

ORDINANCE NO. 19-010

AN ORDINANCE TO AUTHORIZE THE MAYOR CONVEY A TRACT OF LAND CONSISTING OF 110.244 ACRES ON BIXBY ROAD TO THE CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION TO PROVIDE FOR ITS SUBSEQUENT CONVEYANCE TO NORTHPOINT DEVELOPMENT, L.L.C., PURSUANT TO THEIR REAL ESTATE SALE CONTRACT, AND TO DECLARE AN EMERGENCY

WHEREAS, NorthPoint Development, L.L.C. desires to acquire 110.244 acres of land which will be owned by the City of Canal Winchester pursuant to a real estate purchase agreement for construction of new facilities; and

WHEREAS, the City hereby finds and determines that the 110.244 acres of land on Bixby Road is not required by the City for its purposes, and the conveyance of such land to the Canal Winchester Industry and Commerce Corporation will promote the welfare of the residents of the City, stabilize the economy, provide additional opportunities for their gainful employment, and assist in the development of industrial, commercial, distribution and research activities to the benefit of the residents of the City; and

WHEREAS, such transfer is authorized and permitted by the Charter and Ordinances of the City of Canal Winchester and pursuant to Chapters 1724 and 1761 of the Ohio Revised Code; and

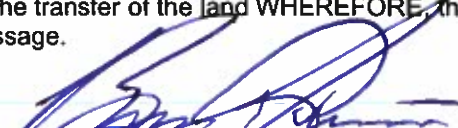
WHEREAS, this conveyance is hereby authorized without advertisement and receipt of bids;

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


Section 1. That the Mayor be and hereby is authorized and directed to by suitable deed of conveyance to convey to the Canal Winchester Industry and Commerce Corporation the 110.244 acres of land, so as to provide for the performance of a Real Estate Sale Contract substantially similar to the attached as Exhibit A, by and among the Canal Winchester Industry and Commerce Corporation and NorthPoint Development, L.L.C.

Section 2. That this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, such emergency arising from the exigencies of the real estate purchase agreement and the need to immediately begin preparations for the transfer of the land WHEREFORE, this Ordinance shall take effect and be in force from and after its passage.


DATE PASSED 2/4/19


PRESIDENT OF COUNCIL

ATTEST Amanda M Jackson
CLERK OF COUNCIL


MAYOR

DATE APPROVED 2-5-19

APPROVED AS TO FORM:

LEGAL COUNSEL

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

Amanda M Jackson
Finance Director/Clerk of Council

REAL ESTATE SALE CONTRACT

THIS REAL ESTATE SALE CONTRACT (this “**Contract**”) is made as of the Effective Date (as defined in Section 25 below) by and between NorthPoint Development, LLC, a Missouri limited liability company, or assigns (“**Buyer**”) and Canal Winchester Industry and Commerce Corporation, an Ohio corporation (“**Seller**”).

WITNESSETH:

1. Property. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, that certain real property comprising approximately 110.145 acres generally located at the Northeast corner of Rager Road and U.S. Highway 33, Canal Winchester, Franklin County, Ohio, together with all improvements of any kind located thereon, all surface and subsurface rights, and any appurtenant easements and rights of parking and access (all hereinafter referred to as the “**Property**”). A depiction of the Property is attached hereto as Exhibit A. The parties agree that upon the completion of the Survey (as defined in Section 5 below), the legal description set forth in the Survey shall be utilized for all purposes in connection with the sale of the Property, as contemplated herein.

2. Purchase Price. The “**Purchase Price**” for the Property shall be Fifteen Thousand and 00/100 Dollars (\$15,000.00) per acre comprising the Property, as determined by the Survey (as defined below). Buyer agrees to pay the Purchase Price as follows:

(a) One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the “**Earnest Deposit**”) to be delivered to Escrow Agent (as hereinafter defined) within three (3) business days following the Effective Date, in the form of a check payable to, and to be deposited in escrow with AmeriTitle Downtown, 150 E. Main Street, Suite 1A, Columbus, Ohio 43215 (the “**Escrow Agent**”), which Earnest Deposit shall be refundable or nonrefundable based upon the further terms of this Contract, and the Earnest Deposit shall be fully applicable to the Purchase Price;

(b) On the Closing Date (as defined in Section 3), Buyer shall deliver the Purchase Price to the Escrow Agent for distribution to Seller, less the Earnest Deposit and the Additional Deposit, by cashier’s or certified check or by wire transfer in immediately-available funds, and subject to any prorations set forth in this Contract.

