

This Instrument Prepared by:

City of Franklin
Law Department
109 Third Avenue South
Franklin, Tennessee 37064

**AGREEMENT TO ~~GRANT~~PROVIDE INGRESS AND EGRESS EASEMENT AND
FIBER OPTIC EASEMENT AND AGREEMENT FOR THE ~~CONSTRUCTION AND~~
MAINTENANCE OF THE ~~EASEMENTS~~INGRESS AND EGRESS EASEMENT AND
FIBER OPTIC EASEMENT**

COF Contract No. 2011-0144

This Agreement is entered into by and between the **City of Franklin, Tennessee** ("City") and ~~LP Franklin, LLC~~ ("LP Franklin"); Lasko Products, Inc. ("Lasko"), entered into on this the ____ day of October 2011.

WHEREAS, ~~LP Franklin~~Lasko owns real property ("~~LP Franklin's~~Lasko's Property") described as: ~~1715 Columbia Avenue, Franklin, TN;~~ ____; and

WHEREAS, the City has entered into a Real Estate Sale Agreement with Pierce Hardy Limited Partnership for the purchase of real property, commonly known as 124 Lumber Drive, Franklin, Tennessee 37064 ("124 Lumber Drive") described as:

Land in Williamson County, Tennessee, being Lot No. 3, on the Plan of 84 Franklin, as shown on plat of record in Plat Book 35, page 48, in the Register's Office for Williamson County, Tennessee, to which plat reference is hereby made for a more particular description.

Being a portion of the same property conveyed to Pierce Hardy Limited Partnership, a Pennsylvania Limited Partnership by Deed of record in Book 2376, Page 343, Register's Office for Williamson County, Tennessee; and

WHEREAS, the Real Estate Sale Agreement with Pierce Hardy Limited Partnership is contingent upon ~~LP Franklin granting the City~~obtaining an ~~Easement~~easement with Lasko for ingress and egress to 124 Lumber Drive from ~~LP Franklin's~~Lasko's Property; and

WHEREAS, the City further ~~desires LP Franklin~~needs to ~~grant the City~~obtain a fiber optic easement ~~through LP Franklin's~~with Lasko on Lasko's Property; and

WHEREAS, the City, in ~~consideration~~exchange for the ~~Easement~~easements, agrees to install, ~~at its sole expense~~, a traffic light on Columbia Avenue at the new primary entrance to the ~~LP Franklin's~~Lasko's Property, also part of the ingress and egress easement.

NOW THEREFORE, for good and valuable consideration exchanged, the parties agree as follows:

The above-referenced recitals are incorporated herein as if set forth at length.

A. Ingress and Egress Easement and Fiber Optic Easement

1. ~~LP Franklin's~~Lasko's Duties and Responsibilities:

a. ~~LP Franklin shall grant~~Lasko agrees to provide the City ~~a nonexclusive terminable, at no charge to the City, an~~ ingress and egress easement (~~"Ingress/Egress Easement"~~) and a ~~nonexclusive fiber optic easement ("Fiber Optic Easement")~~ through ~~LP Franklin's~~Lasko's Property (~~collectively "the Easements"~~), as depicted on Exhibit A, attached hereto and incorporated herein as if set forth at length.

b. ~~LP Franklin~~ Lasko agrees that the ~~Easements shall be granted~~ingress and egress easement and the fiber optic easement shall be executed by ~~LP Franklin upon~~the parties as soon as the City ~~providing LP Franklin has obtained~~ a ~~conforming~~ survey and legal description ~~of the Easements~~, but in no event longer than thirty (30) days after the City has ~~provided LP Franklin an accurate and accepted~~obtained the survey and legal description ~~of the Easements~~.

