

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH 5 M ASSOCIATES, AN OHIO GENERAL PARTNERSHIP, FOR PURCHASE OF APPROXIMATELY 27 ACRES OF LAND LOCATED AT 3921 BRECKSVILLE 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 an Agreement for Purchase of Sale of Real Estate with 5 M Associates, an Ohio general partnership, to purchase approximately 27 acres of land located at 3921 Brecksville Road, Richfield, Ohio, 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 be available for Village Service Department use at the earliest possible time; 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: June 6, 2000

*Michael J. Lyons*  
President of Council

*Donald H. Larsen*  
Mayor

Dated: 6/13/2000

ATTEST:  
*Carol Gibson*  
Clerk of Council

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL ESTATE**

**TABLE OF CONTENTS**

<b><u>ARTICLE I - PROPERTY</u></b> .....	-1-
1.01 <u>Real Property</u> .....	-1-
1.02 <u>Appurtenances</u> .....	-1-
1.03 <u>Intangible Property</u> .....	-2-
1.04 <u>Leases</u> .....	
<b><u>ARTICLE II - PURCHASE PRICE; TERMS OF PAYMENT</u></b> .....	-2-
2.01 <u>Purchase Price</u> .....	-2-
<b><u>ARTICLE III - CONTINGENCY ITEMS AND INSPECTIONS</u></b> .....	-2-
3.01 <u>Contingency Items</u> .....	-3-
3.02 <u>Agency Inquiry</u> .....	-3-
3.03 <u>Title Insurance</u> .....	-4-
3.04 <u>Survey</u> .....	-4-
3.05 <u>Termination</u> .....	-4-
<b><u>ARTICLE IV - ADDITIONAL CONTINGENCIES</u></b> .....	-4-
4.01 <u>Village Council Approval</u> .....	-4-
<b><u>ARTICLE V - TRANSFER OF TITLE</u></b> .....	-4-
5.01 <u>Title to the Real Property</u> .....	-4-
5.02 <u>Rights Under Contracts</u> .....	-5-
5.03 <u>Possession</u> .....	-5-
5.04 <u>Utilities</u> .....	-5-
<b><u>ARTICLE VI - LEASES OF PROPERTY</u></b> .....	-5-
6.01 <u>Leases</u> .....	-5-
<b><u>ARTICLE VII - ESCROW</u></b> .....	-5-
7.01 <u>Escrow</u> .....	-6-
7.02 <u>Close of Escrow</u> .....	-6-
<b><u>ARTICLE VIII - CONDITIONS OF THE ESCROW; FAILURE OF CONDITIONS</u></b> ..	-6-
8.01 <u>Village's Conditions to the Close of Escrow</u> .....	-7-
8.02 <u>Failure of Village's Conditions</u> .....	-7-
8.03 <u>Seller's Conditions to the Close of Escrow</u> .....	-7-
<b><u>ARTICLE IX - DEFAULT</u></b> .....	-7-
9.01 <u>Seller's Default</u> .....	-7-
9.02 <u>Village's Default</u> .....	-7-
<b><u>ARTICLE X - REPRESENTATIONS AND WARRANTIES OF SELLER</u></b> .....	-7-
10.01 <u>Representations and Warranties of Seller</u> .....	-7-

