

**REGULAR COUNCIL MEETING  
OF THE COUNCIL OF THE CITY OF BROOK PARK, OHIO  
HELD ON SEPTEMBER 21, 2021  
7:30 P.M.**

**A. ROLL CALL OF MEMBERS:**

**B. PLEDGE OF ALLEGIANCE:**

**C. APPROVAL OF MINUTES OF PRECEDING MEETINGS:**

1. CAUCUS PRIOR TO MEETING MINUTES HELD ON AUGUST 24, 2021.
2. REGULAR COUNCIL MEETING MINUTES HELD ON AUGUST 24, 2021.

**D. REPORTS OF STANDING COMMITTEES:**

Aviation & Environmental Committee - Chairwoman, Schmuck  
Finance Committee - Chairman, Scott  
Legislative Committee - Chairman, Mencini  
Parks & Recreation Committee - Chairman, Poindexter  
Planning Committee - Chairman, Orcutt  
Safety Committee - Chairman Troyer  
Service Committee - Chairman, Salvatore  
Board of Zoning Appeals - Chairman, Mencini

**E. REPORTS OF SPECIAL COMMITTEES:**

Southwest General Health Center - Trustee, Orcutt  
Berea Board of Education Representative, Mencini  
Technology and Innovation Council Representative - Poindexter

**F. REPORTS OF BOARDS AND COMMISSIONS:**

**G. INTRODUCTION OF RESOLUTIONS OF COMMENDATION:**

**H. REPORTS AND COMMUNICATIONS FROM THE MAYOR:**

**I. REPORTS AND COMMUNICATIONS FROM DEPARTMENTS, COMMISSIONS, AND OTHER PUBLIC OFFICIALS:**

**J. OTHER COMMUNICATIONS AND PETITIONS, AND VERBAL APPROVAL: (INTRODUCTION OF NEW LEGISLATION):**

1. CORRESPONDENCE RECEIVED FROM BROOK PARK RESIDENT.

**K. MISCELLANEOUS BUSINESS, APPOINTMENTS, CONFIRMATIONS:**

**L. REMARKS FROM THE AUDIENCE ON ANY SUBJECT MATTER:**

**M. INTRODUCTION OF ORDINANCES AND RESOLUTIONS: FIRST READING:**

1. ORDINANCE NO. 11217-2021, DESIGNATING THE DEPOSITORIES OF THE ACTIVE FUNDS OF THE CITY OF BROOK PARK, OHIO, FOR A PERIOD OF FIVE YEARS BEGINNING OCTOBER 7, 2021 AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.
2. ORDINANCE NO. 11218-2021, DESIGNATING THE DEPOSITORIES OF THE INTERIM FUNDS OF THE CITY OF BROOK PARK, OHIO, FOR A PERIOD OF FIVE YEARS BEGINNING OCTOBER 7, 2021 AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.
3. ORDINANCE NO. 11219-2021, PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$3,685,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE IMPROVEMENT BONDS, SERIES 2013 DATED OCTOBER 1, 2013, AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.
4. RESOLUTION NO 17-2021, ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY FISCAL OFFICER AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

**N. SECOND READING OF ORDINANCES AND RESOLUTIONS:**

**O. THIRD READING OF ORDINANCES AND RESOLUTIONS:**

1. ORDINANCE NO. 11212-2021, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PERMANENT PARCEL NO. 343-15-023 AND DECLARING AN EMERGENCY.  
Introduced by Mayor Gammella.

**NOTE:** EXECUTIVE SESSION - COUNCIL OFFICE PERSONNEL - PER COUNCIL PRESIDENT VECCHIO:

**P. ADJOURNMENT:**

FOR THE COUNCIL MEETING OF SEPTEMBER 21, 2021

**SYNOPSIS OF ORDINANCES AND RESOLUTIONS**

**FIRST READING:**

Ord. No. 11217-2021 AN ORDINANCE DESIGNATING THE DEPOSITORIES OF THE ACTIVE FUNDS OF THE CITY OF BROOK PARK, OHIO FOR A PERIOD OF FIVE YEARS BEGINNING OCTOBER 7, 2021, AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance selecting eligible banking institutions to become depositories of the city's active funds for a five-year period after their applications have been reviewed and approved by the Finance Director.

Ord. No. 11218-2021 AN ORDINANCE DESIGNATING THE DEPOSITORIES OF THE INTERIM FUNDS OF THE CITY OF BROOK PARK, OHIO FOR A PERIOD OF FIVE YEARS BEGINNING ORCTOBER 7, 2021, AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance selecting eligible banking institutions to become depositories for interim funds of the city for a five-year period, as the Director of Finance deems advisable, according to law.

Ord. No. 11219-2019 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$3,685,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE IMPROVEMENT BONDS, SERIES 2013, DATED OCTOBER 1, 2013, AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance providing for the issuance and sale of bonds for the purpose of refunding for debt charges savings certain of the City's outstanding various purpose improvement bonds, based on the maturing dates of certain bonds and the Finance Director's certification.

Ord. No. 11220-2021 AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SUTPHEN CORPORATION, FOR THE PURCHASE OF A SET OF RESCUE TOOLS AND TWO SETS OF AIR BAGS, AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance authorizing the Mayor to enter into an agreement to purchase rescue tools from the Sutphen Corporation for the Fire department.

**SECOND READING:**

Res. No. 17-2021      A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY FISCAL OFFICER, AND DECLARING AN EMERGENCY.

SYNOPSIS: A resolution accepting the Budget Commission of Cuyahoga County's amounts and rates and authorizing the necessary tax levies and certifying them to the Cuyahoga County Fiscal Officer.

**THIRD READING:**

Ord. No. 11212-2021      AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PERMANENT PARCEL NO 343-15-023, AND DECLARING AN EMERGENCY.

SYNOPSIS: An ordinance authorizing the Mayor to enter into a contract to purchase the real property located at 16644 Snow Road.

**PREPARED BY THE BROOK PARK LEGAL DEPARTMENT  
September 16, 2021**

175  
CA 9-15-21  
1st R 9-21-21  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
D/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

Ordinance No. 11217-2021

Introduced By: MAYOR GAMMELLA

AN ORDINANCE  
DESIGNATING THE DEPOSITORIES OF THE ACTIVE  
FUNDS OF THE CITY OF BROOK PARK, OHIO, FOR  
A PERIOD OF FIVE YEARS BEGINNING OCTOBER 7, 2021,  
AND DECLARING AN EMERGENCY

WHEREAS, Huntington National Bank, PNC Bank, and Fifth Third Bank are banking institutions and are eligible to become the depositories of the City's Active Funds in the amount thereafter set forth, and have filed applications to become the depository of the Active Funds of said City for said five year period; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Council of the City of Brook Park determines that the estimated amount of the Active Funds of the City for deposit in an eligible depository during the five year period beginning October 7, 2021, is \$20,000,000.00.

