

ORDINANCE NO. 2013-09-085

**AN ORDINANCE TO APPROVE THE PURCHASE OF A CERTAIN RIGHT-OF-WAY  
NORTH OF THE CURRENT NORTHERLY TERMINUS OF LINCOLN AVENUE  
AS PART OF THE OLYMPIAN DRIVE CONSTRUCTION PROJECT**

WHEREAS, the City of Urbana ("Urbana") is an Illinois Municipal Corporation and body politic pursuant to the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

WHEREAS, Urbana has joined with one or more other local governments in their endeavor to expand Olympian Drive; and

WHEREAS, as part of the Olympian Drive expansion project, Urbana has engaged the services of an engineer to provide preliminary engineering and design services to build a one mile stretch of Lincoln Avenue from its current north terminus at Saline Court such that Lincoln Avenue will extend to and connect up with Olympian Drive as part of the Olympian Drive expansion project (hereafter, "Lincoln Avenue Extension"); and

WHEREAS, as part of the Lincoln Avenue Extension and the Olympian Drive expansion project, Urbana has been engaged in negotiations with one or more land owners in order to acquire necessary rights-of-way such that the Lincoln Avenue Extension can be constructed; and

WHEREAS, Urbana has been engaged in negotiations with MACC of Illinois, Inc. (hereinafter, "MACC"), the owner of the property on which the right-of-way sought to be purchased is located, in order to acquire the necessary right-of-way; and

WHEREAS, the right-of-way sought to be acquired by Urbana from MACC is identified on the aerial photograph appended hereto and made a part hereof (hereinafter, the "Right-of-Way"); and

WHEREAS, the Urbana City Council deems it necessary and appropriate to purchase the Right-of-Way in order to undertake the Lincoln Avenue Extension; and

WHEREAS, MACC and Urbana have reached tentative terms of agreement concerning MACC's sale to Urbana and Urbana's purchase from MACC of the Right-of-Way; and

WHEREAS, the tentative terms of agreement between MACC and Urbana are contained in an Agreement for Sale of Real Estate which is appended hereto and made a part hereof; and

WHEREAS, the Urbana City Council believes that the tentative terms of agreement between MACC and Urbana in order for Urbana to purchase from MACC and for MACC to sell to Urbana the Right-of-Way are fair and reasonable.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The City Council of the City of Urbana, Illinois hereby approves the terms of the Agreement for Sale of Real Estate in substantially the form appended hereto and made a part hereof.

Section 2. The Mayor of the City of Urbana, Illinois, shall be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois an Agreement for Sale of Real Estate in substantially the form appended hereto and made a part hereof.

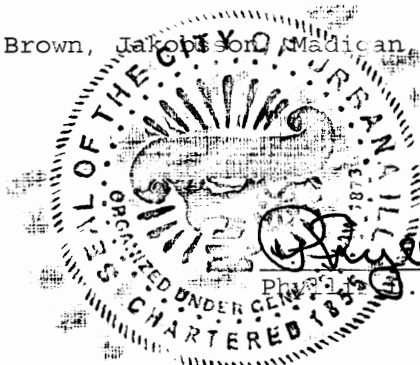
Section 3. The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver to the City Clerk of the city of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of this Ordinance.

PASSED by the City Council this 16th day of September,  
2013 .

AYES: Ammons, Brown, Jakobson, Madigan, Marlin, Roberts, Smyth

NAYS:

ABSTAINS:



Shirley D. Clark  
Shirley D. Clark, City Clerk

APPROVED by the Mayor this 20th day of September,  
2013 .

Laurel Lunt Prussing  
Laurel Lunt Prussing, Mayor



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Tx:4033758

**2013R23389**

REC ON: 09/26/2013 08:18:00 AM  
CHAMPAIGN COUNTY

**BARBARA A. FRASCA, RECORDER**

REC FEE: 28.00

PAGES 7

PLAT ACT: OPLAT PAGE:

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## Recording Cover Sheet

Agreement for Sale of Real Estate  
Urbana, IL

Between:  
MACC of ILL., Inc.  
and  
City of Urbana, IL

Prepared by:  
City of Urbana  
400 South Vine Street  
Urbana, Illinois 61801

Return To:  
City of Urbana Public Works Dept.  
Peggy Staske  
706 Glover Avenue  
Urbana, IL 61802

AGREEMENT FOR SALE OF REAL ESTATE

This Agreement for Sale of Real Estate ("Agreement") is entered into this 18<sup>TH</sup> Day of SEPTEMBER, 2013 by and between MACC of ILL., Inc. ("Seller"), a corporation organized and operating in the State of Illinois and the City of Urbana ("City," a municipality located in the State of Illinois.

