

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2016- 13

A RESOLUTION APPROVING AND AUTHORIZING THE PURCHASE OF A
PARCEL ALONG MASON-MORROW MILLGROVE ROAD (ODOT PARCEL# 6-
WD,T) NECESSARY FOR THE CONSTRUCTION OF THE STATE ROUTE
48/MASON-MORROW-MILLGROVE ROAD PROJECT, AND DECLARING AN
EMERGENCY

WHEREAS, the purchase of a parcel (Parcel# 6-WD,T) along-Morrow-Millgrove Road, South Lebanon, OH 45065 ("the Property") is necessary for the construction of the State Route 48/Mason-Morrow-Millgrove Road Intersection Improvements Project; and,

WHEREAS, the Village desires to purchase from Oeder & Sons Garage, Incorporated. the Property pursuant to the terms contained in the Contract for Sale and Purchase of Real Property, attached hereto as Exhibit A; and,

WHEREAS, immediate action is required for the Village to purchase the Property to complete the State Route 48/Mason-Morrow-Millgrove Road Intersection Improvements Project in a timely manner.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor to execute the Contract for Sale and Purchase of Real Property, attached hereto as Exhibit A, and any other documents to consummate the purchase of the Property.

Section 2. Approving the consideration in the amount of \$27,331.00 as recited in the attached Exhibit A.

Section 3. Authorizing the Fiscal Officer to pay the applicable costs to consummate the purchase of the Property.

Section 4. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 5. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 6. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare.

Section 7. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were passed in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 19th day of May, 2016.

Attest: Sharon Louallen James D. Smith
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

Rules Suspended: <u>5-19-16</u> (if applicable)	Effective Date -
Vote - <u>5</u> Yeas <u>1</u> - Abstain ___ Nays	
First Reading - / /2016	Effective Date - / /2016
Second Reading - / /2016	
Third Reading - / /2016	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 5/19/16

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITHOUT BUILDING(S)PARCEL(S): 6-WD,T
WAR 48 - 8.80

This Agreement is by and between the Village of South Lebanon, Ohio ["Purchaser"] and Oeder & Sons Garage, Incorporated, an Ohio Corporation ["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 \$27,331.00, 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 express 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 Village of South Lebanon, Ohio and Oeder & Sons Garage, Incorporated have executed this Agreement on the date(s) indicated immediately below their respective signatures.

OEDER & SONS GARAGE, INCORPORATED

David Oeder V.P.

By: _____

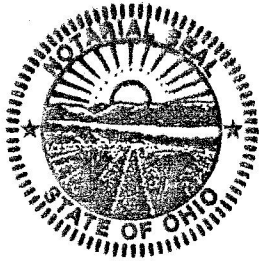
Date: 5-6-16

STATE OF OHIO, COUNTY OF Warren ss:

BE IT REMEMBERED, that on the 6th day of May, 20 16, before me the subscriber, a Notary Public in and for said state and county, personally came the above named David Oeder, who acknowledged being the Vice President and duly authorized agent of Oeder & Sons Garage, Incorporated, and who acknowledged 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.



JANE E ROBERTS
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 1-29-21

Jane E. Roberts

NOTARY PUBLIC
My Commission expires: 1-29-21

Village of South Lebanon, Ohio

James D. Smith
James D. Smith
Mayor

Date: 5-19-16

[Signature]

Approved By: *Paul R. Brandon*
village solicitor

STATE OF OHIO, COUNTY OF WARREN ss:

BE IT REMEMBERED, that on the 19th day of May, 2016, before me the subscriber, a Notary Public in and for said state and county, personally came the above named James D. Smith the Mayor and duly authorized representative of Village of South Lebanon, Ohio, who acknowledged the signing of the foregoing instrument to be the voluntary act and deed of Village of South Lebanon, Ohio.

