

ORDINANCE NO. 22-001

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT FOR THE PURCHASE OF APPROXIMATELY 2.5 ACRES LOCATED ON FRANKLIN STREET, CANAL WINCHESTER, OHIO OWNED BY TIMOTHY W. FISKE AND LEE OSTER**

WHEREAS, Council hereby finds and determines it is in the best interest of the City of Canal Winchester to enter into an agreement for the purchase of property located on Franklin Street, Canal Winchester, Ohio, Franklin County (PID 184-000188) owned by Timothy W. Fiske and Lee Oster; 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 be and hereby is authorized and directed to enter into a real estate purchase agreement, in a form substantially similar to the Exhibit A, on behalf of the City of Canal Winchester for the purchase of real property located on Franklin Street, Canal Winchester, Ohio, Franklin County (PID 184-000188) as fully described in said agreement, in the amount of \$99,900.00.

Section 2. That the Mayor, Law Director, Finance Director, and other officers, agents, and employees of the City are hereby authorized and directed to take such further actions and enter into such further agreements as are necessary to effectuate the purchase authorized by Section 1 of this Ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED 2/7/22

ATTEST Amanda M Jackson  
CLERK OF COUNCIL

[Signature]  
PRESIDENT OF COUNCIL  
[Signature]  
MAYOR

DATE APPROVED 2-8-22

APPROVED AS TO FORM:

[Signature]  
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.

Amanda M Jackson  
Finance Director/Clerk of Council

## **REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** (hereinafter the “**Agreement**”) is made and entered into on the 10th day of December, 2021 (the “**Effective Date**”) by and between the **CITY OF CANAL WINCHESTER**, Ohio, an Ohio municipal corporation (the “**City**”), having an office at 36 S. High Street, Canal Winchester, Ohio 43110, and **TIMOTHY W. FISKE AND LEE OSTER**, (“**Sellers**”), Ohio individuals, with a mailing address of 44 W. Mound Street, Canal Winchester, Ohio 43110. The City and Sellers may hereinafter be referred to individually as a “**Party**”, or collectively as the “**Parties**”.

### **BACKGROUND INFORMATION**

WHEREAS, the City desires to purchase land owned by Sellers to advance certain goals and development within the City; and

WHEREAS, Sellers own Franklin County Parcel Number 184-000188 (the “**Premises**”) within the City; and

WHEREAS, the Premises consists of approximately 2.5 acres of land located along Franklin Street; and

WHEREAS, it is the desire of the Parties to memorialize the terms of the transfer in this Agreement.

### **STATEMENT OF AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Sellers covenant, agree and obligate themselves to the foregoing Background Information and as follows:

### **ARTICLE I** **SALE AND PURCHASE OF THE PREMISES**

- 1. Sale.** Sellers hereby agree to sell and convey to the City, and the City hereby agrees to purchase and obtain from Sellers the Premises. The Parties acknowledge and represent that this conveyance of the Premises is a voluntary transfer.
- 2. Purchase Price.** The total Purchase Price for the Premises shall be Ninety-Nine Thousand Nine Hundred Dollars (**\$99,900.00**) (the “**Purchase Price**”) which sum shall constitute the entire amount of the compensation due to Sellers for the Premises described and depicted in the attached **Exhibit A**.
- 3. Contingent Upon City Council Approval.** This Agreement, and the terms and obligations set forth herein, shall be enforceable and valid only upon City Council approval. This Agreement and the terms and obligations imposed under it shall be null and void should Council fail to adopt an ordinance approving the City’s entry to this Agreement.

