

RESOLUTION NO. 34 -2008

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH GRANT ROSS PEDIGO FOR A PARCEL OF LAND LOCATED AT 3767 BROADVIEW ROAD, RICHFIELD, OHIO

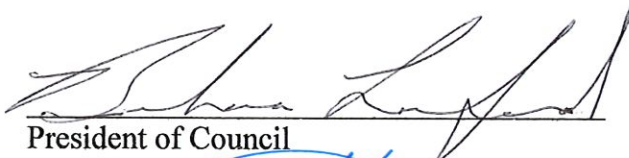
BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into an agreement with Grant Ross Pedigo for a parcel of land located at 3767 Broadview Road, Richfield, Ohio, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. That the Mayor, the Finance Director and the Law Director are hereby authorized to take all necessary actions to complete the purchase of the aforesaid parcel of land in accordance with the Agreement.

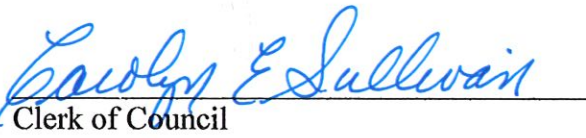
SECTION 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 8/19/08

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 8/19/08

ATTEST:  
  
\_\_\_\_\_  
Clerk of Council

**PROPERTY SALE AND PURCHASE AGREEMENT**

This Property Sale and Purchase Agreement ("**Agreement**") is made by and between:

Grant Ross Pedigo  
3767 Broadview Road  
Richfield, Ohio 44286

and

Village of Richfield, Ohio  
4410 W. Streetsboro Road  
Richfield, Ohio 44286

("Seller")

("Buyer")

Seller and Buyer are sometimes referred to individually as "**Party**" or together as "**Parties**".

**RECITALS:**

- A. Seller is the owner of Property (hereinafter defined) which Buyer desires to purchase and Seller is willing to sell to Buyer on the terms and conditions set forth herein.
- B. The Agreement shall be effective upon the date of the last of Seller and Buyer to execute this Agreement ("**Effective Date**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the adequacy, sufficiency and receipt of which the Parties hereby acknowledge, and intending to be legally bound, the Parties agree as follows:

1. **Sale and Purchase of Property.**

A. **Realty and Improvements.** Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the terms and conditions hereof:

- i. certain improved real property consisting of approximately 2.0018 acres of land located at 3767 Broadview Road, Richfield, Ohio, designated as Permanent Parcel No. 5000993, legally described on Exhibit A attached hereto and depicted on Exhibit B attached hereto, together with all gas, oil and mineral rights, easements, appurtenances, rights, privileges and hereditaments belonging or in any way appertaining thereto or thereunto belonging (collectively, "**Realty**"), and
- ii. any and all improvements, both above and below the ground, and specifically including the residence and ancillary buildings, all utilities, pavings, landscaping and other structures on the Realty and all of their respective supportive systems, equipment and fixtures (collectively, "**Improvements**").

B. **Property.** Realty and Improvements are hereinafter collectively referred to as "**Property**". Buyer acknowledges that Buyer is purchasing the Property in its present "**AS IS**" condition.

2. **Purchase Price/Method of Payment.**

- A. Buyer agrees to pay Seller as the Purchase Price for Property the sum of \$140,000.00 ("**Purchase Price**").
- B. The Purchase Price (less the sum of prorations, adjustments and other credits to which Buyer is entitled as herein provided), shall be paid as follows:

- i. \$70,000 in immediately available funds to be deposited by Buyer with Escrow Agent on the Closing Date (hereinafter defined), and
- ii. \$70,000.00 represented by a Purchase Money Note and Mortgage to be granted by Buyer to Seller payable on the 1<sup>st</sup> anniversary of the Closing. Such Purchase Money Note and Mortgage shall be in form of Exhibits C and D attached hereto. Seller shall be responsible for any interest imputed by the IRS.

3. **Escrow Agent.**

"Escrow Agent" shall be the Title Company (as designated on the signature page of this Agreement). Immediately following the Effective Date, Parties shall open an escrow account with Escrow Agent. This Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of Escrow Agent insofar as the same are not inconsistent with any of the terms hereof.

