

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTINGENT PURCHASE AND SALE AGREEMENT WITH RILEY HOTEL GROUP, LLC FOR THE SALE OF AN APPROXIMATE THREE (3) ACRE PARCEL FROM A LARGER VACANT TRACT OF LAND LOCATED ON WHEATLEY ROAD AND OWNED BY THE VILLAGE AND DECLARING AN EMERGENCY.

WHEREAS, the Village owns a vacant tract of land located on Wheatley Road;

WHEREAS, Riley Hotel Group wishes to purchase approximately three (3) acres of that land to develop an approximate one hundred (100) bed Hilton Brand Hotel in manner consistent with the Crossroads District Plan;

WHEREAS, the Council desires to authorize the sale of said land in accordance with terms and conditions substantially similar to those in the agreement attached hereto as "Exhibit A."

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

SECTION 1. The Mayor is hereby authorized and directed to enter into a Contingent Purchase Agreement with the Riley Hotel Group, LLC in accordance with terms and conditions substantially similar to the agreement attached hereto as Exhibit A.

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure for the reason that it is immediately necessary to execute the Agreement in order to ensure that Riley Hotel Group can immediately begin taking steps to complete its due diligence and develop the portion of land that is the subject of the agreement, provided that it receives the requisite number of votes needed to pass as an emergency measure; otherwise, it shall take effect at the earliest date allowed by law.

PASSED: \_\_\_\_\_

8-15-23

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

Michael Wheeler  
Mayor

Dated: 8/17/2023

ATTEST:

Jill Amy  
Clerk of Council

Exhibit A

**CONTINGENT PURCHASE AND SALE AGREEMENT**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of August 2023, by and between **VILLAGE OF RICHFIELD** ("Seller") and **RICHFIELD VILLAGE CAPITAL GROUP LLC** ("Buyer"). Buyer and Seller are individually referenced herein from time-to-time as a "party" or collectively as the "parties."

RECITALS:

A. Seller is the fee simple owner of that certain tract of vacant land located on the south side of Wheatley Road in Richfield, Ohio, and more particularly described on the attached **Exhibit A-1 (legal description)**, of which Buyer desires to purchase that portion consisting of approximately three (3) acres and approximately located and generally configured on the attached **Exhibit A-2 (conceptual site plan)**, together with all appurtenances, fixtures (if any), and building improvements thereon (if any) (collectively, as to that specific portion of vacant real property to be sold by Seller to Buyer, the "Property").

B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, contingent upon the satisfaction of the terms and conditions set forth hereinafter.

C. The final area and configuration of the Property will be determined by Seller, communicated to Buyer, and agreed by the parties prior to the Closing (defined below) so the survey plat and legal description for the Property can be prepared.

**NOW THEREFORE**, in consideration of the Deposit (defined below) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **SALE OF THE PROPERTY.** Seller agrees to bargain, sell, grant, convey and deliver the Property to Buyer, and Buyer agrees to purchase and accept the Property from Seller, for the Purchase Price (defined below) and on the terms and conditions set forth herein.

2. **RIGHT TO CONSTRUCT AND OPERATE HOTEL ON PROPERTY.** Seller shall have no obligation to sell, and Buyer shall have no obligation to purchase, the Property unless and until Buyer possesses the right to construct and operate a Hilton or Marriott hotel franchise brand (e.g., Holiday Inn & Express, Hampton Inn, etc.) mutually acceptable to the parties on the Property (the "Franchise Rights"). Buyer shall continue to possess the Franchise Rights throughout the duration of this Agreement, and revocation of the Franchise Rights by Hilton or Marriott for any reason shall operate as a complete bar to the sale of the Property. Buyer shall immediately notify Seller in writing when Buyer obtains the right from Hilton or Marriott to construct and operate said hotel franchise on the Property. The date of Buyer's delivery of said written notice to Seller shall serve as the effective date of this Agreement (the "Effective Date").

3. **PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.**

(a) Purchase Price. The total purchase price for the Property is Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.<sup>00</sup>) (the "**Purchase Price**") payable by Buyer to Seller at the Closing (defined below), subject to prorations and other credits provided in this Agreement.

(b) Payment of Purchase Price. The Purchase Price shall be paid in the following manner:

(i) Within three (3) business days of the Effective Date, Buyer shall deliver to Affiliates Title Group, 2211 Medina Rd suite 150, Medina, Ohio 44256 (the "**Escrow Agent**") an earnest money deposit in the amount of \$15,000.00 (the "**Deposit**"), which shall be payable by wire transfer of immediately available United States funds. The Deposit shall be deposited by the Escrow Agent in a non-interest-bearing account at a federally insured depository institution, to be held by Escrow Agent in escrow pending Closing or other disbursement in accordance with the terms of this Agreement.

(ii) At Closing, and subject to the terms of this Agreement, the Deposit shall be applied to the Purchase Price so that Buyer shall pay to Seller an amount equal to the Purchase Price *less* the Deposit by transfer of immediately available United States funds (the "**Cash Amount**") as directed by Seller in writing.