**ARTICLE II**  
**EVIDENCE OF TITLE**

4. **Title Commitment.** The City may obtain a commitment (a "Title Commitment") from a title insurance company licensed to do business in the State of Ohio (the "Title Company") to issue an ALTA Owner's Title Insurance Policy (Form 6/17/06) in the full amount of the Purchase Price of the Premises (the "Title Policy"). The cost of the Title Policy shall be paid by the City. The Title Commitment will be certified to the Effective Date and will include copies of all recorded documents evidencing title exceptions raised in Schedule B of the Title Commitment. On or before the date of Closing, the Title Commitment must show in Seller good and insurable title to the Premises, free and clear, except for the standard printed exceptions contained in the final form of Schedule B of the Title Policy, and free and clear of all liens, charges, encumbrances, and clouds of title, whatsoever, except the following (collectively, the "Permitted Encumbrances"):
- a. Those created or assumed by the City; and
  - b. Zoning ordinances, legal highways and public rights-of-way which do not interfere with the practical use of the Premises; and
  - c. Real estate taxes which are a lien on the Premises but which are not yet due and payable; and
  - d. Easements and restrictions of record acceptable to the City which do not interfere with the City's anticipated use of the Premises, which shall be reflected in the final form of Schedule B to the Title Policy.

The Title Commitment shall fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress or any other appurtenances to the Premises, and shall provide insurance coverage in respect to all of such appurtenant rights. The Title Commitment shall include the results of a special tax search and examination for any financing statements filed of record which may affect the Premises. As used herein, Title Company means a company selected at the City's discretion.

5. **Endorsement at Closing.** At the Closing, the Title Company shall provide the City with endorsements to the Title Commitment updating the commitment to the Closing Date and showing no change in the state of the title to the Premises (other than mortgages which shall be released by Sellers at the Closing). After the Closing, the Title Company shall issue a final owner's title insurance policy in the amount of the Purchase Price.
6. **Survey.** The City may, at its own expense, obtain a current survey of the Premises. The survey shall include a legal description of the Premises and shall be certified by the surveyor to the City and the Title Company. Subject to the approval of the Title Company, the legal description set forth on the survey shall be used in the Title Commitment and policy and in all documents of transfer contemplated hereby. The survey shall be sufficient to waive or insure over any and all questions or survey.

7. **Status of Title; Permitted Encumbrances; Objections.** Up and until five (5) days prior to the Closing Date (the “Deadline for Objections”), the City may provide Sellers with written objections to the extent that the Title Commitment reveals matters other than the Permitted Encumbrances (the "Objections") which constitute a monetary lien or which interfere with the City’s use of the Premises for its intended purpose. The City’s failure to make written Objections by the Deadline for Objections will constitute a waiver of the City’s right to make Objections. Upon the City giving Sellers written notice of Objections, Sellers may either agree in writing to satisfy the Objections, or in the absence of Sellers’ written agreement to satisfy, the City shall either waive the Objections, five (5) days prior to the Closing or terminate this Agreement. In the event the Objections are not cured or removed, or in the event Sellers cannot provide satisfactory evidence that the Objections will be cured on or before the Closing Date or that satisfactory endorsements to the Title Policy will be issued in order to satisfy the Objections, the City shall make its election at closing, by written notice to Sellers, to either:
- a. Accept title to the Premises, at which point such uncured Objections shall be Permitted Encumbrances hereunder; or
  - b. Terminate this Agreement.

**ARTICLE III**  
**DEED AND OTHER DOCUMENTS**

8. **Deed of Conveyance.** Sellers, as grantors, shall convey to the City, at the Closing, good and insurable title in fee simple to the Premises by transferable and recordable limited warranty deed under O.R.C. 5302.07, signed by all parties necessary, free and clear of all defects, mortgages, easements, restrictions, reservations, conditions, agreements, liens and encumbrances, except the Permitted Encumbrances.
9. **Supplemental Instruments.** Sellers agree to execute any and all reasonable supplemental instruments or documents necessary to vest the City with the rights, titles, and interests to the Premises.