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

Sharon A. Douallen
Sharon A. Douallen
Notary Public, State of Ohio
My Commission Expires 5-17-19
Recorded in Warren County

NOTARY PUBLIC
My Commission expires: _____

EXHIBIT A

LPA RX 851 WD

Page 1 of 3

Rev. 06/09

Ver. Date 05/19/2015

PID 94494

**PARCEL 6-WD
WAR-48-8.80
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
THE VILLAGE OF SOUTH LEBANON, WARREN 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]

Situate in Section 1, Town 4, Range 3, in The Village of South Lebanon, Union Township, Warren County, State of Ohio, and being part of a 69.986 acre parcel of land as conveyed to OEDER & SONS GARAGE, INCORPORATED, AN OHIO CORPORATION by instrument as recorded in OR 434, P 613 and as shown on survey record SR 21 P 24 and SR 133 P 95 of the Official Records of said county and being more particularly bounded and described, with Stations and offsets referenced to the proposed centerline of Mason Morrow Millgrove Road (C.R. 38) as shown on the "WAR-48-8.80 Centerline Plat" as recorded in Plat Book 89 Pages 74 to 77, as follows:

Beginning for reference at a rail road spike found at the intersection of the existing centerlines of Mason Morrow Millgrove Road (C.R. 38) and Turtle Creek Road (C.R. 72), 2.22 feet right of Station 42+52.97, said railroad spike being the TRUE POINT OF BEGINNING for Parcel 6-WD;

Thence with the existing centerline of Turtle Creek Road (C.R. 72) and the west line of said 69.986 acre parcel North 22° 43' 59" West 41.37 feet to a point 38.46 feet left of Station 42+45.41;

Thence along a new north right of way line North 71° 06' 11" East passing the existing east right of way easement line of Turtle Creek Road at 30.07 feet for a total distance of 748.15 feet to an iron pin set in the west limited access right of way for State Route 48 and the east line of said 69.986 acre parcel 58.51 feet left of Station 49+95.70;

EXHIBIT A

Page 2 of 3

Rev. 06/09

LPA RX 851 WD

PARCEL 6-WD cont'd

Thence with the east line of said 69.986 acre parcel and said west limited access right of way along the arc of a curve to the left 53.18 feet, said arc having a radius of 2210.48 feet, a central angle of $01^{\circ} 22' 43''$ and a chord bearing South $11^{\circ} 11' 39''$ West 53.18 feet to a railroad spike found at the southeast corner of said 69.986 acre parcel and the intersection of said west limited access right of way and the existing centerline of Mason Morrow Millgrove Road 11.07 feet left of Station 49+71.67;

Thence with the existing centerline of Mason Morrow Millgrove Road, the south line of said 69.986 acre parcel, the north line of a 1.004 acre parcel of land as conveyed to TLC PROPERTIES, INC. A LOUISIANA CORPORATION by instrument as recorded in OR 4714, P 547, the north line of a 1.327 acre parcel of land as conveyed to ROCK CASTLE HOLDINGS LLC by instrument as recorded in OR 5933, P 547, and the north line of a 1.213 acre parcel of land as conveyed to JAMES F. COOPER AND RUTH M. COOPER by instrument as recorded in OR 277, P 502, South $71^{\circ} 29' 11''$ West 440.83 feet to a PK nail set at the northwest corner of said 1.213 acre parcel, being also the northeast corner of a 2.454 acre parcel of land as conveyed to JAMES F. COOPER AND RUTH M. COOPER by instrument as recorded in OR 345, P 58, 10.76 feet left of Station 45+31.26;

Thence continuing with said centerline and the south line of said 69.986 acre parcel, and with the north line of said 2.454 acre parcel, South $71^{\circ} 28' 18''$ West 277.90 feet to the TRUE POINT OF BEGINNING, containing 0.7350 acres (32018 SF), more or less, subject to all legal easements and restrictions of record.

Said parcel being shown on Survey Record 142 page 23, Warren County Engineer's Office.

This description is based upon a field survey performed by G. J. Berding Surveying, Inc. under the direction of Gerard J. Berding, Registered Surveyor Number 6880 in 2007 with bearings based on Ohio State Plane Coordinates, South Zone, NAD83 (1996), by GPS and conventional surveying.

This description was prepared by LJB Inc. under the direction of Andrew J. Shahan, Registered Surveyor Number 8378.