4. **Buyer's Due Diligence.**

A. **Title Commitment.** Buyer shall have the right to order and obtain, at Buyer's expense, a current title commitment ("**Title Commitment**") and special tax search issued by the Title Company setting forth the state of the title of Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations, and other conditions, if any, affecting Property which would appear in an Owner's Policy of Title Insurance ("**Title Policy**"), if issued by the Title Company as provided herein.

B. **Inspections.** Buyer or Buyer's agents shall have the right and permission, at Buyer's expense, to enter upon Property, or any part thereof, after the Effective Date, at all reasonable times and from time to time prior to termination of this Agreement for the purpose of making all inspections, tests, surveys and studies (collectively, "**Inspections**") required to determine the suitability of Property for Buyer's purposes as Buyer shall solely determine (which shall include without limitation, surveys, physical inspections, environmental assessments, soil tests, evaluation of utilities, etc.). Buyer shall indemnify and save Seller harmless from any liability or damage caused in the course of such activities. Seller shall cooperate with Buyer and/or Buyer's agents in providing information and access to the Property necessary to complete the Inspections.

5. **Contingencies during Contingencies Period.**

Buyer's obligations under this Agreement are subject to Buyer's satisfaction with and/or waiver of the following contingencies (collectively, "**Contingencies**") within the 60 day period following the Effective Date ("**Contingencies Period**"):

i. **Title.**

Buyer obtaining a Title Commitment (and, ultimately, a Title Policy) from Title Company showing that the state of title to Property is satisfactory to Buyer and that Property is subject to no liens, encumbrances, defects, restrictions, conditions, easements, leases of residences or other agreements (other than mortgages which will be paid at the Closing from the proceeds due Seller) which would be objectionable to Buyer in Buyer's sole discretion. All real estate taxes and assessments which are a lien but not yet due and payable and all other exceptions approved or accepted by Buyer in writing hereunder shall be the "**Permitted Encumbrances**".

- ii. **Inspections.** Buyer obtaining Inspections which are not objectionable to Buyer in Buyer's sole discretion.
- iii. **Council Approval.** Buyer obtaining approval of this transaction from the Richfield Village Council pursuant to a duly enacted ordinance to such effect.

6. **Resolution of Contingencies.**

Buyer shall endeavor to give Seller notice of Buyer's satisfaction with and/or waiver of any of the Contingencies promptly upon such determination. If Buyer fails to give notice of disapproval of any Contingencies prior to the expiration of Contingencies Period, such failure shall be conclusively deemed to be full and complete approval and satisfaction of all Contingencies. On or before the expiration of Contingencies Period, Buyer shall notify Seller if Buyer is not satisfied with any aspect of Contingencies and, if not satisfactorily resolved, this Agreement shall be deemed terminated thereupon.

7. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

i. **Seller's Authority.**

- a. This Agreement and all documents to be executed pursuant to this Agreement by Seller are and shall be binding upon and enforceable against Seller in accordance with their respective terms.
- c. The execution and delivery of this Agreement and performance thereunder by Seller will not conflict with or result in a violation of, or breach of, or constitute a default under, any law or administrative regulation of any of the terms, conditions or provisions of any judgment, decree, loan agreement, bond, note, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which it is a party and which affects Property.

ii. **The Property.**

- a. Seller has not entered into any contracts for the sale, exchange or other disposition of the Property or any portion thereof, nor do there exist any rights of first refusal, options or other rights of any other party to purchase all or any portion of the Realty.
- b. Neither Seller, nor, to Seller's knowledge, any third party, has engaged in the operation, use, manufacture, treatment, transportation, storage, release, discharge or disposal of any hazardous or toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any federal, state or local law in a manner that violated any applicable law or damaged the Property.
- c. Neither Seller, nor to Seller's knowledge any third party, has received any notice of any violation of or request for information under applicable environmental law with respect to the Property about which a government agency could require corrective action, removal or remedial action.
- d. To the best of Seller's knowledge, there are no underground storage tanks, or hazardous substances or wastes on the Property, whether in structures, drums, tanks, containers, sumps, lagoons, in the earth, any ground water (whether under or on the Property).

- e. To the best of Seller's knowledge, there are no oil or natural gas wells (or pipelines therefore) on the Property.

iii. **Seller's Covenants Regarding the Property.**

Until the Closing, Seller will not (1) convey all or any portion of the Property, (2) subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters, or (3) make any material alterations to the Property.

