

Passed: September 8, 2009  
Signed: September 14, 2009

ORDINANCE NO. 2009-09-098

**AN ORDINANCE APPROVING THE PURCHASE OF CERTAIN REAL ESTATE**

**(205 South Urbana Avenue)**

WHEREAS, the City of Urbana, Illinois (Buyer) and Hurshal C. Tummelson Estate and the Darius E. Phebus Trust (Seller), have agreed to a Real Estate Contract for the purchase of 205 South Urbana Avenue; and

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

Section 2. That the Mayor is hereby authorized to execute and the City Clerk to attest the said Real Estate 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 8th day of September,  
2009 .

AYES: Bowersox, Gehrig, ~~Wells, Martin~~, Roberts, Smyth,  
Mayor Prussing

NAYS:

ABSTAINS:



*Angelle D. Clark*  
Clark, City Clerk

APPROVED by the Mayor this 14th day of September,  
2009 .

*Laurel Hunt Prussing*  
Laurel Hunt Prussing, Mayor

## WAIVER, RELEASE AND ASSUMPTION OF RISK

NOTE: THIS IS A LEGALLY BINDING AGREEMENT, REVIEW CAREFULLY.

The City of Urbana, a municipal corporation, is dedicated to keeping all participants of any activities on city property safe from any potential injury. All participants are expected to engage in safe practices and assist others in ensuring that all activities are safe. The activities that I am requesting to conduct on City of Urbana property are:

To remove any items that have been agreed to by representatives of the City of Urbana on properties located at 305 and 307 E. Elm Street and 203 and 205 E. Urbana Avenues.

In consideration for being able to participate in the above described activity, participants acknowledge and agree to the following:

1. I am not an employee, intern or trainee of the City of Urbana and I will not receive any benefits normally provided to the employees of the City of Urbana.
2. I acknowledge that the activities that I am requesting to perform on city property involve risk. I understand that hazardous conditions may exist in performing this activity.
3. I expressly and voluntarily agree and promise to assume and accept all risks associated with and existing in these activities, whether such risks are known or unknown.
4. I hereby release, discharge, and agree to indemnify the City of Urbana and its employees and officials as well as hold harmless the City of Urbana and its employees and officials from any and all liability, claims, demands, and causes of action that are in any way connected to these activities, including any claims of personal injury, bodily injury, death, illness or damage to property, whether such claims arise now or in the future, and whether known or unknown, of whatsoever kind of nature, whether in law or in equity. I release the City of Urbana and its employees and officials from any and all liability, even if the City's and/or its employees' and/or officials' negligence is the cause of any accident, injuries, damages or any other claims.
5. The City of Urbana does not assume any responsibility for or obligations to provide financial assistance or other assistance, including but not limited to medical, health, or disability insurance in the event of injury or illness arising from these activities.
6. I hereby release and discharge the City of Urbana and its employees and officials from any claim whatsoever that arises or may hereafter arise on account of any first aid, treatment, or service rendered in connection with these activities.
7. I understand that, except as otherwise agreed to me by the City of Urbana in writing, the City of Urbana does not carry or maintain health, medical, or disability insurance coverage for me.
8. Should the City of Urbana, its employees and officials or anyone acting upon the City's behalf incur attorneys' fees, court costs or any other costs to enforce this agreement, I agree to indemnify and hold harmless the City of Urbana and its employees and officials for all such fees and costs. I further agree to defend and protect the City of Urbana and its employees and officials from any claims of liability related to this Waiver, Release and Assumption of Risk.
9. I certify that I am in good health and that I have no physical limitations that would preclude my safe participation in these activities. I further certify that I have adequate insurance to cover any injury or damage that I may suffer or cause while participating in City of Urbana activities, or I will bear the costs of any such injury or damage myself.
10. I agree with the validity and enforceability of this Waiver, Release and Assumption of Risk.
11. I expressly agree that this Waiver, Release and Assumption of Risk is intended to be as broad and inclusive as permitted by the laws of the State of Illinois and shall be governed by and interpreted in accordance with the laws of the State of Illinois. I agree that in the event that any clause or provision of this Waiver, Release

and Assumption of Risk shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Waiver, Release and Assumption of Risk which shall continue to be enforceable.

