

BILL NO. 2363

ORDINANCE NO. 2176

AN ORDINANCE REPEALING ORDINANCE NO. 2166 REGARDING THE PURCHASE OF LAND IN THE CITY OF CHESTERFIELD AND ADOPTING A NEW ORDINANCE TO PURCHASE A TRACT OF LAND LOCATED NORTH OF HIGHWAY 64 / 40 CURRENTLY OWNED BY PRECISION IRRIGATION, INC.

WHEREAS, the City of Chesterfield previously approved the development of a parcel of land owned by Precision Irrigation, Inc. for the development of said property to operate their irrigation business to include the erection of a building thereon; and

WHEREAS, as part of the requirements of the Chesterfield Valley Master Drainage Ditch Plan, a portion of said property was to be encumbered by an open drainage ditch; and

WHEREAS, at the time of the approval it was the anticipation of Precision and the City of Chesterfield, the Missouri Highway and Transportation Commission (MHTC) would allow for the said drainage ditch to be partially upon property owned and operated by the Missouri Highway and Transportation Commission; and

WHEREAS, as a result of changes by the MHTC and its concerns relative to future development and upon the requirements of said approval of the development by Precision, it became difficult for Precision to develop in accordance with the preliminary plans, which had been approved by the City of Chesterfield; and

WHEREAS, disputes have arisen with regards to whether or not the City's action were regulatory actions such as to deprive them of the value of their property and/or whether or not the property in its entirety had a value or was adversely encumbered significantly by the open drainage ditch requirement causing a loss of value to Precision; and

WHEREAS, the City of Chesterfield and Precision Irrigation, Inc. wish to enter into an Agreement whereby they will settle all of their rights and claims, of one against the other relative to said property.

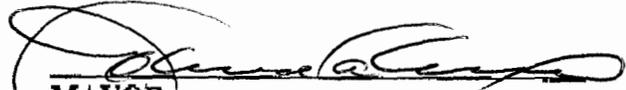
NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Ordinance No. 2166 is hereby repealed in its entirety and a new Ordinance is passed approving the Settlement Agreement and Contract to purchase property from Precision Irrigation, Inc.

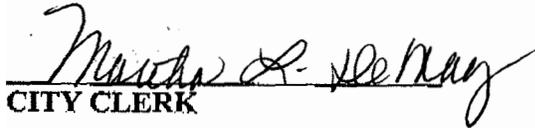
Section 2. The City Administrator of the City of Chesterfield is authorized to enter to a Settlement Agreement and, Purchase and Sale Agreement for the purchase of the Precision property as identified in the Agreement, which is attached as Exhibit 1 and made a part hereof as if fully set out herein.

Section 3. Said Agreement shall be in full force and effect from and after its passage and approval.

Passed and approved this 20th day of June, 2005.


MAYOR

ATTEST:


CITY CLERK

BILL NO. 2351

ORDINANCE NO. 2166

AN ORDINANCE TO PURCHASE A TRACT OF LAND LOCATED NORTH OF HIGHWAY 64 / 40 CURRENTLY OWNED BY PRECISION IRRIGATION, INC.

WHEREAS, the City of Chesterfield previously approved the development of a parcel of land owned by Precision Irrigation, Inc. for the development of said property to operate their irrigation business to include the erection of a building thereon; and

WHEREAS, as part of the requirements of the Chesterfield Valley Master Drainage Ditch Plan, a portion of said property was to be encumbered by an open drainage ditch; and

WHEREAS, at the time of the approval it was the anticipation of Precision and the City of Chesterfield, the Missouri Highway and Transportation Commission (MHTC) would allow for the said drainage ditch to be partially upon property owned and operated by the Missouri Highway and Transportation Commission; and

WHEREAS, as a result of changes by the MHTC and its concerns relative to future development and upon the requirements of said approval of the development by Precision, it became difficult for Precision to develop in accordance with the preliminary plans, which had been approved by the City of Chesterfield; and

WHEREAS, disputes have arisen with regards to whether or not the City's action were regulatory actions such as to deprive them of the value of their property and/or whether or not the property in its entirety had a value or was adversely encumbered significantly by the open drainage ditch requirement causing a loss of value to Precision; and

WHEREAS, the City of Chesterfield and Precision Irrigation, Inc. wish to enter into an Agreement whereby they will settle all of their rights and claims, of one against the other relative to said property.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Administrator of the City of Chesterfield is authorized to enter to a Settlement Agreement and, Purchase and Sale Agreement for the purchase of the Precision property as identified in the Agreement, which is attached as Exhibit 1 and made a part hereof as if fully set out herein.

Section 2. Said Agreement shall be in full force and effect from and after its passage and approval.

Final Version

SETTLEMENT AGREEMENT
and
PURCHASE AND SALE AGREEMENT

THIS SETTLEMENT AGREEMENT AND PURCHASE AND SALE AGREEMENT (the "*Agreement*") is made and dated as of this _____ day of May, 2005, by and between The City of Chesterfield, Missouri (a Municipal Corporation) ("*Buyer*"), and Precision Irrigation, Inc., a Missouri corporation ("*Seller*").

WITNESSETH:

WHEREAS, Seller is the owner of the real estate as more particularly described on Exhibit A attached hereto and incorporated herein by reference, and Seller is the owner of the improvements thereon, (all being hereinafter collectively referred to as the "*Property*"), subject to the liens and other exceptions thereto; and

WHEREAS, disputes related to the Property have arisen between Buyer and Seller; and

WHEREAS, Seller sought to develop the Property and pursued governmental approval from, among others, the City of Chesterfield and the Missouri Highway and Transportation Commission ("*MHTC*"); and

WHEREAS, in reliance upon preliminary approvals received from the City and MHTC, Seller incurred site preparation costs, professional fees and other expenses; and

WHEREAS, the City, pursuant to the Chesterfield Valley Master Drainage Ditch Plan conditioned as its preliminary approvals on a requirement that a substantial portion of the Property was to be encumbered by an open drainage ditch; and

WHEREAS, Precision believes that the requirement of the open drainage ditch has the effect of rendering the property useless for their intended purposes; and

WHEREAS, the City denies Precision assertions and the City has threatened that it would institute eminent domain proceedings in order to acquire all, or a substantial portion of the Property; and

WHEREAS, as a compromise Buyer has agreed to purchase, and Seller has agreed to sell the Property, on the terms set forth herein, in contemplation of, and in lieu of, eminent domain and in settlement of all disputes between Buyer and Seller relative to the Property;

NOW, THEREFORE, in consideration of the premises, mutual releases, and the mutual covenants of the parties hereinafter expressed, it is hereby agreed as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Agreement to Sell and Purchase. In accordance with and subject to the terms and conditions hereof, on the date of Closing (as hereinafter defined), Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

1.2 Purchase Price. The purchase price (the "*Purchase Price*") to be paid by Buyer hereunder constitutes consideration for the following shall be \$375,000.00. The parties hereto expressly agree and acknowledge that the Purchase Price is a composite amount, consisting of consideration for: the fair market value of the Property; reimbursement to Seller of certain development costs and expenses incurred; the release by Seller of Buyer of any potential claims relative to the Property; and a premium for the avoidance of litigation. Buyer shall, on the date of Closing, pay the Purchase Price, subject to credit and adjustment as provided in Section 1.3 hereof, which shall be paid to Seller by the wire transfer of good, current, immediately available funds and which Buyer shall cause to be received by Seller on or before 4:00 p.m. (Central Standard Time) on the date of Closing.