3. Closing; Costs at Closing.

(a) Subject to the terms and conditions hereof, the closing of the transaction contemplated herein (the “**Closing**”) shall occur no later than the date occurring fifteen (15) days following the expiration of the Approvals Period (as defined herein) (the “**Closing Date**”). Buyer and Seller hereby agree to cooperate in good faith to schedule the Closing Date on a date within such fifteen (15) day period that would allow Seller to close contemporaneously on fee simple title to the Property from its current owner. Notwithstanding the foregoing, Seller hereby acknowledges that Buyer shall have the benefit of the entire Due Diligence Period and Approvals Period, and that in no event shall

Closing occur prior to the expiration of either such period or on a date not approved by Buyer, in its reasonable discretion.

(b) On the Closing Date, the parties shall pay any and all closing costs as follows:

(i) The costs of any escrow charges, or similar costs, charged by Escrow Agent, shall be evenly split among Buyer and Seller.

(ii) Any costs related to the recording of the Deed or other conveyance documents (except in connection with the release of any liens or encumbrances agreed to be released by Seller under the terms of this Contract) shall be paid by Buyer.

(iii) The costs of releasing any and all liens, judgments, and other encumbrances objected to by Buyer and agreed to be released by Seller under the terms of this Contract, as well as any recording costs in connection therewith, shall be paid by Seller.

(iv) Any and all transfer taxes, deed taxes, stamp taxes, and other similar fees and taxes shall be paid evenly split among Buyer and Seller.

(v) The costs of the Survey shall be paid by Seller, or, if previously paid by Buyer, shall be reimbursed to Buyer in the form of a credit against the Purchase Price.

(vi) Except as otherwise specifically set forth herein, any costs attributable only to one party, such as each party's attorneys' fees, shall be paid by such party.

(vii) Any and all other costs or expenses not otherwise addressed in this Contract shall be paid by the parties as the same is customary in Canal Winchester, Ohio.

4. Taxes. Seller shall pay all taxes, general and special, against the Property which are due and have accrued before the Closing Date, and Buyer shall assume all of such taxes and assessments becoming due and accruing on the Closing Date and thereafter, except that all general state, county, school and municipal taxes (exclusive of rebates, penalties and interest) becoming due and accruing during the calendar year in which Closing occurs shall be prorated between Seller and Buyer on the basis of said calendar year as of the Closing Date. If the amount of any such tax or assessment to be prorated cannot be then ascertained, proration shall be computed on the basis of the rate(s) for the preceding year applied to the last assessed valuation prior to the Closing Date, without any right to subsequent adjustment once the actual amounts are known. Seller represents that there are no special assessments or other impositions of any nature which are pending with respect to the Property or any portion thereof.

5. Title Insurance and Survey.

(a) As of the Closing Date, Seller shall cause to be issued and delivered to Buyer an ALTA owner's policy of title insurance (the "**Title Policy**") respecting the Property. Costs of a standard coverage Title Policy shall be paid by Seller, and incremental costs (if any) of an extended coverage Title Policy shall be paid by Buyer. Costs of any endorsements to the Title Policy and any lender's title policy issued in connection with the Closing, if applicable, shall be paid by Buyer. The Title Policy shall conform to the following specifications:

(i) The form of the Title Policy will be ALTA Form B or such other form as may be available from the Title Company and reasonably acceptable to Buyer;

(ii) The Title Policy will be issued by Chicago Title Insurance Company (the "**Title Company**");

(iii) The insured will be Buyer (or assigns);

(iv) The Title Policy will be in the amount of the Purchase Price; and

(v) There will be no exceptions to extended coverage other than the Permitted Exceptions (as defined below).

