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ORDINANCE NO. 94-156

This Conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code.

F.C.F. \$ 1-594

EXEMPT

Julian A. Pijou, County Auditor

AN ORDINANCE AUTHORIZING THE ACQUISITION AND USE OF A PERMANENT EASEMENT OVER REAL PROPERTY PRESENTLY OWNED BY DITM CORP. IN FURTHERANCE OF THE GRISWOLD ROAD IMPROVEMENT PROJECT, DETERMINING THE PROPOSED ACQUISITION PRICE TO BE SATISFACTORY, AND DECLARING AN EMERGENCY

WHEREAS, Mayor Michael B. Keys of the City of Elyria, Ohio authorized the law firm of St. Marie, St. Marie, Couch & Guerini Co., L.P.A. to negotiate for the City the acquisition of interests in land necessary for the completion of the Griswold Road Improvement Project; and

WHEREAS, the acquisition of a permanent easement over land owned by DITM CORP. is required for the completion of the project; and

WHEREAS, the City of Elyria and DITM CORP. have reached an agreement for the City's acquisition of a permanent easement over land owned by DITM CORP. which will permit the City to complete work in accordance with the plans and specifications for the Griswold Road Improvement Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELYRIA, STATE OF OHIO:

SECTION 1: That this Council hereby finds and determines that the real property described in Exhibit A, attached hereto and made a part hereof, will be needed permanently for public use by the City of Elyria to carry out the purposes of the Griswold Road Improvement Project.

SECTION 2: That this Council hereby finds and determines that the sum of ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150.00) is fair and equitable consideration to be paid for the acquisition of the easement described in Exhibit A and that the Mayor is authorized and directed to execute a purchase agreement for the acquisition of the easement described in Exhibit A for the consideration provided herein and under such other terms as are commensurate with the project requirements.

SECTION 3: That the Council hereby authorizes the City Auditor to issue to DITM CORP. funds in the sum of ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150.00) upon receipt by the City of a fully executed agreement for the purchase of permanent easement and the permanent easement, which funds shall be paid from and charged against the Griswold Road Improvement Project Capital Outlay Account.

SECTION 4: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code.

SECTION 5: That this Ordinance be and hereby is declared to be an emergency measure

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DEPUTY CITY AUDITOR 1-49500

necessary for the immediate preservation of the public peace, health, safety and welfare of the City, and for the further reason that the immediate effectiveness of this Ordinance is required to expedite the completion of the Griswold Road Improvement Project; wherefore, the Ordinance shall be in full force and effect from and immediately after its passage and approval.

PASSED: 7/11/94

Shirley G. Guinta  
SHIRLEY G. GUINTA, President

ATTEST: 7/11/94

APPROVED: Jack Lesnick  
JACK LESNICK, Clerk

Michael B. Keys  
MICHAEL B. KEYS, Mayor  
7-12-94

Approved as to form:

Terry S. Shilling  
TERRY S. SHILLING, Solicitor

**CERTIFICATE OF PUBLICATION**

I, THE UNDERSIGNED CLERK OF COUNCIL OF THE CITY OF ELYRIA, OHIO, HEREBY CERTIFY THAT THE FULL TEXT OF THE FOREGOING ORDINANCE NO. 94-156 WAS POSTED IN THREE PLACES WITHIN THE CITY AS DETERMINED BY COUNCIL, AND THAT SUCH PLACES WERE AS FOLLOWS: CITY HALL, CENTRAL FIRE STATION AND THE POLICE STATION FOR A PERIOD OF FOURTEEN (14) DAYS, TO WIT, FROM:

7/14/94 to 7/28/94

Dated: 1/4/95

Jack Lesnick  
CLERK OF COUNCIL  
CITY OF ELYRIA, OHIO

CERTIFICATION  
I HEREBY CERTIFY THAT THIS IS AN EXACT AND TRUE COPY OF Ordinance 94-156  
Jack Lesnick 1/4/95  
JACK LESNICK, CLERK OF COUNCIL, DATE  
CITY OF ELYRIA, OHIO

**Exhibit A  
To Permanent Easement**

*Situated in the City of Elyria, County of Lorain and State of Ohio: Beginning at the intersection of east property line and south right-of-way of Griswold Road; thence southerly along east property line a distance of 35 feet; thence westerly parallel to said right-of-way a distance of 50 feet; thence northerly perpendicular to said right-of-way a distance of 35 feet to a point on said right-of-way; thence easterly along said right-of-way a distance of 50 feet to the point of beginning.*