10.02 Representations and Warranties of Village ..... -10-

10.03 Survival ..... -10-

**ARTICLE XI - ADDITIONAL COVENANTS OF SELLER AND VILLAGE** ..... -10-

11.01 Maintenance of the Property ..... -10-

11.02 Insurance ..... -10-

11.03 Environmental Insurance ..... -10-

11.04 No New or Amended Leases ..... -10-

11.05 Payment of Bills ..... -10-

**ARTICLE XII - RISK OF LOSS** ..... -11-

12.01 Risk of Loss ..... -11-

**ARTICLE XIII - OTHER TAKING** ..... -11-

13.01 Other Taking ..... -11-

**ARTICLE XIV - PRORATIONS AND EXPENSES** ..... -11-

14.01 Prorations ..... -11-

14.02 Costs ..... -11-

**ARTICLE XV - MISCELLANEOUS** ..... -12-

15.01 Brokerage Commission and Finder's Fee ..... -12-

15.02 Successors and Assigns ..... -12-

15.03 Notices ..... -12-

15.04 Time ..... -13-

15.05 Incorporation by Reference ..... -13-

15.06 Further Assurances ..... -13-

15.07 Construction ..... -13-

15.08 No Merger ..... -13-

15.09 Governing Law ..... -13-

15.10 Entire Agreement ..... -13-

15.11 Foreign Person ..... -13-

15.12 Counterparts ..... -14-

**LIST OF EXHIBITS** ..... -15-

**AGREEMENT FOR PURCHASE AND SALE  
OF REAL ESTATE**

**THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE** ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000 by and between 5 M ASSOCIATES, an Ohio General Partnership, 2078 South Medina Line Road, Wadsworth, Ohio 44281 ("Seller"), and THE VILLAGE OF RICHFIELD, an Ohio Municipal Corporation, or its nominee, ("Village").

**WITNESSETH:**

WHEREAS, Seller is the owner of the Property (as defined in Article I below); and

WHEREAS, the Village and Seller have negotiated an agreement whereby the Village desires to purchase the Property from Seller and Seller desires to sell the Property to the Village on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and the Village agree as follows:

**ARTICLE I - PROPERTY**

Seller hereby agrees to sell the Property containing approximately 27 acres of land located at 3921 Brecksville Road, Richfield, Ohio all as more fully described in attached Exhibit A, a map of which is attached as Exhibit B to the Village, and the Village agrees to purchase the Property from Seller, subject to the warranties and representations and the terms and conditions set forth herein:

1.01 Real Property. Certain developed real property, consisting of approximately 27 acres of land located at 3921 Brecksville Road, Richfield, Ohio, also commonly known as Permanent Parcel No. \_\_\_\_\_ (hereinafter referred to as the "Real Property").

1.02 Appurtenances. All rights, privileges and easements appurtenant to and for the benefit of the Real Property of Seller, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and/or under the Real Property, as well as all development rights, air rights and water, relating to the Real Property and any other easements, rights-of-way or appurtenances relating to or used in connection with the ownership, operation, use, occupancy or enjoyment of the Real Property, or any other appurtenance, together with all rights of Seller in and to streets, sidewalks, alleys, driveways, parking areas and areas adjacent thereto or used in connection therewith, and any land lying in the bed of any existing or proposed street adjacent to the Real Property (all of which are collectively referred to as the "Appurtenances").

1.03 Intangible Property. All of the interest of Seller in any contractual rights and intangible personal property owned by Seller relating to or used in connection with the ownership, operation, use, occupancy or enjoyment of the Real Property, and, to the extent approved by the Village in writing pursuant to the provisions of this Agreement, (i) any environmental claims, suits

or causes of action against any party who may be held liable under any law or legal theory, including, without limitation, common law or statutory nuisance, trespass, equitable contribution, equitable indemnification, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the Resources Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.) for environmental contamination arising from Hazardous Materials, as hereinbelow defined; and (ii) any and all development agreements, permits, contracts, warranties, guarantees, indemnities, agreements, utility contracts, permits, licenses and other rights owned by Seller relating to or used in connection with the ownership, operation, use, occupancy or enjoyment of all or any part of the Real Property and/or Appurtenances (all of which are collectively referred to as the "Intangible Property"), described in attached Exhibit C, and all of which shall be assigned to Village pursuant to an assignment in the form of Exhibit D attached hereto (the "Assignment and Assumption of Intangible Property"); and

1.04 Leases. All interest of Seller, as landlord, in and to the leases of the Real Property in effect now and/or on the Closing Date (as defined in Paragraph 7.02 below), if any, (the "Leases").

All of the items described in Paragraphs 1.01, 1.02, 1.03, and 1.04 above are hereinafter collectively referred to as the "Property."

## 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 ONE MILLION THREE HUNDRED NINETY-FIVE THOUSAND EIGHT HUNDRED SEVENTY and No/100 DOLLARS (\$1,395,870.00) (the "Initial Deposit"). Such sum shall be deposited in Escrow with Midland Title Security, Inc., \_\_\_\_\_, Ohio \_\_\_\_\_, Attn: \_\_\_\_\_, Telephone: \_\_\_\_\_; Fax: \_\_\_\_\_, on or before June \_\_\_\_, 2000. The Escrow Agent shall hold the deposit in an interest bearing account acceptable to Seller in accordance with the terms and conditions of this Agreement. All interest on such sums up to Closing shall be credited to Buyer. If for any reason this Agreement is terminated by either party and even if either party alleges a default of the other party pursuant to Article IX of this Agreement, the Escrow Agent shall immediately refund the Initial Deposit together with all interest earned thereon to the Buyer.