1.3 Adjustments. The following items shall be credited, debited and otherwise adjusted, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing pursuant to Section 1.2 hereof (where appropriate, such adjustments shall be made on the basis of a year of 12 months, 30 days to the month, Seller to have the last day, unless otherwise provided):

(a) General property taxes (state, county, municipal, school and fire district) for the then current tax fiscal year based upon the latest available tax bills or assessment information, whether for that year or the preceding year.

(b) Special taxes or assessments, if any, upon the Property assessed or becoming a lien prior to the date hereof (but only a pro rata share of the then current installment of such special taxes or assessment, if any, shall be charged as a credit against the Purchase Price, Buyer agreeing to assume all liability for future installments and deferred payments).

In addition, certain costs incidental hereto and to the transactions contemplated hereby shall be borne such that at (or prior to) Closing, Buyer shall pay all recording fees and costs, all survey costs, all title commitment and title insurance premiums, all mortgage taxes or intangible taxes, and all transfer taxes or revenue stamps incidental to the recordation of the Special Warranty Deed, Buyer and Seller shall each pay one half of the escrow and/or closing fees, if any, charged by the U.S. Title Guaranty Corporation, 8135 Forsyth, Clayton, Missouri 63105 (the "Title Company"). Any and all state, county and municipal sales taxes due and payable as a result of the transactions contemplated herein shall be paid by Buyer. To the extent

the law requires Seller to collect and remit such taxes, then Buyer shall pay such taxes to Seller at the Closing and the parties shall agree, each acting reasonably, upon the appropriate procedure for determining or estimating the amount thereof.

Except as expressly provided in this Section 1.3 or as expressly provided elsewhere in this Agreement, Buyer and Seller shall pay their own respective costs and expenses, including any and all attorneys' fees, incidental to this Agreement and any rights being settled by this Agreement and the transactions contemplated hereby.

1.4 Possession. Seller shall transfer possession of the Property to Buyer on the date of Closing.

1.5 Closing. The closing (herein referred to as the "*Closing*") of the transactions contemplated hereby shall be on June 30, 2005, subject the satisfaction and/or waiver of the final condition precedent to be satisfied or waived under Section 4.1 hereof, between the hours of 9 a.m. and 4 p.m. (Central Standard Time) on said date. The Closing shall take place through escrow at the offices of the Title Company.

1.6 Documents at Closing.

(a) On the date of Closing, Seller shall execute and deliver or cause to be delivered to Buyer, the following documents:

(i) Special Warranty Deed, transferring and conveying to Buyer title to the Property (Seller's record title to govern for purposes of the legal description), subject to the lien of general real estate taxes for the then current tax fiscal year, and those easements, restrictions, conditions, and other exceptions described on Exhibit B attached hereto and incorporated herein by reference ("*Permitted Exceptions*"), which Special Warranty Deed shall be in form reasonably approved by Seller.

(ii) A standard form Seller's affidavit, against mechanics liens and against parties in possession, and such other documents, if any, as may be required by the Title Company, on forms customarily used by the Title Company and reasonably satisfactory to Seller, in order to issue an owner's policy of title insurance.

(b) On the date of Closing, Buyer and Seller shall execute and deliver to one another counterpart originals of the following:

(i) Closing Statements.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall not survive the Closing but shall be merged into the delivery of the Special Warranty Deed.

2.1 **Corporate Authority.** With respect to Seller and its business, Seller represents and warrants, in particular, that:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Seller has all necessary power and authority to own, use and transfer its properties (including the Property) and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of Seller herein, and to perform its obligations hereunder.

(c) Seller is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

2.2 **Commissions.** Seller has dealt with no broker, finder or other person in connection with the sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Buyer.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall survive Closing.

3.1 **Corporate Authority.** With respect to Buyer and its business, Buyer represents and warrants, in particular, that:

(a) Buyer is a corporate municipality duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Buyer has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Buyer herein, and to perform its obligations hereunder.

(c) Buyer is duly authorized to execute and deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

3.2 Commissions. Buyer has dealt with no broker, finder or any other person, in connection with the purchase of or the negotiation of the purchase of the Property that might give rise to any claim for commission against Seller or lien or claim against the Property.

ARTICLE IV

CONDITIONS TO OBLIGATIONS

4.1 Conditions to the Buyer's Obligations. The obligations of Buyer to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Buyer to waive any one or more of such conditions:

(a) Buyer shall have obtained a commitment in favor of Buyer for a current ALTA owner's policy of title insurance from the Title Company with respect to the Property, which commitment shall be in the amount of the Purchase Price and shall show Seller as the owner of the Property. Buyer agrees to obtain such a commitment (the cost of which shall be paid by Buyer), together with copies of all exceptions referred to thereon, on or before the date 30 days after the date hereof (and Buyer agrees to furnish Seller with copies thereof immediately upon receipt); it being understood that if Buyer fails to obtain such commitment within such 30 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such commitment and the exceptions shown thereon and the status of title to the Property (or disapprove the same and thereby terminate this Agreement) on or before the date 30 days after the date hereof (Buyer hereby agreeing that it shall not disapprove, as exceptions, the lien of general real estate taxes for the current tax fiscal year); provided, however, that in the event Buyer shall disapprove the status of title as shown on such commitment or any exceptions referred to thereon, Seller may, on or before the date of Closing, at its own expense and effort, cure such status of title or cause to be released of record or removed (by endorsement) from such commitment such disapproved exceptions, whereupon this condition shall not be deemed unsatisfied by reason of Buyer's disapproval of such status of title or such exceptions.

