

## **REAL ESTATE PURCHASE CONTRACT**

This Real Estate Purchase Contract (**"Contract"**), made and entered into to be effective on the date upon which the last party to execute this Contract shall so execute the same by and between **COLUMBUS LIMESTONE, INC.**, an Ohio Corporation, (hereinafter called "OWNER"), and the **CITY OF COLUMBUS, OHIO** (hereinafter called "CITY"), a municipal corporation under the laws of the State of Ohio.

1. **PURCHASE AND SALE.** OWNER agrees to sell and convey, and CITY agrees to purchase and pay for, subject to the terms, conditions and provisions, the following described real property including all appurtenances, easements and rights of way, and all other rights benefiting the real property (collectively the "Premises") described in Exhibit A attached hereto, together with all improvements and fixtures to be constructed by OWNER thereon and for roadway access and utility services, as set forth in Exhibits B and C, attached hereto and made a part hereof and in accordance with construction drawings for such improvements to be provided by the City.

2. **PURCHASE PRICE.** The purchase price for the Premises and Constructed Improvements shall be equal to Three Million Nine Hundred Ninety-Five Thousand Dollars (\$3,995,000.00), payable at the time of delivery of the deed as defined by and described in Paragraph 5 hereof.

OWNER may elect the purchase price to be paid to OWNER'S closing agent by wire transfer to such account as designated in a notice to CITY given at least ten (10) business days before the closing date so as to constitute collected funds on that date. If OWNER does not elect wire transfer of the purchase price, said purchase price shall be paid at closing by a warrant drawn on the treasury of the CITY payable to the OWNER.

3. **CONSTRUCTED IMPROVEMENTS.** OWNER shall convey the Premises with the Constructed Improvements as set forth herein-and as defined in the attached Exhibits B and C (hereinafter called "Constructed Improvements"). The City shall provide construction drawings for the Constructed Improvements not later than **45** days after the effective date of this Contract. CITY agrees to cooperate and assist OWNER with any and all local, state and/or federal permits and approvals necessary to construct the improvements per CITY's specifications, attached hereto in Exhibits B and C. City further agrees to pay for or waive (at its option) all City inspection fees associated with the Constructed Improvements. Stated generally, the improvements to be Constructed Improvements shall include:

(A) OWNER's construction, per the attached specifications of CITY, of the following utilities to serve the Premises;

(i) electric service, including lines, conduits, transformers, meters and other necessary equipment, to the site engineered and sized to support the proposed buildings and uses of the site.

(ii) a water line of not less than eight (8) inches in diameter to serve the proposed buildings.

(iii) a sanitary sewer to serve the proposed buildings, which is estimated to require construction of a sanitary pump station with a force main of approximately 1,200 feet to connect to the Castle Road wet well.

(B) OWNER's improvement of the surface and subsurface, if necessary, of a defined ten (10) contiguous buildable acres to render it suitable for constructing 140,000 square feet of building space, at a location to be determined by CITY.

(C) OWNER's construction, per City specifications in Exhibits B and C, on another thirty-five (35) acres, of graveled or equivalent surfaces for parking, including area lighting and stormwater drainage meeting the requirements of the CITY's Stormwater Drainage Manual as effective on the date of this Contract. The final location/layout to be provided by the CITY prior to the effective date of this Contract.

(D) OWNER's construction of the following roadway to provide access to the Premises: (i) a paved twenty-six (26) foot wide roadway ("New Haul Road") including waterline, curbs, gutters, street lighting as called for in Exhibits B, C and the construction drawings to be provided by the City, which roadway will connect the Premises to OWNER's existing access to State Route 104/Frank Road. The paved access road between Premises and Route 104/Frank Road may be retained by OWNER as a private road, but must be built to CITY specifications as set forth in Exhibits B, C, and the construction drawings to be provided by the City, and OWNER must grant to CITY, at Closing, a perpetual easement for use of the private road by CITY for all vehicular and pedestrian access to the Premises. The "New Haul Road" shall be constructed to meet the specifications of the CITY's Department of Public Service for public streets as effective on the date of this Contract.

(E) OWNER's specific acknowledgment that the above construction will be done to City specifications and direction, as set forth herein (including Exhibits) and at prevailing wage rates set forth in Ohio Revised Code Chapter 4115.

(F) OWNER's elevation, with suitable fill materials, of forty-five (45) acres of the Premises to a height that is a minimum of five (5) feet above the 100 Year Base Flood Elevation in accordance with FEMA, U.S. Army Corps of Engineers and all other federal, state and local regulatory requirements and OWNER shall obtain any and all required permits and other approvals necessary for such activity, including a FEMA Letter of Map Revision-based on Fill (LOMR-F), and provide CITY with documentation of all said permits and approvals.