(b) Subject to the foregoing provisions, the Title Policy shall not contain exceptions with respect to any of the following (except to the extent they become Permitted Exceptions), provided that the same can be removed upon Seller's execution and delivery of the Title Company's standard seller's affidavit at Closing (and with respect to (iv) below, Seller's delivery of the Survey to the Title Company) and that the cost to remove same that cannot be so removed shall be Buyer's sole responsibility:

(i) Defects, liens, encumbrances, adverse claim, or other matters first appearing in the public records or attaching subsequent to the Effective Date but prior to the Closing Date;

(ii) Rights or claims of parties in possession;

(iii) Easements, or claims of easements, not shown by the public records;

(iv) Any encroachment, encumbrance, violation, or adverse circumstance that would be disclosed by an accurate and complete survey of the Property;

(v) Any lien, or right to a lien, for services, labor or materials furnished;

(vi) Taxes or installments of assessments due or payable as of the Closing Date; or

(vii) Tenancies, either by month-to-month or by virtue of a written or oral lease, by a party in possession of any part of the Property.

(c) Buyer shall request that the Title Company provide to Buyer, at Seller's cost, within ten (10) days following the Effective Date, a commitment from the Title Company setting forth the basis upon which the Title Company is willing to insure title to the Property, together with legible copies of all documents identified therein as exceptions to title (excluding mortgages, deeds of trust and similar matters which shall be released at Closing) (collectively, the "**Title Commitment**").

(d) Within twenty (20) days after the Effective Date, Seller shall obtain a new or updated ALTA/NSPS survey for the Property (the "**Survey**") and provide a copy of the Survey to Buyer. Such Survey shall be performed by a surveyor licensed in the State of Ohio. Upon the completion of the Survey, the legal description set forth therein shall be the legal description of the Property for all purposes in connection with this Contract, including the Deed and the Title Policy.

(e) If the Title Commitment or the Survey discloses any defects, liens, or encumbrances objectionable to Buyer, in Buyer's sole and absolute discretion, Buyer may object in writing to the same no later than the date occurring thirty (30) days following the Effective Date. Matters listed in the Title Commitment or Survey and not objected to by Buyer within such period and matters later accepted by Buyer shall constitute "**Permitted Exceptions**". Buyer shall not be required to object to any monetary encumbrances recorded against the Property, such as mortgages, deeds of trust, or liens, all of which shall not be deemed Permitted Exceptions and shall be released at Closing. As to any matters to which Buyer so objects in a timely manner, Seller shall notify Buyer in writing, within ten (10) days after receipt by Seller of Buyer's objection letter, as to which specific matters Seller is unable or unwilling to remedy and which specific matters Seller will exercise reasonable efforts to attempt to remedy. As to those matters to be remedied, Seller shall deliver to Buyer a revised Title Commitment reflecting that such remedy has been affected, or Seller shall otherwise assure Buyer, to Buyer's reasonable satisfaction, that such remedy will be made on or before the Closing Date. If Seller is unable or unwilling to remedy all matters objected to by Buyer and to deliver the Title Policy in accordance with the foregoing requirements, Buyer shall have the option of either: (i) consummating the transaction contemplated hereby and accepting such title as Seller is so able or willing to convey, and without any claim against Seller or any adjustment in the Purchase Price with respect thereto, or (ii) terminating this Contract by giving written notice to Seller of the same on or prior to the expiration of the Due Diligence Period, in which event the entire Earnest Deposit shall be returned to Buyer. If Buyer fails to give the termination notice under clause (ii) above within such period, Buyer shall be deemed to have elected clause (i) above as to those specific matters that are set forth in such written notice from Seller. In the event that Seller indicates that Seller will cure any of Buyer's objections on or prior to Closing but fails to so cure such objections, the same shall be deemed a default by Seller pursuant to Section 13(b) hereof, and Buyer shall have all remedies set forth therein against Seller.

6. Right of Entry; Existing Materials.

(a) Seller hereby grants to Buyer, and its contractors and agents, a non-exclusive right and license to enter the Property from time to time prior to the earlier of the