SECTION 2: Huntington National Bank, PNC Bank, and Fifth Third Bank are applicants for the deposit of Active Funds of said City, be determined to be eligible depositories for said Active Funds during the period as aforesaid, and the Director of Finance of the City is hereby authorized to deposit such Active Funds as he deems advisable in said depositories according to law and upon receipt of the proper security.

SECTION 3: The period for the designation of depository for the Active Funds of said City shall be for the five year period dating from October 7, 2021.

SECTION 4: The Mayor and Finance Director shall be authorized to enter into depository agreements with said banks as the

depositories of the Active Funds of the City for the aforesaid five year period application of said banks.

**SECTION 5:** It is found and determined that all formal actions of this Council concerning and relating to this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 6:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to immediately designate depositories before the present agreement terminates; provided that this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
Clerk of Council

APPROVED: \_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

  
DIRECTOR OF LAW

P/C \_\_\_\_\_  
CA 9-15-21  
1st R 9-21-21  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

Ordinance No. 11218-2021

Introduced By: MAYOR GAMMELLA

AN ORDINANCE  
DESIGNATING THE DEPOSITORIES OF THE INTERIM  
FUNDS OF THE CITY OF BROOK PARK, OHIO, FOR  
A PERIOD OF FIVE YEARS BEGINNING OCTOBER 7, 2021  
AND DECLARING AN EMERGENCY

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Brook Park, State of Ohio that:

SECTION 1: The Council of the City of Brook Park determines that the estimated amount of the Interim Funds of the City for deposit in an eligible depository during the five year period beginning October 7, 2021, is \$20,000,000.00.

SECTION 2: The period for the designation of a depository for the Interim Funds of said City shall be for the five year period dating from October 7, 2021.

SECTION 3: The following applicants for the deposit of Interim Funds of said City, shall be determined to be eligible depositories for said Interim Funds during the period as aforesaid, and the Director of Finance of the City is hereby authorized to deposit such Interim Funds as he deems advisable in said depositories according to law and upon receipt of the proper security:

JP Morgan Chase Bank, N.A.  
Key Bank  
PNC Bank  
Huntington National Bank  
First Merit Bank  
Fifth Third Bank



SECTION 4: The Mayor and Finance Director shall be authorized to enter into depository agreements with said banks as the depositories of the Interim Funds of the City for the aforesaid five year period application of said banks.

SECTION 5: It is found and determined that all formal actions of this Council concerning and relating to this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 6: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to identify the depositories to the present agreement; provided that this Ordinance receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
Clerk of Council

APPROVED: \_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

  
DIRECTOR OF LAW

CITY OF BROOK PARK, OHIO

ORDINANCE NO.: 11219-2021

INTRODUCED BY: MAYOR GAMMELLA

17C 9-7-21 Finance  
CA 9-15-21  
1st R 9-21-21  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
E/C \_\_\_\_\_

AN ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$3,685,000 FOR THE PURPOSE OF REFUNDING FOR DEBT CHARGES SAVINGS CERTAIN OF THE CITY'S OUTSTANDING VARIOUS PURPOSE IMPROVEMENT BONDS, SERIES 2013, DATED OCTOBER 1, 2013, AND DECLARING AN EMERGENCY.

**WHEREAS**, pursuant to Ordinance Nos. 9855-2013, 9856-2013 and 9857-2013, each passed on September 3, 2013, and the related Final Terms Certificate signed by the Director of Finance dated September 18, 2013 (collectively, the Original Bond Legislation), there were issued \$5,520,000 Various Purpose Improvement Bonds, Series 2013, dated October 1, 2013 (the Series 2013 Bonds), for the purposes stated in Section 2, which Series 2013 Bonds are currently outstanding in the aggregate principal amount of \$3,805,000 and will mature on December 1 in the years 2021 through 2030 and 2033 (the Outstanding Bonds); and

**WHEREAS**, this Council finds and determines that it is necessary and in the best interest of the City to refund for debt charges savings all or a portion of the Outstanding Bonds maturing on December 1 in the years 2022 through 2030 and 2033 (the Refunded Bonds); and

**WHEREAS**, this Council finds and determines that it is necessary and in the best interest of the City to issue the Bonds described in Section 2 to provide funds sufficient for that purpose, including the payment of expenses properly allocable to that refunding and to the issuance of the Bonds; and

**WHEREAS**, the Director of Finance, as fiscal officer of the City, has certified to this Council that the estimated life or period of usefulness of the improvements described in Section 2 was, at the time of issuance of the City's Sanitary Sewer Improvement Notes, Series 2012, dated October 3, 2012, and/or the Refunded Bonds, as applicable, at least five years, and the estimated maximum maturity of the Bonds described in Section 2 is at least December 1, 2033, the final maturity of the Refunded Bonds;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Brook Park, County of Cuyahoga, State of Ohio, that:

**SECTION 1: Definitions.** In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"Authorized Denominations" means the denomination of \$100,000 or any whole multiple of \$1,000 in excess thereof.

"Bond proceedings" means, collectively, this Ordinance, the Certificate of Award and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds.

"Bond Register" means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

"Bond Registrar" means the Fiscal Officer.

"Certificate of Award" means the certificate authorized by Section 6(a), to be signed by the Fiscal Officer, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

"Closing Date" means the date of physical delivery of, and payment of the purchase price for, the Bonds.

"Code" means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

"Escrow Agreement" means the Escrow Agreement between the City and the Escrow Trustee, as it may be modified from the form on file with the Clerk of Council and signed by the Mayor and the Fiscal Officer in accordance with Section 8.

"Escrow Fund" means the Escrow Fund established pursuant to Section 9.

"Escrow Trustee" means the bank or trust company appointed pursuant to Section 8 or in the Certificate of Award as the initial escrow trustee with respect to the Refunded Bonds under the Escrow Agreement and until a successor Escrow Trustee shall have become such pursuant to the provisions of the Escrow Agreement and, thereafter, "Escrow Trustee" shall mean the successor Escrow Trustee.

"Fiscal Officer" means the Director of Finance of the City.

