

RESOLUTION NO.: 2020-R25
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: FEBRUARY 25, 2020 **ASSIGNED TO:** FINANCE

A RESOLUTION AUTHORIZING THE CITY OF GREEN TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH CLAYTON C. MCCUNE FOR THE PROPERTY LOCATED AT 1364 EAST TURKEYFOOT LAKE ROAD, MAKING AN APPROPRIATION, AND DECLARING AN EMERGENCY.

WHEREAS, the Administration entered into discussions with Clayton C. McCune, the owner of the Property located at 1364 East Turkeyfoot Lake Road, for the potential purchase of that Property; and

WHEREAS, the City and Clayton C. McCune had reached a prior purchase agreement; and

WHEREAS, this prior purchase agreement was approved under resolution 2019-R24; and

WHEREAS, due to delays, all terms of the prior purchase agreement were not executed; and

WHEREAS, the City and Clayton C. McCune have reached a new tentative agreement amending the terms for the purchase of the Property; and

WHEREAS, the Administration desires to proceed with the purchase of the Property.

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

SECTION ONE:

Green City Council authorizes the Mayor to enter into the Real Estate Purchase Agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A" and proceed with the purchase of the Property located at 1364 East Turkeyfoot Lake Road from Clayton C. McCune.

SECTION TWO:

Green City Council authorizes an appropriation of Five Thousand Dollars (\$5,000.00) to the Land Account (acct# 100-1900-53610) from the unappropriated balance of the General Fund.

SECTION THREE:

The Finance Director is authorized to make payment to Clayton C. McCune through the established purchase order procedure.

SECTION FOUR:

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 an open meeting of this Council and any deliberations of this Council and any of its committees that resulted in those formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION FIVE:

Green City 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 (¾ ths) 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: MARCH 12, 2020
Molly Kapeluck
Molly Kapeluck, Clerk of Council

[Signature]
Barbara Babbitt, Council President

APPROVED: March 12, 2020
[Signature]
Gerard M. Neugebauer, Mayor

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MAY FIN LAW PLAN ENG
SVCE FIRE PARK ZONE HR

ENACTED EFFECTIVE: MARCH 12, 2020

ON ROLL CALL: Babbitt -Aye Brandenburg -Aye DeVitis -Aye France -Aye
Shaughnessy -Aye Yeargin -Aye Young -Aye Adopted 7-0

Suburbanite publication on MARCH 20 and MARCH 27, 2020
Molly Kapeluck
Molly Kapeluck, Clerk of Council

02/20/2020 Approved as to form and content by Lisa Carey Dean, Director of Law [Signature]

**AMENDMENT TO
PURCHASE AGREEMENT, DATED APRIL 23, 2019**

Now comes Clayton C. McCune ("Seller") and the City of Green ("Purchaser") on this 7th day of February 2020 and hereby enter into this Amendment to the Purchase Agreement, dated April 23, 2019 (the "Agreement") for the Sale and Purchase of the Real Property generally known as 1364 East Turkeyfoot Lake Road, Akron, Ohio (the "Property"). Together, Seller and Purchaser are referred to collectively as the "Parties."

1. The Parties agree that the Agreement shall remain in full force and effect, subject to the amended terms and conditions stated herein.
2. Section 3 of the Agreement shall be changed to indicate that the Purchaser shall pay the sum of \$130,000.00 for the Property. Seller continues to acknowledge his prior receipt of the amount of \$18,160.00, leaving a balance of \$111,840.00 to be paid by Purchaser at closing.
3. The Financing Contingency set forth in Section 4 of the Agreement is removed in its entirety, except that the Parties agree that this Amendment to the Agreement is subject to the approval of the City of Green's Council.
4. The Closing date set forth in Section 5 of the Agreement shall be changed to reflect that the Closing shall occur on or before April 1, 2020.
5. The change of Possession date set forth in Section 6 of the Agreement shall be changed to reflect that Seller shall deliver possession to Purchaser no later than May 31, 2020.
6. Section 18 of the Agreement is hereby removed in its entirety.
7. Section 21 of the Agreement shall be amended to require notice to the Purchaser as follows:

City of Green
Director of Law for the City of Green
1755 Town Park Blvd.
P.O. Box 278
Green, Ohio 44232