Closing or the termination of this Contract for purposes of conducting review and planning activities, including, without limitation, site reviewing, engineering, surveying, environmental audits, inspections, photographing, client tours, rock borings, soil tests, and utility locating; provided, however, that any invasive testing shall be subject to the prior written approval of Seller. Buyer shall indemnify and hold Seller harmless from and against any and all (i) damage caused to the Property or any other property by Buyer or its agents or contractors, (ii) loss, damage or injury to any person or property to the extent resulting directly or indirectly from any hazard or other condition created by Buyer or its agents or contractors, (iii) any injury to Buyer or any of its agents or contractors, or any person arising out of the exercise of Buyer's rights under this Contract, and (iv) any expenses incurred by or for Buyer, in connection with such planning or other activities. This indemnification provision shall survive Closing or any termination of this Contract. Buyer shall not alter or damage the Property in any manner and shall promptly restore the Property substantially to its original condition if any such damage does occur. Buyer hereby acknowledges that the Property is currently owned by a party other than Seller, and Seller agrees to use commercially reasonable efforts to afford Buyer all access to the Property contemplated in this Section, including by coordinating the same with the current owner of the Property. Prior to entering the Property, Buyer shall provide Seller with an insurance accord evidencing insurance coverage held by Buyer, or each contractor or subcontractor performing inspections on Buyer's behalf providing commercial general liability insurance in an amount not less than \$1 million per occurrence, with the accord naming Seller and the current owners of the Property as additional insureds.

(b) Seller shall, within two (2) days following the Effective Date, provide to Buyer copies of the following, if any, in Seller's possession or control (the "**Due Diligence Materials**"):

(i) Any and all leases, contracts, licenses, permits, and agreements with any other party, person, or entity in connection with the Property, including without limitation, those affecting ownership, operation, maintenance, repair, or development of the Property;

(ii) Any and all information and correspondence regarding any liens, lien claimants, attachments, executions, or assignments for the benefit of creditors, including those still pending and those that have received a priority determination;

(iii) Any and all existing environmental reports, engineering reports, surveys, soil and substrata studies and reports, soil boring logs, development assessments, and any other similar studies, reviews, surveys, assessments, audits, or reports in connection with the Property;

(iv) Any and all governmental approvals obtained by Seller in connection with the Property, such as zoning and entitlements, as well as all notices and correspondence to and from any governmental agencies or insurers of the Property, related to the Property;

- (v) A list of all known defects and/or malfunctions affecting the Property with respect to any parking lots, and drainage and sewer systems;
- (vi) Any title policies or title reports in possession of Seller related to the Property;
- (vii) The most recent appraisal in connection with the Property; and
- (viii) Any operating agreements, covenants, restrictions, or other similar documents affecting the Property.

7. Due Diligence Period; Approvals Period.

(a) Buyer acknowledges and agrees that the sale of the Property to Buyer in accordance with the terms of this Contract is expressly contingent on the approval of such sale by the City of Canal Winchester and the Seller's board of trustees. Upon receipt of such approvals, Seller shall provide written notice thereof to Buyer, which Buyer shall confirm within one (1) day. The date of such confirmation by Buyer is hereinafter referred to as the "**Consent Date.**" Buyer shall have until 11:59 p.m. (Canal Winchester, Ohio local time) on the date occurring forty five (45) days following the Consent Date (the "**Due Diligence Period**") to inspect the legal and physical condition of the Property, conduct such due diligence activities and inspections, pursue such governmental approvals, and conduct such other activities and reviews with respect to the Property and Buyer's intended use thereof as Buyer shall deem appropriate. During the term of this Contract, Seller shall cooperate, and use commercially reasonable efforts to cause the current owner of the Property to cooperate, at no cost to Seller or the current owners of the Property, with Buyer in connection with such due diligence activities, including, without limitation, authorizing the submittal, approval, and execution of zoning, planning, and platting applications, and applications or petitions in connection with any financial incentives sought by Buyer in connection with the Property, in Buyer's sole discretion (collectively, the "**Approvals**"). Seller shall have the right to review and approve, such approval not to be unreasonably withheld, conditioned or delayed, any applications for any Approvals prior to their submittal to the appropriate governmental authorities. Following the Effective Date, Buyer shall provide Seller an anticipated schedule for the Approvals and anticipated date by which Buyer anticipates that the Approvals will be finalized.

(b) If Buyer determines for any or no reason, in its sole and absolute discretion, that it does not desire to purchase the Property, Buyer shall have the right to terminate this Contract by giving written notice to Seller on or before the expiration of the Due Diligence Period, in which event the entire Earnest Deposit shall be returned to Buyer, and the parties shall have no further obligations to one another, except as expressly provided herein. In the event Buyer does not terminate this Contract prior to the expiration of the Due Diligence Period, Buyer shall be deemed to have waived its right to terminate this Contract in accordance with this Section 7(b), and thereafter, Buyer's right to terminate this Contract in accordance with this Section 7 shall be limited to termination in connection with Buyer's failure to obtain Approvals as provided in Section 7(d).

