

RESOLUTION NO. 76 -2015

Offered by All of Council

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN IMPROVEMENT AGREEMENT WITH JJJ PROPERTIES L.L.C. FOR THE CONSTRUCTION OF PUBLIC SANITARY SEWER AND WATER LINE IMPROVEMENTS, AND DECLARING AN EMERGENCY

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

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into an Improvement Agreement with JJJ Properties L.L.C. for the construction of public sanitary sewer and water line improvements located in the JEDD, based upon the terms and conditions set forth in the agreement which is attached hereto and incorporated herein as Exhibit "A".

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

SECTION 3. That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to continue the JEDD Improvements at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 11-2-15

*Rich Hedak*  
President of Council

*Robert Boshan*  
Mayor

ATTEST:  
*Carolyn E Sullivan*  
Clerk of Council

Dated: 11/2/15

**IMPROVEMENT AGREEMENT (2015)**

THIS AGREEMENT, made at Richfield, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between JJJ Properties L.L.C. (hereinafter referred to as "Developer") and RICHFIELD, OHIO, a municipal corporation organized as a village under the laws of the State of Ohio (hereinafter referred to as "Village").

**WITNESSETH:**

WHEREAS, Developer is desirous of improving certain lands situated in the Richfield/Richfield Township Joint Economic Development District (hereinafter referred to as "JEDD"), and known as Richfield Industrial Park; and

WHEREAS, Developer and Village were parties to an Improvement Agreement dated as of April 27, 2011, which called for certain public sanitary sewer and waterline improvements to be completed within eighteen (18) months; and

WHEREAS, Developer has constructed a part of the previously-approved sanitary sewer improvements (approximately 2,247.5 lineal feet installed as per daily log, with approximately 45 lineal feet left to be installed from Brecksville Road to Manhole A and 490 lineal feet left to be installed in Phase 1) and has not yet commenced construction of the previously-approved waterline improvements or the access road for access to the sanitary sewer; and

WHEREAS, Developer now wishes to construct the improvements in a phased manner, and to dedicate the Phase I which consists of 2,247.5 lineal feet of 8-inch sanitary sewer pipe already installed and approximately 45 lineal feet to be installed from Brecksville Road to manhole A and 490 lineal feet left to be installed in Phase I and then to construct Phase II which consist of approximately 920 lineal feet of sanitary sewer and the remaining previously-approved improvements, and also to extend sanitary completing Phase I and Phase II of the Richfield Industrial Park of Sanitary Sewer; and the waterline improvement shall consist of approximately

1,450 lineal feet of 12" water main for Phase I and approximately 1,640 lineal feet of 12" water main for Phase II. The waterline improvement shall extend 3,090 lineal feet for Phase I and Phase II of the Richfield Industrial Park; and

WHEREAS, improvement plans for Richfield Industrial Park have been reviewed and approved by the Village; and

WHEREAS, Developer desires to comply with the Land Development Code of the Village of Richfield so that it may proceed with the improvements for Richfield Industrial Park -- Sanitary Sewer and Waterline; and

WHEREAS, an Agreement between the Village and the Developer is required.

NOW, THEREFORE, IT IS AGREED THAT:

1. The Developer will complete the improvements for Phase I Richfield Industrial Park -- Sanitary Sewer and Waterline (hereinafter referred to as the "Improvements") within a period of ten (10) months from the date of approval by the Village of the Performance Bond for the various portions of construction with proper surety in the amount of One Hundred Fifty Percent (150%) of the labor and materials cost of the Improvements as a condition of the approval by the Village, and as a guarantee that such work will be completed. The labor and materials cost of installing the Improvements for Phase I to be complete has been estimated by the Developer to be \$65,893.00 for Sanitary Sewer; and \$207,537.00 for Waterline, for a total cost for Phase I of \$273,430.00, which estimates have been reviewed by the Village and found to be reasonable and representative of 2015 costs of construction of proposed improvements. The labor and materials cost of Improvements necessary for Phase II to be complete has been estimated by the Developer to be \$73,964.00 for Sanitary Sewer; and \$170,560.00 for Waterline for a total cost for Phase II of \$244,524.00, which estimates have been reviewed by the Village and found to be reasonable and representative of 2015 costs of construction of proposed

improvements. All Improvements are to be constructed in accordance with the plans and specifications for such Improvements as approved by the Summit County Engineer, Village of Richfield, Summit Soil and Water Conservation District, Summit County Planning Commission, Ohio Environmental Protection Agency, Cleveland Water Department and the Service Director for the Village of Richfield, as applicable, which plans and specifications are made a part hereof and incorporated herein by reference, and are dated June 26, 2014, as may be revised and approved by the Village.