SIGNATURES NEXT PAGE

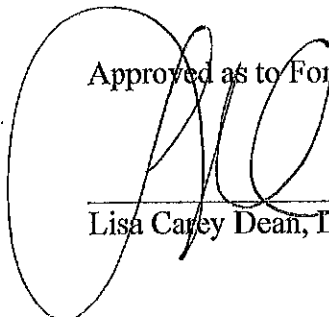
Seller: Clayton C. McCune

Purchaser: City of Green

By: _____
Clayton C. McCune

By: _____
Gerard M. Neugebauer, Mayor

Approved as to Form:

 2-20-2020

Lisa Carey Dean, Director of Law

PURCHASE AGREEMENT

1. **SELLER & PURCHASER:** City of Green or its assignee, hereinafter referred to as "Purchaser," and Clayton C. McCune, hereinafter referred to as "Seller", hereby jointly and severally agree as follows, to wit:

Seller is the owner respectively of the real estate known as 1364 East Turkeyfoot Lake Road, County of Summit, and State of Ohio with said real estate and structure;

Seller desires to sell said real estate as set forth in this Purchase Agreement;

Purchaser desires to purchase said real estate as set forth in this Purchase Agreement;

Purchaser agrees to accept in its present "AS IS" physical condition real estate as set forth in this Purchase Agreement, except as may be otherwise expressly set forth below in writing in this Purchase Agreement;

Purchaser states the Seller has made and makes no oral or written, express or implied, warranty or representation of any kind or character whatsoever with respect to the real estate as set forth in this Purchase Agreement, or any other matter or thing relating to or affecting said real estate, and that there are no oral agreements, warranties or representations collateral to or affecting the real estate being purchased, except as may otherwise be expressly set forth, below, in writing in this Purchase Agreement; and

Purchaser and Seller each acknowledges that this Purchase Agreement constitutes a legally binding contract.

2. **PROPERTY:** The property being purchased by the Purchaser from the Seller is known as 1364 East Turkeyfoot Lake Road, Akron, Ohio 44312, Permanent Parcel No. 28-02613, and described in Exhibit "A" attached hereto and incorporated herein.

3. **PRICE:** Purchaser shall pay the sum of \$125,000.00, when Purchaser exercises option to purchase.

Payable as follows:

| | |
|--|--------------|
| (a) Earnest money already paid to Seller | \$18,160.00 |
| (b) Cash to be deposited in escrow | \$106,840.00 |

4. **FINANCING:** Purchaser shall obtain the above mortgage loan and/or cash for the balance due and owing of \$106,840.00 at the time of closing, on June 20, 2019 and subject to the approval of Green City Council and if despite Purchaser's good faith efforts, that mortgage loan and/or cash for the balance due and owing has not been obtained, then this Purchase Agreement shall be null and .

5. **CLOSING:** All documents and funds pertaining to this conveyance and the title work necessary shall be performed by Title One Agency, within thirty (30) days of acceptance, and the closing and transfer of title to Purchaser and the release and payment of the balance of the funds due and owing to the Seller shall take place as agreed upon by the parties on June 20, 2019.

6. **POSSESSION:** Seller shall deliver possession to the Purchaser on or before September 20, 2019 provided the title has transferred to Purchaser and the Seller has received the balance of the funds due and owing.

7. **TITLE:** Seller shall convey a marketable title to Purchaser by general warranty deed and/or fiduciary deed, if required, with dower rights released, free and clear of all liens and encumbrances whatsoever, except (a) any mortgage assumed by Purchaser, (b) such restrictions, conditions, easements, however created, and encroachments as do not materially adversely affect the use or value of the property, (c) zoning ordinances, if any, and (d) any general and/or special taxes, liens and/or assessments, not yet due and payable.

8. **PRORATIONS:** None.

9. **CHARGES:** Purchaser shall pay the following costs through escrow: (a) Real Estate Transfer Tax, (b) title exam and the costs of insuring premiums for Owners Fee Policy of Title Insurance, (c) the Escrow fee, (d) all recording fees for the deed and any mortgage, and (e) all closing costs.

10. **INSPECTION:** This Purchase Agreement shall **NOT** be subject to any inspections, except as provided for in Lease between the parties.

However, if Purchaser desires, Purchaser may make any such inspections they deem necessary provided they do so within thirty (30) days of closing of this Purchase Agreement by the Seller and that Purchaser do so at their sole expense.

