

ORDINANCE NO. 2010-02-006

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
A REAL ESTATE OPTION AND CONTRACT**

(202 South Vine Street/Goodyear)

WHEREAS, the City of Urbana, Illinois (Optionee/Buyer) and HURSHAL C. TUMMELSON ESTATE and the DARIUS E. PHEBUS TRUST (Optionor/Seller), have agreed to a Real Estate Option and Contract for 202 South Vine Street; and

WHEREAS, it is in the interest of the people of Urbana to approve the said Real Estate Option and Contract.

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

Section 1. The City Council hereby approves the Real Estate Option and Contract attached hereto.

Section 2. That the Mayor is hereby authorized to execute and the City Clerk to attest the said Real Estate Option and Contract.

Section 3. This Ordinance takes effect immediately upon passage and approval by the Mayor.

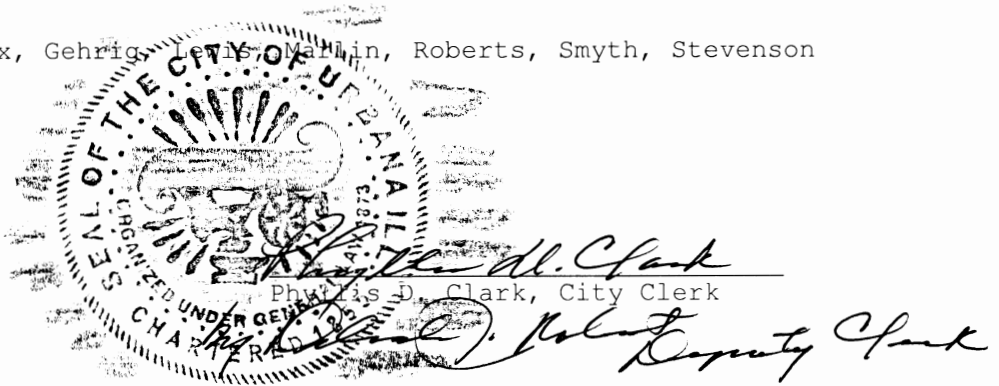
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of the Council.

PASSED by the City Council this 1st day of February, 2010.

AYES: Bowersox, Gehrig, Lewis, Martin, Roberts, Smyth, Stevenson

NAYS:

ABSTAINS:



Phyllis D. Clark
Phyllis D. Clark, City Clerk

Robert J. Pollock
Deputy Clerk

APPROVED by the Mayor this 4th day of February, 2010.

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

FILED

FEB 26 2010

**Phyllis D. Clark
City Clerk**

GOODYEAR REAL ESTATE OPTION AND CONTRACT

This Real Estate Option and Contract (the "Contract") is made as of the date of the last to execute of the parties hereto (the "Effective Date") by and between the City of Urbana, Champaign County, Illinois (the "Optionee/Purchaser, sometimes referred to as Buyer") and the HURSHAL C. TUMMELSON ESTATE and the DARIUS E. PHEBUS TRUST,, executing this Contract as the Optionor/Seller (the "Optionor/Seller sometimes referred to as Seller").

WITNESSETH

WHEREAS, Optionor/Seller is the owner of certain real estate as later more specifically described in this Contract; and

WHEREAS, the Optionee/Purchaser desires to obtain an option to purchase said real estate on such terms and conditions as are provided for herein; and

WHEREAS, the parties agreed upon the terms and conditions relating to an Option for the Purchase of the property, and now wish to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Contract, the Optionor/Seller and the Optionee/Purchaser hereby agree as follows:

Section 1. Grant of Option. Optionor/Seller, in consideration of the payments occurred by Optionee/Purchaser to Optionor/Seller, the exclusive right and option to purchase the real estate described below ("Subject Real Estate) on the terms and conditions for the option period as follows: Commencing as of the Effective Date and continuing until 5:00 p.m. on the 31st day of August, 2010.

Payment for the option shall be Ten Thousand Dollars (\$10,000), payable on the effective date.

Payments for the Option Period shall be credited as partial payment of the purchase price in the event the option is exercised. If the Option is not exercised, the Optionor/Seller shall retain the Option Payment.