**I HAVE READ THIS WAIVER, RELEASE AND ASSUPMPTION OF RISK, I UNDERSTAND IT, AND I AGREE TO BE BOUND BY ITS TERMS.**

Darrel Foster  
Name  
Darrel Foster  
Signature  
409 W. Main St  
Street Address

Ryan Brault  
Witness Name  
Ryan Brault  
Witness Signature  
Urbana, IL 61801  
City, State, Zip Code

10-5-10  
Date

I certify that I am over the age of eighteen(18).  Yes  No  
If not, your parent or guardian must sign the indemnification and release below.

**PARENT OR LEGAL GUARDIAN'S ADDITIONAL WAIVER AND INDEMNIFICATION**

In consideration of \_\_\_\_\_ ("Minor") being allowed to participate in these activities, I agree to release, indemnify and hold harmless the City of Urbana from any and all claims brought by or on behalf of Minor that are in any way related to Minor's participation in these activities. I agree that Minor and I are bound by all the terms and language of this Waiver, Release and Assumption of Risk.

Name of Parent or Legal Guardian

Witness Name

Signature of Parent or Legal Guardian

Witness Signature

## REAL ESTATE CONTRACT

This real estate contract is made as of the date indicated below the signature of the Mayor, by and between the City of Urbana, Champaign County, Illinois, a municipal corporation (hereinafter "BUYER"), and the HURSHAL C. TUMMELSON ESTATE and the DARIUS E. PHEBUS TRUST (hereinafter "SELLERS").

### WITNESSETH

WHEREAS, HURSHAL C. TUMMELSON ESTATE and the DARIUS E. PHEBUS TRUST, as SELLERS are the owners of certain real estate as later more specifically described in this contract, and

WHEREAS, BUYER desires to purchase said real estate on such terms and conditions as are provided for herein, and

WHEREAS, the parties agree upon the terms and conditions relating to the purchase of the property and now wish to reduce their agreement to writing.

NOW THEREFORE in consideration of the mutual promises and undertakings set forth in this contract, SELLERS and BUYER hereby agree as follows:

1. That legal title to the subject property is vested in the estate of HURSHAL C. TUMMELSON, Deceased and the DARIUS E. PHEBUS TRUST. The persons executing this contract on behalf of the SELLERS represent that they have full legal authority to sell the said property without requiring consent of the court.

2. SELLERS agree to sell and BUYER agrees to purchase the following described real estate located at:

The South 42 feet of Lot 11 of William T. Webber's Subdivision of Outlots 5, 6 and 7 to the Town, now City of Urbana, Champaign County, Illinois

Commonly known as 205 S. Urbana Avenue, Urbana, Illinois.

PIN: 92-21-17-233-004

together with all improvements and appurtenances thereon upon the terms set forth in this contract.

3. BUYER agrees to pay to SELLERS the total sum of \$60,000 as purchase price, adjusted by proration and credits allowed the parties by this contract. This sum shall be paid to SELLERS at closing by check issued by the City of Urbana. The SELLERS agree to provide to BUYER at least ten (10) days prior to the scheduled closing, the appropriate federal tax number for each of the SELLERS' entities.

4. SELLERS shall deliver possession of the premises to BUYER at the time of closing of this transaction which shall be on the 31<sup>st</sup> day of August, 2010. Closing shall be at such place as the parties may agree. At closing, SELLERS shall deliver to BUYER all available keys and any land surveys in the possession of SELLERS.

5. It is understood and agreed that the BUYER, City of Urbana, intends to raze the existing residential structures located on the subject property and therefore the City waives receipt of any lead paint disclosure statements, or other statements regarding the condition of the premises as otherwise required by law.

6. BUYER or BUYER' attorney shall promptly advise SELLERS' attorney of the desired form of deed. As soon as practicable thereafter, SELLERS' attorney shall prepare and SELLERS shall execute recordable Executor's and Trustee's Deeds sufficient to convey the real estate to BUYER or their nominee, in fee simple absolute, subject only to exceptions permitted herein. SELLERS' attorney, as escrow agent for both parties with copies of executed deed to be delivered to attorneys for both parties. The deed shall be delivered to BUYER at the closing of this transaction upon BUYER' compliance with the terms of this Contract.

7. SELLERS warrant that no contracts 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 land 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 relating to the property, except as heretofore disclosed to BUYER in writing.

8. Real estate taxes apportioned through the date of possession shall be SELLERS' expense. The proration thereof shall be calculated upon the basis of the most current tax information, including confirmed multipliers. All special assessments which are a lien upon the real estate as of the date of this Contract shall be SELLERS' expense. All such taxes and special assessments shall constitute a credit to BUYER against the purchase price, and shall release SELLERS from any further liability to BUYER in connection therewith.

