

EXHIBIT "A"

Being entire Lots 15 and 16 of the Revised Plat of the Village of Mason, Warren County, Ohio, and bounded and described as follows:

Beginning at an iron pin in the Westerly line of Section Avenue at the Northeasterly corner of Lot 15, said beginning point also being the Southeasterly corner of Lot 1 of the Revised Plat of the Village of Mason; thence, with the Westerly line of Section Avenue, S. 2° 45' W. 132.00 feet to an iron pin at the Southeasterly corner of Lot 15; thence with the Southerly line of Lots 15 and 16, N. 87° 15' W. 264.00 feet to an iron pin at the Southwesterly corner of Lot 16; thence, with the Westerly line of Lot 16, N. 2° 45' E. 165.00 feet to an iron pin at the Northwesterly corner of Lot 16; thence, with the Northerly line of Lot 16, S. 87° 15' E. 132.00 feet to an iron pin at the Northeasterly corner of Lot 16; thence, with the Easterly line of Lot 16, S. 2° 45' W. 33.00 feet to an iron pin at the Northwesterly corner of Lot 15; thence, with the Northerly line of Lot 15, S. 87° 15' E. 132.00 feet to the place of beginning.

Subject to all easements of record.

Being the same premises conveyed to grantors herein by deed recorded in Deed Book 396, page 278, Deed Records, Warren County, Ohio.

EXHIBIT "B"

AGREEMENT TO SELL

BETWEEN

**JAMES E. DAPP AND BETH E. DAPP
AS SELLER**

AND

**THE CITY OF MASON
AS PURCHASER**

AGREEMENT TO SELL

THIS AGREEMENT TO SELL ("Agreement") has been made and entered into as of this _____ day of _____, 2002, by and between JAMES E. DAPP and BETH E. DAPP ("Seller") and THE CITY OF MASON ("Purchaser").

RECITALS:

WHEREAS, Seller is the owner of a parcel of real estate commonly known as 113 South Mason-Montgomery Road, Mason, Ohio, 45040, and is specifically described in Exhibit "A," which is attached hereto and incorporated herein by reference (hereinafter referred to as the "Land") together with all improvements located thereon ("Improvements"). The Land and Improvements are herein referred to collectively as the "Property."

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property on the terms and conditions set forth in this Agreement; and

WHEREAS, Buyer has previously deposited the sum of \$263,420.00 with the Clerk of Courts for the Warren County Court of Common Pleas in Case No. 01 CV 58248, and such funds have been distributed to the Seller at his request;

NOW, THEREFORE, in exchange for an additional \$1,000.00 Earnest Money and other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the recitals, the parties hereto agree as follows:

1. Sale and Conveyance.

Purchaser agrees to purchase from Seller, and Seller agrees to sell and convey to Purchaser, all of Seller's rights, title and interest in and to the Property and all property, tangible and intangible, located thereon at the price and upon such other terms and conditions as are set forth herein. Exhibit "A" is believed to be a correct legal description of the Property, but will be verified by Purchaser during the Inspection Period. Seller shall convey the Property to Purchaser by general warranty deed, conveying marketable title to the Property free, clear and unencumbered, subject only to easements and restrictions of record.

2. Purchase Price.

The purchase price for the Property and any Personal Property included in the sale shall be **Five Hundred Ninety-Five Thousand (\$595,000.00) Dollars** (the "Purchase Price"). Seller hereby acknowledges and affirms the receipt of **Two Hundred and Sixty-Three Thousand, Four Hundred and Twenty Dollars (\$263,420)**. The remaining amount, **Three Hundred Thirty-One Thousand Five Hundred and Eighty Dollars (\$331,580)**, shall be payable by Purchaser to Seller as follows:

(a) Upon execution of this Agreement by Seller, Purchaser will provide the sum of **One Thousand (\$1,000.00) Dollars** ("Earnest Money") to Seller, the receipt of which Seller hereby acknowledges. Said Earnest Money shall apply to the Purchase Price.

(b) Purchaser agrees to pay Seller the balance of the purchase price at closing by certified check, cashier's check or bank check. In calculating the balance of the purchase price due from Purchaser, Purchaser shall receive a credit for the Earnest Money, all funds previously deposited in Warren County Common Pleas Court Case No 01 CV 58248, and for any prorations or adjustments set forth in this Agreement to which Purchaser is entitled.