(b) Buyer shall have reviewed and approved a physical inspection and engineering report and analysis with respect to the Property, reflecting the physical condition of all improvements, comprising the Property, and the condition of the Property. Buyer agrees to obtain such report and analysis at Buyer's expense, including without limitation, those reports and tests set forth in Section 8.4(b) hereof, on or before the date 90 days after the date hereof (and Buyer agrees to furnish Seller with a copy thereof immediately upon receipt); it being understood that if Buyer fails to obtain such report and analysis within such 90 day period, this condition precedent shall be

conclusively deemed satisfied. Buyer agrees to review and approve such report and analysis (or disapprove the same and thereby terminate this Agreement) on or before the date 90 days after the date hereof; provided, however, that in the event Buyer shall disapprove any matter shown on such report and analysis, Seller may, on or before the date of Closing, at its own expense and effort, cure such disapproved matter, whereupon this condition shall not be deemed unsatisfied by reason of Buyer's disapproval of such matter shown on such report and analysis.

(c) Buyer shall have reviewed and approved an "as built" survey of the Property (the "Survey") bearing a reasonably current certification date. The Survey shall verify the location of the Property, shall verify the legal description on Exhibit A attached hereto as the legal description of the Property (or show any corrections thereto), and shall show the location of improvements and easements. Buyer agrees to obtain the Survey at Buyer's expense, on or before the date 90 days after the date hereof (and promptly provide a copy thereof to Seller); it being understood that if Buyer fails to obtain the Survey within such 90 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such survey (or disapprove the same and thereby terminate this Agreement) on or before the date 60 days after the date hereof.

(d) Buyer shall have reviewed and approved an appraisal of the Property (the "Appraisal"). Buyer agrees to obtain the Appraisal at Buyer's expense, on or before the date 90 days after the date hereof (and promptly provide a copy thereof to Seller); it being understood that if Buyer fails to obtain the Appraisal within such 60 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such survey (or disapprove the same and thereby terminate this Agreement) on or before the date 90 days after the date hereof.

(e) The Council of the City of Chesterfield shall have approved this Agreement, the Survey, and the Appraisal of the Property within 90 days of the date hereof.

4.2 Conditions to the Seller's Obligations. The obligations of Seller to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Seller to waive any one or more of such conditions:

(a) Buyer shall have, on or before the date of Closing, performed all of its covenants, obligations and agreements under this Agreement.

4.3 Failure of Satisfaction of Conditions.

(a) In the event that any one or more of the matters referred to in each of the subsections of Section 4.1 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Buyer may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties

shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Buyer, then such condition precedent shall be conclusively deemed satisfied.

(b) In the event that any one or more of the matters referred to in each of the subsections of Section 4.2 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Seller may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Seller, then such condition precedent shall be conclusively deemed satisfied.

ARTICLE V

COVENANTS OF SELLER

Seller covenants and agrees that from and after the date of this Agreement and until the date of Closing:

5.1 Operation of Property. Seller shall continue to maintain the improvements, if any, that comprise or that are upon the Property in "AS IS" condition and repair, normal wear and tear and casualty damage excepted.

ARTICLE VI

COVENANTS OF BUYER

6.1 Post Termination Covenants. Buyer covenants and agrees that in the event Closing does not occur due to the failure of a condition precedent to Buyer's obligations, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Seller's cost of reproduction and delivery. Buyer covenants and agrees that in the event Closing does not occur due to the failure of Buyer to perform all of its covenants, obligations and agreements under this Agreement, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Buyer's cost of reproduction and delivery.

6.2 Restoration of Property. Buyer shall, in connection with its studies and investigations of the Property contemplated hereunder, promptly restore the Property to its condition existing immediately prior to such studies and investigations. Buyer hereby agrees to indemnify, defend and hold Seller and the Property free and harmless from and against any cost,

expense, charge, lien, action or judgment, as well as any claim of a right to any such cost, expense, charge, lien, action or judgment arising directly or indirectly from any act or omission of Buyer, Buyer's agents or contractors, or any services, labor, supplies or materials provided or performed by surveyors, engineers, architects and others making the inspections and tests, and from and against any personal injury and property damage caused by the act or neglect of Buyer or any of its agents, or independent contractors. This indemnification shall survive the termination of this Agreement and shall survive the Closing of the transactions described in this Agreement. Buyer, or such person or entity actually doing any work contemplated hereunder shall secure and maintain, at Buyer's or such other person or entity's sole cost and expense, the following policies of insurance: (i) comprehensive public liability and property damage insurance, with limits of \$1,000,000 for bodily injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person on an occurrence basis, property damage insurance with limits of \$1,000,000 for each accident, and \$1,000,000 policy limit for aggregate operations on an occurrence basis, (ii) comprehensive automobile liability insurance with limits of \$100,000,000 for injury or death to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person, and (iii) workers' compensation and employer's liability insurance in accordance with the provisions of Missouri law.

ARTICLE VII

CASUALTY

7.1 Casualty. In the event of the damage or destruction of all or any part of the Property, the aggregate cost to repair, replace and/or restore of which shall be \$100,000 or more (as reasonably estimated by Seller), prior to Closing, Buyer may, at its option, exercisable by written notice to Seller, either (i) terminate this Agreement, whereupon, except as expressly provided herein, neither party will have any further obligations hereunder (and the Deposit shall be returned to Buyer), or (ii) continue under this Agreement, whereupon Seller will assign to Buyer its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to Seller for the costs of any restoration work incurred by Seller prior to Closing. In the event of the damage or destruction of any part of the Property prior to Closing, the aggregate cost to repair, replace and/or restore of which shall be less than \$100,000 (as reasonably estimated by Seller), Buyer shall have no right to terminate this Agreement on account thereof, but Seller shall assign to Buyer all of its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to Seller for the costs of any restoration work incurred by Seller prior to Closing; provided, however, in the event there is no insurance on the Property and Seller chooses not to repair, replace or restore the Property, then Buyer, at its option, may reduce the Purchase Price by the value of the damage or destruction (as reasonably estimated by Seller as set forth above) or terminate this Agreement. Seller shall not, in any event, be obligated to effect any repair, replacement, and/or restoration, but may do so at its option.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective heirs, administrators, executors, personal representatives, successors and assigns.

8.2 Assignment. Seller may assign its rights and interests hereunder. Buyer may not assign its rights and interests hereunder without the prior written consent of Seller.