WHEREAS, Seller owns certain real estate as depicted on Exhibit A appended hereto and labeled "ROW" and made a part hereof ("Subject Parcel");

WHEREAS, the City seeks to purchase the Subject Parcel in connection with the extension of Lincoln Avenue; and

WHEREAS, the parties to this Agreement seek to consummate and memorialize their respective sale and purchase of the Subject Parcel in this Agreement.

NOW for good, valuable and mutual consideration which each party hereto acknowledges as having in hand received and for the exchange of the terms, conditions, and covenants contained herein, the parties hereto agree as follows:

**1. Sale and Purchase of Subject Parcel:** Seller agrees to sell and City agrees to purchase the Subject Parcel depicted in the attached Exhibit A ("Subject Parcel").

**2. Purchase Price:** City agrees to pay to Seller, at closing, the sum of \$210,000, minus the proration and credits allowed by the parties in this Agreement for the Subject Parcel which shall be conveyed to City at closing by the legal description set forth in the Surveyor's plat of Right-Of-Way as approved by the Director of Public Works of the City. Until closing, interest on the amount of the purchase price at the rate of two percent (2 %) shall commence on the first day of the month following the date of the **Agreement**. Interest payments shall be made annually or on a pro rata basis if (because of the closing date), less than a full year interest is due. Payments shall be made to Seller as directed by the Seller in writing.

**3. Environmental Audit and Disclosure:**

(a) The City's agent or agents shall be granted access to the Subject Parcel for environmental inspections at all reasonable times. City shall also be entitled to conduct a Phase II environmental audit of the Subject Parcel, at its own option and expense.

(b) The Seller shall disclose to the City any and all information known to the Seller, whether oral or written, of any environmental condition or contamination which may affect the marketability or usability of the Subject Parcel. Such disclosure shall include, but not be limited to, any notice or inquiry made to or received from, the Illinois Environmental Protection Agency, the United States Environmental Protection Agency, the State Fire Marshal's Office, the Illinois Department of Public Health, or any other local, state or federal agency in regard to any hazardous condition, industrial process, or use of chemicals on or about the Subject Parcel or any business operating thereon. The Seller shall provide an affirmative declaration to the City that to the best of its knowledge and belief, the Subject Parcel is free of pollution and/or contamination and/or any environmental condition that might affect the marketability or usability of the Subject Parcel for commercial or residential purposes.

(c) If the City becomes aware of the existence of any environmental concern or violation of any environmental law or at any time prior to closing which affects either the value of the Subject Parcel or its use for the City's Public Works Department, City shall notify Seller in writing of such concern or violation. If the parties do not come to an agreement regarding an adjustment of the purchase price based upon the cost of environmental remediation and associated costs within thirty (30) days of written notice to the Seller, and the City shall have the right to terminate the agreement by written notice to the Seller.

**4. Possession:** Seller shall give possession of the premises to City at the time of closing of this transaction which shall be on or before December 31, 2016, at the Urbana City Building, 400 S. Vine Street, Urbana, Illinois, 61801, or such other place as the parties may agree.

**5. Deed of Conveyance:** The City's attorney shall promptly advise Seller's attorney of the desired form of deed. As soon as practicable thereafter, Seller's attorney shall prepare and Seller shall execute a recordable Warranty Deed sufficient to convey the Subject Parcel to City, in fee simple absolute, subject only to exceptions permitted herein. The deed shall then be held by the Seller's attorney, as escrow agent for both parties. The deed shall be delivered to City at the closing of this transaction upon City's compliance with the terms of this Agreement.

