

CITY COUNCIL ACTION REPORT

March 13, 2009

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Steven J. Vandette, City Engineer
Patricia A. Petitto, Real Estate Consultant, Greenstar & Associates, LLC *PAF*

SUBJECT: Request for Approval of Purchase Agreement and Acceptance of Permanent Public Utility Easement & Grading and Temporary Construction Permit
Rochester Road Improvements, Torpey to Barclay - Project No. 99.203.5 &
Wattles Road Improvements, Bristol to Worthington – Project No. 01.106.5
Parcel 49 – Sidwell #88-20-22-226-074 – CNL Net Lease Funding 2003

Background:

- In connection with the proposed improvements to Rochester Road, from Torpey to Barclay, the Real Estate & Development Department received a Purchase Agreement, Permanent Public Utility Easement, and Grading and Temporary Construction Permit from CNL Net Lease Funding 2003. This parcel is located at the southwest corner of Rochester Road and Wattles Road in the northeast ¼ of Section 22.

Financial Considerations:

- An appraisal was prepared by Raymond V. Bologna, CRE, MAI, State Certified Appraiser and reviewed by Kimberly Harper, Deputy Assessor and State Licensed Appraiser. Staff believes that \$79,560, plus closing costs for the acquisition of the property described in the purchase agreement; \$39,500 for the Permanent Public Utility Easement and \$1,100 for the Grading and Temporary Construction Permit are justifiable amounts for this acquisition.
- Eighty percent of these costs will be reimbursed from Federal funds. Funds for the City of Troy's share are included in the 2008-09 Major Road fund, account numbers 401479.7989.992035 and 401479.7989.011065.

Legal Considerations:

- The format and content of the purchase agreement, easement and permit are consistent with documents previously accepted by City Council.

Policy Considerations:

- The purpose of this project is to relieve congestion, improve safety and improve the flow of traffic. (Outcome Statements I, II and III)

Options:

- City Management recommends that City Council approve the attached purchase agreement and accept the attached Permanent Public Utility Easement and Regrading and Temporary Construction Permit from CNL Net Lease Funding 2003 so that the City can proceed with the acquisition of this right-of-way.

PAP\G\MEMOS TO MAYOR & CC\CNL Purchase Agreement, PUE & RGTCP

CITY OF TROY
AGREEMENT TO PURCHASE REALTY
FOR PUBLIC PURPOSES

The CITY OF TROY (the "Buyer"), agrees to purchase from CNL Net Lease Funding 2003, a Delaware Limited Liability Company (the "Sellers"), the following described premises (the "Property"):

SEE ATTACHED EXHIBIT "A"

for a public project within the City of Troy and to pay the sum of Seventy-Nine Thousand, Five Hundred, Sixty and no/100 Dollars (\$79,560) under the following terms and conditions:

1. Seller shall pay all taxes, prorated to the date of closing, including all special assessments, now due or which may become a lien on the property prior to the conveyance.

2. Seller shall deliver the Covenant Deed upon payment of the purchase money by check drawn upon the account of the City of Troy.

3. Buyer shall, at its own expense, provide title insurance information, and the Seller shall disclose any known encumbrances against the property. Buyer shall pay all costs associated with the completion of this transaction.

4. This Agreement is binding upon the parties and closing shall occur within ninety (90) days of the date that all liens have been released and encumbrances have been extinguished to the satisfaction of the Buyer, unless extended by agreement of the parties in writing. It is further understood and agreed that this period of time is for the preparation and authorization of purchase money.

5. Buyer shall notify Seller immediately of any disapproved matters. If Buyer gives Seller notice of any disapproved matter, Seller may eliminate the disapproved matters, it being understood and agreed, however, that Seller shall have no duty or obligation whatsoever to eliminate against any such disapproved matter. If the Seller fails to remove the disapproved matters in marketable title to Buyer's approval, the Buyer shall have the option of proceeding under the terms of this Agreement to take title in a deficient condition or to render the Agreement null and void, and any deposit tendered to the Seller shall be returned immediately to the Buyer upon demand.

6. To the best of the Seller's knowledge, the subject property is free of all Hazardous Substances. Although the City of Troy will not withhold or place in escrow any portion of this sum, the City reserves its rights to bring Federal and/or State and/or local cost recovery actions against any potentially responsible parties, arising out of a release of hazardous substances at the property. For purposes of this Section 6, "Hazardous Substances" means any and all dangerous substances, oils, petroleum and petroleum products, hazardous chemicals and any other materials which may be harmful to human health or the environment and which are or may be regulated or controlled under environmental laws and/or regulations in any of the jurisdictions in which the Property is located.