*Area = 1750 sq. ft. = 0.0402 ac.*

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*Maris, A. Maris,  
Branch V. Guarnini  
Co., L.P.A.  
200 PremierBank  
& Trust Bldg.  
11 Middle Avenue  
Elyria, Ohio 44035*

**AGREEMENT FOR PURCHASE  
OF PERMANENT EASEMENT**

This agreement is entered this 2nd day of August, 1994, in Elyria, Ohio, by and between **THE CITY OF ELYRIA**, a municipal corporation of 328 Broad Street, Elyria, Ohio 44035, ("City") and **DITM CORP.**, an Ohio corporation of 524 Griswold Road, Elyria, Ohio 44035, ("Seller").

**WITNESSETH:**

WHEREAS, City and Seller have negotiated terms for City's acquisition from Seller of a permanent easement over real property owned by Seller for the development and construction of the Griswold Road Improvement Project; and

WHEREAS, the Council of the City of Elyria, by Ordinance 94- 156, authorized the Mayor of the City of Elyria, the Honorable Michael B. Keys, to enter a purchase agreement with Seller for the acquisition of the easement to facilitate the Griswold Road Improvement Project.

THEREFORE, in consideration of the mutual promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That in consideration of the payment by City to Seller of the sum of ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150.00), receipt of which Seller hereby acknowledges, Seller shall convey to City the permanent easement described in Exhibit A, attached hereto and incorporated herein.

2. Seller shall execute a permanent easement in the form of Exhibit A concurrently with the execution of this agreement. City will file the permanent easement at City's expense with the Lorain County Recorder's office.

3. The parties acknowledge that the real property described in Exhibit A may be subject to an existing mortgage or mortgages. If a mortgagee has an interest in the proceeds of the

*A. Mario, A. Mario,  
Couch & Guorini  
Co., L.P.A.  
1000 PremierBank  
& Trust Bldg.  
124 Middle Street  
Elyria, Ohio 44035*

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property to be acquired, Seller shall obtain a release of each mortgage to vest in City title to the property free and clear of all encumbrances except easements, restrictions, and reservations of record and taxes and assessments.

4. City agrees to require the contractor or contractors working on the Griswold Road Improvement Project to replace the surface of the easement area after construction with the same or substantially similar materials as those in place prior to construction. Grass shall be replaced with grass seed and given reasonable time to grow.

5. As part of any contract to be awarded for the construction of the Griswold Road Improvement Project, City agrees that City or the appropriate contractor shall be obligated as follows:

- A. To permit Seller to have continued access to Seller's property at all times.
- B. Extend existing culvert approximately 20 feet to the south and remove a 24 inch diameter tree as requested by Seller.

IN WITNESS WHEREOF, the parties have hereunto set their hands to duplicates of this agreement.

In the presence of:

Mary J. Swicka

CITY OF ELYRIA:

By: Michael B. Keys  
MICHAEL B. KEYS, Mayor

Date: 8-2-94

SELLER:

DITM CORP.

By: John M. Helton  
Title: PRES.

Date: 6-27-94

[Signature]

APPROVED AS TO FORM.

Terry S. Shilling  
TERRY S. SHILLING, Solicitor

A. Mario, A. Mario,  
Couch & Guorini  
Co., L.P.S.  
1000 PremierBank  
& Trust Bldg.  
126 Middle Square  
Elyria, Ohio 44035

**EXHIBIT A**  
**To Agreement for Purchase of Permanent Easement**  
**PERMANENT EASEMENT FOR**  
**GRISWOLD ROAD IMPROVEMENT PROJECT**

**KNOW ALL MEN BY THESE PRESENTS:**

That **DITM CORP.**, (the "Grantor") claiming title by virtue of a deed recorded in Volume 150, Page 385 of Lorain County, Ohio records, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received from the **CITY OF ELYRIA, OHIO** (the "Grantee"), the receipt of which is hereby acknowledged, hereby grants and conveys to Grantee, its successors and assigns, in perpetuity, the following rights, privileges and easements in, upon and over the real estate described in Exhibit A, attached hereto and made a part hereof.

The permanent easement and rights herein granted shall include the rights to use the area of the permanent easement by Grantee, its agents or employees, to perform all work for the construction, maintenance, use, inspection and repair of a storm sewer and new and future utilities in accordance with the plans and specifications prepared by Grantee for the Griswold Road Improvement Project, which are incorporated herein by reference.