8.3 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally (which shall include delivery by national overnight courier service) or sent by registered or certified mail, postage pre paid, and addressed as set forth below:

(a) If to Seller:

James Nienhaus
Precision Irrigation, Inc.
Precision Irrigation, Inc.
2516 Highway 109
Wildwood, Missouri 63040-1103

With a copy to:

Daniel C. Nester, Esq.
Bryan Cave LLP
One Metropolitan Square
Suite 3600
St. Louis, MO 63102

If to Buyer:

City of Chesterfield, Missouri
Chesterfield City Hall
690 Chesterfield Parkway W
Chesterfield, MO 63017-0670
Attn: Mike Herring, City Administrator

With a copy to:

Douglas R. Beach, Esq.
222 S. Central, Suite 900
Clayton, MO 63105

Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

8.4 Environmental Review.

(a) The following defined terms used in this Section 8.4 shall have the following meanings:

"Hazardous Materials" include: (i) oil or other petroleum products, (ii) "hazardous wastes," as defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., or similar state or local law, ordinance, regulation or order, (iii) "hazardous substances," as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq., or similar state or local law, ordinance, regulation or order, (iv) "hazardous materials," as defined by the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §5102, or similar state or local law, ordinance, regulation or order, (v) radioactive materials subject to the Atomic Energy Act (AEA), 42 U.S.C. §2011 et seq., or similar state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

"Environmental Liability" means any and all liability, claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage, loss, cost, expense, injury, judgment, penalty, or fine alleged by any third party (including, without limitation, any private party or governmental entity), arising out of, relating to, or resulting from, directly or indirectly, in whole or in part: (i) the presence, generation, transport, disposal, treatment, storage or Release of Hazardous Materials, (ii) the violation or alleged violation of any Environmental Law, or (iii) any Enforcement or Remedial Action. This liability includes any cost of removing or disposing of any Hazardous Materials, any cost of enforcement, cost of investigation and/or remedial action, and any other cost or expense whatsoever, including, without limitation, reasonable attorneys', accountants', engineers', and consultants' fees and disbursements, interest, and medical expenses.

"Environmental Law" means any past, present, or future federal, state, or local laws, ordinances, regulations, judgments, and orders and the common law, including the law of strict liability and the law of abnormally dangerous activities, relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Materials, or any other activities or conditions which impact or relate to the environment or nature.

“Enforcement or Remedial Actions” include any step taken by any person or entity (i) to cleanup, remedy, or remove any Release of Hazardous Materials, or (ii) to enforce compliance with or to collect or impose penalties, fines, or other sanctions provided by any Environmental Law.

“Release” includes any and all releasing, spilling, leaking, migrating (from or to), pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, and any other means by which any Hazardous Material or other substance may be introduced into or travel through the environment (i.e., the soils and/or groundwater).

(b) At Buyer’s sole cost and expense, Buyer may, with Seller’s prior written consent, on or before the date 90 days after the date hereof, inspect and survey the Property and perform tests and analyses of any kind relating to the Property’s physical quality or physical condition at a time mutually convenient to Seller and Buyer. At its option and at the same time, Seller may perform similar tests and analyses including, but not limited to, the taking of split samples with Buyer.

(c) Seller expressly disclaims any warranties as to: (i) the presence or Release of Hazardous Materials on, in, under, or adjacent to the Property, (ii) the Property’s compliance with Environmental Laws, and (iii) any potential Environmental Liability associated with the Property or any activities conducted on the Property.

(d) After the Closing, the Buyer shall be solely responsible and liable for the Property’s compliance with all Environmental Laws.

(e) After the Closing, the Seller shall not bear any responsibility or liability contractually, under common law, or under federal, state, or local laws or regulations for: (i) any Hazardous Materials which have been, are, or may be present, generated or Released in, on, under, or adjacent to the Property or the disposal of such Hazardous Materials, or (ii) any Environmental Liability associated with the Property or past, present or future activities conducted on the Property.

(f) Buyer, for itself, all persons or entities that control, are controlled by or under common control with Buyer (each, an ***“Affiliate”***), and all of their respective successors and assigns, expressly waives any and all rights against Seller pertaining to any Environmental Liability or pursuant to any Environmental Law, including, without limitation, any claim alleged under CERCLA.

(g) Buyer, for itself, its respective Affiliates, and all of their respective successors and assigns, agrees to reimburse, defend, indemnify and hold harmless the Seller, its subsidiaries and affiliates and their respective successors and assigns, officers, directors, employees and agents from and against any and all losses, costs, expenses, claims, demands, obligations and liabilities (including, without limitation, cleanup costs, reasonable attorneys’ and consultants’ fees and expenses) (collectively, ***“Liabilities”***) arising from or related to, directly or indirectly, in whole or in part: (i) the threatened or

actual Release of any Hazardous Materials in, on, under or from the Property, and (ii) any Environmental Liability or Enforcement or Remedial Action associated with the Property or any past, present or future activities conducted on the Property or any adjacent property. This indemnification shall survive the Closing of the transactions described in this Agreement and shall include any Liabilities attributable, in whole or in part, to Seller's acts or omissions, including the negligence or gross negligence of Seller, or those of third parties.

8.5 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri.

8.6 Time of the Essence. Time is of the essence with respect to each and every provision of this Agreement.

8.7 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

8.8 Entire Agreement. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

8.10 AS IS. It is expressly acknowledged and agreed by Buyer that no representations or warranties of any kind, except those set forth in Article II hereof, have been made by Seller or Seller's agents or consultants to Buyer or to the agents or consultants of Buyer with respect to the Property, and that any statements whatsoever made by Seller or Seller's agents or consultants to Buyer or to Buyer's agents or consultants outside of Article II are not material and have not been relied upon by Buyer. Without limiting the generality of this acknowledgment and agreement, it is specifically acknowledged and agreed that the Property shall be accepted by Buyer in "as is", "where is" condition, "with all faults".

8.11 [Intentionally Omitted]

8.12 No Offer. The submission of this Agreement to Buyer shall not be deemed an offer by Seller to enter into any transaction or to enter into any other relationship with Buyer, whether on the terms contained in this Agreement or on any other terms. This Agreement shall not be binding upon Buyer or Seller nor shall Buyer or Seller have any obligations or liabilities or any rights with respect hereto, unless and until both Buyer and Seller have executed and delivered this Agreement. Until such execution and delivery of this Agreement, Seller may negotiate with other prospective buyers and either Buyer or Seller may terminate all negotiation

and discussion of the subject matter of this Agreement without cause or for any reason, without recourse or liability.