## ARTICLE III - CONTINGENCY ITEMS AND INSPECTIONS

3.01 Contingency Items. Seller shall deliver to the Village within five (5) business days after this Agreement is executed by the Village (the "Delivery Date") such of the following items as are noted below for delivery by the Delivery Date:

- (a) Copies of all Leases, royalty agreements, casualty and liability insurance policies or certificates of insurance therefor, any warranties, any service and supply contracts and equipment leases and all other contracts and agreements

to which Seller is a party relating to the operation or maintenance of the Real Property.

- (b) Copies of any plans and specifications, surveys, or other working drawings, architectural and engineering inspection reports, environmental assessments and reports, environmental impact reports, archaeological reports, structural reports and soils reports relating to the Real Property which are in Seller's possession. Seller shall cooperate with the Village in obtaining copies of any environmental assessments previously undertaken by third parties with respect to the Real Property.
- (c) Copies of any and all permits, warranties, utility contracts, permits, licenses and other rights owned by Seller relating to or used in connection with the ownership, operation, use, occupancy or enjoyment of all or any part of the Real Property.

3.02 Agency Inquiry. Seller hereby grants permission to the Village to make inquiries of governmental agencies relating to the condition of the Real Property, the results of the Village's inspections, and the existence of any Hazardous Materials on the Real Property. Seller shall be responsible for any reporting requirements set forth in any federal, state or local law relating to any Hazardous Materials.

3.03 Title Insurance.

- (a) Within fifteen (15) days of the execution of this Agreement, Seller will obtain a Commitment for an ALTA Owner's Title Insurance Policy (Form B 1970) with respect to Seller's interest in the Property (the "Preliminary Report") in the amount of the Purchase Price, prepared and issued by Midland Title Security, Inc., \_\_\_\_\_, (Telephone: (\_\_\_\_) \_\_\_\_\_), (the "Title Company" or "Escrow Agent"), together with copies of all documents and instruments referred to as exceptions to title in the Preliminary Report. The title policy as finally issued shall reflect the exceptions as shown on the Preliminary Report subject to those removed in accordance with Exhibit E of this Agreement and others agreed to be removed by the Village and the Title Company.
- (b) Buyer shall notify Seller in writing within ten (10) days after receipt of the Preliminary Report or the survey as defined in Paragraph 3.04 of this Agreement, whichever is later, of any defects, exceptions, liens, encroachments or encumbrances shown thereon which Buyer disapproves. If Buyer disapproves of any exceptions or defects shown on the Preliminary Report or survey, Seller shall have twenty (20) days after receipt of Buyer's objections to remove any objectionable items 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 or remedy such matters by the Closing Date and the Village is unwilling to take title subject to the exceptions, the Village shall elect either (i) to close this transaction subject to such exceptions or (ii) to terminate this Agreement in its entirety.
- (d) The term "Permitted Exceptions," as used in this Agreement, shall include (a) all liens and encumbrances subject to which the Village agrees to take the Property pursuant to this Paragraph 3.03 of this Agreement, (b) all subsequent liens or encumbrances which the Village shall accept or approve, and (c) all liens or encumbrances which the Village causes or authorizes against the Property.

3.04 Survey. The Village, at the Village's option and at the Village's expense, shall order an "as-built" ALTA Survey of the Real Property, prepared by a licensed surveyor or civil engineer of the Village's choice (the "Survey"), and the Village shall notify Seller of any matters affecting the Permitted Exceptions in accordance with the provisions of Paragraph 3.03(b) of this Agreement.

3.05 Termination. After satisfaction of Paragraph 4.01 herein below and any objection as provided in Paragraph 3.03(b) above, this matter shall proceed to close. If the Village gives no notification to Seller within thirty (30) days after the satisfaction of Paragraph 4.01 below, (the Contingency Notification Date), then the Village shall be deemed to have waived its rights to object to matters as provided in Paragraph 3.03(b) above.