c. ~~The Ingress/Egress Easement shall be limited to vehicular traffic of City owned and operated vehicles and City employees. The City shall restrict traffic through the Ingress/Egress easement by use of a secured gate at the entrance to the 124 Lumber Drive at the entrance to the Ingress/Egress entrance. The Fiber Optic Easement shall be used only for fiber optic service and shall not extend to any other use. Lasko agrees that the ingress and egress easement shall be for any City-related purposes.~~

d. ~~In the event LP Franklin sells or transfers~~Lasko agrees that should it ~~sell~~ its property, the ~~Fiber Optic Easement~~ingress and egress easement shall survive the ~~sale or transfer and whereas LP Franklin shall insure the conditions of the Ingress/Egress Easement as described herein are transferred to the future property owner. sales transaction.~~

e. ~~Should LP Franklin at any time elect~~Lasko agrees that should it ~~decide~~ to improve its property ~~in and~~ such ~~a manner that materially interrupts the Easements, LP Franklin shall grant the City~~improvement(s) affects the City's ingress and egress easement, Lasko shall, at its own expense, provide an alternative easement through its property, ~~and shall bear the expense of constructing the new Easements.~~ Further, at the City's sole discretion, Lasko shall either reimburse the City the full amount for reconstruction of the easement, including, but not limited to design fees, construction cost or Lasko shall improve the new easement at its own expense.

~~LP Franklin~~ f. ~~LP Franklin~~ Lasko agrees to provide the City, at no charge to the City, a fiber optic easement, as depicted on Exhibit A.

g. Lasko agrees that the fiber optic easement shall be perpetual and shall have no bearing on whether or not the City owns 124 Lumber Drive.

h. Lasko agrees that it shall bear the sole responsibility of designing and maintaining the new primary entrance portion of the roadway, as depicted on Exhibit A.

g. In the event, Lasko agrees that should the City sell or transfers sell 124 Lumber Drive anytime from the date of the execution of this agreement until November 2036, LP Franklin shall to reimburse the City the depreciated value (such amount shall mean the lesser of final cost of construction or Seven Hundred Fifty Thousand (\$750,000) Dollars depreciated by 1/25 of such amount, annually, through November 2036) ("the Depreciated Value") of if the cost of its construction of the Easement easement, including the installation of the traffic signal. In, or in the alternative, LP Franklin Lasko agrees that it may, at its sole discretion, elect to amend the Easement easement to be transferrable by allow the City easement to become perpetual. The City will validate the final cost of construction of the easement and traffic signal by providing LP Franklin Lasko a copy of the public bid tab, accepted bid, and change orders for said improvements when construction is complete. As of the date of this agreement said improvements are estimated at Seven Hundred Fifty Thousand (\$750,000) Dollars and depreciated for this agreement shall mean the final cost of construction minus 1/25 of the total value, annually, through November 2036.

h. To the extent possible, LP Franklin shall coordinate and make available to the City the plans and specifications of the new primary entrance portion of the roadway, as depicted on Exhibit A for the distinct purpose of coordinating the City's design and installation of the traffic control signal with the new primary entrance improvements and to make same fully operational for purposes of allowing adequate controlled left hand turns from the primary entrance within eighteen (18) months of LP Franklin granting the Easements.

2. City's Duties and Responsibilities:

a. City shall 3. City's Duties and Responsibilities:

a. City shall have the right to design and construct a road, except for the new primary entrance, similar to Exhibit A, and subject to the executed ingress and egress easement, at its sole expense the roadway, excluding the primary entrances designated in Exhibit A and install the Fiber Optic within the Easement. City shall construct, at its sole expense, an additional twenty-two (22) parking spaces, extending the southern border of the existing parking lot.

b. City agrees that the Depreciated Value depreciated value as described in 1(i) of the ingress and egress easement shall either be reimbursed by LP Franklin Lasko should the City sell or transfer 124 Lumber Drive, or, in the alternative, be amended so that the easement becomes transferrable perpetual.

c. City shall have the right to place signage near the roadway constructed by the City to curtail parking on the roadway and to curtail vehicles from driving over the roadway edge or curb to park in the adjacent grass. -Further, City shall have the right to install walkways through the grass area adjacent to the roadway should the City deem such walkway would improve pedestrian access and safety to the playing fields.