**6. Encumbrances:** Seller warrants that no contracts or Agreements for the furnishing of any labor or material to the land or the improvements thereon, and no security agreements or leases in respect to any goods or chattels that have been or are to become attached to the Subject Parcel or any improvements thereon as fixtures, will at the time of closing be outstanding and not

fully performed and satisfied, and further warrant that there are not and will not at the time of the closing be any unrecorded leases or contracts or Agreements relating to the Subject Parcel.

**7. Taxes, Assessments and Notices:** Real estate taxes apportioned through the date of possession shall be Seller's expense. The proration thereof shall be calculated upon the basis of the most current tax information, including confirmed multipliers. Transfer tax and all special assessments which are a lien upon the Subject Parcel as of the date of this Agreement shall be Seller's expense. All such taxes and special assessments shall constitute a credit to City against the purchase price, and shall release Seller from any further liability to City in connection therewith.

**8. Evidence of Title:** City shall be responsible for ordering a Commitment for Title Insurance issued by a title insurance company doing business in the county where the Subject Parcel is located, committing a company to issue a policy in the usual form insurance title to the Subject Parcel in City's name for the amount of the purchase price. City shall be responsible for payment of the owner's (Seller's) premium and Seller's search charges.

Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record, which do not underlie the improvements; covenants and restrictions of record which do not restrict reasonable use of the Subject Parcel; existing mortgages to be paid by Seller at closing.

If title evidence discloses exceptions other than those permitted, City shall give written notice of such exceptions to Seller within a reasonable time. Seller shall have a reasonable time to have such title exceptions removed, or, any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Seller is unable to cure such exception, then City shall have the option to terminate this Agreement.

**9. Default:**

(a) If City fails to make any payment or to perform any obligation imposed upon them by this Agreement, Seller may serve written notice of default upon City, and if such default is not corrected within ten (10) days thereafter, City is deemed in default and Seller may take one or more of the following actions: re-sell the Subject Parcel to another party; maintain a claim for monetary damages for breach of Agreement; maintain a specific performance action against City; and maintain any other different remedy allowed by law.

(b) In the event of the failure of Seller to perform the obligation imposed upon them by this Agreement, City may serve written notice of default upon Seller and if such default is not corrected within ten (10) days thereafter, Seller is deemed in default and City may take one or more of the following actions: maintain a claim for monetary damages for breach of Agreement; maintain a specific performance action against Seller; and maintain any other or different remedy allowed by law.

**10. Notices:**

All notices to the City shall be addressed as follows:

Mayor  
City of Urbana  
400 South Vine Street  
Urbana, Illinois 61801

All notices to Seller shall be addressed as follows:

Hugh Gallivan  
President  
MACC of Illinois, Inc.  
P. O. Box 848  
Urbana, Illinois 61803

All notices provided for herein shall be deemed to have been duly given, if and when deposited in the U.S. Mail, postage prepaid and addressed to the respective addressee at the above listed address, or when delivered personally to such party, as the case may be.

**11. Recording of Agreement:** The City may and is hereby authorized to file in the appropriate real estate records, either a copy of this Agreement or an appropriate memorandum of the existence of this Agreement, identifying the Subject Parcel, the Seller, the City and a brief summary of this Agreement.

**12. Execution and Counterparts:** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. By executing this Agreement, the persons executing it as Seller covenant that they are the record owners of the Subject Parcel, and all of the record owners thereof, and have full power and authority to so execute and deliver this Agreement.

**13. Governing Law:** This Agreement shall be governed by the laws of the State of Illinois and any action to construe, interpret and/or enforce this Agreement shall be initiated and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

**14. Parties' Sole Agreement:** This Agreement represents the parties' sole agreement regarding the transaction contemplated herein and any other prior agreement, whether oral or in writing shall be deemed null, void and unenforceable.

This Agreement is made as of the date of the last to execute of the parties hereto, which date then is the "Effective Date".