8.13 Mutual Release. Other than the covenants, representations and warranties of Seller set forth herein and the terms and provisions of this Agreement, upon Closing, Buyer forever fully releases and discharges Seller from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Property or actions of Seller in connection therewith. Upon closing, Buyer, for itself, its heirs, successors and assigns, waives, releases, remises, acquits and forever discharges Seller, its affiliates, employees, agents, officers, successors and assigns, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the physical or environmental condition of the Property, or any federal, state or local law, ordinance, rule or regulation applicable thereto, including without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. Other than the covenants, representations and warranties of Buyer set forth herein and the terms and provisions of this Agreement, upon Closing, Seller forever fully releases and discharges Buyer from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Property of Buyer's actions related to the Property to include, but not limited to, any claims of temporary taking, taking of the Property by regulatory action, alleged right to costs or attorney's fees arising out of the approval or preliminary approval of the Property for development. Upon Closing, Buyer, for itself, its heirs, successors and assigns, waives, releases, remises, acquit and forever discharges Seller, its affiliates, their employees, agents, officers, successors and assigns, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the known or unknown physical or environmental condition of the Property, or any federal, state or local law, ordinance, rule or regulation applicable thereto, including without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK,
SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]**

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

"BUYER"

THE CITY OF CHESTERFIELD, MISSOURI

By: _____
Name:
Title:

"SELLER"

PRECISION IRRIGATION, INC.

By: _____
Name:
Title:

SETTLEMENT AGREEMENT
and
PURCHASE AND SALE AGREEMENT

THIS SETTLEMENT AGREEMENT AND PURCHASE AND SALE AGREEMENT (the "*Agreement*") is made and dated as of this 15th day of May, 2005, by and between The City of Chesterfield, Missouri (a Municipal Corporation) ("*Buyer*"), and Precision Irrigation, Inc., a Missouri corporation ("*Seller*").

WITNESSETH:

WHEREAS, Seller is the owner of the real estate as more particularly described on Exhibit A attached hereto and incorporated herein by reference, and Seller is the owner of the improvements thereon, (all being hereinafter collectively referred to as the "*Property*"), subject to the liens and other exceptions thereto; and

WHEREAS, disputes related to the Property have arisen between Buyer and Seller; and

WHEREAS, Seller sought to develop the Property and pursued governmental approval from, among others, the City of Chesterfield and the Missouri Highway and Transportation Commission ("*MHTC*"); and

WHEREAS, in reliance upon preliminary approvals received from the City and MHTC, Seller incurred site preparation costs, professional fees and other expenses; and

WHEREAS, the City, pursuant to the Chesterfield Valley Master Drainage Ditch Plan conditioned as its preliminary approvals on a requirement that a substantial portion of the Property was to be encumbered by an open drainage ditch; and

WHEREAS, Precision believes that the requirement of the open drainage ditch has the effect of rendering the property useless for their intended purposes; and

WHEREAS, the City denies Precision assertions and the City has threatened that it would institute eminent domain proceedings in order to acquire all, or a substantial portion of the Property; and

WHEREAS, as a compromise Buyer has agreed to purchase, and Seller has agreed to sell the Property, on the terms set forth herein, in contemplation of, and in lieu of, eminent domain and in settlement of all disputes between Buyer and Seller relative to the Property;

NOW, THEREFORE, in consideration of the premises, mutual releases, and the mutual covenants of the parties hereinafter expressed, it is hereby agreed as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Agreement to Sell and Purchase. In accordance with and subject to the terms and conditions hereof, on the date of Closing (as hereinafter defined), Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

1.2 Purchase Price. The purchase price (the "*Purchase Price*") to be paid by Buyer hereunder constitutes consideration for the following shall be \$375,000.00. The parties hereto expressly agree and acknowledge that the Purchase Price is a composite amount, consisting of consideration for: the fair market value of the Property; reimbursement to Seller of certain development costs and expenses incurred; the release by Seller of Buyer of any potential claims relative to the Property; and a premium for the avoidance of litigation. Buyer shall, on the date of Closing, pay the Purchase Price, subject to credit and adjustment as provided in Section 1.3 hereof, which shall be paid to Seller by the wire transfer of good, current, immediately available funds and which Buyer shall cause to be received by Seller on or before 4:00 p.m. (Central Standard Time) on the date of Closing.

1.3 Adjustments. The following items shall be credited, debited and otherwise adjusted, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing pursuant to Section 1.2 hereof (where appropriate, such adjustments shall be made on the basis of a year of 12 months, 30 days to the month, Seller to have the last day, unless otherwise provided):

(a) General property taxes (state, county, municipal, school and fire district) for the then current tax fiscal year based upon the latest available tax bills or assessment information, whether for that year or the preceding year.

(b) Special taxes or assessments, if any, upon the Property assessed or becoming a lien prior to the date hereof (but only a pro rata share of the then current installment of such special taxes or assessment, if any, shall be charged as a credit against the Purchase Price, Buyer agreeing to assume all liability for future installments and deferred payments).

In addition, certain costs incidental hereto and to the transactions contemplated hereby shall be borne such that at (or prior to) Closing, Buyer shall pay all recording fees and costs, all survey costs, all title commitment and title insurance premiums, all mortgage taxes or intangible taxes, and all transfer taxes or revenue stamps incidental to the recordation of the Special Warranty Deed, Buyer and Seller shall each pay one half of the escrow and/or closing fees, if any, charged by the U.S. Title Guaranty Corporation, 8135 Forsyth, Clayton, Missouri 63105 (the "Title Company"). Any and all state, county and municipal sales taxes due and payable as a result of the transactions contemplated herein shall be paid by Buyer. To the extent

the law requires Seller to collect and remit such taxes, then Buyer shall pay such taxes to Seller at the Closing and the parties shall agree, each acting reasonably, upon the appropriate procedure for determining or estimating the amount thereof.

Except as expressly provided in this Section 1.3 or as expressly provided elsewhere in this Agreement, Buyer and Seller shall pay their own respective costs and expenses, including any and all attorneys' fees, incidental to this Agreement and any rights being settled by this Agreement and the transactions contemplated hereby.

1.4 Possession. Seller shall transfer possession of the Property to Buyer on the date of Closing.

1.5 Closing. The closing (herein referred to as the "**Closing**") of the transactions contemplated hereby shall be on June 30, 2005, subject the satisfaction and/or waiver of the final condition precedent to be satisfied or waived under Section 4.1 hereof, between the hours of 9 a.m. and 4 p.m. (Central Standard Time) on said date. The Closing shall take place through escrow at the offices of the Title Company.

1.6 Documents at Closing.

(a) On the date of Closing, Seller shall execute and deliver or cause to be delivered to Buyer, the following documents:

(i) Special Warranty Deed, transferring and conveying to Buyer title to the Property (Seller's record title to govern for purposes of the legal description), subject to the lien of general real estate taxes for the then current tax fiscal year, and those easements, restrictions, conditions, and other exceptions described on Exhibit B attached hereto and incorporated herein by reference ("**Permitted Exceptions**"), which Special Warranty Deed shall be in form reasonably approved by Seller.

(ii) A standard form Seller's affidavit, against mechanics liens and against parties in possession, and such other documents, if any, as may be required by the Title Company, on forms customarily used by the Title Company and reasonably satisfactory to Seller, in order to issue an owner's policy of title insurance.

