

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A SETTLEMENT AGREEMENT AND RELEASE IN THE CASE OF *PARASILITI, ET AL. V. VILLAGE OF RICHFIELD, ET AL.*, SUMMIT COUNTY COMMON PLEAS COURT CASE NO. CV2000-08-3754 AND DECLARING AN EMERGENCY

WHEREAS, the Village Law Director has recommended the entry into a Settlement Agreement and Release in the case of *Parasiliti, et al. v. Village of Richfield, et al.*, Summit County Common Pleas Court Case No. CV2000-08-3754.

NOW, THEREFORE, 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 Settlement Agreement and Release in the case of *Parasiliti, et al. v. Village of Richfield, et al.*, Summit County Common Pleas Court Case No. CV2000-08-3754, a copy of which Agreement and Release is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into the Addendum D to the Purchase Agreement between Parasiliti and G.N. Associates, Inc. and to take all steps necessary to purchase the property located at 4014 Wheatley Road, Richfield, Ohio as set forth in the attached Settlement Agreement.

SECTION 3. 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 this Agreement in force prior to any further scheduled hearings in the captioned lawsuit; 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: February 5, 2002

Mary P. Peggy Malone  
President of Council

ATTEST:  
Carole Gibson  
Clerk of Council

Donald H. Larsen  
Mayor

Dated: 2/5/2002

**SETTLEMENT AGREEMENT AND RELEASE**

THIS AGREEMENT made this 19<sup>th</sup> day of February, 2002, by and among THE VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, P. O. Box 387, Richfield, Ohio 44286-0387 ("Richfield"), LOUIS PARASILITI, 4014 Wheatley Road, Richfield, Ohio 44286 ("Parasiliti") and GN ASSOCIATES, 6540 Wooded View Drive, Boston Heights, Ohio 44236 ("GN").

WHEREAS, Parasiliti and GN have instituted a lawsuit against Richfield in the Summit County Common Pleas Court, being Case No. CV 2000-08-3754 (the "Litigation"); and

WHEREAS, the Litigation is currently scheduled to proceed to trial on January 3, 2002; and

WHEREAS, the parties to this Agreement have found it in their mutual interest to settle and resolve the Litigation and all outstanding issues between the parties under the terms of this Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY agreed by and among the parties as follows:

1. Assignment. GN shall assign and hereby does assign and Parasiliti hereby consents to the assignment of the Purchase Agreement between GN and Louis Parasiliti of the Parasiliti Parcel, being an approximately 6.0 acre property located at 4014 Wheatley Road, Richfield, Ohio, to Richfield. A copy of the contract dated April 16, 1999 ("Purchase Agreement") is attached hereto as Exhibit A and incorporated herein fully as if by reference. Alternatively, Richfield shall, at the election of Parasiliti, purchase the property for Four Hundred Ninety Thousand Dollars (\$490,000.00) cash at closing. This shall occur within thirty (30) ~~forty-five (45)~~ days of the execution of this Agreement. All other terms of the attached Purchase Agreement shall apply.

2. Purchase. Richfield shall immediately exercise its rights, as purchaser/assignee under the Purchase Agreement, and purchase the Parasiliti property.

3. Griesinger Property. GN shall immediately commence negotiations for the purchase of the front approximately 1.33 portion of the "Griesinger property," being an approximately 3.15 total acre property, located at 4154 Wheatley Road, Richfield, Ohio. The remainder of the Griesinger property shall remain in life estate to Mrs. Griesinger so that she may remain in the house on the property as long as she wishes. GN will assist the Village in purchasing the entire parcel or attempt to secure an option to purchase the remainder of the property as Mrs. Griesinger desires or after her death or her vacation of the property at the same price per acre as it secures the purchase of the front 1.33 acres of the property. At any rate, GN shall not be obligated to purchase any portion of the Griesinger property for more than \$80,000 per acre or \$103,500 for the front 1.33 acre portion of the property. If requested by GN, the Village of Richfield, at no cost to GN except as outlined above, shall assist GN with its full powers toward the acquisition of the front 1.33 acres of the Griesinger property and to enter into a joint development agreement to facilitate the development of the parcel for the economic and community development of the Village of Richfield.