#### 4. INSPECTION PERIOD; DUE DILIGENCE MATERIALS; TERMINATION.

(a) Inspection Period. Commencing on the Effective Date and continuing for a period ending six (6) months thereafter at 5:00 p.m. Eastern Standard Time (the "**Inspection Period**"), Buyer and Buyer's agents (collectively, "**Buyer Parties**") shall have the right (upon prior notice to and coordination with Seller) to enter upon the Property for the limited purpose of performing such non-invasive inspections, examinations, inquiries, reviews, surveys, studies and tests (collectively, "**Inspections**") thereon as Buyer may deem reasonably appropriate, subject to the terms of this Agreement. Notwithstanding the immediately foregoing sentence, Buyer shall be permitted to take soil borings, soil samples, any other samples to determine the suitability of the soil for construction, and water samples from the Property during the Inspection Period. Seller shall take all actions reasonably requested by Buyer to assist Buyer Parties with the Inspections. Prior to any entry onto the Property by Buyer Parties, Buyer shall provide to Seller a certificate of insurance evidencing that Buyer carries commercial general liability insurance in an amount not less than \$1,000,000 for injury or death of one person in any one occurrence and in an amount not less than \$2,000,000 for injury or death of more than one person in any one occurrence and against liability for damage to property in the amount of \$2,000,000 for each occurrence for Buyer Parties seeking access to the Property, naming Seller as additional insured. Such insurance shall be maintained by Buyer in full force and effect until the earlier of Closing or the termination of this Agreement. Buyer acknowledges that it shall assume all risks involved in entering upon the Property for the performance of such activities by Buyer Parties, and shall indemnify, defend and hold Seller harmless from and against all losses, liabilities, costs, claims, demands, damages, actions, causes of action, suits and expenses (including, but not limited, to attorneys' fees, expert witness fees and court costs) (collectively, "**Claims**") arising out of, relating to, or resulting from, such activities conducted by Buyer Parties. Furthermore, if the transactions that are the subject of

this Agreement fail to close for any reason except for Seller's material breach or default under this Agreement, then Buyer shall, at its sole cost and expense, repair any damage to the Property caused by Buyer's activities on the Property, and Buyer shall return the Property to the condition it was in prior to Buyer's activities on the Property to the extent legally permissible. Notwithstanding the foregoing, Buyer's rights under this paragraph are subject to the following limitations, covenants and agreements: (i) prior to any entry onto the Property by Buyer Parties, Buyer shall give Seller notice at least one (1) business day before conducting any Inspections on the Property, and a representative of Seller shall have the right to be present when Buyer Parties conduct Inspections on the Property; (ii) Buyer Parties shall not unreasonably interfere with the use, occupancy or enjoyment of the Property by Seller or other occupants thereof; (iii) Buyer shall not damage the Property or any portion thereof; (iv) Buyer shall, at its sole cost and expense, comply with all applicable federal, state and local laws, statutes, rules regulations, ordinances, and policies (collectively, "Laws") in conducting any of the Inspections of the Property; (v) Buyer agrees to keep the Property free from any and all liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Buyer Parties in connection with any Inspection, and if any such lien shall at any time be filed, Buyer shall cause the same to be discharged of record within forty-five (45) days thereafter (and if Buyer fails to do so, Seller may discharge the same at Buyer's expense and receive an applicable portion of the Deposit from the Escrow Agent to reimburse Seller therefor); (vi) except as approved by Seller in writing, in no event shall Buyer Parties have the right to place any materials or equipment on the Property (including without limitation, signs or other advertising material) until after the Closing has occurred, except such equipment necessary for the Inspections, which shall be promptly removed by Buyer Parties upon completion of the Inspections or the Inspection Period, whichever occurs earlier in time; and (vii) Buyer and Buyer's representatives and agents hereby waive any and all Claims against Seller and Seller's agents for any injury to persons or damage to property arising out of any Inspections or other work performed by Buyer Parties, including, but not limited to, any damage to the tools and equipment of Buyer Parties, all of which shall be brought onto the Property at the sole risk and responsibility of Buyer Parties, unless the same is caused by Seller's or Seller's agent's negligence or intentional acts.

(b) Due Diligence Materials. In the event that the transactions contemplated herein fail to close for any reason whatsoever, Buyer hereby agrees that Buyer shall immediately deliver to Seller, at Buyer's cost and expense and at no cost or expense to Seller: (i) a list setting forth the names of all persons or entities who conducted investigations, examinations, tests or inspections of or with respect to the Property on behalf of or at the instance of Buyer, (ii) all reports, studies, surveys, site plans and other written or graphic material of any kind or nature whatsoever generated, collected, prepared or compiled in connection with such investigations, examinations, tests or inspections (collectively, the "**Due Diligence Materials**"), and (iii) any and all reports, studies, surveys, site plans and other written or graphic material of any kind or nature whatsoever furnished to Buyer by Seller. All Inspections of the Property shall be at Buyer's sole cost and expense. All of Buyer's duties and obligations under this Section 4 shall survive the termination of this Agreement or the closing of the transactions contemplated in this Agreement (the "**Closing**").

