

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A PURCHASE AND SALE AGREEMENT FOR 4208 WHEATLEY ROAD AND DECLARING AN EMERGENCY

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 a Purchase and Sale Agreement for the purchase of property located at 4208 Wheatley Road, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to have the purchase close by May 7, 2003 as required in the agreement; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: April 15, 2003

Michael Lyons  
President of Council

Donald H. Larson  
Mayor

Dated: 4/16/2004

ATTEST:  
Carole Gibson  
Clerk of Council

Charles T. Riehl, Esq.  
E-Mail: [criehl@walterhav.com](mailto:criehl@walterhav.com)  
Direct Dial: (216) 928-2895

April 23, 2003

Gregory J. O'Brien, Esq.  
Taft, Stettinius & Hollister LLP  
3500 BP Tower  
200 Public Square  
Cleveland, OH 44114-2302

Dear Greg:

Enclosed please find two (2) executed copies of the Richfield-DeFranco Agreement. Please note that on page 5, Section 11.01, I have changed the rental for the current tenants to be kept by the Buyer.

Very truly yours,

Charles T. Riehl

CTR:kaw  
Enclosure

cc: The Honorable Donald H. Larsen (w/o encl.)  
Members of Council (w/o encl.)  
Finance Director Eleanor Lukovics (w/o encl.)  
Majestic Title Agency, LLC (w/o encl.)

## PURCHASE AND SALE AGREEMENT

4208 Wheatley Road

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the 18<sup>th</sup> day of April, 2003 by and between VIVIAN DeFRANCO, et al., 4208 Wheatley Road, Richfield, Ohio 44286 ("Sellers") and THE VILLAGE OF RICHFIELD, OHIO, an Ohio municipal corporation, 4410 West Streetsboro Road, P. O. Box 387, Richfield, Ohio 44286-0387 ("Buyer").

### **RECITALS**

A. Seller and Buyer have negotiated the terms of this Agreement, pursuant to which Seller shall sell and convey and Buyer shall now purchase and pay for the Property (as defined in Article I below) upon and subject to the terms of this Agreement.

B. This Agreement, together with each and every rider and exhibit to this Agreement, shall together constitute one Agreement governing the terms of the sale of the real property to Buyer.

NOW, THEREFORE, Buyer and Seller hereby agree as follows:

### ARTICLE I – PROPERTY

Subject to the terms and conditions set forth herein, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller subject to the Permitted Encumbrances, the following:

1.01 Land. That certain parcel of real property comprising approximately 5.15 acres being Permanent Parcel No. 50-01485 and having a street address of 4208 Wheatley Road in the Village of Richfield, County of Summit, State of Ohio (the "Property") described in Exhibit A and a sketch of which is attached as Exhibit B attached hereto and made a part of this Agreement, all of which shall be conveyed to Buyer.

### ARTICLE II – PURCHASE PRICE; TERMS OF PAYMENT

2.01 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be the sum of FIVE HUNDRED FIFTEEN THOUSAND DOLLARS (\$515,000.00), and shall be payable by Buyer to Seller as follows:

(a) Within forty-eight (48) hours of execution and delivery of this Agreement, Buyer shall deposit with Majestic Title Agency, Attention: Kristina Lah (the "Escrow Agent"), having its offices at 2132 Case Parkway, North B, Twinsburg, Ohio 44087; telephone: (330) 486-0950; facsimile: (330) 486-0955, a Note in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) made payable to Vivian DeFranco, et al. The Escrow Agent shall hold the Note and shall cancel the same upon deposit of the Purchase Price in accordance with Section 2.01(b) hereof.

(b) The Purchase Price shall be paid in immediately available funds through escrow on the Closing Date, as defined herein ("Purchase Price Balance").

## ARTICLE III – CONTINGENCY ITEMS AND INSPECTIONS

### 3.01 Title Insurance.

(a) On or before ten (10) business days after execution of this Agreement by Seller and delivery of a fully executed copy of this Agreement to Buyer, Seller shall obtain a Commitment for an ALTA Owner's Title Insurance Policy with respect to Seller's interest in the Property (the "Preliminary Report") dated on or after the date hereof in the amount of the Purchase Price, to be prepared and issued by Majestic Title Agency (the "Title Company" or "Escrow Agent"), together with copies of all documents and instruments referred to as exceptions to title in the Preliminary Report. Seller will provide a standard owner's affidavit at Closing (subject to Permitted Encumbrances).

