

DATE: MARCH 7, 2011

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL
CITY OF MASSILLON, OHIO
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 33 - 2011

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to sign the Contract For sale and Purchase of Real Property with Lincoln Company for the purchase of 0.019 acres of Right of Way and Temporary Easement for the 2011 Intersections Improvement Project, and declaring and emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The real property consisting of 0.019 acres of Right of Way and Temporary Easement in the City of Massillon is needed for the 2011 Intersections Improvement Project.

Section 2:

The Director of Public Service and Safety is authorized to sign the Contract For Sale and Purchase of Real Property to purchase the 0.019 acres of Right of Way and Temporary Easement for Twenty-Three Thousand Four Hundred Forty Dollars (\$23,440.00) and upon the execution and approval the said Director of Public Service and Safety is further authorized to execute and approve all necessary documents to expedite the purchase of said real estate.

Section 3:

That the City Auditor is hereby authorized to pay the purchase price of Twenty-Three Thousand Four Hundred Forty Dollars (\$23,440.00). These funds will be provided through a grant that was received from the Ohio Department of Transportation.

Section 4:

It is hereby 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 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 5:

That this Ordinance is hereby declared to be an emergency measure, immediately necessary for the preservation of the health, safety and welfare of the community and for the additional reason that the acquisition of the real estate is necessary for further development within the downtown area of the City of Massillon. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS 7th DAY OF March 2011

APPROVED: Mary Beth Bailey
MARY BETH BAILEY, CLERK OF COUNCIL

Glenn E. Gamber
GLENN E. GAMBER, PRESIDENT

APPROVED: March 8, 2011

Francis H. Cicchinelli, Jr.
FRANCIS H. CICCHINELLI, JR., MAYOR

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon:

Mary Beth Bailey
Clerk of Council

Date 3/7/11

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)

PARCEL(S): 1 WD, T
STA-241-8.04/10.41

This Agreement is by and between the **City of Massillon** ["Purchaser"] and Lincoln Company, a partnership ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$23,440.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; and (e) N/A

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty

deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change,

alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

12. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

13. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

14. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

15. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either expressed or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

16. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto, namely the City of Massillon and the Lincoln Company have executed this Agreement on the date(s) indicated immediately below their respective signatures.

Lincoln Company, a partnership

By:

T.W. Schervish II
T.W. SCHERVISH II

Date:

12.20.10

STATE OF OHIO, COUNTY OF STARK ss:

BE IT REMEMBERED, that on the 20 day of December, 2010, before me the subscriber, a Notary Public in and for said state and county, personally came the above named T.W. SCHERVISH II, who acknowledged being the PRESIDENT and duly authorized agent of Lincoln Company, a partnership, and who signed or acknowledged the signing of the foregoing instrument to be the voluntary act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



CAROL L. OYLER, Notary Public
Residence - Stark County
State Wide Jurisdiction, Ohio
My Commission Expires Dec. 8, 2012

Carol L Oyler

NOTARY PUBLIC

My Commission expires:

12-10-12

CITY OF MASSILLON

By: _____

Date: _____

STATE OF OHIO, COUNTY OF STARK ss:

BE IT REMEMBERED, that on the _____ day of _____, _____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named _____, the _____ and duly authorized representative of **City of Massillon**, who signed or acknowledged the signing of the foregoing instrument to be the voluntary act and deed of **City of Massillon**.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC

My Commission expires: _____

EXHIBIT A

Page 1 of 2

Rev. 06/09

LPA RX 851 WD

Ver. Date 1/09/2011

PID 80897

**PARCEL 1-WD
STA 241 8.04/10.41
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF MASSILLON, STARK COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Stark, City of Massillon and being part of original Perry Township, T10N, R9W, situated in the southeast quarter of section 9 and being more particularly described as follows:

Being a parcel of land lying on the right side of the centerline of right of way of Lincoln Way East, S.R. 172, as surveyed by URS Corporation for the City of Massillon in 2009, said parcel being part of a 28,793 square foot parcel of land deeded to Lincoln Company, the Grantor, per O.R. Vol. 3756, Pg. 791 in the records of Stark County Ohio and located within the following described points:

Commencing for reference at a 3" diameter Stark County brass disk monument found in a monument box at the northeast corner of the southeast quarter of section 9 in said township, said monument also being at the southeast corner of the northeast quarter of section 9, said monument also being on the existing centerline of right of way of 27th Street at station 24+47.07; Thence South 01 degrees 43 minutes 17 seconds West, along the existing centerline of right of way of 27th Street and the east line of Section 9 for a distance of 480.27 feet to a point, said point being at station 19+66.80 on the existing centerline of 27th Street; Thence North 88 degrees 16 minutes 43 seconds West, for a distance of 18.00 feet to a point on the westerly existing right of way line of 27th Street at it's intersection with southerly existing right of way line of Lincoln Way East, S.R. 172, said point also being at the northeast corner of the Grantor's land, said point being 36.20 feet right of S.R. 172 centerline station 9+89.22 and also being the **TRUE POINT OF BEGINNING** for the following parcel of land herein described within the following numbered courses:

EXHIBIT A

Page 2 of 2

LPA RX 851 WD

Rev. 06/09

1. Thence South 01 degrees 43 minutes 17 seconds West along the existing westerly right of way line of 27th Street and the Grantor's easterly line, for a distance of 45.22 feet to a iron set on the proposed southerly right of way line of Lincoln Way East, S.R. 172;
2. Thence 68.18 feet along the proposed right of way of Lincoln Way East, S.R. 172, along the arc of a curve to the left having a central angle of 78 degrees 07 minutes 28 seconds, a radius of 50.00 feet and a chord which bears North 37 degrees 20 minutes 27 seconds West, 63.02 feet to an iron pin set at a point of tangency;
3. Thence North 76 degrees 24 minutes 11 seconds West, 79.05 feet, along the proposed right of way line of Lincoln Way East, to an iron pin set on the Grantor's west property line;
4. Thence North 01 degrees 47 minutes 20 seconds East, 4.17 feet, along the Grantor's west property line, to a drill hole set on the existing southerly right of way line of Lincoln Way East and the Grantor's northerly property line;
5. Thence South 76 degrees 37 minutes 28 seconds East, 119.53 feet, along the existing southerly right of way line of Lincoln Way East and the Grantor's northerly property line, to the point of beginning and containing **0.019 acres**, of land, more or less.

The above parcel of land is contained within Stark County Auditor's Permanent Parcel Number 0617677.

This description was prepared and reviewed on January 9, 2011 by Dan Stankavich, Professional Surveyor Number 7122, for the URS Corporation and the City of Massillon.

Based on a survey by URS Corporation in July, 2008 under the supervision of Dan Stankavich, P.S. No. 7122 in the State of Ohio.

Basis of Bearing is the Ohio State Plane Grid, NAD83, North Zone.

All Iron Pins set are ¾ inch rebar with 1 inch cap marked "URS CORP."

Dan Stankavich, P.S.

Date

EXHIBIT A

LPA RX 887 T

Page 1 of 2

Rev. 07/09

Ver. Date 12/5/2009

PID 81897

**PARCEL 1-T
STA 241-8.04/10.41
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
DRIVE RECONSTRUCTION
FOR 18 MONTHS FROM DATE OF ENTRY BY THE
CITY OF MASSILLON, STARK COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Stark, City of Massillon and being part of original Perry Township, T10N, R9W, situated in the southeast quarter of section 9 and being more particularly described as follows:

Being a parcel of land lying on the right side of the centerline of right of way of Lincoln Way East, S.R. 172, as surveyed by URS Corporation for the City of Massillon in 2009, said parcel being part of a 28,793 square foot parcel of land deeded to Lincoln Company, the Grantor, per O.R. Vol. 3756, Pg. 791 in the records of Stark County Ohio and located within the following described points:

Beginning at a point at the intersection of the proposed south right of way line of Lincoln Way East, S.R. 172; and the Grantor's west property line, said point being 40.74 feet right of centerline Station 8+70.54 of Lincoln Way East, said point also being the **TRUE POINT OF BEGINNING** for the following parcel herein described;

Thence S 76°24'11" E, 52.00 feet, along the proposed south right of way line of Lincoln Way East, to a point;

Thence S 13°53'53" W, 8.00 feet, to a point;

Thence S 75°22'50" W, 34.00 feet, to a point;

Thence N 87°58'43" W, 16.61 feet, to a point on the Grantor's west property line;

Thence N 01°47'20" E, 28.00 feet, along the Grantor's west property line, to the point of beginning and containing **0.023 acres** of land, more or less.

The above parcel of land is contained within Stark County Auditor's Permanent Parcel Number 0617677.

EXHIBIT A

LPA RX 887 T

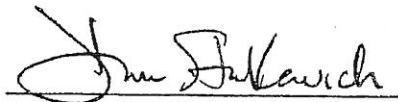
Page 2 of 2

Rev. 07/09

This description was prepared and reviewed on December 5, 2009 by Dan Stankavich, Professional Surveyor Number 7122, for the URS Corporation and the City of Massillon.

Based on a survey by URS Corporation in July, 2008 under the supervision of Dan Stankavich, P.S. No. 7122 in the State of Ohio.

Basis of Bearing is the Ohio State Plane Grid, NAD83, North Zone.


Dan Stankavich, P.S.



12/5/2009
Date