(c) Termination Notice. Should Buyer determine during the Inspection Period that Buyer does not desire to purchase the Property, for any reason or no reason at all, then Buyer may terminate this Agreement by, prior to the expiration of the Inspection Period, delivering

written notice to Seller of Buyer's desire to terminate this Agreement and delivering to Seller the Due Diligence Materials (collectively, the "**Termination Requirements**"). Should Buyer timely comply with the Termination Requirements, then (i) this Agreement shall thereupon become null, void and of no further effect, (ii) the Deposit shall be promptly returned to Buyer, and (iii) the parties shall be relieved of all obligations hereunder (except for those duties and obligations that expressly survive the termination of this Agreement). Should Buyer not timely comply with the Termination Requirements, then this Agreement shall continue in full force and effect, and Buyer shall be deemed to have accepted the condition of the Property and irrevocably waived its right to terminate this Agreement for any reason whatsoever other than for (i) Seller's subsequent default hereunder or (ii) the non-occurrence of the condition to Closing set forth in Section 7 of this Agreement.

## 5. SURVEY AND TITLE.

(a) Survey. Prior to the expiration of the Inspection Period, Buyer may cause an Ohio licensed surveyor to prepare an ALTA survey of the Property (the "**Survey**") and to provide one copy of the Survey to each party. Buyer shall have until the expiration of the Inspection Period to approve the Survey or to notify Seller in writing of its objections thereto, if any (the "**Survey Objections**"). Buyer's failure to timely provide Survey Objections to Seller shall be deemed a waiver of Buyer's right to object to any matters related to survey. If Buyer raises any Survey Objections, then Seller may, but shall have no obligation, to cure and remove such Survey Objections on or before the Closing Date (defined below) at Seller's expense. If Seller notifies Buyer ("**Seller's Survey Notification**") that Seller is unwilling or unable to cure the Survey Objections on or before the Closing Date, then Seller shall not be in default hereunder, and Buyer shall have as its sole and exclusive remedy, the option to (i) terminate this Agreement by providing Seller with written notice of its intent to do so no later than the earlier of ten (10) days after Buyer's receipt of Seller's Survey Notification or the Closing Date (failure to timely provide such notice to Seller shall be deemed a waiver of Buyer's right to terminate under this Section 5(a)), or (ii) waive such defects and proceed to Closing, accepting the Property as it then is and without setoff or reduction in the Purchase Price. In the event Buyer shall timely elect to terminate because of an uncured Survey Objection, then Escrow Agent shall return the Deposit to Buyer, and the parties shall be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement.

(b) Area and Boundary Confirmation. Prior to the Closing: (i) Seller shall determine the final area and configuration of the Property (the "**Property Area and Configuration**") and communicate the Property Area and Configuration to Buyer in writing; (ii) Buyer shall have a survey plat and legal description prepared for the Property Area and Configuration (the "**Plat and Legal Description**"); and (iii) Buyer and Seller shall mutually agree on the Plat and Legal Description, and the parties shall memorialize that agreement pursuant to an addendum to this Agreement (the "**Plat and Legal Description Addendum**").

(c) Title. Prior to the expiration of the Inspection Period, Buyer may conduct a title examination of the Property and obtain a commitment or binder for issuance of an owner's title insurance policy issued by a title insurance company of Buyer's choice. Buyer shall have until the expiration of the Inspection Period to provide Seller with written notice of Buyer's objections to the title of the Property, if any (the "**Title Objections**"). Except as otherwise set forth below in

this Section 5(c), Buyer's failure to timely provide Title Objections to Seller shall be deemed a waiver of Buyer's right to object to any matters related to the title to the Property. If Buyer raises any Title Objections, then Seller may, but shall have no obligation to, cure and remove such Title Objections on or before the Closing Date at Seller's expense. If Seller notifies Buyer ("**Seller's Title Notification**") that Seller is unwilling or unable to cure the Title Objections on or before the Closing Date, then Seller shall not be in default hereunder, and Buyer shall have as its sole and exclusive remedy, the option to (i) terminate this Agreement by providing Seller with written notice of its intent to do so no later than the earlier of ten (10) days after Buyer's receipt of Seller's Title Notification or the Closing Date (failure to timely provide such notice to Seller shall be deemed Buyer's termination of this Agreement under this Section 5(c)), or (ii) waive such defects and proceed to Closing, accepting title to the Property as it then is and without setoff or reduction in the Purchase Price. In the event Buyer shall timely elect to terminate because of an uncured Title Objection, then Escrow Agent shall return the Deposit to Buyer, and the parties shall be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Seller shall have an absolute obligation to satisfy all outstanding mechanic's, mortgage related and judgment liens encumbering the Property.