8. **Closing Arrangements.**

A. **Seller's Closing Obligations.**

Provided Buyer is satisfied with or waives the Contingencies before the end of the Contingency Period as herein provided with no material adverse change in the status thereof before Closing Date, this transaction shall be closed ("**Closing**") at the office of the Escrow Agent on or before the 30th day after the end of Contingencies Period or on such other date as may be mutually agreed by the Parties ("**Closing Date**") and Seller shall

- i. cause to be delivered to Buyer the Title Policy in the full amount of the Purchase Price issued in accordance with the form of Title Commitment approved by Buyer during the Contingency Period without any intervening liens, encumbrances or exceptions,
- ii. cause to be paid in full and released of record all mortgages, liens and encumbrances which are liens on the Property,
- iii. deliver to Escrow Agent a General Warranty Deed ("**Deed**"), duly executed and in proper form for recording in the form reasonably acceptable to Buyer conveying to Buyer fee simple, marketable and insurable title to the Property, free and clear of all liens and encumbrances except for Permitted Encumbrances and zoning ordinances and taxes and assessments, both general and special, not yet due and payable, and
- iv. execute, acknowledge and deliver such affidavits, resolutions and other documents which the Title Company shall reasonably require in order to issue the Title Policy and to omit from the Title Policy all exceptions for judgments, mechanics liens and similar matters.

B. **Buyer's Closing Obligations.** Buyer shall, on or before the Closing Date through escrow, deliver to Seller the Purchase Price, and any other documents reasonably required to close this transaction.

C. **Escrow Agent's Closing Obligations.** At the Closing Date, after causing the filing of the Deed, Escrow Agent shall close this transaction as follows:

- i. Credit Seller and charge Buyer with the Purchase Price deposited in escrow.
- ii. Credit Buyer and charge Seller with real estate taxes and assessments, both general and special, prorated to the Closing Date based upon the latest available tax rate and valuation.
- iii. Charge Seller with and pay to the payee entitled thereto:

- a. 50% of the cost of title examination, special tax search, Title Commitment and Title Policy;
  - b. 50% of Escrow Agent's fee;
  - c. the transfer tax and/or conveyance fee;
  - d. Seller's pro rata share of all items to be prorated in escrow;
  - e. any amounts necessary to remove liens which are removable upon the payment of a fixed sum in order to convey title as herein provided; and
  - f. all other fees and charges which are required to be paid by Seller pursuant to this Agreement.
- iv. Charge Buyer with and pay to the payee entitled thereto:
- a. 50% of the cost of title examination, special tax search, Title Commitment and Title Policy and;
  - b. 50% of Escrow Agent's fee;
  - c. the cost of recording Deed and Mortgage;
  - d. Buyer's pro rata share of all items to be prorated in escrow; and
  - e. all other fees and charges which are required to be paid by Buyer pursuant to this Agreement.
- v. Immediately following the Closing Date, Escrow Agent shall deliver the funds and documents as follows:
- a. to Seller (or Seller's attorney, if Seller is represented by legal counsel), the funds and documents due Seller together with duplicate copies of the escrow statement, and
  - b. to Buyer (or Buyer's attorney, if Buyer is represented by legal counsel), the funds and documents due Buyer together with duplicate copies of the escrow statement.

9. **Possession.**

Seller shall deliver possession of the Property to Buyer immediately upon the Closing. Further, Seller shall deliver to Buyer, upon or prior to the Closing, the keys to all doors to the Improvements in Seller's possession, which shall be properly tagged for identification.

10. **Default.**

In the event of a material default hereunder by Seller, Buyer may elect to terminate this Agreement, in which event Buyer shall be entitled to reimbursement of its reasonable expenses incurred in connection with the Contingencies and may, in addition, sue for specific performance. If Buyer shall default in the performance of its obligations under this Agreement, Seller shall be entitled to sue for specific performance.