Further, as to any issues of EPA that the Purchaser may have, the Seller will provide Purchaser with all documents that they have in reference to the same.

Purchaser restates that they accept in its present "AS IS" physical condition real estate, except as may be otherwise expressly set forth below in writing in this Purchase Agreement, the property in its present "AS IS" physical condition.

Purchaser agrees that they shall pay for any INSPECTIONS REQUIRED BY ANY STATE, COUNTY, LOCAL GOVERNMENT.

If any INSPECTIONS REQUIRED BY ANY STATE, COUNTY, LOCAL GOVERNMENT sets for a any defects Purchaser shall have three (3) days to elect one of the following: 1) accept the property in its present "AS IS" physical condition and be responsible to resolve the defect; or 2) Terminate this Purchase Agreement by providing a copy of the written inspection report(s) to the Seller and all parties agree thereafter to promptly sign a mutual release. Upon signing of a mutual release, while the earnest money deposited shall not be returned to the Purchaser, there shall be no further liability of any party to the other, except as agreed to above.

11. CONDITION OF PROPERTY: Purchaser has examined the real estate and agrees that it is being purchased in their respective present "AS IS" physical condition.

Purchaser has not relied upon any representations, warranties or statements about the real estate (including but not limited to its condition or use) unless otherwise disclosed in this Purchase Agreement.

12. DAMAGE: It is agreed that Seller may salvage items from the property prior to the transfer, so long as the property is maintained in a safe and secure condition.

13. SELLER WARRANTS THAT:

- (a) There is no pending, threatened or contemplated condemnation or similar proceeding affecting said property by any governmental agency or authority, or any part thereof, to their best knowledge and belief;
- (b) They have complied with all applicable state, county and municipal laws, ordinances, regulations, statutes, rules, and restrictions relating to said real property, or any part thereof; and
- (c) They have disclosed any known potential matter, if any, that could result in litigation, which, as previously noted, they have agreed to have the Escrow Agent retain the funds alleged due and owing, which sums they dispute.

14. BINDING AGREEMENT: Upon written acceptance, this Purchase Agreement and any addendum listed below shall become a LEGALLY BINDING AGREEMENT UPON Purchaser and the Seller and their heirs, executors, administrators, successors, and assigns and shall represent the entire understanding of the parties regarding this transaction. All counter-offers, amendments, changes or deletions to this Purchase Agreement shall be in writing and be signed by both Purchaser and the Seller.

This Purchase Agreement shall be used as escrow instructions subject to the Escrow Agent's usual conditions of acceptance.

This Purchase Agreement is a legally binding contract. If you have any questions of law, consult your attorney.

15. ADDITIONAL TERMS: If this Purchase Agreement is NOT ACCEPTED by the Seller, the earnest money above mentioned, if any paid, shall be NOT BE RETURNED to the Purchaser without liability upon the part of any party connected with this Purchase Agreement. When this Purchase Agreement is accepted by the Seller, it shall constitute a Purchase Agreement and a legally binding contract for the purchase and sale of said property as previously set forth herein.

16. INSPECTIONS: Except as otherwise agreed to in this Purchase Agreement, Seller agrees to apply for, obtain and any inspections, permits, and/or certificates that Purchaser requests and which are required by federal, state or local laws and/or ordinances. Purchaser agrees to pay for any such applications, inspections, permits, and/or certificates.

17. AS IS: The Purchaser agrees that the real estate, except as may be otherwise expressly set forth below in writing in this Purchase Agreement is being purchased in its present "AS IS" condition and that the Seller has not made any warranties or representations (express or implied) whatsoever, except those expressly set forth in writing herein, as to any condition(s) of the real estate being purchased herein.