"Interest Payment Dates" means, unless otherwise determined by the Fiscal Officer in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing June 1, 2022.

"Mayor" means the Mayor of the City.

"Original Purchaser" means the original purchaser of the Bonds designated by the Fiscal Officer in the Certificate of Award.

"Principal Payment Dates" means unless otherwise determined by the Fiscal Officer in the Certificate of Award, December 1 in the years from and including 2022 to and including 2033, provided that in no case shall the final Principal Payment Date be later than the maximum maturity of the Bonds referred to in the preambles hereto.

"Refunded Bonds" means that portion of the City's outstanding Various Purpose Improvement Bonds, Series 2013, dated October 1, 2013, determined by the Fiscal Officer in the Certificate of Award to be necessary and in the best interest of the City to be refunded for debt charges savings.

**SECTION 2: Authorized Principal Amount and Purpose.** This Council determines that it is necessary and in the best interest of the City to issue bonds of the City as a single fully registered bond in one lot in the maximum principal amount of \$3,685,000 (the Bonds) for the purpose of refunding for debt charges savings certain of the City's outstanding Various Purpose Improvement Bonds, Series 2013, dated October 1, 2013, which were issued for the purpose of paying costs of improving the sanitary sewer system by the construction and installation of a trunk sewer along Smith Road between Hummel Road and Holland Road, new sanitary sewers along Engle Road between Snow Road and Holland Road and an underground overflow storage chamber, and resurfacing Engle Road between Sheldon Road and Brook Park Road, including the payment of expenses related to the issuance of the Bonds and the refunding of the Refunded Bonds.

Subject to the limitations set forth in this Ordinance, the aggregate principal amount of the Bonds to be issued, the principal maturities of and the principal payment schedule for the Bonds, the interest rate or rates that the Bonds shall bear and certain other terms and provisions of the Bonds identified in this Ordinance are subject to further specification or determination in the Certificate of Award upon the finalization of the terms and provisions of the Bonds. The aggregate principal amount of Bonds to be issued, as so specified by the Fiscal Officer in the Certificate of Award, shall be the aggregate principal amount of Bonds required to be issued, taking into account any premium above or discount from the aggregate principal amount of the Bonds at which they are sold to the Original Purchaser, in order to effect the purpose for which the Bonds are to be issued, including the payment of any expenses properly allocable to the refunding of the Refunded Bonds and the issuance of the Bonds.

**SECTION 3: Denominations; Dating; Principal and Interest Payment and Prepayment Provisions.** The Bonds shall be issued as a single fully registered bond in one lot in the maximum principal amount of \$3,685,000. The Bonds shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than 60 days prior to the Closing Date.

(a) **Interest Rates and Interest Payment Dates.** The Bonds shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of 12 30-day months) as shall be determined by the Fiscal Officer in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) **Principal Payment Schedule.** The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Fiscal Officer, subject to subsection (c)

of this Section, in the Certificate of Award, consistent with the Fiscal Officer's determination of the best interest of and financial advantages to the City.

(c) Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing on each Principal Payment Date, shall be such as to demonstrate debt charges savings to the City due to the refunding of the Refunded Bonds, taking into account all expenses related to that refunding and issuance of the Bonds.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of the Bonds shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day preceding that Interest Payment Date. Notwithstanding the foregoing, so long as the Original Purchaser is the registered owner of the Bonds, (i) the principal installments on the Bonds may be paid on each Principal Payment Date and any prepayment date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner, provided that in connection with the payment or prepayment of the final installment of principal of the Bonds, the registered owner thereof shall present and surrender its Bonds at the office of the Bond Registrar, and (ii) interest on the Bonds may be paid on each Interest Payment Date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner.

(e) Prepayment. If agreed to by the Original Purchaser, the Bonds shall be prepayable, in whole or in part, with or without penalty or premium, at the option of the City at any time or a specific time prior to maturity, each as designated by the Fiscal Officer in the Certificate of Award and as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Bond Registrar of the principal amount of the Bonds then to be prepaid, together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Bond Registrar, by certified or registered mail to the registered owners of the Bonds to be prepaid, and at their addresses, each as shown on the Bond Register at the close of business on the day preceding the mailing of the notice. The notice shall be mailed not less than 30 days prior to the date of that deposit, unless that notice is waived by the registered owner(s) of the Bonds. If moneys for prepayment are on deposit with the Bond Registrar on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Fiscal Officer the registered owner(s) of the Bonds shall arrange for the delivery of the Bonds to the Bond Registrar for prepayment and surrender and cancellation.

**SECTION 4:** Execution and Authentication of Bonds. The Bonds shall be signed by the Mayor and the Fiscal Officer, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by

the Fiscal Officer, shall be numbered as determined by the Fiscal Officer in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the provisions of Chapter 133 of the Revised Code, the City's Charter, this Ordinance and the Certificate of Award; provided, however, that, if requested by the Original Purchaser, the Bonds may be issued as a single registered Bond with multiple maturities of principal in Authorized Denominations as set forth in a payment schedule to be set forth in such Bond or attached thereto.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Fiscal Officer on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

#### **SECTION 5: Registration; Transfer and Exchange.**

(a) Bond Registrar. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at the office satisfactory to the Fiscal Officer and the Bond Registrar. The person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the

Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for prepayment between the 15<sup>th</sup> day preceding the mailing of notice of Bonds to be prepaid and the date of that mailing, or (ii) any Bond selected for prepayment, in whole or in part.

**SECTION 6: Award and Sale of the Bonds.**

(a) Original Purchaser Designated in Certificate of Award. The Bonds shall be sold to the Original Purchaser at a purchase price, not less than 97% of their aggregate principal amount, to be determined by the Fiscal Officer in the Certificate of Award, plus accrued interest on the Bonds from their date to the Closing Date, and shall be awarded by the Fiscal Officer with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance. The Fiscal Officer is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Fiscal Officer shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Fiscal Officer, the Director of Law, the Clerk of Council and other City officials, as appropriate, each are authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

(b) Financing Costs. The expenditure of the amounts necessary to pay the financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Bonds is authorized and approved, and the Fiscal Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

**SECTION 7: Refunding; Call of Refunded Bonds.** This Council determines that it is necessary and in the best interest of the City to refund the Refunded Bonds. The Fiscal Officer is authorized and directed to give to The Huntington National Bank, as the authenticating agent, bond registrar, transfer agent and paying agent for the Refunded Bonds, written notice of the call for redemption, and the Refunded Bonds that are subject to optional redemption shall be redeemed in accordance with the Original Bond Legislation. The City covenants for the benefit of the holders of the Refunded Bonds and of the Bonds, that it will at no time on or after the issuance of the Bonds take actions to modify or rescind that call for prior redemption, and that it will take, and will cause the bond registrar and paying agent for the Refunded Bonds to take, all steps required by the terms of the Refunded Bonds to make and perfect that call for prior redemption.