3. **Conditions Precedent to Closing.**

(a) Title

Purchaser shall obtain, within thirty (30) days of the Purchaser's execution of this Agreement, a title insurance commitment showing title to the Property in the name of the Seller and issued by a title insurance company acceptable to the Purchaser ("Title Company"). The title insurance commitment shall be in the amount of the purchase price.

4. **Existing leases on Property.**

Seller represents that the Property is not currently occupied by tenants, or that if the Property is currently occupied by tenants, that this leasehold interest will terminate upon the sale of the Property to Purchaser.

5. **Inspection Period.**

(a) On or after April 22 , 2002 until May____, 2002, ("Inspection Period"), Purchaser shall have the right to perform at Purchaser's sole cost and expense such tests, inspections or surveys of the Property as Purchaser may deem necessary to determine that the condition of the Property is acceptable for Purchaser's use thereof, which tests and inspections may include, without limitation, environmental, soil and engineering, structural, electrical, and termite or other wood-destroying insect tests with respect to the Property. Upon completion of its tests and inspections, Purchaser shall restore the Property to substantially the same condition as existed prior to any such inspection or testing.

(b) If Purchaser, in its sole judgment, shall not be satisfied with the results of any test, analysis, inspection or appraisal, including, without limitation, any environmental inspection or survey of the Property, performed by Purchaser during the Inspection Period, then Purchaser may terminate this Agreement by written notice delivered to Seller on or before the day the Inspection Period expires, in which case neither party shall have any further rights or obligations hereunder. Alternatively, Purchaser may, in Purchaser's sole discretion, grant the Seller a reasonable time to correct the unsatisfactory conditions and make the Property acceptable to Purchaser. Seller may, at his option, decline to correct any unsatisfactory condition(s), and terminate this Agreement by written notice, rather than correcting a condition that is unsatisfactory to Purchaser.

(c) Purchaser shall protect, defend, indemnify and hold harmless the Seller and his agents, tenants, successors, and assigns from and against all liabilities, losses, costs, damages, expenses or claims arising in any way from the Purchaser's inspection of the Property.

6. Seller's General Representations and Warranties.

Seller hereby makes the following representations and warranties to Purchaser as of the date of this Agreement and as of the date of closing to the best of its knowledge. Seller represents and warrants, to the best of his knowledge, that:

- (a) By entering into this transaction, Seller has not breached any contracts and/or agreements to which Seller is a party.
- (b) There are no pending or threatened assessments or proceedings to collect assessments relating to the Property.
- (c) Seller has not received any formal written notices that it is in violation of any restrictions or easements affecting the Property.
- (d) There is no pending or threatened litigation affecting title to the Property, with the exception of Warren County Common Pleas Case No. 01 CV 58248.
- (e) Seller owns the Property in fee simple.
- (f) There has been no work performed on or materials supplied to the Property which have not been paid for, in full.
- (g) There are no outstanding and incomplete contracts affecting the Property.
- (h) The Property shall be conveyed to Purchaser unencumbered by any written leases and/or rights of tenants in possession.
- (i) These representations and warranties shall survive the closing of the sale of the Property to Purchaser and shall remain in full force and effect.

7. Purchaser's General Representations and Warranties.

- (a) Purchaser is a municipality that is purchasing the Property.
- (b) By entering into this transaction, Purchaser has not breached any contracts and/or agreements to which Purchaser is a party.
- (c) These general representations and warranties shall survive the closing of the sale of the Property to Purchaser and shall remain in full force and effect.

8. Prorations; Payment of Expenses.

- (a) The following items shall be prorated and adjusted between Seller and Purchaser as of the day of the Closing Date, except as otherwise specified:
 - (i) General real estate taxes based on the most recently ascertainable figures available for the Property;

- (ii) All installments of special assessments payable after the Closing Date, whether for work commenced or completed as of the Closing Date or otherwise, shall be paid solely by Purchaser;
- (iii) All other items required by any other provision of this Agreement to be prorated or adjusted.

(b) Purchaser shall pay all survey costs, title insurance premiums, charges and recording fees incurred in connection with any financing obtained by Purchaser for the acquisition of the subject Property. Purchaser and Seller shall each be solely responsible for the fees and Disbursements of their respective counsel and other professional advisers.