## 11. General Provisions

### A. Notices.

- i. All notices, elections, consents, demands and communications shall be in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid or by any nationally recognized overnight courier service addressed to the other Party at their address first stated in this Agreement. Copies of notices shall be sent to the Attorneys for the respective Parties, if identified on the signature page. Either Party may, by written notice to the other, change the address to which notices are to be sent.
- ii. Unless otherwise provided herein, all notices shall be deemed given when personal delivery is effected or when deposited in any branch, station or depository maintained by the U.S. Postal Service or the overnight courier service within the United States of America, except that a notice of a change of address shall be deemed given when actually received. Seller's affidavit of the date and time of deposit in a mailbox or with the overnight courier service or the postmark, whichever is earlier shall constitute evidence of the Effective Date when the notice has been given.

### B. Entire Agreement.

This Agreement, together with the attached Exhibits, contains all of the terms and conditions of the Agreement between the Parties, and any and all prior and contemporaneous oral and written Agreements are merged herein. The Exhibits attached to this Agreement are hereby incorporated by reference in their entirety with the same force and effect as if they were set forth at length in this Agreement.

### C. Modifications and Waivers.

This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any Party, be waived orally. Changes and waivers can only be made in writing and the change or waiver must be signed by the Party against whom the change or waiver is sought to be enforced. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

### D. Benefit of Agreement.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

### E. Broker.

Seller and Buyer each warrant to the other that neither Party has dealt with any real estate broker in effecting this Agreement. Each Party shall hold the other harmless from any and all claims, demands, and attorney's fees resulting from any other real estate broker's claims for real estate commission based upon dealings with such Party.

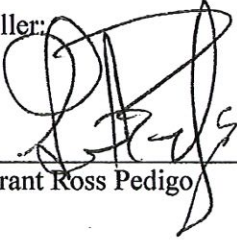
### F. Counterparts.

This Agreement may be executed in multiple counterparts and shall be effective when such counterparts are executed by and delivered to all signatory Parties. Such counterparts shall be taken to be one and the same original document with the same effect as if all Parties hereto had signed the same document. Any executed signature page of this Agreement may be detached from any counterpart and attached to another counterpart containing the signature pages with the signatures of all other signatory Parties to this Agreement.

**This is the end of page 7.**

IN WITNESS WHEREOF, Seller, Buyer and Escrow Agent/Title Company have hereunto set their hands at the place and date set forth beneath their signatures.

Seller:



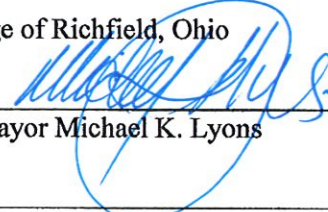
\_\_\_\_\_  
Grant Ross Pedigo

SHERIDAN, WY  
(place)

6/16/08  
(date)

Buyer:

Village of Richfield, Ohio

By:   
\_\_\_\_\_  
Mayor Michael K. Lyons

By: \_\_\_\_\_  
Finance Director Eleanor Lukovics

\_\_\_\_\_  
(place) (date)

Charles T. Riehl, Law Director  
Walter and Haverfield, LLP  
1301 East 9<sup>th</sup> Street, Suite 3500  
Cleveland Ohio 44114  
Telephone: 216-928-2895

Approved as to form:

By: \_\_\_\_\_  
Charles T. Riehl, Law Director

\_\_\_\_\_  
(place) (date)

Escrow Agent/Title Company:

Lawyer's Title Insurance Corporation  
Attn: Gayle Montalto, Esq.  
195 S. Main Street, Suite 202  
Akron, Ohio 44308  
Telephone: 330-762-3029  
Fax: 330-873-9529  
[gmontalto@landam.com](mailto:gmontalto@landam.com)

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

Seller's attorney:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Buyer's attorney:

Ziegler, Metzger & Miller LLP  
Christopher E. Soukup  
925 Euclid Avenue, Suite 2020  
Cleveland, Ohio 44115  
Telephone: (216) 781-5470  
Fax: (216) 781-0714  
Email: [csoukup@zieglermetzger.com](mailto:csoukup@zieglermetzger.com)

Director of Finance of the Village of Richfield hereby certifies that the monies required to meet the obligations of the Village during the fiscal year 2008 under the foregoing agreement have been lawfully appropriated by the Council of the Village for such purposes and are in the Treasury of the Village or in the process of collection to the credit of an appropriate fund free from any previous encumbrances pursuant to Ohio Revised Code Section 5705.41.

By: \_\_\_\_\_  
Finance Director Eleanor Lukovics

Dated: \_\_\_\_\_, 2008





Exhibit B