(b) On the date of Closing, Buyer and Seller shall execute and deliver to one another counterpart originals of the following:

(i) Closing Statements.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall not survive the Closing but shall be merged into the delivery of the Special Warranty Deed.

2.1 Corporate Authority. With respect to Seller and its business, Seller represents and warrants, in particular, that:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Seller has all necessary power and authority to own, use and transfer its properties (including the Property) and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of Seller herein, and to perform its obligations hereunder.

(c) Seller is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

2.2 Commissions. Seller has dealt with no broker, finder or other person in connection with the sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Buyer.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall survive Closing.

3.1 Corporate Authority. With respect to Buyer and its business, Buyer represents and warrants, in particular, that:

(a) Buyer is a corporate municipality duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Buyer has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Buyer herein, and to perform its obligations hereunder.

(c) Buyer is duly authorized to execute and deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

3.2 Commissions. Buyer has dealt with no broker, finder or any other person, in connection with the purchase of or the negotiation of the purchase of the Property that might give rise to any claim for commission against Seller or lien or claim against the Property.

ARTICLE IV

CONDITIONS TO OBLIGATIONS

4.1 Conditions to the Buyer's Obligations. The obligations of Buyer to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Buyer to waive any one or more of such conditions:

(a) Buyer shall have obtained a commitment in favor of Buyer for a current ALTA owner's policy of title insurance from the Title Company with respect to the Property, which commitment shall be in the amount of the Purchase Price and shall show Seller as the owner of the Property. Buyer agrees to obtain such a commitment (the cost of which shall be paid by Buyer), together with copies of all exceptions referred to thereon, on or before the date 30 days after the date hereof (and Buyer agrees to furnish Seller with copies thereof immediately upon receipt); it being understood that if Buyer fails to obtain such commitment within such 30 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such commitment and the exceptions shown thereon and the status of title to the Property (or disapprove the same and thereby terminate this Agreement) on or before the date 30 days after the date hereof (Buyer hereby agreeing that it shall not disapprove, as exceptions, the lien of general real estate taxes for the current tax fiscal year); provided, however, that in the event Buyer shall disapprove the status of title as shown on such commitment or any exceptions referred to thereon, Seller may, on or before the date of Closing, at its own expense and effort, cure such status of title or cause to be released of record or removed (by endorsement) from such commitment such disapproved exceptions, whereupon this condition shall not be deemed unsatisfied by reason of Buyer's disapproval of such status of title or such exceptions.

(b) Buyer shall have reviewed and approved a physical inspection and engineering report and analysis with respect to the Property, reflecting the physical condition of all improvements, comprising the Property, and the condition of the Property. Buyer agrees to obtain such report and analysis at Buyer's expense, including without limitation, those reports and tests set forth in Section 8.4(b) hereof, on or before the date 90 days after the date hereof (and Buyer agrees to furnish Seller with a copy thereof immediately upon receipt); it being understood that if Buyer fails to obtain such report and analysis within such 90 day period, this condition precedent shall be

conclusively deemed satisfied. Buyer agrees to review and approve such report and analysis (or disapprove the same and thereby terminate this Agreement) on or before the date 90 days after the date hereof; provided, however, that in the event Buyer shall disapprove any matter shown on such report and analysis, Seller may, on or before the date of Closing, at its own expense and effort, cure such disapproved matter, whereupon this condition shall not be deemed unsatisfied by reason of Buyer's disapproval of such matter shown on such report and analysis.

(c) Buyer shall have reviewed and approved an "as built" survey of the Property (the "Survey") bearing a reasonably current certification date. The Survey shall verify the location of the Property, shall verify the legal description on Exhibit A attached hereto as the legal description of the Property (or show any corrections thereto), and shall show the location of improvements and easements. Buyer agrees to obtain the Survey at Buyer's expense, on or before the date 90 days after the date hereof (and promptly provide a copy thereof to Seller); it being understood that if Buyer fails to obtain the Survey within such 90 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such survey (or disapprove the same and thereby terminate this Agreement) on or before the date 60 days after the date hereof.

(d) Buyer shall have reviewed and approved an appraisal of the Property (the "Appraisal"). Buyer agrees to obtain the Appraisal at Buyer's expense, on or before the date 90 days after the date hereof (and promptly provide a copy thereof to Seller); it being understood that if Buyer fails to obtain the Appraisal within such 60 day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such survey (or disapprove the same and thereby terminate this Agreement) on or before the date 90 days after the date hereof.

(e) The Council of the City of Chesterfield shall have approved this Agreement, the Survey, and the Appraisal of the Property within 90 days of the date hereof.

4.2 Conditions to the Seller's Obligations. The obligations of Seller to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Seller to waive any one or more of such conditions:

(a) Buyer shall have, on or before the date of Closing, performed all of its covenants, obligations and agreements under this Agreement.

4.3 Failure of Satisfaction of Conditions.

(a) In the event that any one or more of the matters referred to in each of the subsections of Section 4.1 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Buyer may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties

shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Buyer, then such condition precedent shall be conclusively deemed satisfied.

(b) In the event that any one or more of the matters referred to in each of the subsections of Section 4.2 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Seller may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Seller, then such condition precedent shall be conclusively deemed satisfied.

ARTICLE V

COVENANTS OF SELLER

Seller covenants and agrees that from and after the date of this Agreement and until the date of Closing:

5.1 Operation of Property. Seller shall continue to maintain the improvements, if any, that comprise or that are upon the Property in "AS IS" condition and repair, normal wear and tear and casualty damage excepted.

ARTICLE VI

COVENANTS OF BUYER

6.1 Post Termination Covenants. Buyer covenants and agrees that in the event Closing does not occur due to the failure of a condition precedent to Buyer's obligations, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Seller's cost of reproduction and delivery. Buyer covenants and agrees that in the event Closing does not occur due to the failure of Buyer to perform all of its covenants, obligations and agreements under this Agreement, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Buyer's cost of reproduction and delivery.