(G) Owner and the City specifically acknowledge that any changes to the

specifications set forth in Exhibits B and C that result in a cost increase, whether labor or materials, shall be paid by the City. Owner shall notify the City of any and all such deviations or changes as may arise and shall obtain a written consent for such changes prior to performing the work. The City agrees to respond to such notice within twenty-four (24) hours. A cost reconciliation shall be prepared by Owner and payments for any increase in costs resulting from said changes shall be paid at closing.

4. POSSESSION. OWNER shall deliver possession of the premises to CITY at the time of delivery of the deed described in Paragraph 5 hereof, free from all leases, licenses, concessions, tenancies and occupancies.

5. DEED. OWNER shall convey the Premises to CITY by a transferable and recordable limited warranty deed, conveying good and marketable title in fee simple, free and clear from all defects, liens, mortgages, leases, encumbrances, easements, restrictions, reservations, conditions, agreements and encroachments, except Permitted Encumbrances set forth in Paragraph 6. Marketability of title shall be in accordance with the Title Standards adopted by the Ohio State Bar Association.

OWNER shall pay all transfer and conveyance taxes and fees, if any. Any and all easements and other rights benefiting the Premises shall be assigned by OWNER to CITY by appropriate transferable and recordable instruments.

6. EVIDENCE OF TITLE. At least ten (10) business days after the effective date of this Contract, as defined in Paragraph 16 herein, OWNER shall obtain from a title insurance company ("Title Company") acceptable to CITY, a commitment to issue the "Preliminary Commitment", an American Land Title Association Owner's Title Insurance Policy in accordance with the most recent ALTA Form, (the "Title Commitment") in an amount equal to the purchase price, showing good and marketable title to the Premises, and committing to insure fee simple title in CITY free and clear of the standard printed exceptions contained in Schedule B, including exceptions for surveys if the property is surveyed pursuant to Paragraph 16, and free and clear of all liens and encumbrances except as follows (collectively the Permitted Encumbrances) which may be:

- A. Real estate taxes which are a lien but not yet due and payable; and
- B. Utility easements of record provided said easements of record do not materially and adversely impact the intended use of the property by the CITY.

At least ten (10) business days prior to closing, at closing, and at the time of recording of the deed, CITY shall be provided with an endorsement to the Title Commitment updating the Preliminary Commitment to the time of closing and recording of the deed, showing no change in the state of title to the Premises and containing a binding commitment to issue a final policy to CITY consistent with this contract.

OWNER shall pay for the costs of the Title Commitment, including any updates, premiums for final owner's policy title insurance, and search fees or title examination fees and any closing fees charged by the Title Company in connection with the closing.

If the Preliminary Commitment or any other title evidence obtained shows that OWNER does not have good and marketable fee simple title to the Premises and/or shows any exceptions to title other than the Permitted Encumbrances, and if OWNER is unable to correct or remove such exceptions by commercially reasonable efforts within ten (10) days after receiving notice thereof, CITY may within ten (10) days of the expiration of such ten (10) days take any one or more of the following actions: (a) waive such defects or exceptions in writing and proceed with the transaction; (b) by written notice to OWNER, give OWNER an additional thirty days (30) days to correct defects or remove such exceptions to title; or (c) terminate this Contract by giving written notice to OWNER.

If CITY elects ( c) above, or if CITY elects (b) above and OWNER fails to correct such defects or remove such exceptions within such additional thirty (30) day period and such failure is not waived by CITY, then this Contract shall terminate and OWNER and CITY shall thereafter be relieved and discharged from all obligations each to the other hereunder.

7. ACCESS. After the effective date of this Contract until delivery of possession OWNER grants to CITY and its contractors the right and permission upon reasonable notice to OWNER, to enter upon the premises for any purpose related to the relocation of the CITY's impound lot operations, to inspect the Premises, conduct environmental surveys and inspect the construction of the Constructed Improvements for compliance with the specifications set forth in Exhibits B and C. The City hereby agrees to pay for or waive (at its discretion) all City inspection fees associated with the Constructed Improvements.

8. FIXTURES. At closing, OWNER shall execute and deliver to CITY a bill of sale which shall convey to CITY all of the Constructed Improvements.