Subject Real Estate

Lots 9 and 12 of William T. Webber's Subdivision of Outlots 5, 6 and 7 to the Town of Urbana, situated in the County of Champaign, State of Illinois

Commonly known as 202 South Vine Street, Urbana, Illinois
PIN# 92-21-17-233-001

Section 2. Purchase Price. Optionee/Purchaser agrees to pay to Optionor/Seller the total sum of Four Hundred Thousand Dollars (\$400,000.00) for the Real Estate, which amount, adjusted by prorations and credits allowed the parties by this Contract, shall be paid to Optionor/Seller at closing if Optionee/Purchaser elects to exercise this Option.

Section 3. Special Covenants. (a) During any Option periods, the Optionor/Seller shall not create any new leases, liens, mortgages clouds on title or other encumbrances, (except as the Optionee/Purchaser shall in writing consent to), to affect or exist with respect to the Real Estate. The Optionor/Seller hereby covenants that the persons or the entities executing this Contract as the Optionor/Seller are the owners of record of the Real Estate. Owner/seller represents that the only existing lease is attached hereto as Exhibit A (the "Goodyear Lease").

Section 4. Evidence of Title. In the event that Optionee/Purchaser elects to exercise this Option, Optionor/Seller shall, within a reasonable time, deliver to Optionee/Purchaser, as evidence of Optionor/Seller's title, a Commitment for Title Insurance issued by a title insurance company regularly doing business in the county where the real Estate is located, committing the company to issue a policy in the usual form insuring title to the Real Estate in Optionee/Purchaser's name for the amount of the purchase price, subject to the Goodyear Lease.

Optionor/Seller shall be responsible for payment of the owner's premium and Optionor/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 are not violated by the existing improvements or the present use of the Real Estate and which do not restrict reasonable use of the Real Estate; existing mortgages to be paid by Optionor/Seller or assumed by Optionee/Purchaser at closing and the rights of the Tenant under the Goodyear Lease. If title evidence discloses exceptions other than those permitted, Optionee/Purchaser shall give written notice of such exceptions to Optionor/Seller within a reasonable time. Optionor/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 Optionor/Seller is unable to cure such exception, then Optionee/Purchaser shall have the option to terminate this Contract.

Section 5. Environmental Audit and Disclosure.

(a) Buyer may obtain at its own expense an environmental audit of the Property if deemed necessary by Buyer, and Buyer's agent or agents, shall be granted access to the property for such purpose at all reasonable times.

(b) The Seller shall disclose to the Buyer 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 Property. 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 Property or any business operating thereon. The Seller shall provide an affirmative declaration to the Buyer that

to the best of its knowledge and belief, the Property is free of pollution and/or contamination and/or any environmental condition that might affect the marketability or usability of the Property for commercial or residential purposes.

(c) If the Buyer becomes aware of the existence of any environmental concern or violation of any environmental law or regulation at any time prior to closing which affects either the value of the Property or its use for a commercial or residential purpose, Buyer 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 following written notice to the Seller, the Buyer shall have the right to terminate the agreement by written notice to the Seller.

Section 6. During the option periods and at all times prior to closing, the Buyer and assigns shall have reasonable access to the subject real estate for purpose of inspection and to “show” the subject real estate to others, subject to such access being limited to the reasonable convenience of the Tenant under the Goodyear Lease.

Section 7. Taxes and Assessments. In the event that the Optionee/Purchaser elects to exercise this option, Seller shall pay prior to closing or give credit to Buyer at the time of closing for all special assessments, if any, now a lien on the Property or outstanding. Seller shall give Buyer credit at the closing against the purchase price for its prorated share of the said special assessments, if any. General Real Estate Taxes, sewer benefit taxes and sanitary district user charges are paid by the Tenant under the Goodyear Lease and therefore will not be prorated or credited. If for any reason, the Goodyear Lease is not in effect at the time of a closing Seller’s share of general real estate taxes, sewer benefit taxes and sanitary district user charges will be prorated between the parties using the most recently ascertainable tax figures for such computation.