4. Arby's Site Plan Approval. Once GN secures the right to purchase the front 1.33 acres of the Griesinger property, it shall make application to the Village of Richfield for site plan approval for an Arby's restaurant on this property, generally in accordance with the preliminary site plan layout prepared by Elewski & Associates dated December 4, 2001, a copy of which preliminary site plan layout is attached hereto as Exhibit B and incorporated herein fully as if by reference. The Village of Richfield shall cooperate with Arby's by expeditiously processing and promptly approving, subject to paragraph 11, the preliminary plan for the location of the Arby's on this property and granting the following variances, if needed:

- (a) An approximately 75-foot setback from the road while the current zoning requirement requires a 105-foot setback.
- (b) Allowing a single curb cut of approximately 40 feet in width as opposed to the 36-foot width provided by the Code.
- (c) Allowing a driveway in width of 25 feet as opposed to the Code requirement of 24 feet in width.

Richfield, through the passage by its Council of Resolution 23-2002 authorizing the execution and delivery of this Agreement, agrees that the devotion of the front 1.33 acres of the Griesinger property as set forth in this paragraph 4 is reasonable and accords with the land use objective of Richfield.

5. Cooperation with Village Planner. GN agrees to cooperate with the Village, through the input and advice of the Village Planner, as to the siting of the building on the property together with parking layout, landscaping, screening, etc. GN agrees to process its preliminary site plan through the Planning Commission in accordance with the requirements of the Richfield Code.

6. Reimbursement of Expenses. In light of the considerable planning, expense and layout design work encountered by GN in planning to place an Arby's on the Parasiliti property and on the Griesinger property, the Village agrees to reimburse GN as follows:

- (a) Professional fees incurred by GN as of December 6, 2001 in the amount of \$47,800.00.
- (b) Additional costs incurred and expected to be incurred by GN because of evaluation, topographical and engineering issues on the Griesinger site in the amount of \$9,500.00.
- (c) With the exception of the foregoing, all remaining professional fees of GN in processing the site plan through the Planning Commission shall be borne by GN.

The reimbursement of the above expenses, with exception of Section (c), shall be forthcoming within ~~forty five (45)~~ <sup>thirty (30)</sup> days of the execution of this Agreement or contemporaneously with paragraph 1.

7. Soil. The Village will perform necessary grading of the building site and facilitate the removal of soil if required by detailed engineering conclusions concerning grading the topography of the site to make it suitable for development. GN shall grant a license to the Village to allow the grading and removal, and, prior to the grading and removal, shall provide such assurances as the Village may reasonably require that there are no environmental hazards in the soil.

8. No Other Fast Food. The Village of Richfield agrees that if it is successful in obtaining a unified development on the south side of Wheatley Road, it shall not allow development of any other free-standing fast food restaurant in any such proposed development contemplated on parcels on the south side of Wheatley Road between Interstate 77 and the Griesinger property.

9. No Truck Parking. In pursuing site plan approval, GN agrees not to utilize truck parking on the Griesinger site and agrees to preclude semi-tractor-trailer trucks from entering the property except for deliveries to the business on the site.

10. IRS 1033. The Village of Richfield agrees to furnish Parasiliti with a letter so that the consequences of Internal Revenue Service Code Section 1033 shall apply.

11. Permits. The Village agrees to cooperate with GN and agrees that all permits for the Arby's on the Griesinger property shall be issued no later than three (3) months after completed application and in no event later than June 1, 2002.

12. Release. Parasiliti and GN, for themselves, their heirs, executors, administrators, attorneys, successors, assigns and all others acting on their behalf, hereby release and forever discharge the Village of Richfield, its elected officials, officers, employees, attorneys, agents, successors, assigns and all others acting on its behalf from any and all losses, liens, claims, charges, demands, damages, actions, lawsuit, rights, causes of action, costs (except as provided in paragraph

16 below) and expenses of any kind (including but not limited to reasonable attorneys' fees) of whatsoever kind or nature, arising out of, resulting from, or in any way connected with, directly or indirectly, the transaction and/or occurrences which are the subject matter of Parasiliti's and GN's claims which were raised, or could have been raised in the Litigation other than the promises made in this Agreement.

The Village of Richfield, its elected officials, officers, officials, employees, attorneys, agents, successors, assigns and all others acting on their behalf, hereby release and forever discharge Parasiliti and GN, their heirs, executors, administrators, attorneys, successors, assigns and all others acting on their behalf from any and all losses, liens, claims, charges, demands, damages, actions, lawsuits, rights, causes of action, costs and expenses of any kind (including but not limited to reasonable attorneys' fees) of whatsoever kind or nature, arising out of, resulting from, or in any way connected with, directly or indirectly, that was raised or could have been raised in the Litigation.