**ARTICLE IV**  
**INSPECTION**

10. **Tests and Engineering Studies.** During the Contingency Period, the City shall, at its sole cost, have the right through the City's associates, employees and/or contractors and agents, upon not less than 24 hours prior notice to Sellers, which for purposes of meeting the requirements of this Section, notice may be given solely by email to Sellers and Seller’s agent, to enter upon the Premises for the purpose of surveying, inspecting, making contour surveys, temporary excavations, test borings and other purposes required by the City to enable the City to ascertain whether it is feasible to complete the proposed development of the Premises.

**ARTICLE V**  
**CLOSING**

11. **Closing.** The Parties agree that the purchase and sale of the Premises shall be closed (the "Closing") within 90 days of the Effective Date of this Agreement, (the "Closing Date"), unless otherwise agreed to in writing by the Parties. Said Closing shall be held at a time and place in Franklin County, Ohio as shall be selected by the City, and agreed to by Sellers.
12. **Possession.** At Closing, Sellers shall deliver exclusive possession of the Premises, except as provided in Article X herein.
13. **Sellers' Closing Documents.** In addition to the deed described in Article III, at the Closing, Sellers shall deliver to the City: (i) a closing statement showing the Purchase Price and all charges, prorations and/or credits to the City or Sellers provided for herein, (ii) all consents, affidavits or other documents reasonably and customarily required by the Title Company to issue the Title Policy, (iii) such evidence of authority as the City or the Title Company reasonably may deem necessary to evidence the authority of the Sellers signatory to enter into this Agreement and to consummate the transactions contemplated hereby, and (iv) an affidavit that Seller is not non-resident "aliens", "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate" within the meaning of the Internal Revenue Code and Regulations thereunder.
14. **The City's Closing Documents.** At the Closing, the City shall deliver to Sellers: (i) the Purchase Price, (ii) a closing statement showing the Purchase Price and all charges, prorations and/or credits to the City or Sellers provided for herein, (iii) such evidence of authority as Sellers or the Title Company reasonably may deem necessary to evidence the authority of the City's signatory to enter into this Agreement and to consummate the transactions contemplated hereby, and (iv) any other documents reasonably requested by the Title Company.
15. **Adjustments at Closing.** At Closing, the Parties shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:
  - a. **Real Estate Taxes and Assessments.** Sellers shall pay or credit against the Purchase Price all delinquent real estate taxes, together with penalties and interest thereon, all assessments which are a lien against the Premises as of the Closing Date (both current and reassessed, whether due or to become due and not yet payable), all unpaid real estate taxes for years prior to Closing, and real estate taxes for the year of Closing, prorated through the Closing Date. The proration of undetermined taxes shall be based upon a three hundred sixty-five (365) day year and on the last available tax rate, giving due regard to applicable exemptions, recently voted millage, change in tax rate or valuation (as a result of this transaction or otherwise), etc., whether or not the same have been certified. It is the intention of the Parties in making this tax proration to give the City a credit in an amount as close as possible to the amount which the City will be required to remit to the County Auditor for the period of time preceding the Closing Date hereof.

- b. The prorations provided in 18(a) shall be final at Closing. Sellers warrant and represent that, to their actual knowledge, (1) all assessments presently constituting a lien are shown on the County Treasurer's records and (2) no improvement, site or area, has been installed by any public authority, the cost of which is to be assessed against the Premises in the future. Sellers further warrant and represent that neither Sellers nor any of their agents or representatives have received written notice, or have actual knowledge of any proposed improvement, any part of the cost of which would or might be assessed against the Premises in the future. The covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder for a period of one (1) year.
- c. *Seller's Expenses.* Seller shall, at the Closing (unless previously paid) pay by credit against the Purchase Price the following:
  - i. The cost of all municipal services and public utility charges due for the Premises (if any) through the Closing Date; and
  - ii. One-half (1/2) the fee, if any, charged by the Title Company for closing the transaction contemplated herein.
- d. *The City's Expenses.* The City shall at the Closing (unless previously paid) pay the following:
  - i. The cost of the Title Commitment and Owner's Title Policy; and
  - ii. The recording fees required for recording the limited warranty deed; and
  - iii. The cost of the survey referred to in Article II paragraph 5; and
  - iv. One-half (1/2) the fee, if any, charged by the Title Company for closing the transaction contemplated herein.
- e. *Brokers.* The City represents and warrants that it has not retained a real estate broker or realtor in connection with the purchase of the Premises. Sellers represent and warrant that they retained Shari Smith of e-Merge Real Estate as their representative and that she is due a commission upon Closing.