**6. REPRESENTATIONS AND WARRANTIES.**

(a) Seller's Representations and Warranties. As material consideration to induce Buyer to enter into this Agreement and consummate the transactions contemplated herein, Seller warrants, represents, and covenants with Buyer as of the Effective Date and again as of the Closing Date as follows:

- (i) The person(s) executing this Agreement and any of the other documents executed and delivered on behalf of Seller pursuant to this Agreement are duly appointed and authorized to execute such documents; 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 Seller agrees to indemnify and hold Buyer harmless from any Claim or loss which may be incurred by Buyer, including attorney fees, as a result of any lack of right or authority by Seller to enter into this Agreement and all documents specifically identified in this Agreement;
- (ii) To Seller's knowledge, the documents and other items relating to or affecting the Property and delivered to Buyer 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, and all such documents and other items referenced in this Agreement have been, or will be, delivered to Buyer pursuant to this Agreement to the extent required by this Agreement;

- (iii) Seller has not entered into, and there are no, material service contracts, leases, or other agreements of any kind or nature whatsoever affecting the Property, and there will be as of the Closing Date no obligation of Buyer under the terms of any contract, lease, or other instrument affecting the Property;
- (iv) Seller has not committed or obligated itself in any manner whatsoever to sell the Property, or any portion thereof, to any person, entity, or party other than Buyer; Seller has not hypothecated or assigned any rents or income from the Property, or any portion thereof, in any manner except pursuant to secured financing to be satisfied and released from title on the Closing Date; Seller further represents and warrants to Buyer that, except for Buyer, no other person or entity 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;
- (v) Seller is the fee simple owner of the Property, Seller solely holds title to the Property, and Seller can convey good and marketable title to Buyer pursuant to a limited warranty deed, subject only to the exceptions set forth in Section 7(b)(i); and
- (vi) As of the Closing Date, the Property will be free and clear of all mortgages, encumbrances, and secured interests arising out of, relating to, or resulting from any loans, notes, financing, or any other actions by Seller or Seller's agent.

(b) Representations and Warranties of Buyer. As material consideration to induce Buyer to enter into this Agreement and consummate the transactions contemplated herein, Seller warrants, represents, and covenants with Buyer as of the Effective Date and again as of the Closing Date as follows:

- (i) The person(s) executing this Agreement and any of the other documents executed and delivered on behalf of Buyer pursuant to this Agreement are duly appointed and authorized to execute such documents; this Agreement and all other documents executed and delivered by Buyer have been duly authorized, executed, and delivered by Buyer and constitute legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their terms; and Buyer agrees to indemnify and hold Seller harmless from any Claim or loss which may be incurred by Seller, including attorney fees, as a result of any lack of right or authority by Buyer to enter into this Agreement and all documents specifically identified in this Agreement;

- (ii) To Buyer's knowledge, the documents and other items relating to or affecting the Property and delivered to Seller 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, and all such documents and other items referenced in this Agreement have been, or will be, delivered to Seller pursuant to this Agreement to the extent required by this Agreement;
- (iii) Buyer is not the subject of any lawsuit, action, or proceeding, whether contemplated, threatened, or actual, under any bankruptcy, insolvency, or similar laws affecting creditor's rights generally (whether state or federal);
- (iv) Buyer is not, and will not become, a person or entity with whom U.S. persons or entities are restricted from doing business with under regulations of OFAC of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities; and
- (v) Buyer will design, construct, and use the Property at all times in compliance with the Laws of the Village of Richfield, Ohio, including its codified ordinances and planning and zoning code, and Buyer will ensure that all structures, improvements, and uses of the Property are in compliance with the Crossroads District Design Guidelines, a copy of which is attached as Exhibit B.

(c) Survival. Except as otherwise provided herein, the representations, warranties and covenants contained in this Agreement shall survive the Closing for a period of twelve (12) consecutive months immediately following the Closing.

7. CLOSING. Buyer and Seller agree that the Closing shall occur as follows:

(a) Place and Date of Closing. The Closing shall occur by mail escrow, via the Escrow Agent, within thirty (30) days of the expiration of the Inspection Period (the actual date of Closing defined herein as the "Closing Date").

(b) Seller's Instruments. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following items:

(i) A limited warranty deed duly executed by Seller conveying to Buyer, or Buyer's nominee, fee simple title to the Property (the "**Deed**"), subject to (A) all easements, covenants, conditions, restrictions and other agreements of record; (B) all matters

which would be disclosed by a recent and accurate survey of the Property; (C) public streets and legal highways; and (D) municipal, zoning and subdivision laws and ordinances;

(ii) A closing statement duly executed by Seller setting forth the prorations and adjustments required by this Agreement or otherwise agreed by Buyer and Seller;

(iii) The Plat and Legal Description Addendum duly executed by Seller;  
and

(iv) Evidence of authority to execute the closing documents required of Seller hereunder and enter into this Agreement.