**SECTION 8: Escrow Trustee.** The Huntington National Bank is hereby appointed as the initial Escrow Trustee with respect to the refunding of the Refunded Bonds; provided, however, that the Fiscal Officer is authorized to appoint a different Escrow Trustee in the Certificate of Award after determining that such bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose. The Escrow Trustee is authorized and directed to cause notice of the refunding of the Refunded Bonds to be given in accordance with the Escrow Agreement. The Mayor and the Fiscal Officer shall sign and deliver, in the name and on behalf of the City, the Escrow Agreement between the City and the Escrow Trustee, in substantially the form as is now on file with the Clerk of Council. The Escrow Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Fiscal Officer on behalf of the City, all of which shall be conclusively evidenced by the signing of the Escrow Agreement or amendments thereto. The Fiscal Officer shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement (including the fees and expenses of any mathematical verification agent appointed by the Fiscal Officer in the Certificate of Award) from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

**SECTION 9: Escrow Fund.** There is created under the Escrow Agreement a trust fund designated the "City of Brook Park Series 2013 Bonds Escrow Fund" which shall be held and maintained by the Escrow Trustee in trust for the registered owners of the Refunded Bonds and is pledged for the payment of principal of and interest on the Refunded Bonds, all in accordance with the provisions of the Escrow Agreement. The Fiscal Officer is hereby authorized and directed to pay or cause to be paid to the Escrow Trustee for deposit in the Escrow Fund (i) any available funds on deposit in the Bond Retirement Fund for the payment of debt charges on the Refunded Bonds determined by the Fiscal Officer to be applied for that purpose and (ii) proceeds from the sale of the Bonds, except any accrued interest and any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds as determined by the Fiscal Officer, in the amount required, together with the funds referred to in clause (i), if any, to provide for the defeasance of the Refunded Bonds. Those funds are appropriated and shall be applied to pay principal of and interest on the Refunded Bonds, as provided in the Escrow Agreement.

The funds so deposited in the Escrow Fund shall be (a) held in cash to the extent that they are not needed to make the investments hereinafter described and (b) invested in direct obligations of, or obligations guaranteed as to payment by, the United States of America (within the meaning of Section 133.34(D) of the Revised Code) that mature or are subject to redemption by and at the option of the holder, in amounts sufficient, together with any uninvested cash in the Escrow Fund but without further investment or reinvestment, for the payment of principal of and interest on the Refunded Bonds as provided in the Escrow Agreement:

If U.S. Treasury Securities – State and Local Government Series are to be purchased for the Escrow Fund, the Escrow Trustee is hereby specifically authorized to file, on behalf of the City, subscriptions for the purchase and issuance of those U.S. Treasury Securities – State and Local Government Series. If, in the judgment of the Fiscal Officer, an open-market purchase of obligations described in (b) in the preceding paragraph for the Escrow Fund is in the best interest of and financially advantageous to the City, the Fiscal Officer or any other officer of the City, on behalf of the City and in the Fiscal Officer's official capacity, may purchase and deliver such obligations, engage the services of a municipal advisor, bidding agent or similar entity for the purpose of



facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

If the City determines to fund or refund other outstanding general obligation securities (collectively, the Other Refunded Obligations) contemporaneously with the refunding of the Refunded Bonds, the proceeds from the sale of bonds and other funds necessary and sufficient for that purpose may be deposited in the Escrow Fund and commingled and invested with the proceeds of the Bonds and other funds necessary and sufficient for the refunding of the Refunded Bonds. In that event, the Escrow Fund shall be held and maintained by the Escrow Trustee in trust for the registered owners of the Refunded Bonds and the Other Refunded Obligations and pledged to the payment of principal of and interest and redemption premium on the Refunded Bonds and the Other Refunded Obligations.

**SECTION 10: Application of Proceeds.** The proceeds from the sale of the Bonds (except any premium or accrued interest received from the sale of the Bonds and any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds as determined by the Fiscal Officer) shall be paid into the Escrow Fund as provided in Section 9. Any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Bonds, as determined by the Fiscal Officer, shall be paid into the proper fund or funds. Any proceeds representing premium or accrued interest received from the sale of the Bonds shall be paid into the Bond Retirement Fund. The proceeds from the sale of the Bonds (except any premium or accrued interest received from the sale of the Bonds) are appropriated and shall be used for the purpose for which the Bonds are being issued.

**SECTION 11: Provisions for Tax Levy.** During the year or years in which the Bonds are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due. In each year, to the extent money from the municipal income tax is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio; and the City hereby covenants, subject and pursuant to such authority, including particularly Sections 133.05(B)(7) and 5705.51(A)(5) and (D) of the Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in this Section in any way diminishes the pledge of the full faith and credit and property taxing power of the City to the prompt payment of the debt charges on the Bonds.

**SECTION 12: Federal Tax Considerations.** The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Internal Revenue Code of 1986, as amended (the Code), or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Fiscal Officer, or any other officer of the City having responsibility for the issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation or treatment of the Bonds as "qualified tax-exempt obligations" if such designation or treatment is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval or waiver on behalf of the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Each covenant made in this Section with respect to the Bonds is also made with respect to all issues any portion of the debt charges on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Bonds.

**SECTION 13: Certification and Delivery of Ordinance and Certificate of Award.** The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Cuyahoga County Fiscal Officer.