9. **Closing and Possession.**

(a) Closing shall take place within **60 days** from the date that Purchaser executes this Agreement to Sell, at a time and place mutually agreed upon between Purchaser and Seller (“Closing Date”).

(b) In the event Seller is unable to deliver the Property to Purchaser in compliance with all the terms and conditions of this Agreement, Purchaser shall have the sole and exclusive option of extending the time for the Seller’s completion of its obligations under the Agreement. Any extensions of the Closing Date of this Agreement to Seller must be in writing and signed by a duly authorized representative of the Purchaser. Purchaser and Seller agree and acknowledge that Purchaser is not under any obligation to extend the terms of this Agreement.

10. **Default.**

(a) If Seller defaults hereunder, then Purchaser, at Purchaser’s option, but provided Purchaser is not in default hereunder, may, as its exclusive remedies:

- (i) Terminate this Agreement by giving written notice thereof to Seller, whereupon the Seller shall promptly return to the Purchaser the funds expended by Purchaser in exercising its due diligence under this Agreement. Purchaser shall supply Seller with copies of invoices for the inspections, examinations, surveys and title insurance matters for which Purchaser requests reimbursement in the event of the Seller’s breach of this Agreement, or
- (ii) Assert and seek judgment against Seller for specific performance.

(b) If Purchaser defaults hereunder, then Seller, at Seller’s option, but provided Seller is not in default hereunder, may terminate this Agreement by giving written notice thereof to Purchaser.

(c) Upon a termination of this Agreement as provided herein, this Agreement shall be null and void and no party hereto shall have any further liability or obligation to another party hereto except as otherwise expressly provided herein. A party electing to terminate this Agreement must do so by written notice to the other party, within any applicable time period for such notice, setting forth the reason for such election, and such election shall not be effective until such notice is deemed delivered. Seller, at its election, may purchase from Purchaser all surveys, title work, studies, reports and other due diligence materials generated by Purchaser prior to the termination hereof. Purchaser shall not be obligated to disgorge such documents and information to Seller until Seller compensates Purchaser for the costs thereof. Purchaser shall provide invoices to verify the cost of said due diligence reports and materials.

11. **General Provisions.**

(a) This Agreement, including all exhibits attached hereto and documents delivered pursuant hereto, shall constitute the entire Agreement and understanding the parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties or covenants not contained herein. Unless expressly provided herein to the contrary, any representations, warranties, and covenants of Seller shall merge into the deed and shall not survive closing.

(b) This Agreement, and each of the provisions hereof, may be amended only by a written memorandum executed by both of the parties hereto.

(c) No waiver of any provision or condition of, or default under this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act or default.

(d) Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday or legal holiday.

(e) In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as if said provision has not been included herein, as the case may be.

(f) Headings of paragraphs are for convenience of reference only and shall not be construed as a part of this Agreement.

(g) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns; provided, however, that this Agreement may be assigned by Purchaser or Seller without the prior express written consent of the other.

(h) Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally with a receipt requested therefor, by a recognized overnight courier service or by United States registered or certified mail return receipt requested, postage prepaid and addressed to the parties at each of their respective addresses set forth below, and the same shall be effective upon the date of delivery or refusal to accept delivery as shown by written record of service. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Purchaser:

The City of Mason
c/o Scot Lahrmer, City Manager
202 West Main Street
Mason, Ohio 45040

With copy to:

Kenneth J. Schneider
Law Director, City of Springdale
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 4520

If to Seller:

James and Beth Dapp
466 Banbury Road
Dayton, Ohio 45459

12. **Choice of Laws.**

This Agreement shall be governed in all respects by the laws of the State of Ohio.

13. **Cooperation.**

The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the closing not specifically set forth in this Agreement which shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby, provided, however, that any further act, instrument or assurance does not adversely affect the economic position of, or create any potential liability on the part of, the party requested to furnish such further act, instrument or assurance.

14. **Purchaser's Acceptance.**

Upon Seller's execution of this Agreement to Sell, Purchaser shall have up to **60 days** from the date thereof to execute this Agreement to Sell. Until such time, Seller agrees that this Agreement to Sell shall remain open and Seller shall not rescind this Agreement to Sell or in any way alter the terms hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

SELLER:

DATED

JAMES E. DAPP

DATED

BETH E. DAPP

PURCHASER:

THE CITY OF MASON

DATED

BY: _____

ITS: _____

135773.1