(b) Buyer shall notify Seller in writing within ten (10) business days after receipt of the Preliminary Report or the environmental investigation, as defined in Paragraph 3.02 of this Agreement, whichever is later, of any defects, exceptions, liens, encroachments or encumbrances shown therein which Buyer disapproves. If Buyer disapproves of any exceptions or defects shown on the Preliminary Report or environmental investigation, Seller shall have ten (10) days after receipt of Buyer's objections to remove any objectionable exceptions from title and provide Buyer with evidence satisfactory to Buyer of such removal, or provide Buyer with evidence satisfactory to Buyer that the objectionable exceptions will be removed on or before the Closing Date.

(c) If Seller is unable to remove such objectionable exceptions from title by the Closing Date, Buyer's sole remedy shall be to either (i) elect to take such title as Seller is able to deliver, or (ii) terminate this Agreement and receive a refund of its deposits. In the event of such termination, Buyer shall pay all title fees and neither party shall have any further liability. Notwithstanding, Seller shall be obligated to remove monetary liens and mortgages.

(d) The term "Permitted Exceptions," as used in this Agreement, shall include (a) all liens and encumbrances subject to which Buyer agrees to take the Property pursuant to this Paragraph 3.01 of this Agreement, (b) all subsequent liens or encumbrances which Buyer shall accept or approve, and (c) all liens or encumbrances which Buyer causes or authorizes against the Property.

3.02 Environmental Investigation. Buyer, at Buyer's option and expense, may conduct a Phase I Environmental Assessment of the Property and shall notify Seller of any substantial objections or defects reported therein in accordance with the provisions of Paragraph 3.01(b) of this Agreement. Buyer shall leave the property in its undisturbed state after the environmental investigation. Seller hereby grants to Buyer a license to enter on the Property to perform the environmental investigation referenced herein.

## ARTICLE IV – TRANSFER OF TITLE AND POSSESSION

4.01 Title to the Property. Title to the Property, subject to the Permitted Exceptions, shall be transferred by Seller to Buyer on the Closing Date by Seller's good and sufficient Fiduciary Deed (the "Deed") free and clear of any liens or encumbrances except zoning restrictions of record and taxes not yet due and payable and any matter which would be revealed by an accurate Survey, the form and substance of which shall be approved in writing by Buyer or Buyer's counsel.

4.02 Possession. Possession of the Property, subject to the Permitted Encumbrances, shall be delivered to Buyer on May 7, 2003. Prior to Closing, Seller shall grant a license to Buyer to enter the premises for environmental testing.

#### ARTICLE V – ESCROW

5.01 Escrow. The purchase and sale contemplated by this Agreement is to be consummated through an escrow (the “Escrow”) to be established with the Title Company within three (3) business days after Seller’s execution of this Agreement and the delivery to Buyer of a fully executed copy thereof. At least one (1) business day prior to the Closing Date, as defined in this Agreement, Buyer and Seller each shall sign and deposit with the Title Company the Title Company’s Standard Conditions of Escrow which shall govern only to the extent same are consistent with the terms and conditions of this Agreement (in all events the terms and conditions of this Agreement shall control over any other provisions in the Title Company’s Standard Conditions of Escrow), together with the following funds and documents:

(a) Seller shall execute and deposit the duly executed and acknowledged Deed;  
and

(b) Buyer shall deposit (i) the Purchase Price Balance, and (ii) sufficient additional cash as necessary to pay Buyer’s share of all Escrow costs and closing expenses.

5.02 Close of Escrow. The close of the Escrow shall take place at the offices of Escrow Agent on or before May 7, 2003 (the “Closing Date”). Expenses of the Escrow and other items shall be charged or credited, as the case may be, to Seller and Buyer, as provided in Paragraphs 9.01 and 9.02 hereof. The close of Escrow shall be completed upon the delivery to and receipt by Seller of the Purchase Price.