#### ARTICLE IV - ADDITIONAL CONTINGENCIES

4.01 Village Council Approval. The Village's obligations hereunder are also specifically contingent upon obtaining all necessary approvals from the Richfield Village Council of the terms of this Agreement.

#### ARTICLE V - TRANSFER OF TITLE

5.01 Title to the Real Property. Title to the Real Property, subject to the Permitted Exceptions, shall be transferred by Seller to the Village on or before \_\_\_\_\_, 2000 by Seller's good and sufficient general warranty deed (the "Deed"), the form and substance of which shall be approved in writing by the Village's counsel prior to Closing.

5.02 Rights Under Contracts. Prior to the Closing Date, all of Seller's right, title and interest in and to any Intangible Property to be assumed by the Village, together with any and all warranties available in connection with the Property, shall be assigned to the Village on the Closing

Date pursuant to the Assignment and Assumption of Intangible Property. The Village shall provide Seller with a list of the Intangible Property to be assumed by the Village.

5.03 Possession. Possession of the Property, free and clear of all matters except items of record listed on the commitment is to be delivered by Seller to the Village on the Closing Date, together with all materials and information necessary to assure the Village complete access to and possession of the Property.

5.04 Utilities. Seller shall arrange for termination of any and all service in its name and for final meter readings to be taken on the Closing Date or as close thereto as possible. The Village shall apply for utility service in its name to become effective as of the Closing Date. To the extent final water readings are not taken on the Closing Date, the parties shall make an equitable adjustment between themselves outside escrow to account for such charges.

#### ARTICLE VI - LEASES OF PROPERTY

6.01 Leases. At Closing, Seller shall deliver to the Village an appropriate termination of the Leases effective as of the Closing Date unless the Village and Seller shall otherwise agree that the Leases shall remain in full force and effect after the Closing Date in which event Seller shall assign to the Village all of their right, title and interest in and to the Leases.

#### ARTICLE VII - ESCROW

7.01 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 the Village of a fully executed copy thereof. On or before \_\_\_\_\_, 2000, the Village 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 (i) the duly approved, executed and acknowledged Deeds, and (ii) Seller's Non-Foreign Affidavit;
- (b) The Village shall deposit the Purchase Price as set forth in Paragraph 2.01 and sufficient additional cash necessary to pay the Village's share of Escrow Costs or evidence that the same are in hand and subject to immediate payment and transfer to Seller through the escrow; it being understood and agreed that the Seller has no control over the funds being deposited in escrow and it shall have no claim on the funds until close of escrow pursuant to Paragraph 7.02; and

### ARTICLE VIII - CONDITIONS OF THE ESCROW: FAILURE OF CONDITIONS

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

- (a) The conveyance to the Village on or before July 17, 2000 of fee simple title to the Real Property as evidenced by a pro forma ALTA Owner's Policy of Title Insurance (Form B 1970) ("Title Policy") in the full amount of the Purchase Price, issued by the Title Company, subject only to the Permitted Exceptions agreed to by the Village delivered to the Village on the Closing Date, to be followed promptly by the delivery of the Title Policy.
- (b) The delivery of possession of the Property to the Village on the Closing Date as described in Paragraph 5.03, or earlier as provided in paragraphs below.
- (c) The delivery to the Village through escrow on or before July 17, 2000 of the Deed in accordance with this Agreement.
- (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) Seller's execution and delivery to the Village, on or prior to the Closing Date, of Seller's certificate in the form attached hereto as Exhibit F (the "Non-Foreign Certificate") stating, under penalty of perjury, that as of the Closing Date, Seller is not a "foreign person" for the purposes of Section 1445 of the Internal Revenue Code of 1986, as amended, and that as of the Closing Date withholding of tax will not be required thereunder in connection with the contemplated transfer of the Real Property by Seller to the Village.
- (f) Satisfaction of the contingency items set forth in Articles III and IV of this Agreement.
- (g) Clean-up of all vehicles, barrels, trailers, spoil dirt located nine hundred (900) feet from the roadway and fifty (50) feet south of the center line containing approximately one hundred (100) tons and miscellaneous personal property by the Seller on the Property prior Closing on or before July 17, 2000.