**Seller:**

MACC of Illinois, Inc  
Urbana, Illinois

By: \_\_\_\_\_  
Hugh W. Gallivan, President

Dated: *Hugh W. Gallivan*  
8/20/13

**City:**

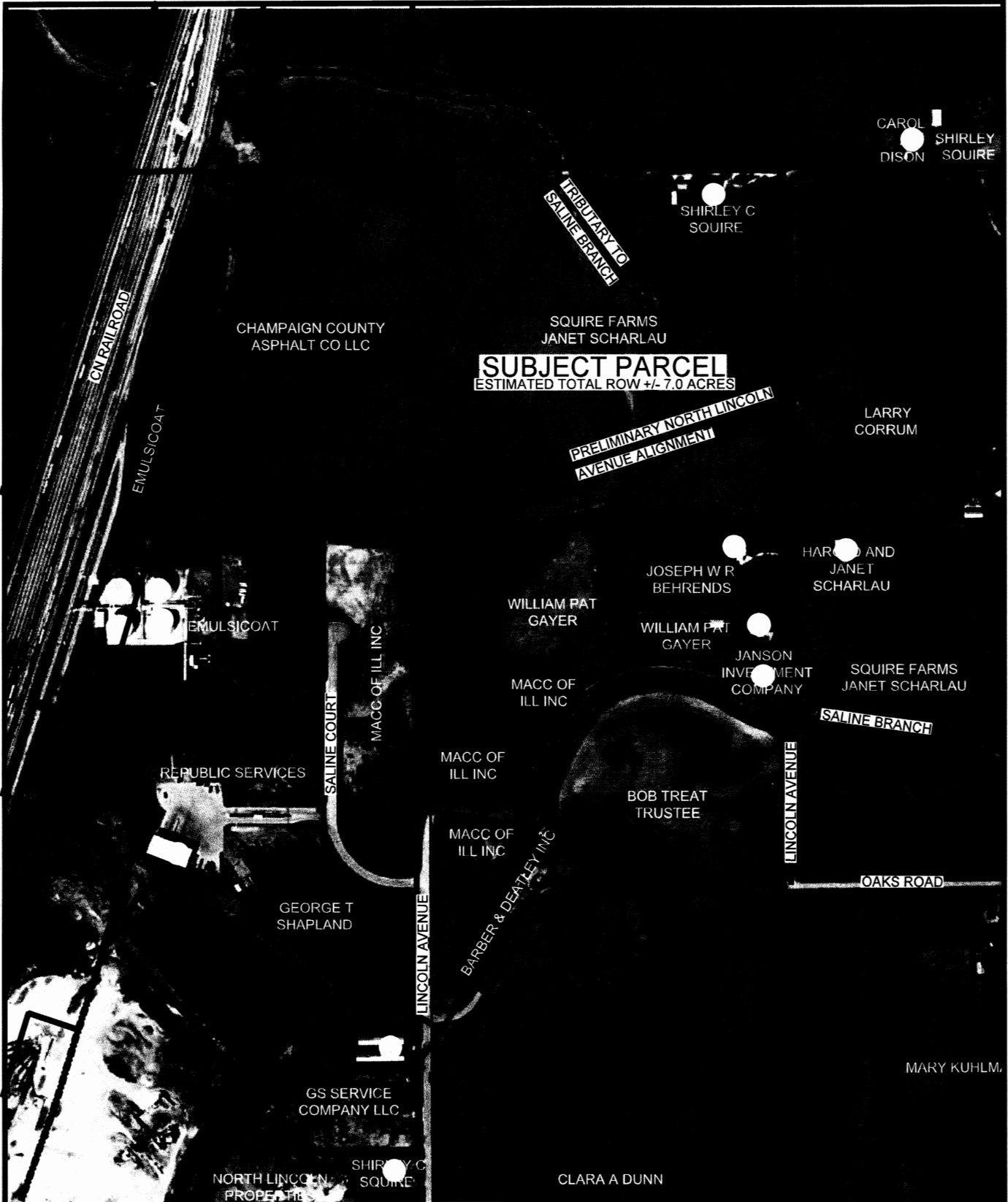
City of Urbana,  
Champaign County, Illinois

By: *Laurel Lunt Prussing*  
Laurel Lunt Prussing, Mayor

Dated: 9/18/13



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**LEGEND**

- ESTIMATED PROPERTY LINE
- ESTIMATED EXISTING ROW
- ESTIMATED MUNICIPAL BOUNDARY
- ESTIMATED PROPOSED ROW

**EXHIBIT A  
LINCOLN AVENUE RIGHT-OF-WAY**

URBANA, IL