9. TAXES. At or prior to the closing, OWNER shall pay or cause to be paid all delinquent taxes, including penalties and interest, to the date of delivery of the deed and all assessments, both current and reassessed, which are a lien on the Premises on the date of delivery of the deed, whether or not such assessments are past due, then due or are thereafter to become due. Any assessments which are then known but which will be payable in whole or in part after the date of delivery of the deed, including assessments which are payable in installments, shall be paid in full by OWNER at or prior to the closing.

At or prior to the closing, OWNER shall pay or credit on the purchase price all unpaid real estate taxes for years preceding the date of delivery of the deed, and shall credit to CITY a portion of real estate taxes for the year in which the deed is delivered, prorated through the date of delivery of the deed. The proration of such taxes shall be based upon 365-day year and upon the most recently available tax rate and valuation and the amounts so computed and adjusted shall be final.

10. UTILITY CHARGES. All utility charges and all charges for services of any type furnished to the Premises by all governmental agencies, public utilities and private utilities or others, including all charges for gas, electric, telephone, water, sewer, trash removal and street cleaning, shall be paid by OWNER until possession of the Premises is given to CITY. In the event that the same are not paid prior to OWNER'S vacation of the Premises, OWNER covenants and agrees that (~~I~~ **A**) after the closing it shall cause all such utility charges for services incurred in respect of the Premises on or prior to the date possession of the Premises is given to CITY to be fully paid and satisfied on or prior to the due date for payment thereof and (~~it~~ **B**) it shall indemnify CITY and hold it harmless from liability with respect to any such charges.

11. INSURANCE; DAMAGE OR DESTRUCTION OF PROPERTY. Risk of loss to the Premises and the improvements on the Premises by fire or other casualty shall be borne by OWNER until delivery of possession.

Owner shall between the date of this Contract and the date title closes maintain property in ordinary repair and shall not permit waste.

12. OWNER'S REPRESENTATIONS. OWNER to the best of OWNER's knowledge represents and warrants that:

- A. OWNER has not been notified within the period of two (2) years immediately preceding the date hereof of contemplated improvements to the Premises by public authority, the costs of which are to be assessed as special taxes or assessments against the Premises in the future;
- B. OWNER has received no notice from any governmental entity of any existing condition in any of the buildings or structures located on the Premises which would constitute a violation of the building code or similar statutes and regulations of the City of Columbus, Franklin County and/or the State Of Ohio;
- C. No unpaid-for improvements or materials, respectively, which might form the basis of mechanic's or materialmen's lien in and to the Premises will have been made to the Premises within the ninety (90) days immediately preceding the date of delivery of the deed;
- D. No off-record or undisclosed legal or equitable interests in the Premises owned or claimed by any other person, firm or corporation;
- E. OWNER has never been and is not now under any legal disability;
- F. The Premises will be vacant by date of closing;
- G. As of the date of closing, the only encumbrances upon the title to the Premises will be utility easements and restrictions of record;

- H. The Constructed Improvements on the Premises are located within the boundaries of the real property;
- J. OWNER states it is without knowledge or information regarding all uses of the Premises prior to OWNER acquiring title, and that OWNER has not been the OWNER since the inception of industrial use of the Premises. OWNER states, represents and warrants the following, as relates only to OWNER's knowledge of the Premises, since OWNER acquired title:
- (i) There is no pending claim, lawsuit, agency proceeding, or other legal, quasi-legal or administrative challenge concerning the ~~property~~ **Premises**, the operation of the property or any condition existing thereon, and no such claim, litigation, proceeding, or challenge is proposed or threatened by any person or entity, or otherwise anticipated by OWNER.
  - (ii) During the OWNER's term of ownership there are no Hazardous Materials (as defined in Paragraph 15) on or in the Premises, whether contained in barrels, tanks, equipment (movable or fixed) or other containers; deposited or located in land, waters, sumps or in any other part of the Premises; incorporated into any structure on the Premises; or otherwise existing thereon.
  - (iii) During the OWNER's term of ownership the Premises has not been used for any industrial or commercial operation involving any Hazardous Materials, including but not limited to any sort of manufacturing, processing or refining; equipment, machinery, part or component, cleaning or degreasing; the sale, storage or transport of Hazardous Materials; any aspect of the provision of services which utilize Hazardous Materials; drilling, mining or production of oil, gas, minerals or other naturally occurring products; or any agricultural activities involving the use and storage of fertilizers or pesticides.
  - (iv) During the OWNER's term of ownership, no spills, discharges, releases, deposits or emplacements of any Hazardous Materials have occurred on the Premises.
  - (v) No tanks, trucks or other vehicles, containing Hazardous Materials have traveled over, stopped at, or been loaded or unloaded at the Premises during OWNER'S ownership thereof.
  - (vi) No asbestos-containing materials have been installed in or affixed to the structures on Premises during OWNER'S ownership thereof. During OWNER's term of ownership, no such materials have been stored or disposed of anywhere on the Premises.