9. If prior to the delivery of possession hereunder, the improvements on said premises should be destroyed or materially damaged by fire, or other casualty, then the BUYER shall accept the premises as damaged or destroyed with the proceeds of any insurance payable as a result of the destruction or damage, which proceeds the SELLERS agree to assign for payment to the BUYER. In no event shall the SELLERS be obligated to repair or replace the damaged improvements.

10. Within a reasonable time, SELLERS shall deliver to BUYER as evidence of SELLERS' title, a Commitment for Title Insurance issued by a title insurance company doing business in the county where the premises are located, committing the company to issue a policy in the usual form insuring title to the real estate in BUYER's name for the amount of the purchase price. SELLERS shall be responsible for payment of the owner's premium and SELLERS' search charges.

Permissible exceptions to title shall include only the lien of general taxes and special assessments; 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 premises and which do not restrict reasonable use of the premises; existing mortgages to be paid by SELLERS.

If title evidence discloses exceptions other than those permitted, BUYER shall give written notice of such exceptions to SELLERS within a reasonable time. SELLERS 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 closing. If SELLERS are unable to cure such exception, then BUYER shall have the option to terminate this contract.

#### 11. Default.

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

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

(c) The foregoing remedies in the event of a default are not intended to be exclusive and the parties shall have the right to all other lawful remedies.

(d) In the event of such breach, the non-defaulting party shall be excused from further performance of the contract, unless he elects the remedy of Specific Performance.

(e) Default by any party to this Contract shall also entitle the non-defaulting party to reasonable costs, attorney's fees and expenses incurred by reason of the default (breach) of this contract.

12. Any notice required under the contract to be served upon SELLERS and BUYER shall be in writing and addressed to the address provided below and shall be effective when either actually received or when mailed to such party evidenced by certified mail or upon postal certification of mailing to such party; information copies of all such notices shall be sent or delivered to offices of the attorneys and such information copies may be sent by facsimile transmission. Notice to or from one of multiple SELLERS shall be effective as to all SELLERS.

13. SELLERS and BUYER agree to make all disclosures and sign all documents necessary to allow full compliance with all applicable laws. In the event the purchase price herein exceeds \$300,000.00 or such other amount as may be the threshold exception of Section 1445 of the Internal Revenue Code, SELLERS hereby certify (under penalties of perjury) that SELLERS are not foreign persons and agree upon request to execute an affidavit so stating.

14. This Contract contains the entire agreement between the parties and NO ORAL REPRESENTATION, warranty or covenant exists other than those herein set forth. References to plural parties shall apply to singular parties as well. References to a specific number of days shall mean calendar days.

15. The time for performance of the obligations of the parties is of the essence of this Contract.

16. Upon closing, free and clear title to the items of any personal property on the premises shall pass to BUYER without a separate instrument of conveyance. This personal property is either (1) typical of items customarily transferred with residential property in the community, or (2) is of no significant monetary value and is being left on the premises for the convenience of SELLERS and with the consent of BUYER.

17. BUYER may, at its own expense, obtain an environmental evaluation of the property and BUYER' agents shall be granted access to the property for such purpose at all reasonable times. If any such environmental evaluation of the property indicates the existence of environmental concerns or a violation of environmental laws or regulations, and the BUYER are unwilling to accept the property in its current condition, then the BUYER shall have a right to terminate this agreement by written notice of such election delivered to the SELLERS.

This Contract made as of the date indicated below the Mayor's signature on and for BUYER and SELLERS.

ESTATE OF HURSHAL C. TUMMELSON, Deceased

BY: Jo Elaine Tummelson Dated: 9/30/09  
Jo Elaine Tummelson, Executor

DARIUS E. PHEBUS TRUST,  
BUSEY TRUST COMPANY, Trustee

BY: Elizabeth Czys Dated: 9/25/09  
Elizabeth Czys, Sr. Vice President & Trust Officer

Address:  
c/o E. Phillips Knox  
Tummelson Bryan & Knox, LLP  
115 N. Broadway Ave.  
Urbana, IL 61801

City of Urbana, Illinois, by:

*Paul Prunty*

Mayor  
400 South Vine Street  
Urbana, IL 61801

Dated: 10/23/09

ATTEST:

*Christina Wilk*

City Clerk  
400 South Vine Street  
Urbana, IL 61801