(c) Buyer's Instruments. At or prior to the Closing, Buyer shall deliver or cause to be delivered to Seller the following items:

(i) The Cash Amount;

(ii) A closing statement duly executed by Buyer setting forth the prorations and adjustments required by this Agreement or otherwise agreed by Buyer and Seller;  
and

(iii) Evidence of authority to enter into this Agreement and to execute the closing documents required of Buyer hereunder.

#### 8. CONDITION TO CLOSING.

(a) Conditions Precedent to Buyer's Obligation to Close. The following are express conditions precedent to Buyer's obligation to close the transactions contemplated in this Agreement:

(i) No material, adverse change in title to, or condition of, the Property after the expiration of the Inspection Period which is not cured by Seller;

(ii) Conveyance to Buyer on the Closing Date of fee simple title to the Property as evidenced by a pro forma ALTA Owner's Policy of Title Insurance in the full amount of the Purchase Price ("Title Policy"), issued by the Escrow Agent, subject only to the exceptions set forth in Section 7(b)(i) delivered to Buyer on the Closing Date, to be followed promptly by the delivery of the Title Policy;

(iii) Delivery of possession of the Property to Buyer as set forth in this Agreement;

(iv) Delivery of the documents and instruments set forth in Section 7(b) to Buyer from Seller; and

(v) all Seller's representations and warranties contained herein, or made in writing by Seller pursuant to this Agreement, shall have been true and correct in all material respects when made and shall be true and correct in all material respects 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.

(b) Conditions Precedent to Seller's Obligation to Close. The following are express conditions precedent to Seller's obligation to close the transactions contemplated in this Agreement:

(i) Delivery of the documents and instruments set forth in Section 7(c) to Seller from Buyer; and

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

(c) Waiver of Conditions Precedent. Each party agrees that if the transactions contemplated herein proceed to Closing, then any unfulfilled condition precedent set forth in this Section 8 shall be deemed waived by the party for whom such condition precedent benefits.

#### 9. CLOSING COSTS.

(a) Seller's Costs. Seller shall pay the following costs at Closing: (i) the cost to prepare the Deed and the other documents to be delivered by Seller; (ii) one-half the Survey costs; (iii) one-half (1/2) any fees and costs due and owing to the Escrow Agent (the "Escrow Fees"); (iv) all documentary transfer taxes levied by state or local authorities in connection with the transfer of title; and (v) its proportionate share of the expenses to be prorated as set forth in this Agreement.

(b) Buyer's Costs. Buyer shall pay the following costs at Closing: (i) the cost to prepare the documents to be delivered by Buyer; (ii) the Deed recording fee; (iii) one-half the Survey costs; (iv) the costs to obtain title insurance commitment, the premium for the Title Policy, environmental audit and other due diligence reports; (v) its proportionate share of the expenses to be prorated as set forth in this Agreement; and (v) one-half the Escrow Fees. Except as otherwise provided herein, each party agrees to bear its own expenses, including, but not limited to, attorneys' and advisors' fees.

10. DELIVERY OF POSSESSION; CASUALTY. Possession of the Property will be delivered to Buyer on the Closing Date. If prior to the Closing Date there shall occur damage to the Property caused by fire or other casualty, then, at the sole choice of Buyer, (a) the Closing shall take place as provided herein, and Seller shall assign to Buyer all rights to insurance proceeds and claims, if any, available as a result of such destruction or damage, plus a credit for any deductible thereunder, or (b) Buyer may terminate this Agreement within thirty (30) days of its actual knowledge of such destruction or damage, in which event (i) this Agreement shall thereupon become null, void and of no further effect, (ii) the Deposit shall be promptly returned to Buyer, and (iii) the parties shall be relieved of all obligations hereunder (except for those duties and obligations that expressly survive the termination of this Agreement).

11. **TAXES.** While Seller owns the Property, it is not subject to taxation. Upon transfer of ownership to Buyer, it will become subject to taxation. Buyer shall be responsible for paying all taxes levied against the Property once transfer occurs.

12. **DEFAULT; REMEDY.**

(a) **Seller Default.** In the event of a material default by Seller under this Agreement, Buyer may elect, as Buyer's sole remedy, to either:

(i) Terminate this Agreement, in which event (A) this Agreement shall thereupon become null, void and of no further effect, (B) the Deposit shall be promptly returned to Buyer, (C) the parties shall be relieved of all obligations hereunder (except for those duties and obligations that expressly survive the termination of this Agreement), (D) any escrow cancellation charges or similar fees, including examination fees imposed by the Escrow Agent, shall be borne by Seller, and (E) Seller shall reimburse Buyer for all Buyer's out of pocket expenses in connection with this Agreement in an amount not to exceed \$50,000; or

(ii) Pursue an action for specific performance against Seller.