13. Dismissal of All Claims. Immediately upon execution of this Agreement, Parasiliti and GN agree to dismiss with prejudice their Complaint and they agree to file with the Court a Stipulation for Dismissal with Prejudice and Judgment Entry.

14. Covenant Not to Sue. Parasiliti and GN and Richfield further agree and covenant to forever refrain from instituting, procuring or in any way aiding any suit, cause of action, or claim against the other for any loss, liability, cost, expense or damages of any nature or description whatsoever, arising out of or relating to: (i) the claims or causes of action that were or could have been asserted by the parties in the Litigation, and (ii) the real property located at 4014 Wheatley Road, Richfield, Ohio. It is expressly understood, agreed and acknowledged that the foregoing release and covenant not to sue shall be binding and of full force and effect with respect to any other conditions,

whether latent or obvious, known or to be discovered in the future as a result of any repairs, improvements, remodelings or otherwise, of the property located at 4014 Wheatley Road, Richfield, Ohio, and that Richfield shall bear no further liability to Parasiliti and GN for any such conditions.

15. No Admission of Liability. It is expressly acknowledged that the consideration reflected herein is made to compromise and settle certain claims disputed as to both liability and amount, and does not constitute any admission of liability by the Village of Richfield, its officers, officials, employees, attorneys, agents or any person acting on its behalf. In addition, neither this Agreement nor any part of the negotiations connected herewith will be or can be offered or received in evidence for any purpose or at any proceeding, other than for the purpose of enforcing this Agreement or as specifically authorized herein.

16. Court Costs. The Village of Richfield agrees to pay all court costs incurred as a result of the dismissal of the Litigation and this Agreement.

17. Transfer of Rights. Each party hereto represents that it has not, in whole or in part, assigned or transferred to any third party the claims or causes of action herein compromised and settled.

18. Agreement is Complete Defense. This Agreement may be pleaded as a full and complete defense, and it may be used as a basis for an injunction or specific performance in any action at law, proceeding in equity or any other judicial or nonjudicial proceeding in equity or any other judicial or nonjudicial proceedings that the parties may institute, prosecute, maintain or continue to maintain or prosecute in breach of this Agreement.

19. Applicable Law. The parties acknowledge that this Agreement is entered into in the State of Ohio and is to be interpreted in accordance with the internal laws of the State of Ohio.

20. Construction. This Agreement contains the entire agreement among the parties with regard to the matters set forth in it. Each party, and counsel for any represented party, has reviewed this Agreement and, accordingly, the normal rules 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. In entering into this Agreement, the parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their choice. The parties further represent that the terms of this Agreement have been completely read and explained to them by their attorneys and that these terms are fully understood and accepted by them.

21. Arbitration. Recognizing that GN has certain expectations of an ability to develop the Parasiliti property for an Arby's franchise, which expectations are subject to certain known risks inherent in the Litigation and any development project, GN and Richfield agree that should the Arby's project proceed on the Griesinger site, GN will forego and waive any right to pursue these claims against the Village. Should the Arby's project not proceed on the Griesinger site, the Village and GN agree that GN only (and not Parasiliti) may submit its claims for lost profits and business opportunity against the Village only (and not against any individual elected officials, officers, employees, attorneys or agents of the Village) to arbitration in commercial arbitration before the American Arbitration Association ("AAA") or other similar body. The administrative costs charged by AAA shall be the responsibility of the Village. GN shall further recognize the reimbursement for professional services and expenses incurred by GN as set forth in paragraph 6 above.

IN WITNESS WHEREOF, the Village of Richfield, by its Mayor and its Finance Director, having been previously authorized by Resolution No. 23-2002, Louis Parasiliti and GN Associates, by George D. Nadvit, its President, having full authority to enter into this Agreement,



Signed in the presence of:

James Lee

GN ASSOCIATES, INC.

By: [Signature]

Print name: GEORGE D. NADVIT

Its: PRESIDENT

STATE OF Ohio )  
COUNTY OF Summit ) SS:

Before me, a Notary Public in and for said County and State, appeared the GN ASSOCIATES, INC., by George D. Nadvit, its President, who acknowledged that he did sign the foregoing Agreement and that the same is his free act and deed and the free act and deed of GN Associates, Inc.

February SUBSCRIBED and sworn to before me at \_\_\_\_\_, this 1st day of February 2002.

James Lee  
Notary Public  
My commission expires 11/15/03