

ORDINANCE NO. 2007-160

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY WITH ROSEANN MOSS COSTELLO AND DANIEL M. COSTELLO FOR AN AMOUNT NOT TO EXCEED \$145,000.00

WHEREAS, the City of Mason has determined that it is in the public welfare to complete storm sewer and sanitary improvements through the City; and

WHEREAS, the proposed storm sewer and sanitary sewer alignment is located on the property owned by Roseann Moss Costello and Daniel M. Costello; and

WHEREAS, the City of Mason and the Costellos have reached an agreement as to the purchase of the property.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That the City Manager is hereby authorized and directed to enter into a Contract for Sale and Purchase of Real Property with Roseann Moss Costello and Daniel M. Costello.

Section 2. That the City Manager is further authorized to execute any and all necessary and related documents to complete the terms of the Contract.

Section 3. That said property is as described in the attached Exhibit "A" which is incorporated herein by reference.

Section 4. That the terms of the Contract are as indicated in the attached Exhibit "B", which is incorporated herein by reference, and which terms are subject to modifications by the Law Director of the City of Mason consistent with the overall purpose of this Contract.

Section 5. That the Finance Director is hereby authorized to pay Roseann Moss Costello and Daniel M. Costello an amount not to exceed \$145,000.00 for said real property.

Passed this 12th day of November, 2007.

Attest:


Clerk of Council


Mayor

**CONTRACT FOR SALE AND
PURCHASE OF REAL PROPERTY**

**PARCEL(S): 16362870111 & 16362870112
WARREN COUNTY, OHIO
CITY OF MASON, OHIO**

This Agreement is being entered into by and between the City of Mason, Ohio (hereinafter "Purchaser") and **Daniel M. Costello and Roseann Moss Costello (husband and wife) whose address is 108 South East Street, Mason, Ohio 45040** (hereinafter "Seller"); "Seller" includes all of the foregoing named persons or entities, and, if applicable, their respective spouses, each of whom hereby agrees to relinquish and release to Purchaser all of his or her rights, interests, and expectancies of dower in the hereinafter described real property].

In consideration of the mutual promises, agreements, and covenants herein contained, the parties hereto do hereby contract as follows:

1. Price and Consideration

Seller shall sell to Purchaser the property, which is more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein, for **One Hundred Forty Five Thousand Dollars and 00/100 (\$145,000.00)**. Purchaser has paid Seller an earnest money deposit in the amount of **\$5,200.00**, originally given to Seller as payment for a ten foot utility and 30 foot temporary construction easements. The amount due from Purchaser to Seller at Closing shall be **\$139,800.00**. There shall be no additional 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 the Seller; (c) the Seller's covenants set forth herein; and (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interests; and all other real estate taxes and assessments that are a lien as of

the date on which this contract closes. Seller shall not 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 after the date of transfer of title.

2. Estate Sold and Deed 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 the appurtenances and hereditaments thereunto belonging and with all 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 in 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. 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.

4. 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 interest in the property described in Exhibit "A", such as, but not limited to those belonging to tenants, lessees, or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

5. No Change in Character of Property

Seller shall not change the existing character of the land and building described in Exhibit "A" prior to the date of Closing. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property, suffers any damage, changes, alteration, or destruction then, 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. If the Seller refuses to restore the premises, then Purchaser may, at its option after discovery or notification of such damage, change, alteration, or destruction, terminate, cancel, and void this Agreement upon written notice to Seller. Purchaser shall be entitled to a walk through of the building prior to Closing. This provision shall not merge with the deed and shall survive Closing.

6. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by the Seller that shall remain open to acceptance by Purchaser for a period of **twenty (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 the said period of **twenty (20) days**, this Agreement shall constitute and be a valid Contract For Sale and Purchase of Real Property that is binding upon all parties hereto.

7. Designation of Escrow Agent

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

8. 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 **ten (10) days after Purchaser** notifies Seller in writing that Purchaser is ready to Consummate and close this Agreement. Provided, however, in no event shall consummation and closing occur more than **one hundred twenty (120) days** after the last date on which one of the parties hereto executes this Agreement.

9. Physical Possession of Vacant Land and Structures

Physical possession of vacant land and buildings shall be surrendered by Seller to Purchaser not later than January 2, 2008. Seller's cousin, Jim Disque, shall continue to lease the Property from Purchaser and shall execute a Lease Agreement with the provisions pertaining to his obligations as Tenant. This Contract is contingent upon the execution of the Lease Agreement.

10. Binding Agreement

This Agreement shall be binding upon Seller and Seller's heirs, executors, administrators, successors and, this Agreement shall inure to the benefit of Purchaser, its successors and assigns.

11. 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.

12. 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 whatever, either express or implied, other than herein set forth, shall be binding upon either party.

13. 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.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties hereto, namely the City of Mason, Ohio (Purchaser) and **Daniel M. Costello and Roseann Moss Costello** (Seller) have executed this Agreement on the date(s) indicated immediately below their respective signatures.

WITNESS:

1. _____
_____ *Daniel M. Costello, Seller*
By: _____
_____ *Roseann Moss Costello, Seller*
Date: _____
2. _____
_____ *Print Name of Witness*

WITNESS: **CITY OF MASON, OHIO, PURCHASER**

1. _____
_____ *Eric Hansen, City Manager*
By: _____
Date: _____
2. _____
_____ *Print Name of Witness*

Approved as to form: _____ Date: _____
Legal Counsel for the City of Mason, Ohio 333435.1