(b) **Buyer Default.** In the event of a material default by Seller under this Agreement, Seller shall receive the Deposit as liquidated damages, it being understood and agreed that Seller is hereby releasing and/or waiving any right it might have to either specifically enforce this Agreement or to sue for any other damages. Seller has agreed to this liquidated damage provision because of the difficulty of ascertaining Seller's actual damages given the uncertainties of the real estate market, fluctuating property values and differences of opinion with respect to such matters. Seller covenants not to bring any action or suit challenging the amount of liquidated damages provided hereunder in the event of such default. This provision shall expressly survive the termination of this Agreement.

12. **ESCROW AGENT.** The parties agree that Escrow Agent shall have no liability under this Agreement except to account for the Deposit as specified herein, and except for Escrow Agent's gross negligence. Without limiting the generality of the foregoing, Escrow Agent shall not be liable for any loss or damage resulting from any of the following: any defects or conditions of title to the Property; the legal effect of any instrument exchanged by the parties; any default, error, action or omission of any other party; any good faith act or forbearance by Escrow Agent; any loss or impairment of the funds deposited in escrow in the course of collection or while on deposit with a trust company, bank, savings bank or savings association resulting from failure, insolvency or suspension of such institution or while in transit by wire transfer or otherwise; or Escrow Agent complying with any legal process, writs, orders, judgments and decrees of any court, whether issued with or without jurisdiction, and whether or not subsequently vacated, modified, set aside or reversed. Upon disbursement of the Deposit, Escrow Agent shall be relieved of all further liability and responsibility in connection with the Agreement and the escrow. In the event any Claim is made upon Escrow Agent concerning the Deposit, or at any time for any cause or for no cause, Escrow Agent, at its election and in its sole discretion, may cause the Deposit to be delivered to a court of competent jurisdiction to determine the rights of Seller and Buyer, or to interplead Seller and Buyer by an action brought in any such court. Deposit by Escrow Agent into

such court of the Deposit shall relieve Escrow Agent of all further liability and responsibility in connection with this Agreement and the escrow.

**13. MISCELLANEOUS.**

(a) Notice. All notices, demands, requests, consents, approvals or other communications (the "Notices") required or permitted to be given by this Agreement shall be in writing and shall be either personally delivered, or sent via FedEx or other regularly scheduled overnight courier or sent by United States mail, registered or certified with return receipt requested, properly addressed and with the full postage prepaid. Said Notices shall be deemed received and effective on the earlier of (i) the date actually received (which, in the case of Notices sent by overnight courier, shall be deemed to be the day following delivery of such Notices to such overnight courier), or (ii) three (3) business days after being placed in the United States Mail as aforesaid. Said Notices shall be sent to the parties at the following addresses, unless otherwise notified in writing:

**To Seller:** Village of Richfield  
4410 West Streetsboro Rd.  
Richfield, OH 44286  
Attn: Brian M. Frantz, AICP

**With a copy to:** Roetzel & Andress  
1375 East 9<sup>th</sup> Street, 10<sup>th</sup> Floor  
Cleveland OH 44114  
Attn: Benjamin Grant Chojnacki

**To Buyer:** Richfield Village Capital Group LLC  
387 Medina Road, Suite 400  
Medina, OH 44256  
Attn: Joseph Moffa

**With a copy to:** Autonomy Capital, LLC  
3991 N. Jefferson Street  
Medina, OH 44256  
Attn: Marc R. Hertrick, Esq.

(b) Entire Agreement; Amendment. All exhibits and other documents referenced in, or attached to, this Agreement (collectively, the "Exhibits") are fully incorporated herein by reference. This Agreement, together with the Exhibits, constitutes the entire understanding between the parties and supersedes any and all prior agreements, arrangements and understandings between the parties. This Agreement may not be amended, modified, changed, or supplemented, nor may any obligations hereunder be waived, except by a writing signed by the party to be charged or by its agent duly authorized in writing or as otherwise permitted herein.

(c) Binding Effect. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the representatives, successors and permitted assigns of the parties.

(d) Assignment. Except as otherwise set forth in this Section 13(d), Buyer's rights hereunder may not be assigned in whole or in part without the prior written consent of Seller. In the event of a permitted assignment, Buyer shall not be relieved of any of its duties, obligations or liabilities hereunder, instead Buyer, as assignor, and Buyer's assignee shall therefore be jointly and severally liable hereunder. Any attempted assignment or transfer in violation of this provision shall be null and void *ab initio*. Notwithstanding anything to the contrary contained herein, Buyer does have the right to assign this Agreement to, and take title to the Property in name of, a nominee designated by Buyer, an affiliate of Buyer, or an entity sponsored by Buyer, without the consent of Seller, provided Buyer shall not be released from any obligations under this Agreement. Upon such assignment or nomination, the assignee or nominee shall have and be subject to all the rights, benefits, duties and obligations of Buyer hereunder.

(e) Captions; Gender. Captions are included solely for convenience of reference and shall not be considered in the interpretation of this Agreement. Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine or neuter gender is used herein, such gender shall be used as the context deems appropriate.