(c) Buyer shall have from the expiration of the Due Diligence Period until 11:59 p.m. (Canal Winchester, Ohio local time) on the date occurring ninety (90) days following the expiration of the Due Diligence Period (the “**Approvals Period**”) to continue pursuing the Approvals. Within three (3) days following the commencement of the Approvals Period, Buyer shall deposit an additional One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the “**Additional Deposit**”) with Escrow Agent, which Additional Deposit shall be applicable to the Purchase Price at Closing.

(d) If Buyer is unable to obtain, or reasonably believes that it will be unable to obtain, any and all Approvals on or prior to the expiration of the Approvals Period, Buyer shall have the right to terminate this Contract by giving written notice to Seller on or before the expiration of the Approvals Period. In the event that Buyer terminates this Contract pursuant to this Section 7(d), the entire Earnest Deposit and Additional Deposit shall be returned to Buyer, and the parties shall have no further obligations to one another, except as expressly provided herein. In the event Buyer does not terminate this Contract prior to the expiration of the Approvals Period, Buyer shall be deemed to have waived its right to terminate this Contract in accordance with this Section 7(d), and the Earnest Deposit and Additional Deposit shall be nonrefundable, other than in accordance with Sections 8, 10 and/or 13, but applicable to the Purchase Price at Closing.

8. Closing Conditions. Notwithstanding any provisions of this Contract to the contrary, Buyer’s obligation to close the transactions set forth herein shall be subject to, and conditioned upon, the satisfaction of each of the following “**Closing Conditions**”:

(a) the Title Company is irrevocably committed to issuing the Title Policy in compliance with the provisions set forth in Section 5 above; and

(b) Seller shall have acquired fee simple title to the Property.

In the event that any of the aforementioned Closing Conditions are not satisfied as of the Closing Date, Buyer shall have the right to terminate this Contract on the Closing Date, in its sole and absolute discretion, in which event, notwithstanding any provisions of this Contract to the contrary, the entire Earnest Deposit and the Additional Deposit shall be immediately returned to Buyer, and the parties shall have no further obligations hereunder each to the other, except as expressly provided herein. In the event that Seller has not acquired fee simple title to the Property as of the Closing Date, as stated in Section 8(b), then the Closing Date shall automatically be extended for up to thirty (30) days to allow the same to occur. If Seller has not acquired fee simple title to the Property within such thirty (30) day period, then Buyer may at any time thereafter terminate this Contract, and notwithstanding anything to the contrary stated herein, receive a full refund of the Earnest Deposit and the Additional Deposit, as well as have any other remedies available to Buyer under Section 13(b) hereof.

9. Closing Obligations.

(a) On the Closing Date, Seller shall be obligated, at its sole cost and expense, to deliver, or cause to be delivered, the following:

(i) a Limited Warranty Deed (the “**Deed**”), in a form reasonably acceptable to Buyer and the Title Company, properly executed and conveying marketable fee simple title to the Property, subject only to the Permitted Exceptions;

(ii) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions contemplated by this Contract.

(b) On the Closing Date, Buyer shall be obligated, at its sole cost and expense, to deliver, or cause to be delivered, the following.

(i) The Purchase Price, less the Earnest Deposit and the Additional Deposit, after all adjustments and prorations are made at the Closing;

(ii) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions contemplated by this Contract.

10. Condemnation. Seller represents that it has no actual knowledge of any pending or threatened condemnation, eminent domain or equivalent proceeding or action which would affect the Property. If, after the Effective Date and before the date and time of Closing, any such proceeding or action is commenced or threatened against the Property or the owner(s) thereof, Seller shall provide Buyer with written notice thereof promptly after Seller has knowledge thereof, and Buyer shall have the option of continuing with this Contract and receiving all proceeds of such action or proceedings (or sale in lieu thereof), or terminating this Contract by written notice to Seller within ten (10) days after receiving such written notice from Seller. If this Contract is so terminated, notwithstanding any provisions of this Contract to the contrary, the entire Earnest Deposit and the Additional Deposit shall be immediately returned to Buyer and the parties shall have no further obligations each to the other, except as expressly provided herein.