8.02 Failure of Village's Conditions. If any of the conditions specified in Paragraph 8.01 immediately above are not satisfied by Seller or waived by the Village prior to the date specified for

satisfaction of the condition, then, at the option of the Village 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 the Village, shall be immediately returned to the party having deposited the same. In the event of any such termination by the Village, the Village 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, except in the case of items (f) and (g), termination on account of which shall require the Village to bear all such expenses.

8.03 Seller'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, less Seller's charges, to Seller upon the close of escrow on the Closing Date.

#### ARTICLE IX - DEFAULT

9.01 Seller's Default. The Village retains all rights, in law or in equity, including the right of specific performance, it may have as a result of Seller's default under this Agreement.

9.02 Village's Default. Seller retains all rights, in law or in equity, including the right of specific performance, it may have as a result of the Village's default under this Agreement.

#### ARTICLE X - REPRESENTATIONS AND WARRANTIES OF SELLER

10.01 Representations and Warranties of Seller. As an inducement to the Village to enter into this Agreement and to consummate the transactions contemplated by this Agreement, each corporation that constitutes Seller, jointly and severally, warrants, represents and covenants with the Village as of the date of this Agreement and again as of the Closing Date as follows:

- (a) Use and Operation. Seller represents and warrants to the Village that Seller has received no written notices nor is Seller aware, without specific inquiry, of any written notices from applicable governmental and regulatory authorities that the use and operation of the Property are in violation of applicable building codes, environmental laws and regulations (including, but not limited to, those relating to the handling, manufacturing, treatment, storage, disposal, discharge, use and transportation of environmental materials) and other applicable local, state and federal laws, ordinances, regulations, rules, requirements and agency guidelines.
- (b) Real Property-Use Regulation. Seller represents and warrants to the Village that Seller has received no written notice of condemnation, environmental, zoning or other real property-use regulation proceedings that have been instituted or are planned to be instituted by any person, entity or jurisdiction,

which could detrimentally affect the use or operation of the Real Property, or any portion thereof, and Seller has not received notice of any special assessment proceedings affecting the Real Property, or any portion thereof.

- (c) Authority of Seller. Seller represents and warrants to the Village that (i) the person(s) executing this Agreement and any of the other documents executed and delivered on behalf of Seller are duly appointed and authorized to execute such documents; (ii) this Agreement and all other documents executed and delivered by Seller have been duly authorized, executed and delivered by Seller and constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms; and (iii) the execution, delivery and performance of this Agreement and all other documents executed and delivered by Seller do not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property are subject.
- (d) Other Contracts to Convey Property. Seller represents and warranties to the Village that Seller has not committed or obligated itself in any manner whatsoever to sell the Property, or any portion thereof, to any party other than the Village. Seller further represents and warrants to the Village that, except for the Village, no tenant, subtenant or other occupant or owner of the Property has any right to purchase the Property, or any portion thereof or interest therein, including any right of first refusal, right of first offer, or similar arrangement, contained in any agreement, written or oral, with any such third party.
- (e) Utilities. Seller represents and warrants to the Village that, to the best of Seller's knowledge, all water, sewer, gas, electric, telephone and drainage facilities and all other utilities required for the normal use and operation of the Property (i) are installed to the property lines of the Property, (ii) are connected and operating pursuant to valid permits for the Property, and (iii) run over, through or under a public street or alley to the Property from the location at which such utilities are connected to the main public utility lines.
- (f) Reports and Other Documents. Seller represents and warrants to the Village that reports and all documents and other items relating to or affecting the Property and delivered to the Village pursuant to this Agreement or in connection with the execution hereof, are and as of the Closing Date will be true and correct copies and contain no material inaccuracies or misstatements of fact.
- (g) Agreements Affecting the Real Property. Seller represents and warrants to the Village that, to the best of Seller's knowledge, there are no easements, encumbrances or other agreements affecting the Real Property except as will be shown in the Preliminary Report.