Grantee agrees to restore all areas disturbed by construction.

Grantor, for Grantor and Grantor's heirs, executors, administrators and assigns, hereby covenants with Grantee, its successors and assigns, that Grantor is the true and lawful owner of the premises, is well seized of same in fee simple, and has good right and full power to remise, grant, bargain, sell, convey and release the same and further that Grantor will warrant and defend the premises against all claims and all persons whatsoever.

Grantee covenants that it shall indemnify and hold harmless the Grantor against any and all environmental hazards or unlawful conditions which may arise as the result of the use and

*A. Mario, A. Mario,  
Couch & Guorini  
Co., L.P.A.  
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& Trust Bldg.  
120 Middle Avenue  
Elyria, Ohio 44035*

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occupancy of the easement herein granted.

IN WITNESS WHEREOF, DITM CORP. subscribed its name this 27<sup>th</sup> day of June, 1994.

In the presence of:

DITM CORP.

[Signature]

By: John M. Galvin

Laura B. Swords

STATE OF OHIO

SS

LORAIN COUNTY

Be it remembered that on the 27<sup>th</sup> day of June, 1994, before me, the subscriber, a notary public in and for said County and State, personally came DITM CORP., an Ohio corporation, the Grantor, by and through John M. Galvin, its President, who acknowledged the signing hereof to be \_\_\_\_\_ voluntary act and deed, both personally and as such officer of said corporation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

[Signature]

Notary Public

STEVE A. LIST, ATTORNEY  
NOTARY PUBLIC STATE OF OHIO  
MY COMMISSION HAS NO  
EXPIRATION DATE, SEC. 147.03 R.C.

A. Mario, A. Mario,  
Couch & Guonini  
Co., L.P.A.  
1000 PremierBank  
& Trust Bldg.  
120 Middle Street  
Elyria, Ohio 44035

**AGREEMENT FOR PURCHASE  
OF TEMPORARY EASEMENT**

This agreement is entered this 2<sup>ND</sup> day of August, 1994, in Elyria, Ohio, by and between THE CITY OF ELYRIA, a municipal corporation of 328 Broad Street, Elyria, Ohio 44035, ("City") and DITM CORP., an Ohio corporation of 524 Griswold Road, Elyria, Ohio 44035, ("Seller").

**WITNESSETH:**

WHEREAS, City and Seller have negotiated terms for City's acquisition from Seller of a temporary easement over real property owned by Seller for the development and construction of the Griswold Road Improvement Project; and

WHEREAS, the Council of the City of Elyria, by Ordinance 94-156, authorized the Mayor of the City of Elyria, the Honorable Michael B. Keys, to enter a purchase agreement with Seller for the acquisition of the easement to facilitate the Griswold Road Improvement Project.

THEREFORE, in consideration of the mutual promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That in consideration of the payment by City to Seller of the sum of THREE HUNDRED FIFTY DOLLARS (\$350.00), receipt of which Seller hereby acknowledges, Seller shall convey to City the temporary easement described in Exhibit A, attached hereto and incorporated herein.

2. Seller shall execute a temporary easement in the form of Exhibit A concurrently with the execution of this agreement. City will file the easement at City's expense with the Lorain County Recorder's office.

3. The term of the temporary easement shall be from date of execution until December 31, 1994.

4. City agrees to require the contractor or contractors working on the Griswold Road Improvement Project to replace the surface of the easement area after construction with the same or substantially similar materials as those in place prior to construction. Grass shall be replaced with grass seed and given a reasonable time to grow.

5. As part of any contract to be awarded for the construction of the Griswold Road Improvement Project, City agrees that City or the appropriate contractor shall be obligated as follows:

*A. Mario, A. Mario,  
Coach & Guarnini  
Co., L.P.A.  
1000 PremierBank  
& Trust Bldg.  
120 Middle Avenue  
Elyria, Ohio 44035*

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- A. To permit Seller to have continued access to Seller's property at all times.
- B. To remove and replace the portion of the asphalt drive to match new concrete drive aprons.
- C. To remove and replace existing curbs in the temporary easement area and grade.
- D. To seed to match new roadway grade within the temporary easement area.
- E. To remove the existing sign overhanging the existing right-of-way. The contractor shall be notified to not disturb existing plantings and signage within temporary right-of-way area.
- F. Remove and dispose of existing guardrail within the existing right-of-way.
- G. To neither permit nor countenance the parking of any vehicle whether the same be a vehicle owned or used by the general contractor or any of his subcontractors during the period of this construction.
- H. To maintain existing poles on the property which are used for night security chains. These poles shall be marked "do not disturb" on construction drawings.
- I. To remove and reset existing the mail box.

