

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE ACQUISITION OF PROPERTY AS PART OF THE WESTERN ROW ROAD IMPROVEMENT PROJECT IN AN AMOUNT NOT TO EXCEED \$ 24,800.00, AND DECLARING AN EMERGENCY (VILLAGE LAKES HOA)

WHEREAS, the City of Mason and Village Lakes Homeowners Association have reached an agreement as to the purchase of certain property located along Western Row Road.

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

Section 1. That the City Manager is hereby authorized to enter into a Contract to Purchase with Village Lakes Homeowners Association for the acquisition of certain property located along Western Row Road, Mason, Ohio 45040, which property is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference, and that the City Manager is authorized to execute any and all documents necessary to complete the acquisition.

Section 2. 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 that the overall purpose of this Contract.

Section 3. That the Finance Director is hereby authorized to pay Mason Fields Homeowners Association an amount not to exceed \$24, 800.00 for said real property.

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to acquire the property at the earliest possible date.

Passed this 14th day of January 2008.

Attest:

Clerk of Council


Mayor

B

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

**PARCEL(S): 16-29-398-009, 011
WARREN COUNTY, OHIO
CITY OF MASON, OHIO**

This Agreement is being entered into by and between the City of Mason, Ohio, an Ohio municipal corporation, (hereinafter "Purchaser") and Village Lakes Community Association, an Ohio nonprofit corporation whose address is _____, Mason, Ohio 45040 (hereinafter "Seller"); "Seller" includes all of the foregoing named persons or entities, its successors or assigns in the hereinafter described real property].

See attached Exhibit "A".

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

I. 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 **Twenty four Thousand Eight Hundred Dollars (\$24,800.00) for the right of way acquisition, permanent, and temporary easements**. There shall be no additional amount of compensation due Seller for: (a) the real property to be conveyed, including fixtures, if any; (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 dedication plat or 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 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. Seller shall insure that the sale and transfer are done in accordance with the requirements of any bylaws of the Village Lakes Community Association, the Declaration of Covenants, Conditions, & Restrictions & Reservation of Easements recorded in OR 898, page 937 of the Warren County, Ohio records. Seller shall provide Purchaser evidence of compliance with the terms of these governing documents in the form of a proper resolution at Closing.

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 shall be surrendered by Seller to Purchaser not later than _____.

10. Binding Agreement

This Agreement shall be binding upon Seller and Seller's successors and assigns, 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.

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IN WITNESS WHEREOF, the parties hereto, namely the **City of Mason, Ohio** (Purchaser) and **Village Lakes Community Association (Seller)** have executed this Agreement on the date(s) indicated immediately below their respective signatures.

WITNESS:

1. Kianna Subramanian
2. Michael Buford

Village Lakes Community Association, Seller
By: John P. Kuhre Sr. PRESIDENT

Print name and officer position
By: Paul Mizewicki TREASURER

Print name and officer position
John P. Kuhre Sr.
Date: 2/19/2008

WITNESS:

1. _____
2. _____

By: _____
Eric Hansen, City Manager

Date: _____

CITY OF MASON, OHIO, PURCHASER

Date: _____

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

338157.1

IN WITNESS WHEREOF, the parties hereto, namely the City of Mason, Ohio (Purchaser) and Village Lakes Community Association (Seller) have executed this Agreement on the date(s) indicated immediately below their respective signatures.

WITNESS:

1. [Signature] Village Lakes Community Association, Seller

2. [Signature] Print name and officer position

By: [Signature] Print name and officer position
Date: 2/28/08

WITNESS:

CITY OF MASON, OHIO, PURCHASER

1. [Signature]
2. [Signature] Eric Hansen, City Manager
Date: 2/28/08

Wood & Lamping
[Signature] Date: 2-28-08

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

338157.1

LANDSCAPING ALLOWANCE AGREEMENT

This Landscaping Allowance Agreement (the "Agreement") is made and entered into on the 11 day of Feb, 2008, by and between the City of Mason ("Mason") and Village Lakes Homeowners Association ("Owner").

WHEREAS, Mason is currently preparing for the Western Row Road Improvement Project; and

WHEREAS, as part of this project, certain portions of right of way and temporary easements are being acquired by Mason; and

WHEREAS, Mason is acquiring such right of way and easements from Owner; and

WHEREAS, in addition to any compensation being paid to Owner, Mason has agreed to pay Owner a Landscaping Allowance in order for Owner to install landscaping of its choice to further buffer and screen the remaining property; and

WHEREAS, the parties desire to memorialize their respective rights, obligations, and duties in a written Agreement.

NOW, THEREFORE, in consideration of the above and the mutual promises and covenants contained herein, the parties agree as follows:

1. Mason hereby agrees to pay Owner Fourteen Thousand Two Hundred Fifty Dollars (\$14,250.00) as full and final payment and satisfaction for additional landscaping.
2. Owner agrees and acknowledges that the purchase and installation of any landscaping shall be the sole responsibility of Owner.
3. The parties agree and acknowledge that Mason will compensate Owner in the amount of Twenty Four Thousand Eight Hundred Dollars (\$24,800.00) as payment for the necessary right of way and easements, but that the terms of such acquisition shall be governed by a separate purchase contract.
4. Mason and Owner further agree and acknowledge that each party is authorized to enter into this Agreement.
5. This agreement shall be in effect from the date of execution first written above.
6. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes any prior discussions or agreements between them. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement shall be effective unless in writing signed by the party to be charged.
7. This Agreement shall be construed under the laws of the State of Ohio.

8. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF MASON

VILLAGE LAKES
HOMEOWNERS ASSOCIATION

By: _____
Eric Hansen, City Manager

By: John P. Kuhre

Name: John P. Kuhre Sr.

Its: PRESIDENT.

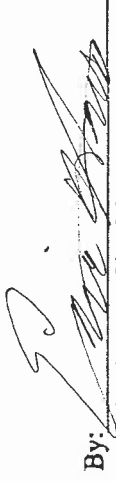
Approved as to form:

Law Director


8. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

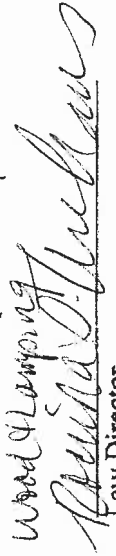
CITY OF MASON

By: 
Eric Hansen, City Manager

**VILLAGE LAKES
HOMEOWNERS ASSOCIATION**

By: 
Name: Tom Peterson
Its: President

Approved as to form:


Amanda D. Andrews
Law Director