- (vii) No electrical transformers, fluorescent light fixtures or other electrical equipment containing PCB's are or have been installed in, affixed to or located on the Premises during OWNER'S ownership thereof.
- (viii) No storage tanks for gasoline or any other substance are located on the Premises, whether above ground, underground or within a structure during OWNER'S ownership thereof.

OWNER covenants that the foregoing representations and warranties shall remain true as of the date of closing of the purchase and sale of the Premises, that the same shall survive the closing and none of the same shall be merged with the title conveyed to CITY, and, if requested by CITY, OWNER shall deliver to CITY at closing an affidavit reaffirming such representations and warranties; provided, however that, CITY'S failure to request such affidavit shall not adversely affect the making and giving of these representations and warranties, their survival of the closing, or any rights or causes of action which CITY might have as a result of any representation or warranty being false.

13. EASEMENTS. At closing OWNER shall grant a conservation easement(s) to the CITY, in substantial form and format as attached hereto as Exhibits D and D1.

14. BROKERS. OWNER and CITY each warrant and represent to the other that it has had no compensable dealings, negotiations, agreements, consultations or other transactions with any broker, finder or other intermediary in respect of the PREMISES or this Contract, and that no person is entitled to be paid any brokerage fee, commission or other payment in respect of this Contract the transaction contemplated hereby and/or the PREMISES.

15. CONTINGENCIES. This Contract and CITY'S obligation to close the transaction described herein and to pay the purchase price are contingent only upon the following: (a) approval by Columbus City Council of the terms and conditions of this Contract on or before February 4, 2008;(b) approval and certification by the City Auditor regarding the availability of funds; (c) OWNER's completion of all Constructed Improvements and fulfillment of all requirements specified in Paragraph 3 and Exhibits B and C; and (d) Not later than 30 days after final completion of the Constructed Improvements City shall provide Owner with written approval of the Constructed Improvements or shall provide a list of deficiencies and Owner shall have until March 2, 2009 to cure all said deficiencies.

If any one or all of the foregoing contingencies are not satisfied on or before March 2, 2009 this Contract is terminated unless OWNER and CITY have mutually agreed to extend said date. Upon termination, each party shall be released from all of its respective obligations hereunder and all provisions of this Contract shall be and become null and void and CITY shall not be liable for the cost of any Constructed Improvements.

The CITY may, prior to closing, obtain, at its sole cost, a report, "environmental survey", by a qualified consultant concerning the presence of any contamination of the premises by

"Hazardous Materials", which means any substance:

- (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
- (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (U.S.C. Section 6901 et seq.); or
- (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Ohio or any political subdivision thereof; or
- (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or
- (v) the presence of which on adjacent properties could constitute a trespass; or
- (vi) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or
- (vii) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

OWNER will cooperate with the CITY or its consultant and supply such historical and operational information as may be reasonably requested by the consultants, including without limitation any environmental studies or reports prepared by or furnished to the OWNER regarding the premises.

If the Environmental Survey reveals the presence of Hazardous Materials upon the Premises the CITY may elect to terminate this agreement with neither party having any further liability or obligation to the other.

16. CLOSING. This Contract shall be performed and the transactions contemplated hereby shall be closed on a date and at a time and place in Franklin County, Ohio to be mutually agreed upon by OWNER and CITY after completion of the Constructed Improvements to the satisfaction of the CITY.



OWNER and City agree that the Title Company chosen under Paragraph 6 shall act as closing agent.

17. SURVEYS. At least fifteen (15) business days prior to the closing, OWNER shall, at its sole cost and expense, deliver to CITY and the Title Company, an ATLA Survey. The survey plat shall show all encroachments on the Premises and all encroachments on adjacent premises all improvements on the Premises, a separate description for the Castle Road Extension and the Access Road Easement. In the event the survey shows any encroachments of any improvements upon, from, or onto the Premises, a property line, or any easement, such encroachment shall be deemed to be a title defect unless included as a permitted encumbrance.

18. SUCCESSORS AND ASSIGNS. This Contract and the matters contained herein shall inure to the benefit and be binding upon the respective successors and assigns of OWNER and CITY.

19. ASSIGNMENT. Notwithstanding paragraph 18 hereof, this Contract is not assignable by either Owner or the City without the written consent of the other. Any assignment permitted shall not release the assignor from its obligations to perform in accordance with the terms hereof.