- (g) Agreements Affecting the Real Property. Seller represents and warrants to the Village that, to the best of Seller's knowledge, there are no easements, encumbrances or other agreements affecting the Real Property except as will be shown in the Preliminary Report.
- (b) Litigation. Seller represents and warrants to the Village that there is no litigation, arbitration, proceeding, investigation or tax assessment complaint pending or, to the best of Seller's knowledge, threatened against Seller or the Property (or any portion thereof), or any basis therefor, that arises out of the use, operation or ownership of the Property, or any portion thereof.
- (i) Hazardous Materials.
1. Seller represents and warrants to the Village that all operations or activities upon, or use or occupancy of the Property, or any portion thereof, are, in all respects, in compliance with all state, federal and local laws, ordinances, regulations, codes, rules, orders and agency guidelines relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of Hazardous Materials.
  2. Seller has not at any time engaged in or permitted any dumping, discharge, disposal, release, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Materials, at, on, in or about the Property, or any portion thereof. Seller represents and warrants to the Village that there is not present upon the Property, or any portion thereof, (A) any PCB's, nor are there any structures, fixtures, equipment or other objects or materials containing PCB's, and (B) underground storage tanks.
  3. For purposes of this Agreement, "Hazardous Materials" shall mean substances (whether solid, liquid, gaseous or otherwise) which are (1) flammable, explosive, corrosive, radioactive, or toxic; or (2) defined as hazardous substances, hazardous materials, toxic substances or hazardous wastes in the Comprehensive Environmental Response, Compensation and Liability Act (49 U.S.C. 1801 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); and all amendments adopted to these laws, and all regulations and publications promulgated pursuant to these laws in effect on the Closing Date; and (3) asbestos, asbestos containing materials containing materials defined and described in Environmental Protection Agency Report No. 56/5-85/204 (June 1985), or any related or successor report, or other applicable government regulations defining or describing such materials issued on or before the Close of Escrow; or (4) petroleum, petroleum derivatives, including crude oil or any fraction thereof, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or the ash produced by a resource recovery facility utilizing

a municipal solid waste stream; or (5) pesticides, insecticides, fertilizers, herbicides or similar chemicals, or (6) any mixture that includes any substance listed above hazardous materials.

4. For purposes of this Agreement, "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing Hazardous Materials).

10.02 Representations and Warranties of Village. The Village represents and warrants to Seller as follows: this Agreement and all documents executed by the Village which are to be delivered to Seller on the Closing Date are, and as of the Closing Date will be, duly authorized, executed, and delivered by the Village, and are and as of Closing Date will be legal, valid and binding obligations of the Village (subject to any applicable bankruptcy and insolvency laws).

10.03 Survival. The representations and warranties set forth in this Agreement and this Article X 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 XI - ADDITIONAL COVENANTS OF SELLER AND VILLAGE

11.01 Maintenance of the Property. At all times until title is transferred to the Village, Seller will perform all obligations on its part to be performed as shall be required to keep and maintain the Property in good condition and repair until the Closing Date.

11.02 Insurance. Up to and including the Closing Date, Seller shall maintain in effect all of its insurance policies now maintained on the Property.

11.03 Environmental Insurance. Buyer and Seller will investigate, prior to Closing, the cost of purchasing environmental risk insurance. Depending on the cost, the Buyer and Seller may agree on purchasing this insurance and the apportionment of the cost thereof prior to Closing.

11.04 No New or Amended Leases. From and after the date of this Agreement, Seller will not amend, alter or modify any of the leases or intangible property or enter into any new lease, contract or agreement relating to the Property without the prior written consent of Buyer.

11.05 Payment of Bills. Seller agrees to timely pay in full any and all of its outstanding bills relating to the Property that exist as of the Closing Date.

### ARTICLE XII - RISK OF LOSS

12.01 Risk of Loss. If the Property or any portion is damaged or destroyed by fire or other casualty, whether or not insured, or the Property or any portion thereof is taken by power of eminent domain or deed in lieu thereof ("Taking"), prior to the Closing Date, then the Village may, at its option, (a) terminate this Agreement and all rights and obligations hereunder, in which event all amounts paid by the Village to Seller shall be immediately returned to the Township and any and all deposits made into the Escrow shall be returned to the party having made the same, or (b) elect to proceed with the purchase of the Property. If the Village elects to proceed with the purchase of the Property after damage or destruction to the Property or a Taking, as specified above, then (i) in the case of damage or destruction, Seller is, at the election of the Village, (A) to pay prior to the Closing Date the deductible portion of any insurance policy covering such damage or destruction and to deliver to the Village upon the later of the Closing Date or the receipt by Seller of insurance proceeds covering such damage or destruction, all such insurance proceeds and if such loss has not been fully adjusted prior to the Closing Date, Seller agrees to continue to prosecute such adjustment to completion in full cooperation with the Village; or (B) to repair, replace and restore, prior to the Closing Date, the Property to substantially the same condition that existed immediately before such damage or destruction; or (ii) in the case of a Taking, pay to the Village all proceeds theretofore received by Seller on account of such Taking and assign to the Township all rights of Seller to receive any future proceeds on account of such Taking pursuant to a form of assignment reasonably satisfactory to the Village. Risk of loss is to be borne by Seller until title is transferred to the Village.