18. LIABILITY ISSUES:

- (a) **Purchaser**, Except for those liabilities and obligations specifically assumed by Purchaser under the Purchase Agreement and the lease option, shall not be liable, or otherwise, assume or otherwise be responsible for any liability or obligation of any nature of Seller, or claims of such liability or obligation, matured or unmatured, liquidated or unliquidated, fixed or contingent, or known or unknown, arising out of occurrences prior to the date of closing as set forth in this Purchase Agreement;
- (b) **Seller** agrees to pay and discharge all of their liabilities and obligations other than the Assumed Liabilities. **Purchaser** does not assume or agree to pay, discharge or perform any liabilities, debts or obligations of Seller, except as otherwise expressly provided herein;
- (c) On the date of the closing, **Purchaser** shall assume and agree to pay and discharge all liabilities and obligations and claims of liability of any nature, matured or unmatured, liquidated or unliquidated, fixed or contingent, or known or unknown, arising out of occurrences from the date of closing;
- (d) There is no action, suit, investigation or proceeding pending against, or, to the knowledge of Seller; and
- (e) **Purchaser** shall promptly notify the Seller in writing of any claim for indemnification, and/or any claim made against Seller, specifying in detail the basis of such claim, the facts pertaining

thereto and, if known, the amount, or an estimate of the amount, of the liability arising therefrom.

19. OTHER:

- (a) All parties acknowledge that there are no Brokerage Agents involved with this sale and no commissions are due and owing anyone.

20. MISCELLANEOUS:

- (a) The headings of the sections and paragraphs of this **Purchase Agreement** are inserted for convenience only and shall not be deemed to constitute part of this **Purchase Agreement** or to affect the construction hereof;
- (b) As used herein, the term "Person" or "Persons" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, governmental body, or other entity;
- (c) The rights and remedies of the parties to this **Purchase Agreement** are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this **Purchase Agreement** or the documents referred to in this **Purchase Agreement** will operate as a waiver of such right, power, or privilege;
- (d) Any action or proceeding seeking to enforce any provision of, or based on any event arising out of, this **Purchase Agreement** may be brought against any of the parties in the courts of the State of Ohio;
- (e) The validity, performance and enforcement of this **Purchase Agreement** will be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflicts of laws principles;
- (f) If any provision of this **Purchase Agreement** is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this **Purchase Agreement** will remain in full force and effect. Any provision of this **Purchase Agreement** held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable;
- (g) The parties agree (i) to furnish upon request to each other such further information, (ii) to execute and deliver to each other such other documents, and (iii) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this **Purchase Agreement** and the documents referred to in this **Purchase Agreement**; and

(h) The parties agree that each shall be responsible for their own attorney fees in connection with the utilization of their respective attorneys and the billings of their attorneys for services rendered.

21. **NOTICES:** Any notice, request, instruction or other document to be given hereunder to either party hereto shall be in writing and delivered personally or certified mail, postage prepaid,

if to Seller, to:

Clayton C. McCune
1364 East Turkeyfoot Lake Road
Akron, Ohio 44312

if to Purchaser, to:

City of Green
c/o William G. Chris, Interim Law Director
1755 Town Park Blvd.
Uniontown, Ohio 44685

23. **ADDITIONAL:** None

- REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -

- SIGNATURES ON NEXT PAGE -

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Purchase Agreement to be effective as of the 23rd day of April, 2019.

Seller: Clayton C. McCune

By: [Signature]
Clayton C. McCune

Purchaser: City of Green

By: [Signature]
Gerard M. Neugebauer, Mayor

By: [Signature]
Bob Young, President City Council

DEPOSIT RECEIPT. Receipt is hereby acknowledged of \$18,160.00 cash, earnest money.

Seller: Clayton C. McCune

By: [Signature]
Clayton C. McCune

APPROVED AS TO FORM:
[Signature]
WILLIAM G. CHRIS
DIRECTOR OF LAW, INTERIM

EXHIBIT 'A'

Parcel of land, improvements and appurtenances thereto in the County of Summit, State of Ohio, to wit:

Known as being a part of the Southeast Quarter of Section 9 of said Township and bounded and described as follows:

Situated in the City of Green, County of Summit and State of Ohio;

Beginning at a point on the centerline of the Barberton-Alliance Road (nka Turkeyfoot Lake Road) at the Northeast corner of the Southeast Quarter of Section 9 of said Township;

Thence South 0 deg. 02' West along the East line of the Southeast Quarter of Section 9, a distance of 250 feet to an iron stake;

Thence due West a distance of 130 feet to an iron bar;

Thence North 0 deg. 02' East a distance of 250 feet to a point on the centerline of the Barberton-Alliance Road;

Thence due East along said centerline, a distance of 130 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Known for street purposes as: 1364 East Turkeyfoot Road, Akron, Ohio 44312

Permanent Parcel Number: 28-02613

Prior Instrument Reference: Instrument No. 55950368, Summit County Records.