#### ARTICLE VI – CONDITIONS OF THE ESCROW; FAILURE OF CONDITIONS

6.01 Seller’s Conditions to the Close of Escrow. It is understood and agreed that the obligation of Buyer to purchase the Property and the close of Escrow are conditioned on each of the following conditions, which conditions are solely for Buyer’s benefit and, except as otherwise specifically set forth in this Agreement, may be waived by Buyer prior to the Closing Date:

(a) The conveyance to Buyer on the Closing Date a fee simple title to the Property as evidenced by a pro forma ALTA Form 1992 Owner’s Policy of Title Insurance (“Title Policy”) in the full amount of the Purchase Price, issued by the Title Company, subject only to the Permitted Exceptions, delivered to Buyer on the Closing Date, to be followed promptly by the delivery of the Title Policy.

(b) The deliver of possession of the Property to Buyer on the Closing Date as described in Paragraph 4.02.

(c) The delivery to Buyer through escrow on the Closing Date of the Deed.

(d) All of Seller's representations and warranties contained herein, or made in writing by Seller pursuant to this Agreement, shall have been true and correct when made and shall be true and correct as of the Closing Date, and Seller shall have complied with all of Seller's covenants and agreements contained in or made pursuant to this Agreement.

(e) Satisfaction of the contingency items set forth in Article III of this Agreement.

6.02 Failure of Seller's Conditions. If any of the conditions specified in Paragraph 6.01 immediately above are not satisfied by Seller or waived by Buyer prior to the date specified for satisfaction of the condition, then, at the option of Buyer, exercisable by the giving of written notice to Seller, (i) the Closing Date may be extended as reasonably necessary to allow Seller to satisfy said conditions, or (ii) this Agreement and the Escrow may be terminated and all funds, together with all interest thereon, and documents deposited with the Escrow Agent or Seller, by Seller or Buyer, shall be immediately returned to the party having deposited the same. In the event of any such termination by Buyer, Buyer and Seller shall be immediately released from all obligations hereunder, and any escrow cancellation charges or similar fees, including examination fees imposed by the Escrow Agent, shall be borne by Seller.

6.03 Buyer's Conditions to the Close of Escrow. The obligation of Seller to sell the Property and the close of escrow are conditioned on delivery of the Purchase Price to Seller upon the close of escrow on the Closing Date.

#### ARTICLE VII – DEFAULT

7.01 Seller's Default. Except as permitted in this Agreement, Buyer shall retain all rights in law and in equity upon Seller's default.

7.02 Buyer's Default. Seller shall retain all rights in law or in equity upon Buyer's default.

#### ARTICLE VIII – REPRESENTATIONS AND WARRANTIES OF SELLER

8.01 Representations and Warranties of Seller. There are absolutely no warranties or representations made by Seller concerning the condition of the Property. Buyer is acquiring the Property "as is" after having performed such due diligence as Buyer has determined to be prudent.

8.02 Survival. The representations, warranties and indemnities set forth in this Agreement and Article VIII or in any other instrument delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement, the closing of Escrow and recording of the deed and transfer of title.

#### ARTICLE IX – PRORATIONS AND EXPENSES

9.01 Prorations; Security Deposits. Real property taxes and current installments of assessments are to be prorated in escrow as of the Closing Date using the latest available duplicate and valuation. There shall be no re-prorations.

9.02 Costs. Buyer shall pay for all closing costs including: title search and commitment fees, Title Insurance premiums, conveyance fees (if any), recording costs (other than costs to record releases of any liens or mortgages), and the escrow fees.

ARTICLE X – APPROVAL BY RICHFIELD COUNCIL

10.01 Approval by Council. Acceptance and approval of this Agreement is specifically conditioned upon the approval of Buyer's Council of a Resolution authorizing the acceptance of this Agreement.

ARTICLE XI – MISCELLANEOUS

11.01 Tenants May Remain on Property. Notwithstanding any other provision in this Agreement, the current tenants may remain on the premises after Closing until such mutually agreeable date between Buyer and the current tenants, Seller to keep rental income until December 31, 2003.