**SECTION 14: Satisfaction of Conditions for Bond Issuance.** This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 11) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

**SECTION 15: Retention of Bond Counsel.** The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinion upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

**SECTION 16: Retention of Municipal Advisor.** The services of MAS Financial Advisory Services LLC, as municipal advisor, be and are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Bonds to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

**SECTION 17: Compliance with Open Meeting Requirements.** This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and

that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

**SECTION 18: Captions and Headings.** The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof.

**SECTION 19: Declaration of Emergency; Effective Date.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City and for the further reason that this Ordinance must be immediately effective in order to enable the City to sell the Bonds, which is necessary to enable the City to refund for debt charges savings the Refunded Bonds upon terms in the best interest of and advantageous to the City and thereby to achieve interest rate savings available under current favorable market conditions; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST:

APPROVED:

\_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

  
\_\_\_\_\_  
DIRECTOR OF LAW

CITY OF BROOK PARK, OHIO

RESOLUTION NO. 17-2021

INTRODUCED BY: MAYOR GAMMELLA

17C 9-7-21 Finance  
CA 9-15-21 amended  
1st R 9-21-21  
2nd R \_\_\_\_\_  
3rd R \_\_\_\_\_  
PVC \_\_\_\_\_  
CAN PRICE 9-21-21 discuss

A RESOLUTION ACCEPTING THE AMOUNTS AND RATES  
AS DETERMINED BY THE BUDGET COMMISSION AND  
AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING  
THEM TO THE COUNTY FISCAL OFFICER,  
AND DECLARING AN EMERGENCY

The Council of the City of Brook Park, Cuyahoga County, Ohio met on the 21st day of September, 2021, at the Brook Park Council Chambers.

**WHEREAS**, this Council in accordance with the provisions of law has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1, 2022; and

**WHEREAS**, the Budget Commission of Cuyahoga County, Ohio, has certified its action thereon to this Council together with an estimate by the County Fiscal Officer of the rate of each tax necessary to be levied by this Council, and what part thereof is without, and what part within the ten mill tax limitation;

**NOW THEREFORE BE IT RESOLVED**, by the Council of the City of Brook Park, Cuyahoga County, State of Ohio that:

**SECTION 1:** That the amounts and rates; as determined by the Budget Commission in its certification, be and the same are hereby accepted.

**SECTION 2:** That there be and is hereby levied on the tax duplicate of said City the rate of each tax necessary to be levied within and without the ten mill limitation as set forth in the attached, Exhibit Schedule A and Exhibit Schedule B.

**SECTION 3:** That the Clerk of Council is hereby directed to certify a copy of this Resolution to the Fiscal Officer of Cuyahoga County.

**SECTION 4:** It is found and determined that all formal actions of this Council concerning and relating to this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 5:** This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for further reason to accept the amounts and rates as determined by the Budget Commission,

authorizing tax levies and certifying them to the Cuyahoga County Fiscal Officer; provided that this Resolution receives the affirmative vote of at least five (5) members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_

Clerk of Council

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

\_\_\_\_\_  
DIRECTOR OF LAW

FUND	Amount to Be Derived from Levies Outside 10 M. Limitation	Amount Approved by Budget Commission Inside 10 M. Limitation	County Fiscal Officer's Estimate of Tax Rate to be Levied	
			Inside 10 M. Limit	Outside 10 M. Limit
	Column II	Column IV	V	VI
General Fund			3.85	0.00
General Bond Retirement Fund			0.30	0.00
Police Pension				0.00
Park Fund				
Recreation Fund			0.30	
Fire Pension Fund				0.30
S.W. Hospital Fund				
TOTAL	\$0	\$0	4.45	0.30

FUND	Amount to Be Derived from Levies Outside 10 M. Limitation	Amount Approved by Budget Commission Inside 10 M. Limitation	County Fiscal Officer's Estimate of Tax Rate to be Levied	
			Inside 10 M. Limit	Outside 10 M. Limit
	Column II	Column IV	V	VI
General Fund			3.85	0.00
General Bond Retirement Fund			0.30	0.00
Police Pension				0.00
Park Fund				
Recreation Fund			0.30	
Fire Pension Fund				0.30
S.W. Hospital Fund				
TOTAL	\$0	\$0	4.45	0.30

# SCHEDULE B

## LEVIES OUTSIDE 10 MILL LIMITATION, EXCLUSIVE OF DEBT LEVIES

FUND	Maximum Rate Authorized to Be Levied	Co. Fiscal Officer's Est. of Yield of Levy (Carry to Schedule A, Column II)
<b>GENERAL FUND:</b>		
Current Expense Levy authorized by voters on for not to exceed years. ,20		
Current Expense Levy authorized by voters on for not to exceed years. ,20		
Total General Fund outside 10m. Limitation.		
Park Fund: Levy authorized by voters on for not to exceed years. ,20		
Recreation Fund: Levy authorized by voters on for not to exceed years. ,20		
Fund: Levy authorized by voters on for not to exceed years.		
Fund: Levy authorized by voters on for not to exceed years. ,20		
Fund: Levy authorized by voters on for not to exceed years. ,20		
Fund: Levy authorized by voters on for not to exceed years. ,20		



P/C 7-20-21 Finance  
CA PAUL 8-24-21  
1st R 8-24-21  
2nd R 9-7-21  
3rd R 9-21-21  
D/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11212-2021

INTRODUCED BY: MAYOR GAMMELLA

AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT  
FOR THE PURCHASE OF PERMANENT PARCEL NO. 343-15-023,  
AND DECLARING AN EMERGENCY

WHEREAS, the owners of real property located at 16644 Snow Road, Brook Park, Ohio, permanent parcel no. 343-15-023 and the City of Brook Park have negotiated an agreement for purchase of said property;

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: That the Mayor is hereby authorized to enter into a contract for the purchase of permanent parcel no. 343-15-0023 pursuant to the terms and conditions set forth in the agreement attached hereto as Exhibit "A", which is incorporated hereto as if fully rewritten herein.

SECTION 2: The Purchase Price for the aforesaid transaction shall be \$1,550,000.00 plus \$210,000.00 tax donation received letter from Brook Park, for a total value of \$1,760,000.00.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter into a purchase agreement for the purchase of permanent parcel no. 343-15-023; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council it shall take effect

and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

APPROVED: \_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

  
DIRECTOR OF LAW



**OHIO**  
**COMMERCIAL REAL ESTATE PURCHASE AGREEMENT**

**I. THE PARTIES.** This Commercial Real Estate Purchase Agreement ("Agreement") made on \_\_\_\_\_, 20\_\_ ("Agreement Date"), between:

**City of Brook Park, ("Buyer")** with a mailing address of 6161 Engle Road, Brook Park, Ohio 44142, who agrees to buy, and

**SMB Hospitality Group, LLC, dba as Super-8 Hotel ("Seller")** with a mailing address of 16644 Snow Road, City of Brook Park, Ohio 44142 who agrees to sell and convey real and personal property as described in Sections II & III. Buyer and Seller shall be collectively known as the "Parties."