2. All such Improvements shall be inspected during the course of construction and improvement by an inspector appointed by the Mayor, at the Developer's cost. The estimated cost of inspection is \$15,244.00 for Phase I and \$20,291.00 for Phase II, assuming all inspection work is completed in 2015; if completed later than 2015, the estimated cost may be higher. The Developer and the Village acknowledge that the sanitary sewer line which has been constructed to date must be inspected by the Village, and the Developer acknowledges and agrees that the already-constructed sanitary sewer lines must be air-tested, mandrill tested, jetted and TV'd prior to connection and dedication of said lines to the Village. As a further condition precedent to connection and dedication of said lines to the Village, Developer shall be required to furnish the Village Service Director with evidence of easements for the sanitary sewer and access drive areas, as shown on the drawings. Further, dedication of aforementioned sanitary sewer lines shall be required prior to commencement of further construction of Improvements.

The initial deposit with the Village by the Developer for the inspection costs shall be \$10,000.00, which amount shall be deposited with the Village prior to commencing further construction of the Improvements. When the costs of inspection are within \$1,000 of exhausting the initial \$10,000.00, the Developer will be notified in writing of the need to redeposit the

balance of the depleted initial required deposit and shall have ten (10) calendar days from the date of written notice to do so.

In the event the cost of inspection or plan review exceeds the amount on deposit at any time, the Village shall have the right to demand a sum of money to bring the deposit equal to the actual cost of inspection within ten (10) days of written notice upon the Developer, whether or not the actual cost of inspection exceeds the estimate of \$10,000.00. Failure to comply with the written demand to bring the inspection or plan review deposit current shall be cause for the Village to stop all work upon the Improvements, to proceed against the financial guarantee until such demand is complied with. All funds not used for inspection fees shall be returned to the Developer upon final approval of the Improvements (Sanitary Sewer and Waterline work)

3. The Performance Bond shall be conditioned upon completion of the Improvements as shown on the Improvement plans and further conditioned upon the Developer's construction and installation of all of the phases of said Improvements, at its own expense, within ten (10) months from the date hereof.

4. Upon completion of all phases of the Improvements and receipt of the approval by the Village and before the Performance Bond is released by the Village, the Developer shall submit a Maintenance Bond in an amount equal to Ten Percent (10%) of the final construction cost to guarantee the workmanship and material for a period of two (2) years following the completion of the Improvements.

5. In the event that the Developer defaults on its obligations hereunder to construct the Improvements in accordance with the Village specifications and approval, the Village shall have the right to collect the proceeds of the financial guarantee and to enter upon the property of the Developer to make the appropriate Improvements.

6. Developer shall also, prior to commencement of further construction, file with the Village a Certificate of Public Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for personal injuries, including wrongful death due to injuries and subject to the same limit for each person, and an amount of not less than Three Million Dollars (\$3,000,000.00) on account of any one accident, and property damage insurance with limits of One Hundred Thousand Dollars (\$100,000.00). This insurance shall be written with an acceptable company authorized to do business in the State of Ohio; shall be taken out before any further operations of Developer are commenced; and shall be kept in effect until all operations shall be satisfactorily completed.

7. Upon completion of construction of the Improvements and approval by the Village, Developer shall dedicate to the Village all public waterline and sanitary sewer improvements and lands set forth in the final engineering drawings.

8. Upon completion of the work, Developer shall furnish to the Village "as built" drawings on reproducible material and on magnetic computer take discs in a size and form approved by the Village.

9. This Agreement shall be made a part of and incorporated into any and all bonds or other security agreements that may have been issued or entered into pursuant hereto.

IN WITNESS WHEREOF, the parties have set forth their hands the day and year first written above.

WITNESSES:

Yolanda Chikay  
Laura Pirosh

("Developer")  
By: [Signature]  
Signature  
JOHN ALLEGA MANAGING MEMBER  
Print Name and Title

WITNESSES:

VILLAGE OF RICHFIELD, OHIO  
(A Municipal Corporation – Incorporated as  
a Village in Ohio)

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Bobbie Beshara, Mayor

And: \_\_\_\_\_  
Sandy Turk, Finance Director

APPROVED AS TO LEGAL FORM.

\_\_\_\_\_  
William R. Hanna, Village Law Director