) year amortization schedule.

(b) All payments shall be applied first to late charges due hereunder, second to accrued interest at the rate then in effect under the terms hereof, and third to principal. However, upon the occurrence of an Event of Default (as hereinafter defined), any monies received shall be applied, at the option and discretion of Seller, to any sums due under this Note or any instrument securing this Note, including, without limitation, attorneys' fees and other costs of collection as provided herein.

(c) All payments which are due on Saturday, Sunday or a holiday shall be deemed to be payable on the next business day.

4. **MATURITY DATE.** On the first (1st) day of April, 2027 (the "Maturity Date"), a final payment shall be due and payable in the amount of the entire unpaid principal and interest on this Note.

5. **DEFAULT AND ACCELERATION.** The occurrence of an Event of Default, as defined in the Instrument (as defined herein), shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, the entire unpaid principal balance, together with accrued interest thereon, shall become, without notice, immediately due and payable at the option of Seller.

6. **LATE CHARGE.** Quarterly payments on the Loan are due on the date provided in this Note. Any quarterly installment payment, including quarterly payments of escrows for real estate taxes, special assessments and/or insurance premiums required by the Instrument or other document securing this Note, not received by Seller within ten (10) days of the due date shall be subject to a late payment charge equal to ten percent (10%) of the amount of such monthly payment. The late charge shall apply individually to all payments past due with no daily adjustment and shall be used to defray the cost of Seller incident to collecting such late payment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights Seller/Seller may have, including the right to declare the entire unpaid principal balance and accrued interest immediately due and payable.

Notwithstanding the foregoing, Purchaser may establish an electronic funds transfer arrangement with Seller for the payments due under the terms of this Note ("Electronic Payments"). If Electronic Payments are established, Purchaser agrees that in the event there are insufficient funds in Purchaser's account for the necessary payment on the date on which Seller automatically withdraws the payment, Purchaser shall be responsible for any costs incurred by Seller as a result of the insufficient funds, and any applicable late charge referred to in the foregoing paragraph shall be assessed.

7. **COSTS OF COLLECTION.** Purchaser agrees that if, and as often as, this Note is placed in the hands of an attorney for collection or to defend or enforce any of Seller's rights hereunder, Purchaser will pay to Seller its attorneys' and paralegals' fees and costs, including, without limitation, all fees and costs incurred in litigation, mediation, arbitration, bankruptcy and administrative proceedings, and appeals therefrom, and all court costs and other expenses, including, without limitation, appraisal fees and costs of environmental review, incurred in connection therewith.

8. **TIME.** Time is of the essence of this Note and each of the provisions hereof.

9. **GOVERNING LAW.** This Note shall be governed by and construed and interpreted in accordance with the laws of the State of Ohio.

10. **INTEREST LIMITATION.** All agreements between Purchaser and Seller are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Seller for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If from any circumstance whatsoever, fulfillment of any provision hereof or of the Instrument, Assignment of Leases or any other Security Document at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Seller should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Purchaser and Seller and shall be binding upon and available to any subsequent holder of this Note.

11. **DISBURSEMENTS.** Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by Seller by mail, wire transfer or other delivery to Purchaser, to escrows or otherwise for the benefit of Purchaser shall, for all purposes, be deemed outstanding hereunder and to have been received by Purchaser as of the date of such mailing, wire transfer, or other delivery and until repaid, notwithstanding the fact that such funds may not at any time have been remitted by such escrows to Purchaser or for its benefit.

12. **CAPTIONS.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **NOTICES.** All notices required or permitted to be given hereunder to Purchaser or Seller shall be given in the manner and to the place as provided in the Real Estate Purchase Agreement.

14. **MISCELLANEOUS.** The provisions of this Note may not be waived, changed or discharged orally, but only by an agreement in writing signed by Purchaser and Seller; and any oral waiver, change or discharge of any term or provision of this Note shall be without authority

and of no force or effect. The invalidity or unenforceability of any term or provision of this Note shall not affect the validity or enforceability of any other term or provision hereof.

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Purchaser has executed this Promissory Note as of the date and year first above written.

PURCHASER

City of Canal Winchester,
an Ohio Municipal Corporation

By: _____
Michael Ebert, Mayor

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of July, 2017 by Michael Ebert, the Mayor of the City of Canal Winchester, an Ohio municipal corporation, on behalf of the City of Canal Winchester, personally appeared before me, is personally known to me or has produced _____ as identification.

Notary Public

Printed

ORDINANCE NO. 17-028

**AN ORDINANCE TO AMEND THE 2017 APPROPRIATIONS
ORDINANCE 16-033, AMENDMENT #4**

WHEREAS, the City Council desires to proceed with activities of the City which require changes in the appropriations to accommodate those activities;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, OHIO:

Section 1: That the 2017 Annual Appropriations Ordinance be amended by appropriating from the unappropriated monies of the General Fund \$70,000.00 to the Lands and Buildings – Capital Outlay function; and

Section 2: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED _____

ATTEST _____
CLERK OF COUNCIL

PRESIDENT OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

CLERK OF COUNCIL