**II. LEGAL DESCRIPTION.** The real property along with improvements and fixtures thereon and with all appurtenant rights, privileges, and easements is best described as: (check one)

☒ - Hotel

**Street Address: 16644 Snow Road, Brook Park, Ohio 44142**  
**Tax Parcel Information: 343-15-023**

**III. PERSONAL PROPERTY.** In addition to the real property described in Section II, the Seller shall include the following personal property: None.

The real property in Section II and any personal property in Section III shall be collectively known as the "Property".

**IV. PURCHASE PRICE.** The Buyer agrees to purchase the Property by payment of **\$1,550,000.00 Dollars and \$210,000.00 tax donation letter** from the City of Brook Park.

☒ - **All Cash Offer.** No loan or financing of any kind is required in order to purchase the Property. Buyer shall provide Seller written third (3<sup>rd</sup>) party documentation verifying sufficient funds to close no later than 30 days after signing of this contract. Seller shall have three (3) calendar days after the receipt of such documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds such verification of funds is not acceptable, Seller may terminate this Agreement. Failure of Seller to provide Buyer written notice of objection to such verification shall be considered acceptance of verification of funds.

**V. EARNEST MONEY DEPOSIT.** After acceptance by all Parties, the Buyer agrees to make a payment in the amount of \$ 10,000.00 as consideration by no later than 30 days after signing of this contract. ("Earnest Money"). The Earnest Money shall be applied to the Purchase Price at Closing and subject to the Buyer's ability to perform under the terms of this Agreement. Any Earnest Money accepted ☒ **is** ☐ **is not** required to be placed in a separate trust or escrow account in accordance with Ohio law. The Earnest Money shall be held by Maximum Title & Escrow Services 400 W. Bagley Road, Berea, Ohio 44017 (440) 801-5000 ("Escrow Agent").

a.) **Return of Deposit.** Unless otherwise specified in this Agreement, in the event any condition of this Agreement is not met and the Buyer has fulfilled any required notice obligation in a timely manner regarding the condition having not been met, the Escrow Money shall be returned in accordance with Ohio law.

**VI. INSPECTION PERIOD.** Buyer shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless Buyer determines the Property to be, in all respects, suitable for its intended purposes. The decision as to whether the Property is suitable for its intended purposes shall be the sole decision of Buyer, determined in the absolute discretion of Buyer, with Buyer's decision being final and binding upon both Parties. Buyer shall have until 90 days after the signing of this contract by both parties, to notify Seller of its termination of this Agreement due to Buyer's determination that the Property is unsuitable for its intended purpose ("Inspection Period"). In the event Buyer elects to terminate this Agreement, Buyer shall provide written notice of termination to Seller prior to the expiration of the Inspection Period. In the event Buyer provides said notice of termination, Seller and any Escrow Agent shall be obligated to return the Escrow Money to the Buyer as provided in Section V hereof, and neither party shall have any further rights or obligations under this Agreement. In the event Buyer does not submit written notice of termination prior to the expiration of the Inspection Period, the Buyer shall be deemed to be satisfied with its inspections of the Property and this contingency shall be deemed to be fulfilled. The Seller, at no expense, shall fully cooperate with Buyer in obtaining any and all approvals required from any Federal, State, or Local Government ("Governmental Approvals") necessary for Buyer to satisfy their needs during the Inspection Period for the suitability of the Property. Said Governmental Approvals shall be obtained during the Inspection Period unless the Parties agree otherwise. Any additional agreements related to this Section must be done in writing and attached to this Agreement.

**VII. SELLER'S DISCLOSURES.** In order to meet the Buyer's obligations during the Inspection Period, the Seller shall be required to provide the following documents and records, to the extent they are within the possession or control of the Seller, at the Seller's sole cost and expense:

a.) **Title Commitment.** A title commitment ("Title Commitment") from a title company selected by the Seller to the Buyer's approval ("Title Company"), together with a copy of each instrument, agreement or document listed as an exception to title in such Title Commitment;

b.) **Disclosure Statement.** A disclosure statement of the Property signed and dated by the Seller;

- c.) **Other Agreements.** A true and correct copy of all management agreements and contracts affecting the Property;
- d.) **Studies and Reports.** All copies in the Seller's possession of studies and/or reports which have previously been performed in connection with or for the Property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which the Seller is aware but that are not in their possession;
- e.) **Written Notices.** All copies of written notices relating to a violation of a Local, State, or Federal law including, without limitation, environmental laws relating to land use, zoning compliance, or building codes;
- f.) **Water Rights.** Water rights and/or water shares used in connection with the Property;
- g.) **Copies of Leases.** Copies of all current leases together with any ongoing evictions or legal matters related to the Property; and
- h.) **Other Documents.** Any other documents related to the Property that could serve as evidence to adversely affect its value.

Seller shall be required to provide the aforementioned disclosures within 30 calendar days after the Effective Date of this Agreement.

**VIII. TITLE.** Merchantable title shall be conveyed by General Warranty deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the Property.

**Title Agent:** Maximum Title & Escrow Services 400 W. Bagley Road, Berea, Ohio 44017 (440) 801-5000 ("Title Agent").

a.) **Title Insurance.** At the ☐ Seller's expense ☐ Buyer's expense ☒ Shared expense of both Parties, the Seller shall provide the Buyer with a standard owner's policy insuring marketable title in the amount of the Purchase Price. If any matter disclosed by the Title Commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Property, the Buyer shall have the right to terminate this Agreement by giving the Seller written notice within 60 calendar days after copies of the Title Commitment, in accordance with Section VII, are delivered to the Buyer; otherwise, the Buyer's right to terminate this Agreement pursuant to this Section shall be deemed to have been waived. A matter disclosed on the Title Commitment that is in the form of a lien that is liquidated in amount, and that can be readily discharged, shall not be grounds for termination of this Agreement by Buyer under this Section so long as the Seller discharges such lien(s) at Closing.

**IX. SURVEY.** The Parties agree that:

☒ - **New Survey Requested.** Buyer will, at the ☒ Seller's ☐ Buyer's ☐ Shared expense and within a timeframe allowed to deliver and examine title evidence, obtain a certified survey of the Property from a certified and registered surveyor within the State. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, such encroachments will constitute a title defect. The Buyer shall have the right to terminate this Agreement with written notice to the Seller within 60 calendar days of being notified of said title defect.

**X. CURE PERIOD.** Prior to any claim for default being made, either the Buyer or Seller will have an opportunity to cure any alleged default. If either Buyer or Seller fails to comply with any provision of this Agreement, the other party will deliver written notice to the non-complying party specifying such non-compliance. The non-complying party shall have 30 calendar days after delivery of such notice to cure the non-compliance.