**ARTICLE VI**  
**WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

**16. Warranties and Representations of Sellers.** In addition to any other representation or warranty contained in this Agreement, Sellers hereby represent and warrant, to the best of their knowledge, as follows:

- a. The Sellers or any agent or representative of Sellers have not received any written notice or notices, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation



- of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected; and
- b. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Premises, under any agreement or other instrument to which Sellers are a party or by which Sellers or the Premises might be bound; and
  - c. The Sellers or any agent, employee or representative of Sellers has not received any written notice, of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, which would prevent, limit or in any manner interfere with the City's proposed use of the Premises; and
  - d. Through and until the Closing Date, Sellers shall not enter into any easement, new lease or other contract pertaining to the Premises, unless otherwise approved herein or in writing by the City; and
  - e. To the best of Seller's knowledge, there are no hazardous wastes, hazardous substances, or hazardous materials located in, on or about or generated from the Premises which may require remediation, or which may result in penalties under any applicable law; and
  - f. Sellers are not a "Foreign Person" as that term is defined in the Foreign Investment in Property Tax Act.

Notwithstanding anything to the contrary contained herein, no such representation and/or warranty is made in relation to any notice received from or delivered by the City, as the same pertain to the underlying substance of those warranties and representations made in subsections 15 a. or 15 c. above.

- 17. Breach of Warranties by Sellers Prior to Closing.** If, during the pendency of this Agreement, the City determines that any warranty or representation given by Sellers to the City under this Agreement was untrue, incorrect, or misleading, in whole or in part, in any material respect, the same shall constitute a default by Sellers hereunder. In such event, the City may give written notice thereof and shall thereafter have the right to terminate this Agreement or the right to pursue in a court of competent jurisdiction a claim for specific performance hereunder.
- 18. "As Is" Condition.** The City acknowledges and agrees that, except as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing, (a) Sellers have not made any warranty, guaranty or representation relating to the Premises, (b) The City is relying solely on its own investigation of the Premises and not on any information provided or to be provided by Sellers, and (c) The City agrees to accept the Premises and acknowledges that the sale thereof as provided for in this Agreement

is made by Sellers on an “As Is, Where Is and with all faults” basis, except as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the City, saving and excepting as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing, the City hereby remises, releases and forever discharges Sellers and its members, managers, agents and employees from any and all obligations, claims, liabilities, suits, costs, expenses, damages, actions and/or causes of action, matured or contingent, known or unknown, which may arise out of, or are in any way or in any manner connected with or related to, in whole or in part, the condition of the Premises, including, but not limited to any claims under applicable Environmental Laws, or otherwise. The term “Environmental Laws” shall mean all present and future federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended), any state and local counterparts of such statutes or regulations and any state voluntary cleanup programs, each as amended from time-to-time. The substance of this Section 22 is intended to survive the Closing or earlier termination of this Agreement.

**19. Warranties and Representations of the City.** In addition to any other representation or warranty contained in this Agreement, the City hereby represents and warrants as follows:

a. N/A

**20. Warranties and Representations Survive Closing.** The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder for a period of one (1) year after the Closing Date. All representations and warranties set forth in this Article IX shall be true and correct as of the date hereof and as of the Closing Date, and at Closing, if requested by the City, Sellers shall so certify, in writing, in form reasonably requested by the City. Sellers hereby agree to indemnify and hold the City harmless from and against any and all claims, demands, liabilities, costs and expenses of every nature and kind (including attorneys' fees) which the City may sustain at any time by reason of the material untruth, breach, misrepresentation or nonfulfillment of any of the covenants, representations, warranties or agreements made by Sellers in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby.