(f) Time is of the Essence. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day.

(g) Survival. Except as otherwise provided for in this Agreement, this Agreement, and all of the representations, warranties, agreements, indemnity obligations and rights, and covenants of Seller and Buyer contained in this Agreement, shall be continuing and shall survive the consummation of the transaction that is the subject of this Agreement, the Closing, the Closing Date, and recording of the Deed/the transfer of title of the Property, and this Agreement shall not merge upon the filing of the Deed or the delivery of title to, or possession of, the Property by Seller to Buyer for a period of twelve (12) months.

(h) Governing Law. This Agreement and each and every related document is to be governed by, and construed in accordance with, the laws of the State of Ohio.

(i) Property Sold "As Is". IT IS UNDERSTOOD AND AGREED BY BUYER THAT SELLER IS ONLY MAKING THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, AND SELLER HAS NOT MADE AND IS NOT NOW MAKING, AND IT SPECIFICALLY DISCLAIMS AND NEGATES ANY AND ALL OTHER COVENANTS, WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND

OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS OR GUARANTIES AS TO (i) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF, (ii) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER, RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES, (iii) WHETHER, AND THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREAS, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD, (iv) DRAINAGE, (v) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING, (vi) ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT, (vii) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC, (viii) USAGE OF ADJOINING PROPERTY, (ix) THE VALUE, COMPLIANCE WITH ANY PLANS AND SPECIFICATIONS, SIZE, LOCATION, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, (x) COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, CODES OR SIMILAR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS, (xi) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, (xii) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND, (xiii) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY, (xiv) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENT AFFECTING THE PROPERTY, (xv) FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (BUYER AFFIRMING THAT BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE), (xvi) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE OR PROVISIONS RELATING TO ANY TAX CREDITS), (xvii) THE INCOME TO BE DERIVED FROM THE PROPERTY, OR (xviii) THE EXISTENCE OF ANY VIEW FROM THE PROPERTY OR THAT ANY EXISTING VIEW WILL NOT BE OBSTRUCTED IN THE FUTURE. ADDITIONALLY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF OF BUYER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY OR PROMISE REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED HEREIN; AND NO SUCH REPRESENTATION, WARRANTY, AGREEMENT, GUARANTY, STATEMENT OR PROMISE IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF SELLER SHALL BE VALID OR BINDING UPON SELLER UNLESS EXPRESSLY SET FORTH HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE

OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER, EXCEPT AS SET FORTH HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS WITH ALL FAULTS AND LIMITATIONS." BUYER HAS FULLY REVIEWED THE DISCLAIMER AND WAIVERS SET FORTH IN THIS AGREEMENT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER HEREBY RELEASES SELLER FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHICH BUYER OR ANY PARTY RELATED TO OR AFFILIATED WITH BUYER HAS OR MAY HAVE ARISING FROM, OR RELATING TO, ANY MATTER OR THING RELATED TO THE PHYSICAL CONDITION OF THE PROPERTY, ANY CONSTRUCTION DEFECTS, ANY ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY, AND ANY ENVIRONMENTAL CONDITIONS AT, IN, OR UNDER THE PROPERTY, AND BUYER WILL NOT LOOK TO SELLER IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING. BUYER HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS AND DEALING WITH REAL ESTATE, THAT ENABLES BUYER TO EVALUATE THE MERIT AND RISKS OF THE TRANSACTION CONTEMPLATED HEREBY. BUYER IS NOT IN A DISPARATE BARGAINING POSITION VIS-A-VIS SELLER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION HEREOF.

(j) Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party except on the basis of a written instrument executed by or on behalf of such party. However, the party for whose unilateral benefit a condition is herein inserted shall have the right to waive such condition.

(k) Counterparts; Facsimile/Electronic Mail. This Agreement may be executed via facsimile or email (PDF) and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

(l) Rule of Construction. Seller and Buyer have experience with the subject matter of this Agreement, have been represented by counsel and have each fully participated in the

negotiation and drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

(m) Patriot Act. Buyer hereby represents and warrants: (i) that none of the funds used by Buyer for payment of the Purchase Price of the Property are subject to any of the following laws of the United States: 18 U.S.C. §§ 1956-1957 (Laundering of Money Instruments); 18 U.S.C. §§ 981-986 (Federal Asset Forfeiture); 18 U.S.C. §§ 881 (Drug Property Seizure); Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001; or the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (the "USA Patriot Act"); and (ii) that Buyer is not a person or entity with whom United States citizens are restricted from doing business with under the regulations of the Office of Foreign Asset Control ("OFAC") of the United States Department of Treasury (including those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), the USA Patriot Act, or other governmental action. Buyer shall indemnify and hold Seller harmless from and against any and all claims, actions, fines, penalties and forfeitures arising out of or resulting from any such representation of Buyer that is false, such indemnity to include payment of all costs of Seller in defending against any of the foregoing, including reasonable attorney fees.