EXHIBIT A

LPA RX 851 WD

PARCEL 6-WD cont'd

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" Iron pin to be set by the contractor's registered surveyor. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 8378 - LJB INC" or "ODOT - PS 8378 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in OR 434, P 613, Warren County Recorder's Office.

0.7350 acres of the above described area is contained within Warren County Auditor's Permanent Parcel Number (SIDWELL) 12-02-351-004, of which the present road right of way occupies 0.5482 acres, more or less.

Prepared by
LJB Inc.



By: Andrew J. Shahhan
Andrew J. Shahhan, Ohio PS No. 8378

5/20/2015
Date

EXHIBIT A

Page 1 of 3

LPA RX 887 T

Rev. 07/09

Ver. Date 05/28/2015

PID 94494

**PARCEL 6-T
WAR-48-8.80
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
PERFORM GRADING AND RELOCATE DRIVEWAY
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
THE VILLAGE OF SOUTH LEBANON, WARREN COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Section 1, Town 4, Range 3, in The Village of South Lebanon, Union Township, Warren County, State of Ohio, and being part of a 69.986 acre parcel of land as conveyed to OEDER & SONS GARAGE, INCORPORATED, AN OHIO CORPORATION by instrument as recorded in OR 434, P 613 and as shown on survey record SR 21 P 24 and SR 133 P 95 of the Official Records of said county and being more particularly bounded and described, with Stations and offsets referenced to the proposed centerline of Mason Morrow Millgrove Road (C.R. 38) as shown on the "WAR-48-8.80 Centerline Plat" as recorded in Plat Book 89 Pages 74 to 77, as follows:

Beginning for reference at a rail road spike found at the intersection of the existing centerlines of Mason Morrow Millgrove Road (C.R. 38) and Turtle Creek Road (C.R. 72), 2.22 feet right of Station 42+52.97;

Thence with the existing centerline of Turtle Creek Road (C.R. 72) and the west line of said 69.986 acre parcel North 22° 43' 59" West 41.37 feet to a point 38.46 feet left of Station 42+45.41;

Thence North 71° 06' 11" East 30.07 feet to a point of intersection of the north right of way easement line of Mason Morrow Millgrove Road with the east right of way easement line of Turtle Creek Road 41.78 feet left of Station 42+75.83, said point being the TRUE POINT OF BEGINNING;

EXHIBIT A

Page 2 of 3

Rev. 07/09

LPA RX 887 T

PARCEL 6-T

Thence along a new temporary easement line the following three courses:

1. North 68° 10' 00" East 318.61 feet to a point 68.78 feet left of Station 46+00.49;
2. North 70° 50' 28" East 210.52 feet to a point 65.92 feet left of Station 48+07.97;
3. North 76° 19' 03" East 190.16 feet to an iron pin set in the west limited access right of way line of State Route 48, the east line of said 69.986 acre parcel and the north right of way line of Mason Morrow Millgrove Road 58.51 feet left of Station 49+95.70;

Thence the said north right of way line South 71° 06' 11" West 718.08 feet to the TRUE POINT OF BEGINNING, containing 0.1784 acres, (7770 SF), more or less, subject to all legal easements and restrictions of record.

This description is based upon a field survey performed by G. J. Berding Surveying, Inc. under the direction of Gerard J. Berding, Registered Surveyor Number 6880 in 2007 with bearings based on Ohio State Plane Coordinates, South Zone, NAD83 (1996), by GPS and conventional surveying.

This description was prepared by LJB Inc. under the direction of Andrew J. Shahan, Registered Surveyor Number 8378.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" Iron pin to be set by the contractor's registered surveyor. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 8378 - LJB INC" or "ODOT - PS 8378 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

EXHIBIT A

Page 3 of 3

LPA RX 887 T

Rev. 07/09

PARCEL 6-T cont.

Grantor claims title through instrument of record in OR 434, P 613, Warren County Recorder's Office.

Prepared by
LJB Inc.



By: Andrew J. Shaħan
Andrew J. Shaħan, Ohio PS No. 8378

5/28/2015
Date