20. NOTICES. All notices which are required for either party to serve upon the other shall be effectively served if personally delivered or sent by certified mail, return receipt requested, and addressed as follows:

If to CITY:

The City of Columbus, Ohio  
Real Estate Division  
109 North Front Street  
Columbus, Ohio 43215  
Attention: Chief Real Estate Attorney

with a copy to:

The City of Columbus, Ohio  
Department of Finance and Management  
Real Estate Management Office  
90 W. Broad Street  
Columbus, Ohio 43215

If to OWNER:

Columbus Limestone, Inc.  
1771 Harmon Avenue  
Columbus, Ohio 43223  
Attention: Mr. Ted W. Lemmon

with a copy to:

Paul Rice, General Counsel  
Columbus Limestone, Inc.  
1771 Harmon Avenue  
Columbus, Ohio 43223

Crabbe, Brown & James, LLP  
500 South Front Street, Suite 1200  
Columbus, Ohio 43215  
Attention: Larry H. James  
Laura MacGregor Comek

Either party may, from time to time by written notice given to the other, specify a new address to which any such notice shall thereafter be sent.

21. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.

22. REMEDIES CUMULATIVE. All rights and remedies of CITY and of OWNER enumerated in this Contract shall be cumulative and, except as specifically contemplated otherwise by this Contract, none shall exclude any other right or remedy allowed at law or in equity and said rights or remedies may be exercised and enforced concurrently. No waiver by CITY or by OWNER of any covenant or condition or the breach of any covenant or condition of this Contract to be kept or performed by the other party shall constitute a waiver by the waiving party of any subsequent breach of such covenant or condition or authorize the breach or nonobservance on any other occasion of the same or any other covenant or condition of this Contract.

23. DUPLICATE ORIGINALS. This Contract may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

24. HEADINGS. The captions and headings contained in the Contract are included only for convenience of reference and do not define, limit, explain or modify this Contract or its interpretation, construction or meaning and are in no way to be construed as part of this Contract.

25. SEVERABILITY. If any provision of this Contract or the application of any provision to any person or to any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Contract or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect, and it is the intention of CITY and OWNER that if any provision of the Contract is susceptible of two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall have the meaning which renders it enforceable.

26. NUMBER AND GENDER. When used in this Contract, the singular number and ~~neuter~~ **neutral** gender of each personal pronoun shall be construed to mean such number and gender as the context, circumstances or its antecedent may require.

27. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between CITY and OWNER in respect of the subject matter hereof, and this Contract supersedes all prior and contemporaneous agreements between CITY and OWNER in connection with the subject matter hereof. No officer, employee or other servant or agent of OWNER or CITY is authorized to make any representation, warranty or other promise not contained in this Contract. No change, termination or attempted waiver of any of the provisions of this Contract shall be binding upon OWNER or CITY unless in writing and signed by the party affected.

28. SURVIVAL. All of the agreements, covenants, warranties and representations of the parties as set forth herein shall survive the closing and none of the same shall merge with the title conveyed to CITY or any instrument delivered in respect thereof.

29. ACCEPTANCE. In the event that this Contract is not signed simultaneously by both parties, it shall be construed to be an offer made by the party first executing it to the other party. In such event this offer shall expire at midnight E.S.T. ten (10) business days after the date of receipt by the second party of this Contract so executed by the first party, unless one copy of this Contract executed by the party to whom this offer has been made shall have been mailed or personally delivered to the party making the offer within the ten (10) business days.

Signed by CITY this \_\_\_\_\_ day  
of \_\_\_\_\_ 2007.

Signed by OWNER this \_\_\_\_\_ day  
of \_\_\_\_\_ 2007.

CITY OF COLUMBUS, OHIO

OWNER: COLUMBUS LIMESTONE, INC.

By: \_\_\_\_\_

Joel S. Taylor, Director  
Department of Finance and Management

By: \_\_\_\_\_

Its: \_\_\_\_\_

This instrument prepared by  
CITY OF COLUMBUS, DEPARTMENT OF LAW  
By: John C. Klein, Chief Real Estate Attorney  
Real Estate Division  
For: Department of Finance and Management  
Re: Relocation of Impound Lot

## **EXHIBIT LIST**

- Exhibit A: Legal
- Exhibit B: Cost Estimate & Map (per the option)
- Exhibit C: Detailed Construction Plans (already signed by Ted Lemmon)
- Exhibit D: West & South Frontage - Scioto Conservation Easement
- Exhibit D1: East Frontage - Kian Run Conservation Easement