6.2 Restoration of Property. Buyer shall, in connection with its studies and investigations of the Property contemplated hereunder, promptly restore the Property to its condition existing immediately prior to such studies and investigations. Buyer hereby agrees to indemnify, defend and hold Seller and the Property free and harmless from and against any cost,

expense, charge, lien, action or judgment, as well as any claim of a right to any such cost, expense, charge, lien, action or judgment arising directly or indirectly from any act or omission of Buyer, Buyer's agents or contractors, or any services, labor, supplies or materials provided or performed by surveyors, engineers, architects and others making the inspections and tests, and from and against any personal injury and property damage caused by the act or neglect of Buyer or any of its agents, or independent contractors. This indemnification shall survive the termination of this Agreement and shall survive the Closing of the transactions described in this Agreement. Buyer, or such person or entity actually doing any work contemplated hereunder shall secure and maintain, at Buyer's or such other person or entity's sole cost and expense, the following policies of insurance: (i) comprehensive public liability and property damage insurance, with limits of \$1,000,000 for bodily injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person on an occurrence basis, property damage insurance with limits of \$1,000,000 for each accident, and \$1,000,000 policy limit for aggregate operations on an occurrence basis, (ii) comprehensive automobile liability insurance with limits of \$100,000,000 for injury or death to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person, and (iii) workers' compensation and employer's liability insurance in accordance with the provisions of Missouri law.

ARTICLE VII

CASUALTY

7.1 Casualty. In the event of the damage or destruction of all or any part of the Property, the aggregate cost to repair, replace and/or restore of which shall be \$100,000 or more (as reasonably estimated by Seller), prior to Closing, Buyer may, at its option, exercisable by written notice to Seller, either (i) terminate this Agreement, whereupon, except as expressly provided herein, neither party will have any further obligations hereunder (and the Deposit shall be returned to Buyer), or (ii) continue under this Agreement, whereupon Seller will assign to Buyer its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to Seller for the costs of any restoration work incurred by Seller prior to Closing. In the event of the damage or destruction of any part of the Property prior to Closing, the aggregate cost to repair, replace and/or restore of which shall be less than \$100,000 (as reasonably estimated by Seller), Buyer shall have no right to terminate this Agreement on account thereof, but Seller shall assign to Buyer all of its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction less such portion thereof as shall first be reimbursed to Seller for the costs of any restoration work incurred by Seller prior to Closing; provided, however, in the event there is no insurance on the Property and Seller chooses not to repair, replace or restore the Property, then Buyer, at its option, may reduce the Purchase Price by the value of the damage or destruction (as reasonably estimated by Seller as set forth above) or terminate this Agreement. Seller shall not, in any event, be obligated to effect any repair, replacement, and/or restoration, but may do so at its option.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective heirs, administrators, executors, personal representatives, successors and assigns.

8.2 Assignment. Seller may assign its rights and interests hereunder. Buyer may not assign its rights and interests hereunder without the prior written consent of Seller.

8.3 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally (which shall include delivery by national overnight courier service) or sent by registered or certified mail, postage pre paid, and addressed as set forth below:

(a) . If to Seller:

James Nienhaus
Precision Irrigation, Inc.
Precision Irrigation, Inc.
2516 Highway 109
Wildwood, Missouri 63040-1103

With a copy to:

Daniel C. Nester, Esq.
Bryan Cave LLP
One Metropolitan Square
Suite 3600
St. Louis, MO 63102

If to Buyer:

City of Chesterfield, Missouri
Chesterfield City Hall
690 Chesterfield Parkway W
Chesterfield, MO 63017-0670
Attn: Mike Herring, City Administrator

With a copy to:

Douglas R. Beach, Esq.
222 S. Central, Suite 900
Clayton, MO 63105

Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

8.4 Environmental Review.

(a) The following defined terms used in this Section 8.4 shall have the following meanings:

"Hazardous Materials" include: (i) oil or other petroleum products, (ii) "hazardous wastes," as defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., or similar state or local law, ordinance, regulation or order, (iii) "hazardous substances," as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq., or similar state or local law, ordinance, regulation or order, (iv) "hazardous materials," as defined by the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §5102, or similar state or local law, ordinance, regulation or order, (v) radioactive materials subject to the Atomic Energy Act (AEA), 42 U.S.C. §2011 et seq., or similar state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

"Environmental Liability" means any and all liability, claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage, loss, cost, expense, injury, judgment, penalty, or fine alleged by any third party (including, without limitation, any private party or governmental entity), arising out of, relating to, or resulting from, directly or indirectly, in whole or in part: (i) the presence, generation, transport, disposal, treatment, storage or Release of Hazardous Materials, (ii) the violation or alleged violation of any Environmental Law, or (iii) any Enforcement or Remedial Action. This liability includes any cost of removing or disposing of any Hazardous Materials, any cost of enforcement, cost of investigation and/or remedial action, and any other cost or expense whatsoever, including, without limitation, reasonable attorneys', accountants', engineers', and consultants' fees and disbursements, interest, and medical expenses.

"Environmental Law" means any past, present, or future federal, state, or local laws, ordinances, regulations, judgments, and orders and the common law, including the law of strict liability and the law of abnormally dangerous activities, relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Materials, or any other activities or conditions which impact or relate to the environment or nature.

“Enforcement or Remedial Actions” include any step taken by any person or entity (i) to cleanup, remedy, or remove any Release of Hazardous Materials, or (ii) to enforce compliance with or to collect or impose penalties, fines, or other sanctions provided by any Environmental Law.

“Release” includes any and all releasing, spilling, leaking, migrating (from or to), pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, and any other means by which any Hazardous Material or other substance may be introduced into or travel through the environment (i.e., the soils and/or groundwater).

(b) At Buyer's sole cost and expense, Buyer may, with Seller's prior written consent, on or before the date 90 days after the date hereof, inspect and survey the Property and perform tests and analyses of any kind relating to the Property's physical quality or physical condition at a time mutually convenient to Seller and Buyer. At its option and at the same time, Seller may perform similar tests and analyses including, but not limited to, the taking of split samples with Buyer.

(c) Seller expressly disclaims any warranties as to: (i) the presence or Release of Hazardous Materials on, in, under, or adjacent to the Property, (ii) the Property's compliance with Environmental Laws, and (iii) any potential Environmental Liability associated with the Property or any activities conducted on the Property.

(d) After the Closing, the Buyer shall be solely responsible and liable for the Property's compliance with all Environmental Laws.

(e) After the Closing, the Seller shall not bear any responsibility or liability contractually, under common law, or under federal, state, or local laws or regulations for: (i) any Hazardous Materials which have been, are, or may be present, generated or Released in, on, under, or adjacent to the Property or the disposal of such Hazardous Materials, or (ii) any Environmental Liability associated with the Property or past, present or future activities conducted on the Property.

(f) Buyer, for itself, all persons or entities that control, are controlled by or under common control with Buyer (each, an ***“Affiliate”***), and all of their respective successors and assigns, expressly waives any and all rights against Seller pertaining to any Environmental Liability or pursuant to any Environmental Law, including, without limitation, any claim alleged under CERCLA.