11. Representations.

(a) Each party represents and warrants to the other party that:

(i) this Contract has been duly executed and delivered by such party, and constitutes the valid and binding obligation of such party, enforceable against it in accordance with the terms hereof; and

(ii) the execution, delivery and performance of this Contract does not violate or breach the terms of any agreement to which it is a party or by which it or its property may be bound.

(b) Seller represents that it has the contractual ability to acquire fee simple title to the Property prior to Closing, and Seller has the legal power and authority to enter into and perform this Contract.

(c) Seller further represents and warrants to Buyer that to Seller's knowledge, except as otherwise disclosed by Seller in writing or the Title Commitment, there are no recorded or unrecorded leases, contracts, and/or options pertaining to or affecting the Property, or any part thereof, and there is no party other than Seller or the current owners of the Property in possession, or with a claim of possession, of the Property or any part thereof.

(d) Seller further represents and warrants that Seller has not received any written notice that the Property is in default under, or not in compliance with, any laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus, nor has Seller received written notice of any proceeding initiated under or with respect to any of the foregoing.

(e) Seller represents and warrants that to Seller's knowledge the Property is not subject to any pending or threatened litigation.

(f) So long as this Contract remains in effect, Seller shall not do any of the following, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed:

(i) Sell, grant, convey, lease or dispose of, or negotiate or contract to sell, grant, convey, lease or dispose of, the Property or any part thereof;

(ii) Grant or record any easement, license or right-of-way in, to or through the Property or any part thereof;

(iii) Create, record, nor allow to be created or recorded, any restriction or covenant of any kind, character, or nature whatsoever with respect to the Property or any part thereof; or

(iv) Cause, or allow, any material physical modifications to the Property.

12. Foreign Investment in Real Property Tax Act. Seller agrees to execute and deliver at Closing an affidavit in conformance with the requirements of the Foreign Investment in Real Property Act.

13. Breach At or Prior to Closing.

(a) If Buyer should fail to consummate the transaction contemplated in Section 1 of this Contract for any reason other than a default or misrepresentation by Seller as described in subsection (b) below under this Contract, or the exercise by Buyer of a right to terminate this Contract as provided herein, then the Earnest Deposit (and the Additional Deposit, if previously paid) shall be paid to Seller as total liquidated damages (due to the difficulty and inconvenience of measuring actual damages and the fact that the Earnest Deposit (and the Additional Deposit, if previously paid) represents as fair an approximation

of actual damages as the parties can now determine) and in full satisfaction of all of Buyer's obligations hereunder except for Buyer's indemnity obligations set forth in Section 6(a) hereof which shall be in addition to said liquidated damages.

(b) If Buyer has performed all of its obligations under this Contract and Seller breaches its obligations hereunder and fails to cure such breach within five (5) business days of receipt of written notice from Buyer of such breach, or a representation or warranty made by Seller herein was untrue when made as of the Effective Date or becomes untrue due to Seller's action, then Buyer may, as its exclusive remedies: (i) seek specific performance of the terms of this Contract, or (ii) terminate this Contract, in which case, notwithstanding any provisions of this Contract to the contrary, the entire Earnest Deposit and the Additional Deposit (if previously paid) shall be immediately returned to Buyer, and Seller shall reimburse Buyer for any and all of Buyer's reasonably documented actual out-of-pocket costs incurred in connection with this Contract and the transactions contemplated hereby, including without limitation, Buyer's reasonable legal costs, design costs in connection with Buyer's intended use of the Property, and costs related to Buyer's due diligence activities in connection with this Contract, up to a maximum of \$50,000.00.

14. Survival. The representations and warranties described in Section 11 shall be deemed made on and as of the Closing Date, as well as on the date hereof, and shall survive consummation of this Contract and delivery of the Deed to the Property for a period of one (1) year following the Closing Date.

15. AS IS. Buyer hereby acknowledges that Buyer has made or will make its decision to purchase the Property solely in reliance upon the representations, warranties and agreements of Seller expressly made in this Contract, if any, and upon Buyer's own inspection and review of the Property. Except as otherwise provided herein to the contrary (including Seller's specific covenants, representations and warranties), Buyer agrees to accept the physical condition of the Property "as is", "where is", "with all faults", and without express or implied warranties of any nature whatsoever. The warranties being disclaimed include, without limitation, implied warranties of merchantability, habitability, tenantability and fitness for a particular purpose.

16. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed made when delivered in person, delivery service, electronic mail, or when mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Buyer: NorthPoint Development, LLC
Attn: Nathaniel Hagedorn, CEO
4825 NW 41st Street, Ste. 500
Riverside, MO 64150
Phone: (816) 888-7381
E-mail: nathaniel@northpointkc.com

with a copy to:

NorthPoint Development, LLC
Attn: Evan Fitts
4825 NW 41st Street, Ste. 500
Riverside, MO 64150
Phone: (816) 768-8108
E-mail: efitts@northpointkc.com

If to Seller: Canal Winchester Industry and Commerce Corporation
Attn: Lucas Haire, Executive Vice President
36 S. High Street
Canal Winchester, OH 43110
E-mail: lhaire@canalwinchesterohio.gov

17. **Miscellaneous.** This Contract (i) supersedes any letter of intent or prior agreement between the Buyer and Seller and constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning the sale contemplated hereunder, (ii) shall be governed by the laws of the State of Ohio, (iii) shall be freely assignable by Buyer without the consent of Seller to any entity with which Buyer is affiliated (i.e., controls, is controlled by, or is under common control with) or in which Buyer is a member, shareholder or partner, and (iv) shall not be modified or amended other than by a written instrument executed by both parties hereto. For the purposes of (iii) above, any entity managed by Buyer or NPD Management, LLC shall be deemed affiliated with Buyer. Any assignment not permitted in accordance with (iii) above shall be subject to the prior written approval of Seller. Any approved or other permitted assignee shall assume all of Buyer's obligations hereunder pursuant to a commercially reasonable form of assignment, a fully executed copy of which shall be delivered to Seller prior to Closing.

18. **Attorneys' Fees.** In case a lawsuit shall be brought because of the breach or alleged breach of any agreement or obligation contained in this Contract on the part of either party to be kept or performed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses in connection with such lawsuit.

19. **Partial Invalidity.** If any provisions of this Contract or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

20. **Commission and Consulting Fees.** Buyer and Seller agree that the only broker involved in the transactions set forth herein is CBRE, Inc., representing Buyer ("**Broker**"). Seller shall be responsible at Closing for the payment to Broker of a commission in the amount of four percent (4%) of the Purchase Price. Each party hereto represents and warrants to the other that no persons or entities, other than as identified pursuant to the provisions of this Section 20, are entitled to a brokerage commission, finder's fee, or other compensation with respect to the transactions contemplated hereby, and each party (an "**Indemnitor**") hereby indemnifies the other party for any damages related to a breach of said representation and warranty by Indemnitor, and for the

failure of such Indemnitor to pay any commission, finder's fee, or other compensation claimed through said Indemnitor.

21. Right to Exchange Real Property. Either party, through the use of a qualified intermediary, may transfer or acquire the Property through a tax free exchange, deferred exchange or reverse exchange of real property pursuant to Section 1031 of the Internal Revenue Code; provided, however (i) in no event shall any such exchange, or the exchanging party's inability to complete any such exchange, impair or otherwise affect the Closing Date, (ii) the non-exchanging party shall have no obligation or liability to the exchanging party or any other person or entity in any respect for any matters in connection with any such exchange other than executing an acknowledgement of such exchange, and (iii) the exchanging party shall indemnify and hold the non-exchanging party harmless from and against any claims, actions, liability and expense in connection with each such exchange.

22. Waiver of Jury Trial. BUYER AND SELLER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BUYER AND SELLER ENTERING INTO THIS CONTRACT.

23. Legal Holidays and Business Days. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the State of Ohio are generally closed for observance thereof. As used herein, the term "business day" shall mean a day which is not a Saturday, Sunday or legal holiday.

24. Construction of Contract. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Both Seller and Buyer have contributed or had the opportunity to contribute substantially and materially to the preparation of this Contract.

25. Effective Date. The "Effective Date" of this Contract shall be the date this Contract is fully executed by the last of Seller and Buyer to sign.

26. Time is of the Essence. Time is of the essence of this Contract.

27. Execution in Counterparts, Electronic Mail and Fax. This Contract may be executed in several counterparts. All counterparts so executed shall constitute one agreement and shall be binding on all parties, even though all the parties did not sign the original or the same counterpart

signature page. Hand signatures transmitted by fax or electronic mail such as PDF are also permitted as binding signatures to this Contract.