11.02 Brokerage Commission and Finder's Fee. Each party represents and warrants to the other that there are no brokers, agents or finders involved in this transaction. The parties agree that Buyer shall be responsible for any and all broker fees and/or commissions, if any. In the event that this broker or any other broker, salesman or other person makes a claim for a commission or finder's fee based upon the transactions contemplated by this Agreement, Buyer shall indemnify and hold harmless the Seller from said claim and all liabilities, costs and expenses related thereto, including reasonable attorney's fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the recording of the Deed.

11.03 Notices. Any and all notices or other communications required or permitted to be given under this Agreement, or by law, shall be in writing and either (i) personally delivered, (ii) sent by United States mail, registered or certified, or express mail, postage prepaid, return receipt requested, or (iii) sent by Federal Express or other nationally recognized overnight courier service that provides receipted delivery service, delivery charges prepaid, return receipt requested, addressed to the following addresses:

If to Seller:                      Vivian DeFranco  
    7419 Hillside Road  
    Independence, Ohio 44131

with a copy to:                      Gregory J. O'Brien, Esq.  
    Taft, Stettinius & Hollister  
    3500 BP Tower  
    200 Public Square  
    Cleveland, Ohio 44114

If to Buyer: Village of Richfield  
4410 West Streetsboro Road  
P. O. Box 387  
Richfield, Ohio 44286-0387  
Attn: Mayor

with a copy to: Charles T. Riehl, Esq.  
Walter & Haverfield LLP  
1300 Terminal Tower  
Cleveland, Ohio 44113

Notice shall be deemed to have been given upon the date of delivery (or the date of refusal to accept delivery, as the case may be) or at such other address as either party may from time to time specify in writing to the other in the manner aforesaid.

11.04 Time. Time is of the essence of every provision herein contained.

11.05 Incorporation by Reference. All of the Exhibits attached hereto or referred to herein and all documents in the nature of such Exhibits, when executed and/or so attached are by this reference incorporated herein and made a part of this Agreement.

11.06 Construction. The parties acknowledge that each party has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

11.07 No Merger. The covenants, warranties, representations and indemnifications set forth in this Agreement shall not merge with the delivery of the deed but shall, except as otherwise expressly provided in this Agreement, survive the recording of the Deed.

11.08 Governing Law. This Agreement shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of Ohio.

11.09 Entire Agreement. This Agreement and the Exhibits which are attached hereto or contemplated to be attached hereto are by this reference incorporated herein and all documents specifically contemplated by this Agreement when executed, contain the entire understanding of the parties and supersede any and all other written or oral understanding.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement the day and year first above written

Witness

Marian L. Streibel  
Print Name: Marian L. Streibel

Hampton W. Shadrach  
Print Name: Hampton W. Shadrach

Witness

Jo Ann Marpin  
Print Name: Jo Ann Marpin

Tammy Lang  
Print Name: Tammy Lang

SELLER:

**VIVIAN DeFRANCO, et al.**

By: Vivian DeFranco  
Its \_\_\_\_\_

BUYER:

**VILLAGE OF RICHFIELD, OHIO**

By: Donald H. Larsen  
Donald H. Larsen, Mayor

And: Eleanor Lukovics  
Eleanor Lukovics, Finance Director

STATE OF OHIO            )  
  ) SS:  
COUNTY OF SUMMIT    )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Vivian DeFranco, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and sale this 10<sup>th</sup> day of April, 2003 at INDEPENDENCE, Ohio.

Gregory J. O'Brien  
Notary Public



GREGORY J. O'BRIEN  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission  
Has No Exp. Date  
Section 147.03 O.R.C.

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF SUMMIT        )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named DONALD H. LARSEN, Mayor and ELEANOR LUKOVICS, Finance Director, of the Village of Richfield, who acknowledged that he did sign the foregoing instrument and that the same is their free act and deed individually and on behalf of the Village of Richfield, for the uses and purposes herein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of April, 2003 at Richfield, Ohio.