~~—————d.———— In no event shall City have the right to assign or grant any third parties any use of the Easements for any purpose, without the express written consent of LP Franklin. The Ingress/Egress Easement shall be limited to vehicular traffic of City owned and operated vehicles and City employees. The City shall restrict traffic through the Ingress/Egress easement by use of a secured gate at the entrance to the 124 Lumber Drive at the entrance to the Ingress/Egress entrance.~~

~~—————e.———— In the event the City is unable, for any reason, to install the traffic control signal and make same fully operational for purposes of allowing adequate controlled left hand turns from the primary entrance within eighteen (18) months of LP Franklin granting the Easements, the Easements shall terminate and the City shall at its sole expense, bear all costs of restoring LP Franklin's property to its existing condition and removing the ingress/egress roadway if the City has begun or completed such improvements on LP Franklin's Property.~~

—————B. Installation of Traffic Signalization

In considerationexchange for ~~LP Franklin granting the Easement~~Lasko providing the City with an ingress and egress easement and a fiber optic easement as depicted in Exhibit A, the City shall agrees to install, and ~~maintain and make fully operational~~ traffic signalization at Columbia Avenue and proposed Longview Circle South/Franklin Business Park Intersection.

C. Maintenance of the Easements and Traffic Signalization

1. The City, ~~at its expense,~~ shall be solely responsible for maintainingto maintain the traffic signalization to be installed at Columbia Avenue and proposed Longview Circle South/Franklin Business Park Intersection.

2. ~~LP Franklin~~Lasko shall be solely responsible for constructingto construct and ~~maintainingmaintain~~ the new, primary entrance to the Franklin Business Park onto its property, as ~~designated~~depicted on Exhibit A.

3. The City shall be solely responsible for maintaining the roadwayto maintain from their ~~point of~~ ingress and egress ~~to easement from~~ the 124 Lumber Drive property to the newly constructed Franklin Business Park entrance, as depicted on Exhibit A.

—————D. General Terms and Conditions

1. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.

2. Notices. Any notice provided pursuant to the Agreement, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth in the Agreement or such other address as either party may in the future specify in writing to the other.

3. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under the Agreement will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

4. Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected.

5. Precedence. In the event of conflict between this Agreement or any other contract, agreement or other document to which the Agreement may accompany, the provisions of this Agreement will to the extent of such conflict take precedence unless such document expressly states that it is amending this Agreement.

6. Entire Agreement. This Agreement, including any contract, agreement or other document which it may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Agreement.

~~7. Additions/Modifications.~~ The terms and conditions of this Agreement may not be changed except by an amendment expressly referencing this Agreement by section number and signed by an authorized representative of each party.

~~7. Additions/Modifications.~~ The If seeking any addition or modification to the Agreement, the parties agree to reference the specific paragraph number sought to be changed on any future document ~~executed~~ or purchase order issued in furtherance of the Agreement, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Agreement or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Agreement; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

8. Applicable Law; Choice of Forum/Venue. The Agreement constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.

9. Breach. Upon deliberate breach of the Agreement by either party, the non-breaching party shall be entitled to terminate the Agreement without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

10. Survival. This Agreement shall survive the completion of or any termination of the Agreement or other document to which it may accompany.

LP Franklin

Lasko Products, Inc.

By: _____
Print Name: _____
Title: _____

_____ Date

STATE OF _____)
COUNTY OF _____)

Before me, the undersigned Notary Public of said County and State, personally appeared _____ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the _____ of the **LP FranklinLasko** Products, Inc. and that they executed the foregoing instrument for the purposes therein contained.

WITNESS, my hand and seal on this the ____ day of _____, 2011.

Notary Public
My Commission expires: _____

APPROVED AS TO FORM:

Bradford Bush, Counsel for **LP FranklinLasko** Products, Inc.

ATTEST

CITY OF FRANKLIN, TENNESSEE

ERIC S. STUCKEY
City Administrator/Recorder

DR. KEN MOORE
Mayor

Date: _____

Date: _____

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared **Dr. Ken Moore** and **Eric S. Stuckey**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Mayor and City Administrator/Recorder, respectively, of the City of Franklin, Tennessee, a corporation, and that as such Mayor and City Administrator/Recorder executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as Mayor and City Administrator/Recorder.

WITNESS, my hand and seal on this the ____ day of _____, 2011.

Notary Public
My Commission expires: _____

APPROVED AS TO FORM:

Shauna R. Billingsley, City Attorney