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IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the Effective Date.

BUYER:

NorthPoint Development, LLC, a Missouri limited liability company

Dated: January 17, 2019

By: 

Nathaniel Hagedorn, Manager

SELLER:

Canal Winchester Industry and Commerce Corporation, an Ohio corporation

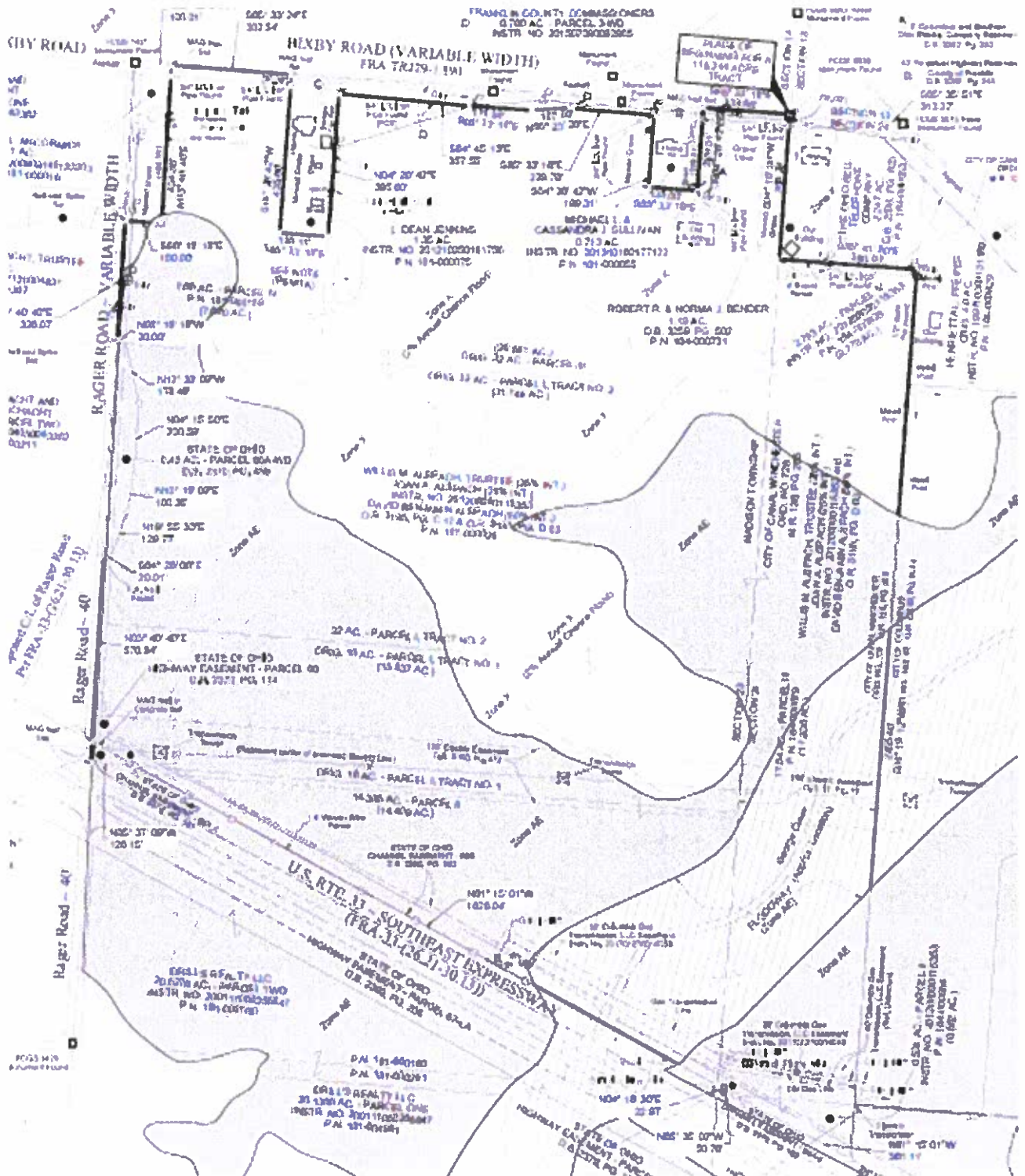
Dated: January 15, 2019

By: 

Lucas Haire, Executive Vice President

EXHIBIT A

Depiction of Property



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