**ARTICLE VII**  
**NOTICES**

**21. Notices.** Whenever in this Agreement it shall be required or permitted that notice be given or served by either Party hereto on the other, such notice shall be in writing and shall be deemed served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, return receipt requested, or with a national courier service (e.g., Federal Express) addressed to the other Party as follows:

If to Seller:

with copy to:

or to such other address as Sellers may hereinafter designate by written notice to City. Any notice to be served on City shall be addressed as follows:

If to the City: Lucas Haire  
Development Director  
City of Canal Winchester  
36 S. High Street  
Canal Winchester, Ohio 43110  
[lhaire@canalwinchesterohio.gov](mailto:lhaire@canalwinchesterohio.gov)

with copy to: Thaddeus M. Boggs, Esq.  
Frost Brown Todd LLC  
One Columbus, 10 West Broad Street  
Columbus, Ohio 43215  
[tboggs@fbtlaw.com](mailto:tboggs@fbtlaw.com)

or to such other address as the City may hereinafter designate by written notice to Seller.

**ARTICLE VIII**  
**GENERAL PROVISIONS**

**22. Governing Law.** This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Ohio.

**23. Entire Agreement.** This Agreement constitutes the entire contract between the Parties hereto, and may not be modified except by an instrument in writing signed by the Parties hereto, and supersedes all previous agreements, written or oral, if any, of the Parties.

24. **Time of Essence.** Time is of the essence of this Agreement in all respects.
25. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, legal representatives, successors and assigns.
26. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the Party making the waiver.
27. **Headings.** The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement.
28. **Survival.** The terms and provisions of this Agreement shall survive the delivery of the deed of conveyance hereunder.
29. **Counterparts.** This Agreement may be executed in one or more counterparts all of which will be considered one and the same agreement, binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
30. **Day for Performance.** Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.
31. **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the fullest extent permitted by law.


**SELLERS:**  
TIMOTHY W. FISKE

*Timothy W Fiske* dotloop verified  
12/10/21 12:47 PM EST  
PV7V-6SDC-AYVW-VYY8

LEE OSTER

*Lee Oster* dotloop verified  
12/10/21 8:27 PM EST  
XTZQ-QP4C-SHQT-2TDX

**CITY:**  
CITY OF CANAL WINCHESTER, OHIO  
An Ohio Municipal Corporation

  
Michael Ebert, Mayor

## **EXHIBIT A**

4894-2967-3478v2

EXHIBIT "A"

Situated in the County of Franklin, State of Ohio and in the Village of Canal Winchester:

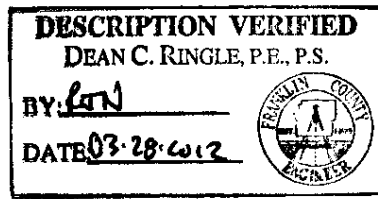
Being a part of the Southeast Quarter of Section Number Thirty (30) in Township Number Fifteen (15) and Range Twenty (20), beginning at a point eleven and one-half (11 1/2) feet due South from the Southeast corner on inlot Number Two (2) of DIXON'S FIRST ADDITION TO THE VILLAGE OF CANAL WINCHESTER, OHIO, of record in Plat Book 3, page 144, Franklin County Records;

Thence due South 434.00 ft. to a stone;

Thence due West 222.75 ft. to a stone;

Thence due North to a stone eleven and one-half (11 1/2) feet South of the Southwest corner of inlot Number five (5), of said DIXON'S FIRST ADDITION on Liberty Street;

Thence East, 222.75 feet to the point of beginning, containing two and one-fourth (2 1/4) acres, more or less.



N-008  
ALL OF  
(184)  
000188