(g) Buyer, for itself, its respective Affiliates, and all of their respective successors and assigns, agrees to reimburse, defend, indemnify and hold harmless the Seller, its subsidiaries and affiliates and their respective successors and assigns, officers, directors, employees and agents from and against any and all losses, costs, expenses, claims, demands, obligations and liabilities (including, without limitation, cleanup costs, reasonable attorneys' and consultants' fees and expenses) (collectively, ***“Liabilities”***) arising from or related to, directly or indirectly, in whole or in part: (i) the threatened or

actual Release of any Hazardous Materials in, on, under or from the Property, and (ii) any Environmental Liability or Enforcement or Remedial Action associated with the Property or any past, present or future activities conducted on the Property or any adjacent property. This indemnification shall survive the Closing of the transactions described in this Agreement and shall include any Liabilities attributable, in whole or in part, to Seller's acts or omissions, including the negligence or gross negligence of Seller, or those of third parties.

8.5 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri.

8.6 Time of the Essence. Time is of the essence with respect to each and every provision of this Agreement.

8.7 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

8.8 Entire Agreement. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties.

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

8.10 AS IS. It is expressly acknowledged and agreed by Buyer that no representations or warranties of any kind, except those set forth in Article II hereof, have been made by Seller or Seller's agents or consultants to Buyer or to the agents or consultants of Buyer with respect to the Property, and that any statements whatsoever made by Seller or Seller's agents or consultants to Buyer or to Buyer's agents or consultants outside of Article II are not material and have not been relied upon by Buyer. Without limiting the generality of this acknowledgment and agreement, it is specifically acknowledged and agreed that the Property shall be accepted by Buyer in "as is", "where is" condition, "with all faults".

8.11 [Intentionally Omitted]

8.12 No Offer. The submission of this Agreement to Buyer shall not be deemed an offer by Seller to enter into any transaction or to enter into any other relationship with Buyer, whether on the terms contained in this Agreement or on any other terms. This Agreement shall not be binding upon Buyer or Seller nor shall Buyer or Seller have any obligations or liabilities or any rights with respect hereto, unless and until both Buyer and Seller have executed and delivered this Agreement. Until such execution and delivery of this Agreement, Seller may negotiate with other prospective buyers and either Buyer or Seller may terminate all negotiation

and discussion of the subject matter of this Agreement without cause or for any reason, without recourse or liability.

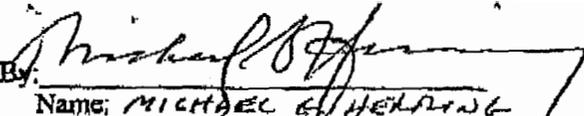
8.13 Mutual Release. Other than the covenants, representations and warranties of Seller set forth herein and the terms and provisions of this Agreement, upon Closing, Buyer forever fully releases and discharges Seller from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Property or actions of Seller in connection therewith. Upon closing, Buyer, for itself, its heirs, successors and assigns, waives, releases, remises, acquits and forever discharges Seller, its affiliates, employees, agents, officers, successors and assigns, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the physical or environmental condition of the Property, or any federal, state or local law, ordinance, rule or regulation applicable thereto, including without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act. Other than the covenants, representations and warranties of Buyer set forth herein and the terms and provisions of this Agreement, upon Closing, Seller forever fully releases and discharges Buyer from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Property of Buyer's actions related to the Property to include, but not limited to, any claims of temporary taking, taking of the Property by regulatory action, alleged right to costs or attorney's fees arising out of the approval or preliminary approval of the Property for development. Upon Closing, Buyer, for itself, its heirs, successors and assigns, waives, releases remises, acquit and forever discharges Seller, its affiliates, their employees, agents, officers, successors and assigns, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Buyer now has or which Buyer may have in the future on account of or in any way arising out of or in connection with the known or unknown physical or environmental condition of the Property, or any federal, state or local law, ordinance, rule or regulation applicable thereto, including without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK,
SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]**

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

“BUYER”

THE CITY OF CHESTERFIELD, MISSOURI

By: 
Name: MICHAEL G. HERD
Title: CITY ADMINISTRATOR

“SELLER”

PRECISION IRRIGATION, INC.

By: 
Name: _____
Title: President

EXHIBIT APROPERTY

All that part of the following described property lying North of Highway 40: Part of Lot 1 of the Subdivision in R. H. Steven's Farm, according to the plat thereof recorded in Plat book 7 page 37 of the city (former county) records, and part of Lot 2 of the Spencer C. Tylers Estate Subdivision in partition according to the plat thereof attached to the Commissioner's Report recorded in Book 7 page 25 of the St. Louis County records in U.S. Surveys 150 and 419, Township 45 North, Range 3 East together described:

Beginning at the point of intersection of the North line of U.S. Highway 40 Traffic Relief and the East line of said Lot 2 of the Spencer C. Tylers Estate Subdivision; thence North 12 degrees West along said East line, 2063.36 feet to the Southeast corner of the property conveyed to John A. Sanwald and wife by deed recorded in Book 2482 page 570 of the St. Louis County records; thence South 78 degrees West along the South line of said Sanwald property 668.78 feet to the Southwest corner of said Sanwald property; thence South 12 degrees East and parallel to the East line of said Lot 2, 1,843 feet to a point in the North line of U.S. Highway 40 Traffic Relief and thence South 83 degrees 45-1/2 minutes East along said North line, 704.18 feet to the point of beginning, according to survey executed by Elbring Surveying Co., during October, 1943, EXCEPTING THEREFROM that part taken for the re-location of U.S. Highway 40 TR, in Cause No. 290860 of the St. Louis County Circuit Court, and recorded in Book 6343 page 824 of the St. Louis County Records.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Special assessments now or hereafter becoming a lien, which are not due and payable as of the date of Closing.
2. General property taxes for the current tax fiscal year and subsequent tax fiscal years, which are not due and payable as of the date of Closing.
3. Chesterfield Valley Master Drainage Ditch Easement.

Any of the following which are not waived or disapproved by Buyer pursuant to Section 4.1 of the attached Agreement:

1. Any covenants, conditions, limitations, restrictions, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters reserved in or established by the provisions of, or permitted under or contemplated by the attached Agreement.
2. Covenants, conditions, limitations, restrictions, rights, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters of fact or record.
3. Present and future zoning, subdivision, building, land use, and environmental laws, ordinances, restrictions, resolutions, orders and regulations and all present ordinances, laws, regulations and orders of all federal, state, county, municipal or other governments, agencies, boards, bureaus, commissions, authorities and bodies now or hereafter having or acquiring jurisdiction of the Property and the use and improvement thereof.
4. Any state of facts or exception which an accurate survey or an inspection of the Property would show.
5. All other exceptions listed in the Title Insurance Commitment to be obtained by Buyer pursuant to Section 1.4(a) of the attached Agreement.