Jo Ann Maupin  
Notary Public

JO ANN MAUPIN, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires Oct. 16, 2006

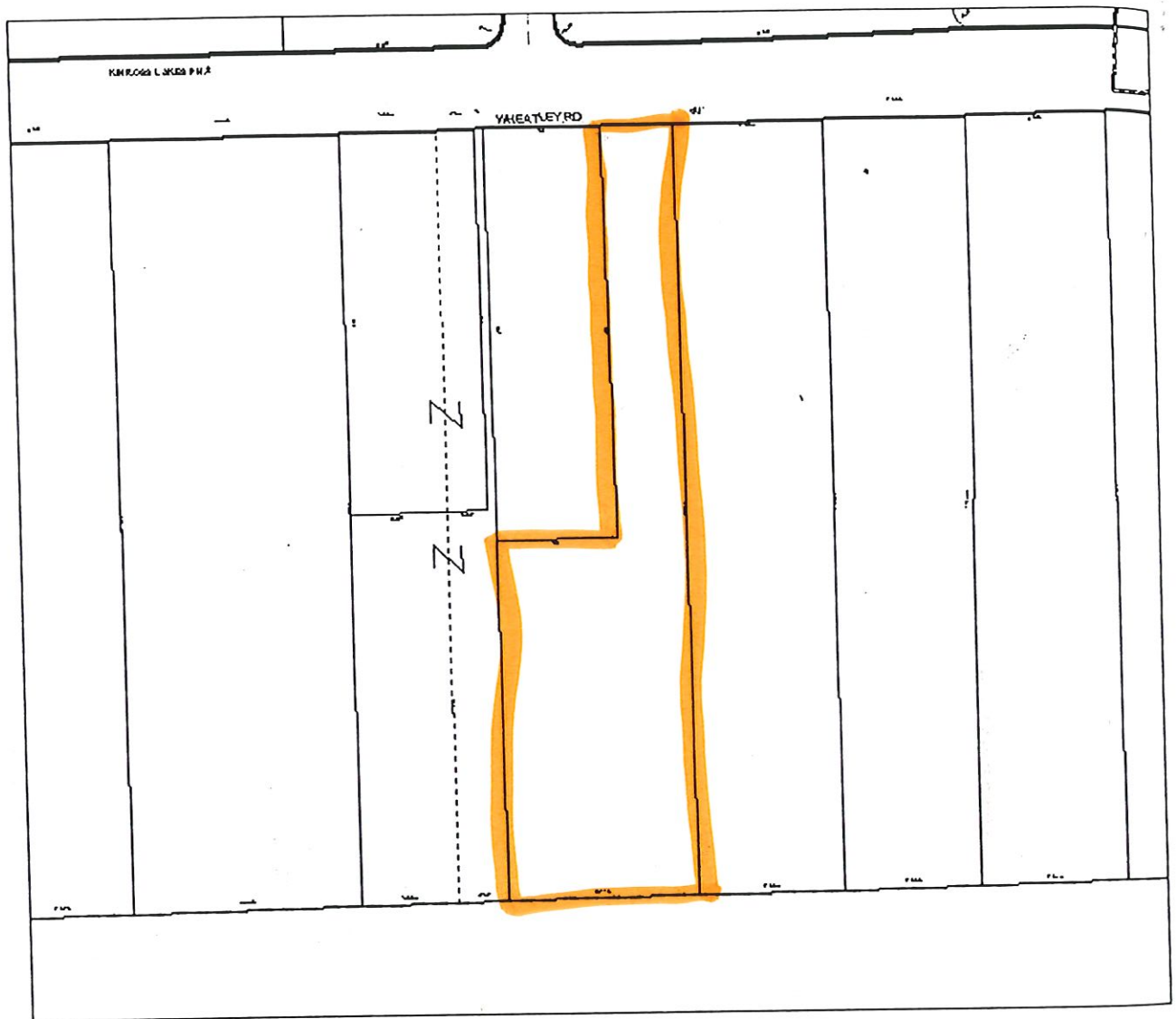
LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Legal Description of Land
B	Estoppel Letters
C	Seller's FIRPTA Affidavit

Vivian DeFranco et al Property  
4028 Wheatley Road  
Richfield, Summit County, Ohio

**EXHIBIT A**

# SUMMIT COUNTY P.A.W.S.\* MAPS



**Selected Parcel ALTID is RI0002801006000**

Frank Williams  
Auditor

Gene Esser  
Engineer

James B. McCarthy  
Executive



\* - Public Access Web Service

**EXHIBIT B**

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