(n) Intentionally Deleted.

(o) No Recording. This Agreement shall not be recorded by Buyer in the real estate records of the county where the Property is located, or otherwise.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

**IN WITNESS WHEREOF**, each of the undersigned have caused this Agreement to be executed on its behalf by its members, officers or agents thereunto on the dates below, but effective as of the Effective Date first above written.

**SELLER:**

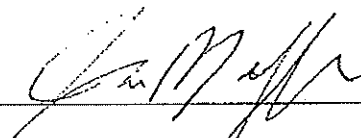
**VILLAGE OF RICHFIELD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

And By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**

**RICHFIELD VILLAGE CAPITAL GROUP, LLC**

By:  Joe  
Moffa  
Date: 8-15-23

Acknowledgment:

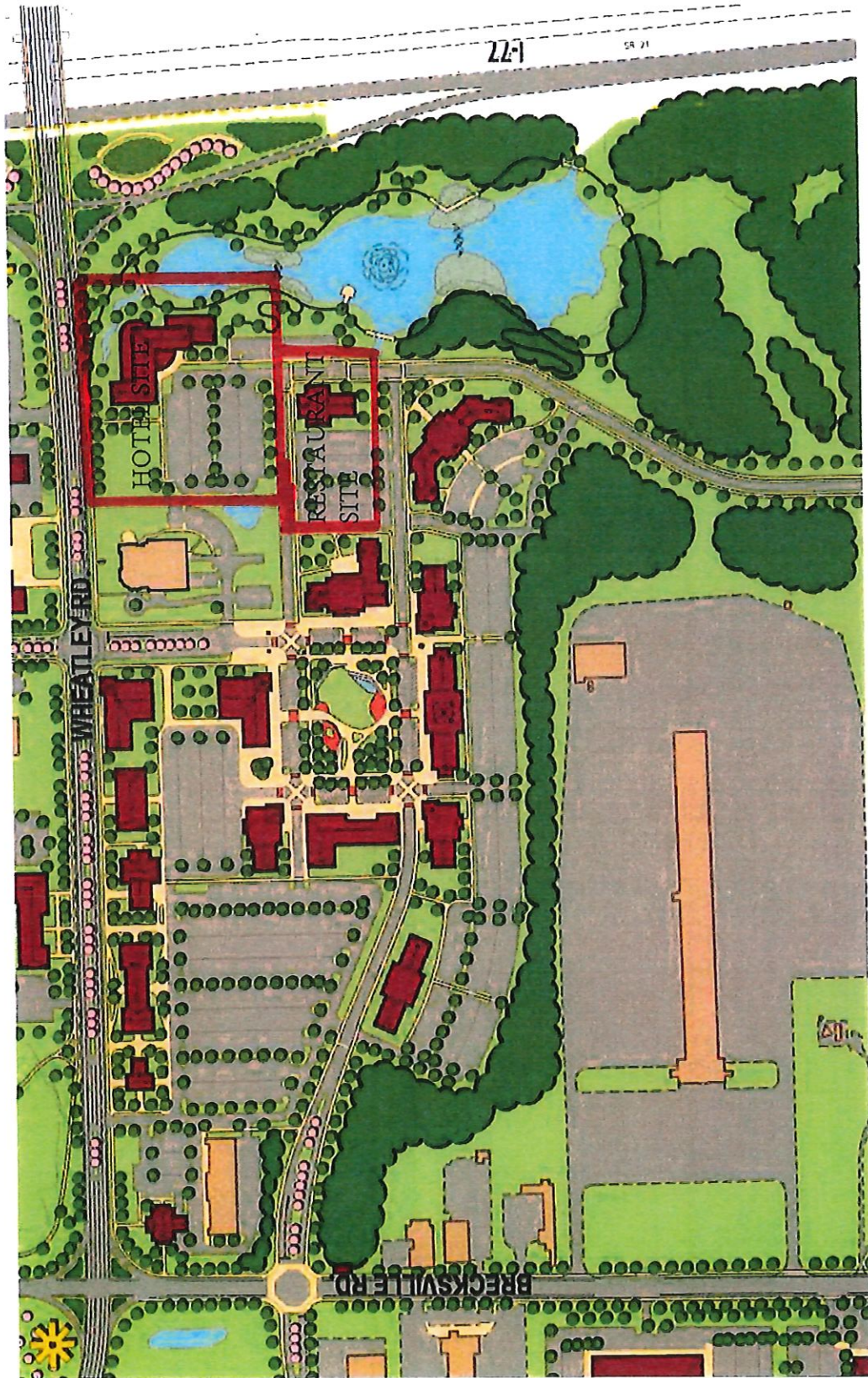
The undersigned hereby acknowledges receipt of the Deposit referenced above and agrees to hold the same in accordance with the terms of this Agreement.

**ESCROW AGENT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A-2

B. 2019 South Wheatley District Focus Area



2019 SOUTH WHEATLEY DISTRICT FOCUS AREA