### ARTICLE XIII - OTHER TAKING

13.01 Other Taking. If the Property or any portion thereof is taken by power of eminent domain or deed in lieu thereof ("Taking"), prior to the Closing Date, then Seller shall pay to the Village all proceeds theretofore received by Seller on account of such Taking and assign to the Village all rights of Seller to receive any future proceeds on account of such Taking pursuant to a form of assignment reasonably satisfactory to the Village.

### ARTICLE XIV - PRORATIONS AND EXPENSES

14.01 Prorations. Real property taxes and assessments shall be prorated in escrow as of the Closing Date using the latest available duplicate and valuation. If any Leases will continue in effect after Closing, the Escrow Agent shall prorate rents and other charges and credit to the Village all security deposits.

14.02 Costs. Seller shall pay for title examination, title commitment, the cost of a Title Guaranty in the amount of the Purchase Price, the conveyance fee, and one-half of the escrow fee. The Village shall pay one-half the cost of the escrow fee, the costs of recording the Deed, Mortgage and other documents, and the difference in cost between a Title Guaranty and the Title Policy. The Village and Seller shall each be responsible for the payment of its or their own attorney's fees.

## ARTICLE XV - MISCELLANEOUS

15.01 Brokerage Commission and Finder's Fee. Each party represents and warrants to the other that no broker, agent or finder is involved in this transaction. In the event any broker, salesman or other person makes a claim for a commission or finder's fee based upon the transactions contemplated by this Agreement, the party through whom said broker, salesman or other person makes its claim shall indemnify and hold harmless the other party 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.

15.02 Successors and Assigns. The Village may assign this Agreement without Seller's consent.

15.03 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 Village:

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  
1300 Terminal Tower  
Cleveland, Ohio 44113

If to Seller:

5 M Associates, an Ohio General Partnership  
2078 South Medina Line Road  
Wadsworth, Ohio 44281

with a copy to:

Sandy A. DiFiore, Esq.  
Amer Cunningham & Brennan Co., L.P.A.  
159 S. Main Street, Suite 600  
Akron, Ohio 44308

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.

15.04 Time. The Parties will cooperate to meet all time requirements.

15.05 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.

15.06 Further Assurances. In a timely fashion, each party shall execute and deliver such further instruments, documents or assurances, and take such further action as shall be required to carry out the purposes and intent of this Agreement.

15.07 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.

15.08 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.

15.09 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.

15.10 Entire Agreement. This Agreement and the Exhibits which are attached hereto or contemplated to be attached hereto and 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 including, without limitation, any prior purchase agreements for the Property previously entered into between the parties.

15.11 Foreign Person. Seller represents and warrants that it is not a "foreign person," a "foreign corporation" or "foreign partnership" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, or a nonresident of Ohio and that, at the Closing Date, Seller shall deliver to the Village all documents required by the Codes, including, without limitation, a "FIRPTA" affidavit providing taxpayer identification numbers.

15.12 Counterparts. This Agreement may be executed in counterparts, each of which counterpart shall be fully enforceable as if contained in one fully executed document.

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

Witnesses:

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

THE VILLAGE OF RICHFIELD

By: \_\_\_\_\_  
Its Mayor

And: \_\_\_\_\_  
Its Finance Director

5 M ASSOCIATES, an Ohio General Partnership

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

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

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Legal Description of Real Property
B	Map of Real Property
C	Description of Personal Property
D	Assignment and Assumption of Intangible Property
E	Items to be Removed from the Preliminary Report
F	Seller's FIRPTA Affidavit