**XI. CLOSING.** The purchase of the Property shall be closed on the 90<sup>th</sup> day after the signing of this contract by all parties or earlier at the office of a title company to be agreed upon by the Parties ("Closing"). Any extension of the closing must be agreed upon, in writing, by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be paid by the Seller and prorated as of the Closing.

a.) **Closing Costs.** The costs attributed to the Closing of the Property shall be the responsibility of ☐ Buyer ☐ Seller ☒ **Both Parties.** The fees and costs related to the Closing shall include, but not be limited to, a title search (including the abstract and any owner's title policy), preparation of the deed, transfer taxes, recording fees, and any other costs by the title company that is in standard procedure with conducting the sale of a property.

**XII. SALE OF BUYER'S PROPERTY.** Performance under this Agreement: (check one)

☒ - **Shall not** be contingent upon the Buyer selling another property.

**XIII. ASSIGNABILITY.** This Agreement is: (check one)

☒ - **Not Assignable.**

**XIV. NOTICES.** All notices shall be in writing and may be delivered by the following acceptable method(s): (check all that apply)

- ☒ - E-Mail
- ☒ - Certified Mail (with return receipt)
- ☒ - Personal Delivery

Such notices shall be sent to the respective Parties' mailing addresses listed in Section I

**XV. CONVEYANCE.** Upon performance by the Buyer of the closing obligations specified herein, the Seller shall convey marketable title of the Property to the Buyer by the deed mentioned in Section VIII, including, but not limited to, oil, gas, and other mineral rights, subject only to building and use restrictions, easements, and restrictions of record, if any.

**XVI. ENVIRONMENTAL WARRANTY, DISCLOSURES AND INDEMNIFICATION.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State, and Local statutes and regulations, have been disposed of, released, or found. No claim has been made against Seller with regard to hazardous substances or wastes as set forth herein, and Seller is not aware that any such claim is current or ever has been threatened. Seller shall inform Buyer, to the best of Seller's knowledge, of any hazardous materials or release of any such materials into the environment, and of the existence of any underground structures or utilities which are or may be present on the Property.

**XVII. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** As an inducement to Buyer to enter into this Agreement and to purchase the Property, Seller warrants, represents, and covenants to Buyer, as follows:

a.) **Authority.** Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws in the State of Ohio or another State; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Buyer in accordance with the terms and provisions of this Agreement.

b.) **Title and Characteristics of Property.** Seller, as of the date of execution of this Agreement, owns the Property in fee simple and has marketable and good title of public record and, in fact, the Property at Closing shall have the title status as described in Section VIII of this Agreement.

c.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller at the Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. At Closing, all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller at Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

d.) **Condemnation.** The Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.

e.) **Litigation.** There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property, which does or will involve or affect the Property or title thereto. Seller will defend, indemnify, and otherwise hold Buyer harmless from any and all claims of any person due to, arising out of or relating to the Property, including any and all costs, expenses, and attorneys' fees which Buyer may incur as a result of Seller's breach of its warranty hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Buyer written notice thereof.

f.) **Assessments and Taxes.** No assessments have been made against any portion of the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and Seller shall notify Buyer of any such assessments which are brought to Seller's attention after the execution of this Agreement. The Seller will pay or cause to be paid promptly all City, State, and County ad valorem taxes and similar taxes and assessments, all sewer and water charges, and all other governmental charges levied or imposed upon or assessed against the Property which are due on or prior to the Closing.

g.) **Boundaries.** (i) There is no dispute involving or concerning the location of the lines and corners of the Property; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon the use of the Property or any part thereof.



h.) **No Violations.** The Seller has received no notice there are any violations of State or Federal laws, municipal or county ordinances, or other legal regulations or requirements with respect to the Property, including those violations referenced in Paragraph 7 above. The Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the Closing, Seller shall promptly notify Buyer thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

i.) **Foreign Ownership.** Seller is not a "foreign person" as that term is defined in the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Buyer has no obligation under Section 1445 of the U.S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U.S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).

j.) **Prior Options.** No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.

k.) **Mechanics and Materialmen.** At Closing, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor, or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property and shall not have done any work on the Property within one-hundred twenty (120) days prior to Closing.

**XVIII. BUYER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** Buyer: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of Ohio or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement.

a.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Buyer at the Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Buyer is a party, or any judicial order or judgment of any nature by which Buyer is bound. At Closing, all necessary and appropriate action will have been taken by Buyer authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Buyer of the documents and instruments to be executed by Buyer at Closing, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

**XIX. ESCROW AGENT.** The Parties authorize the Escrow Agent to receive, deposit, and hold funds and other property in escrow, including Earnest Money, that is subject to collection and disburse them in accordance with the terms of this Agreement. The Parties agree that the Escrow Agent will not be liable to any person for misdelivery of Escrow Money to the Buyer and the Seller, unless the misdelivery is due to the Escrow Agent's willful breach of this Agreement or gross negligence. If the Escrow Agent has doubt as to their duties or obligations under this Agreement, Escrow Agent may, at their sole decision:

a.) **Hold the Escrow Money.** Hold any Escrow Money until the Parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the Parties; or

b.) **Deposit.** Deposit the Escrow Money with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the Parties of such action, Escrow Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Escrow Agent is a licensed real estate broker, Escrow Agent will comply with Ohio law. In any suit in which Escrow Agent interpleads the escrowed items or is made a party because of acting as Escrow Agent hereunder, Escrow Agent will recover reasonable attorneys' fees and costs incurred, with these amounts to be paid from and out of the Escrow Money and charged and awarded as court costs in favor of the prevailing party.

**XX. SELLER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Buyer may, at Buyer's option and as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Escrow Money, in which case this Agreement shall terminate in full.

**XXI. BUYER'S DEFAULT.** If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Buyer's default hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder, to receipt of the Escrow Money amount as full and complete liquidated damages for such default of Buyer. The Parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Buyer's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Escrow Money is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Buyer, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Buyer for any claims, injury, or loss arising from or in connection with this Agreement, including without limitation: (i) for specific performance of this Agreement; or (ii) to recover any damages in excess of such liquidated damages.

**XXII. ATTORNEYS' FEES.** In any claim or controversy arising out of or relating to this Agreement, the prevailing party, which for purposes of this provision shall include the Buyer, Seller, and any real estate agent, will be awarded reasonable attorneys' fees, costs, and expenses.