IN WITNESS WHEREOF, the parties have hereunto set their hands to duplicates of this agreement.

In the presence of:

*Mary J. [Signature]*

CITY OF ELYRIA:

By: *Michael B. Keys*  
MICHAEL B. KEYS, Mayor

Date: 8-2-94

SELLER:

DITM CORP.

*[Signature]*

By: *John M. Galoni*

Title: PRES.

Date: 6-27-94

APPROVED AS TO FORM:

*Terry S. Shilling*  
TERRY S. SHILLING, Solicitor

*A. Mario, A. Mario,  
Couch & Scorsini  
Co., L.P.A.  
1000 PremierBank  
& Trust Bldg.  
124 Middle Avenue  
Elyria, Ohio 44035*

**EXHIBIT A**  
**To Agreement for Purchase of Temporary Easement**  
**TEMPORARY EASEMENT FOR**  
**THE GRISWOLD ROAD IMPROVEMENT PROJECT**

**KNOW ALL MEN BY THESE PRESENTS:**

That DITM CORP., an Ohio corporation, of 524 Griswold Road, Elyria, Ohio 44035, ("Grantor") claiming title by virtue of a deed filed in Deed Volume \_\_\_\_\_, Page \_\_\_\_\_ of Lorain County Records, for and in consideration of the receipt of Ten Dollars (\$10.00) and other valuable consideration paid by the CITY OF ELYRIA, OHIO, of 328 Broad Street, Elyria, Ohio 44035 ("Grantee"), the receipt of which is hereby acknowledged, hereby grants to Grantee and its assigns an easement in, upon and over the following real property:

*Beginning at the intersection of west property line and south right-of-way of Griswold Road; thence easterly along said right-of-way a distance of 125 feet; thence westerly parallel to said right-of-way a distance of 125 feet to a point on west property line; thence northerly along west property line a distance of 12 feet to the point of beginning. Area = 1500 sq. ft. = 0.0344 ac.*

This easement shall include the right and duty of Grantee and its agents, at Grantee's expense, to regrade the cross-slopes of the land subject to the easement in accordance with the plans and specifications prepared by Grantee for the Griswold Road Improvement Project, which are incorporated herein by reference.

This easement shall be from date hereof until December 31, 1994.

Grantor hereby covenants with Grantee and Grantee's assigns that Grantor is the true and lawful owner of the premises, is lawfully seized of the premises in fee simple, and has good right and full power to grant this easement free and clear of all liens and encumbrances except those appearing of record.

IN WITNESS WHEREOF, Grantor has signed this Temporary Easement for the Griswold Road Improvement Project.

In the presence of.

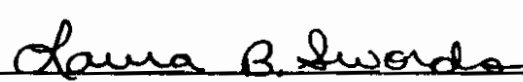


DITM CORP.


By: 

Title: Pres.

Date: 6-27-94



APPROVED AS TO FORM:

  
TERRY S. SHILLING, Solicitor

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*B. Mario, A. Mario,  
Coach & Savini  
Co., L.P.A.  
1000 Premium Bank  
& Trust Bldg.  
120 Middle Street  
Elyria, Ohio 44035*

STATE OF OHIO  
SS  
LORAIN COUNTY

Be it remembered that on the 27th day of June, 1994, before me, the subscriber, a notary public in and for said County and State, personally came DITM CORP., an Ohio corporation, the Grantors, by and through John Galvin, its President who acknowledged the signing hereof to be by voluntary act and deed, both personally and as such officer for said corporation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



Notary Public

STEVE A. LIST, ATTORNEY  
NOTARY PUBLIC STATE OF OHIO  
MY COMMISSION HAS NO  
EXPIRATION DATE, SEC. 147.03 R.C.

MARY ANN JAMISON  
LORAIN COUNTY RECORDER

JAN 17 9 01 AM '95

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BH

*S. Mario, S. Mario,  
Couch & Scovini  
Co., L.P.A.  
1000 Premier Bank  
& Trust Bldg.  
138 Middle Avenue  
Clyde, Ohio 44035*