7. Seller acknowledges that this offer to purchase is subject to final approval by Troy City Council.

8. Additional conditions, if any:

SELLER HEREBY ACKNOWLEDGES THAT NO PROMISES WERE MADE EXCEPT AS CONTAINED IN THIS AGREEMENT.

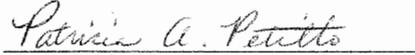
IN WITNESS WHEREOF, the undersigned hereunto affixed their signatures this 10th day of MARCH, 2009.

In presence of:


SCOTT FINLEY

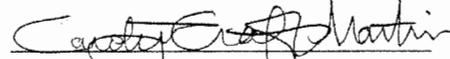

MATTHEW A. ROHRBACH

CITY OF TROY (BUYER)


PATRICIA A. PETITTO

SELLERS:

CNL NET LEASE FUNDING 2003, A
DELAWARE LIMITED LIABILITY
COMPANY



Carolyn Craft Martin
Authorized Signatory

11-20-07
19990476
20-22-226-074
rev. 01-03-08

EXHIBIT 'A'

DESCRIPTION OF RIGHT OF WAY ACQUISITION

Part of Lot 67 and 68 of "Northgate Subdivision" a subdivision of part of the Northeast ¼ of Section 22, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan as recorded in Liber 44 of plats, Page 55, Oakland County Records, described as follows: Beginning at the Northeast corner of said Lot 68; thence N89°37'00"W 15.00 feet to the Point Of Beginning; thence South 32.68 feet; thence N45°04'59"W 46.60 feet; thence S89°37'00"E 33.00 feet to the Point Of Beginning, and the East 15.00 feet of said Lot 67 and the East 15.00 feet of the South 56.84 feet of said Lot 68.

Said right of way contains 2,912 square feet, or 0.067 acres, more or less.

PERMANENT UTILITY EASEMENT

Sidwell #88-20-22-226-074
Parcel #49

CNL Net Lease Funding 2003, LLC, a Delaware Limited Liability Company, Grantors, whose address is: 450 S. Orange Avenue, Ste 1100, Orlando, FL 32801 for and in consideration of the sum of: Thirty-Nine Thousand, Five Hundred and no/100 Dollars (\$39,500) paid by the CITY OF TROY, a Michigan Municipal Corporation, Grantee, whose address is 500 West Big Beaver Road, Troy, Michigan 48084 grants to the Grantee a non-exclusive utility easement, said easement for land situated in the City of Troy, Oakland County, Michigan described as:

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and to enter upon sufficient land adjacent to said improvement(s) for the purpose of the construction, operation, maintenance, repair and/or replacement thereof.

The premises so disturbed by the exercise of any of the foregoing powers shall be reasonably restored to its original condition by the Grantee. The Grantee agrees to reimburse the Grantors all costs related to the relocation of the small "enter" signs to an approved location outside of the easement area, based on the lowest of three bids.

Grantee shall and does hereby agree to indemnify, defend, protect and hold harmless Grantor for, from and against any and all liabilities, claims, losses, costs, damages and expenses, including but not limited to court costs and attorneys' fees, which may be incurred by Grantor as a result of the work conducted by Grantee and Grantee's agents, employees or contractors.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representatives, successors and assigns and the covenants contained herein shall run with the land.

IN WITNESS WHEREOF, the undersigned hereunto affixed her signature(s) this 10th day of March, 2009.

CNL NET LEASE FUNDING 2003, LLC, A
DELAWARE LIMITED LIABILITY COMPANY

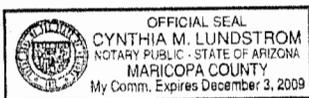
Carolyn Craft Martin (L.S.)

Carolyn Craft Martin (L.S.)

Its: VP

STATE OF ARIZONA)
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 10th day of March, 2009, by Carolyn Craft Martin, of CNL Net Lease Funding 2003, a Delaware Limited Liability Company.