**XXIII. DAMAGE TO THE PROPERTY.** If the property is damaged, by fire or other casualty, after the Effective Date and before the Closing, the Seller will bear the risk of loss and the Buyer may cancel this Agreement without liability and the Escrow Money shall be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing the Property at the agreed-upon Purchase Price and the Seller will credit the deductible, if any, and transfer to the Buyer at Closing any insurance proceeds or Seller's claim to any insurance proceeds payable for the damage. The Seller will cooperate with and assist the Buyer in collecting any such proceeds. The Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

Furthermore, if any part of the Property, after the Effective Date and before the Closing, is taken in condemnation or under the right of eminent domain, or proceedings for such taking are pending or threatened, the Buyer may cancel this Agreement without liability and the Escrow Money will be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing what is left of the Property at the agreed-upon Purchase Price and the Seller will transfer to the Buyer at Closing the proceeds of any award or the Seller's claim to any award payable for the taking. The Seller will cooperate with and assist the Buyer in collecting such an award.

**XXIV. OPERATION OF PROPERTY DURING AGREEMENT PERIOD.** The Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to the Agreement and will take no action that would adversely impact the property, tenants, lender, or business, if any. Any changes, such as renting vacant space, that materially affects the Property or the Buyer's intended use will be permitted only with the Buyer's consent.

**XXV. CLOSING PROCEDURE.** Unless otherwise agreed or stated herein, the Closing shall be in accordance with the laws located in the State of Ohio.

a.) **Possession and Occupancy.** The Seller will deliver possession and occupancy of the Property to the Buyer at Closing. The Seller shall provide access to all locks, including keys, remote controls, and any security/access codes, necessary to operate all locks, mailboxes, and security systems.

b.) **Costs.** The Buyer will pay the Buyer's attorneys' fees, taxes, and recording fees on notes, mortgages, and financing statements and recording fees for the deed. The Seller will pay the Seller's attorneys' fees, taxes on the deed, and recording fees for documents needed to cure title defects.

c.) **Documents.** The Seller will provide: the deed, the bill of sale, mechanic's lien affidavit, originals of those assignable service and maintenance contracts that will be assumed by the Buyer after the Closing, letters to each service contractor from the Seller advising each of them of the sale of the Property, and if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by the Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases and updated rent roll; tenant and lender estoppel letters; tenant subordination, non-disturbance and attornment agreements (SNDA's) required by the Buyer or the Buyer's lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, the Seller will certify to the buyer that the lease is correct. If the Seller is an entity, the Seller will deliver a resolution of its Board of Directors authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. The Seller will transfer security deposits to the Buyer. The Buyer will provide the closing statement, mortgages and notes, security agreements, and financing statements.

d.) **Taxes and Proration's.** The real estate taxes, personal property taxes on any tangible personal property, bond payments assumed by the Buyer, interest, rents (based on actual collected rents), association dues, insurance premiums acceptable to Buyer, and operating expenses will be prorated through the day before Closing. If the amount of taxes for the current year cannot be ascertained, rates for the previous year will be used with due allowance being made for improvements and exemptions. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the current year's tax bill; this provision will survive the Closing.

e.) **Special Assessment Liens.** Certified, confirmed, and ratified special assessment liens as of the Closing will be paid by the Seller. If a certified, confirmed, and ratified special assessment is payable in installments, the Seller will pay all installments due and payable on or before the Closing, with any installment for any period extending beyond the Closing prorated, and the Buyer will assume all installments that become due and payable after the Closing. The Buyer shall be responsible for all assessments of any kind which become due and owing after the Closing, unless an improvement is substantially completed as of the Closing. If an improvement is substantially completed as of the Closing but has not resulted in a lien before Closing, the Seller will pay an amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

**XXVI. RECORDING.** Buyer and Seller agree that before the recording of the deed can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check or cashier's check drawn on a financial institution located in the State of Ohio, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.

**XXVII. ACCEPTANCE.** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, he/she/they accept the above offer and agrees to sell the Property on the above terms and conditions.

**XXVIII. BINDING EFFECT.** This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which, therefore, constitutes the entire agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

**XXIX. SEVERABILITY.** In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

**XXX. DISPUTE RESOLUTION.** Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

- a.) **Mediation.** If a dispute arises between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.
- b.) **Arbitration.** The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator is required to be a retired judge or justice, or an attorney with at least five (5) years of residential real estate law experience, unless the Parties

mutually agree to a different arbitrator. Under arbitration, the Parties shall have the right to discovery in accordance with Ohio law. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this Agreement to arbitrate shall be governed by the Federal Arbitration Act.

- c.) **Exclusions.** The following matters shall be excluded from the mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with Ohio law; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of probate, small claims, or bankruptcy court. The filing of court action to enable the recording of a notice of pending action, for an order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

**XXXII. TERMS AND CONDITIONS OF OFFER.** This is an offer to purchase the Property in accordance with the above-stated terms and conditions of this Agreement. If at least one, but not all, of the Parties initial such pages, a counteroffer is required until an agreement is reached. The Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. If this offer is accepted and the Buyer subsequently defaults, the Buyer may be responsible for payment of licensed real estate agent(s) compensation. This Agreement and any supplement, addendum, or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

**XXXIII. GOVERNING LAW.** This Agreement shall be interpreted in accordance with the laws in the State of Ohio ("Governing Law").

**XXXIV. OFFER EXPIRATION.** This offer to purchase the Property as outlined in this Agreement shall be deemed revoked, and the Earnest Money shall be returned, unless this Agreement is signed by Seller and a copy of this Agreement is personally given to the Buyer during and including the 10 days following signed contract agreement submitted to Sellers representative.

- a.) **Effective Date.** The "Effective Date" of this Agreement is the date on which the last one of the Parties has signed or initialed and delivered this offer or the final counteroffer. Calendar days will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. local time of the next business day. Time is of the essence in this Agreement.

**XXXV. ADDITIONAL TERMS & CONDITIONS:** Buyer reserves the right to conduct all necessary property evaluations and environmental surveys regarding the legal evaluation of property prior to transfer.

**XXXVI. ENTIRE AGREEMENT.** This Agreement, together with any attached addendums or disclosures, shall supersede any and all other prior understandings and agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the Parties with respect to the said Property. All prior negotiations and agreements between the Parties with respect to the Property hereof are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or by anyone acting on behalf of any party which are not embodied in this Agreement, and that any agreement, statement, or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

**Seller's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Title of Seller:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Buyer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Title of Seller:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

DIRECTOR OF LAW