Section 8. Exercise of Option and Closing. The Option herein provided to the Optionee/Purchaser shall be exercised and the closing of this transaction shall occur either by the fact of concluding the purchase and taking possession within any Option period or by notice in writing to the Optionor/Seller within any Option period and with the fact of concluding the purchase and taking possession within thirty (30) days of such notice, at the time and place in Champaign County designated by Optionee/Purchaser.

Section 9. Notices. Notice of a request to extend or an election to exercise this Option shall be made by Optionee/Purchaser addressed to Optionor/Seller as follows:

All notices to the Optionee/Purchaser shall be addressed as follows:

City of Urbana Optionor/Seller
400 South Vine Street
Urbana, IL 61801

All notices to the Optionor/Seller shall be addressed as follows:

c/o E. Phillips Knox

Tummelson Bryan & Knox, LLP
115 N. Broadway Avenue
Urbana, IL 61801

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 Optionor/Seller at the above listed address, or when delivered personally to such party.

Section 10. Termination by Transferee Where Property is Damaged or Destroyed. If, prior to closing, the improvements on the Property, are destroyed or materially damaged by fire or other casualty, then the Optionee/Purchaser may, at its option, rescind this Agreement, or Optionee/Purchaser may nevertheless agree to continue this Agreement, close and take title to the property, in which event Optionee/Purchaser shall be entitled to settle the loss with the insurers and collect the full amount thereof for Optionee/Purchaser's own use. Optionor/Seller shall furnish all necessary proofs of loss, assignment of claim and other reasonable assistance as needed.

Section 11. Memorandum of Contract. The Optionee/Purchaser may and is hereby authorized to file in the appropriate real estate records, either a copy of this Contract or an appropriate memorandum of the existence of this Contract, identifying the Real Estate, the Optionor/Seller, the Optionee/Purchaser and a brief summary of this contract.

Section 12. Default and Enforcement. Default under this Contract shall mean failure to timely and fully perform with respect to any material term or provision hereof. The Optionor/Seller and the Optionee/Purchaser shall have all rights and remedies available to them in law and in equity. The Optionor/Seller shall be liable for any consequential damages with respect to any willful default to close on the Real Estate transaction as hereby contemplated. No failure by the Optionor/Seller or the Optionee/Purchaser to elect to declare a default hereunder shall be deemed a waiver of their respective rights to make such election, and a waiver in one case shall not be a waiver of another. Default by the Optionor/Seller or the Optionee/Purchaser shall entitle the non-defaulting party to claim as damages all reasonable costs, attorney's fees and expenses incurred in connection with enforcement of this Contract, whether by suit or otherwise.

Section 13. Agreements and Binding Effect. This Contract shall be binding upon the Optionor/Seller and the Optionee/Purchaser, and their respective successors and assigns, according to its tenor and import. When any term or provision of this Contract directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Time is of the essence of this Contract.

Section 14. Amendments. This Contract may be amended from time to time, but only in writing by the Optionor/Seller and the Optionee/Purchaser.


Section 15. Execution and CounterParts. This Contract 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 contract, the persons executing it as Optionor/Seller covenant that they are the record owners of the Real Estate, and all of the record owners thereof, and have full power and authority to so execute and deliver this Contract.

Section 16. Assignment of Option. This Option and Contract may be assigned by either party even without the approval of the other party, and it shall remain a binding obligation. If the Option and Contract is assigned, the original parties shall remain liable for breach of any of the terms hereof.

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

Optionor/Seller:

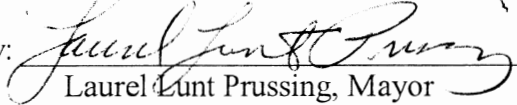
ESTATE OF
HURHSAL C. TUMMELSON, Deceased

BY: 
Jo Elaine Tummelson, Executor

Dated: 2-2-10

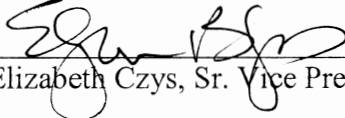
Optionee/Purchaser:

The City of Urbana,
Champaign County, Illinois

By: 
Laurel Lunt Prussing, Mayor

Dated: 2/22/10

DARIUS E. PHEBUS TRUST,
BUSEY TRUST COMPANY, Trustee

BY: 
Elizabeth Czys, Sr. Vice President & Trust Officer

Dated: 2/3/2010