Cynthia M. Lundstrom

Notary Public, Maricopa County, Arizona
Acting in Maricopa County, Arizona
My Commission Expires 12-03-09

Prepared by: Patricia A. Petitto
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Return to: City Clerk
City of Troy
500 W. Big Beaver Road
Troy, MI 48084

PLEASE SIGN IN BLUE INK AND PRINT OR TYPE NAMES IN BLACK INK UNDER SIGNATURES

11-20-07
19990476
20-22-226-074
rev. 01-03-08

EXHIBIT 'A'

DESCRIPTION OF PUBLIC UTILITY EASEMENT

Part of Lot 67, 68 and 69 of "Northgate Subdivision" a subdivision of part of the Northeast ¼ of Section 22, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan as recorded in Liber 44 of plats, Page 55, Oakland County Records, described as follows: Beginning at a point S89°47'19"W 15.00 feet from the Southeast corner of said Lot 67; thence continuing S89°47'19"W 12.00 feet; thence North 193.97 feet; thence S45°04'59"E 16.98 feet; thence South 181.91 feet to the Point Of Beginning, and Beginning at the Northwest corner of said Lot 69; thence S89°37'00"E 272.80 feet; thence S45°04'59"E 14.28 feet; thence N89°37'00"W 282.93 feet; thence North 10.00 feet to the Point Of Beginning.
Said easement contains 5,033 square feet, or 0.116 acres, more or less.

REGRAIDING AND TEMPORARY CONSTRUCTION PERMIT

Sidwell # 88-20-22-226-074
Project # 99.203.5
Parcel #49

CNL Net Lease Funding 2003, LLC, a Delaware Limited Liability Company, Grantor(s), whose address is: 450 S. Orange Avenue, Ste 1100, Orlando, FL 32801, for and in consideration of the sum of One Thousand, One and no/100 Dollars (\$1,100.00) paid by the CITY OF TROY, a Michigan Municipal Corporation, hereinafter called the CITY, whose address is 500 West Big Beaver Road, Troy, Michigan, hereby grants to the CITY, during the construction of and for a total period of eighteen (18) Months for Rochester Road Improvements, Torpey to Barclay, the right to move men, equipment, and materials on and through, and to store equipment, materials, and excavated matter on the following described property, located in the City of Troy, to-wit:

SEE ATTACHED EXHIBIT "A"

IN FURTHER CONSIDERATION, the premises so disturbed by reason of the exercise of any of the foregoing powers, shall be reasonably restored to its original condition by the City.

Grantee agrees that (a) the easement granted herein is non-exclusive and Grantor reserves unto itself and its tenants, licensees, invitees and permittees all rights to the use and occupation of the easement area, (b) while using the rights granted hereunder, Grantee shall in all cases make a good faith effort to minimize the disruption of business conducted on Grantor's premises, but in no event shall Grantee unreasonably interfere with the conduct of such business and (c) Grantee shall not block the points of entry or exit to Grantor's premises except as may be absolutely necessary to the construction of improvements contemplated by the easement and only for such time as such absolute necessity continues; notwithstanding the foregoing, reasonable access to Grantor's premises shall remain open during all typical business hours.

Grantee shall and does hereby agree to indemnify, defend, protect and hold harmless Grantor for, from and against any and all liabilities, claims, losses, costs, damages and expenses, including but not limited to court costs and attorneys' fees, which may be incurred by Grantor as a result of the work conducted by Grantee and Grantee's agents, employees or contractors.

This instrument shall be binding upon and inure to the benefit of the parties hereto, their heirs, representative, successors, and assigns and the covenants contained herein shall run with the land.

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CNL NET LEASE FUNDING 2003, LLC, A
DELAWARE LIMITED LIABILITY COMPANY

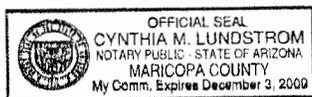
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Notary Public, Maricopa County, Arizona
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Prepared by: Patricia A. Petitto
500 West Big Beaver
Troy, MI 48084

Return to: City Clerk, City of Troy
500 West Big Beaver Road
Troy, Michigan 48084

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DESCRIPTION OF REGRADING AND TEMPORARY CONSTRUCTION PERMIT

The South 8.00 feet of the North 18.00 feet of the West 66.00 feet and the South 12.00 feet of the North 30.00 feet of the West 37.00 feet of Lot 69 of "Northgate Subdivision" a subdivision of part of the Northeast $\frac{1}{4}$ of Section 22, T2N, R11E, Troy Township (now City of Troy), Oakland County, Michigan as recorded in Liber 44 of plats, Page 55, Oakland County Records.

Said easement contains 972 square feet, or 0.022 acres, more or less.

