

ORDINANCE NO. 55-2006

Offered by All of Council

AN ORDINANCE AMENDING ORDINANCE NO. 90-2005 ENTITLED "AN ORDINANCE DECLARING IMPROVEMENTS TO CERTAIN PROPERTY IN THE VILLAGE TO BE A PUBLIC PURPOSE, DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENT TO BENEFIT THE PROPERTY, EXEMPTING SUCH IMPROVEMENTS TO THE PROPERTY FROM REAL PROPERTY TAXATION, AUTHORIZING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY, AND ESTABLISHING A TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS AND RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40, 5709.42 AND 5709.43" AND DECLARING AN EMERGENCY

WHEREAS, on November 21, 2005, this Council passed Ordinance No. 90-2005 entitled " An Ordinance Declaring Improvements to Certain Property in the Village to be a Public Purpose, describing the Public Infrastructure Improvement to Benefit the Property, Exempting Such Improvements to the Property from Real Property Taxation, Authorizing the Execution of Such Other Documents as May Be Necessary; and Establishing a Tax Increment Equivalent Fund for the Deposit of Such Service Payments and Related Authorizations Pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 and Declaring an Emergency"; and

WHEREAS, this Council wishes to amend Ordinance No. 90-2005 to provide that one hundred percent (100%) of the assessed value of the new construction is a public purpose that will be exempt from real property taxation for thirty (30) years, except that the Revere Local School District and the Cuyahoga Valley Joint Vocational School District shall receive their full portion of real estate taxes based on their tax rates; and

WHEREAS, this Council further has authorized the Mayor and the Finance Director to enter into an agreement with the Developer, MPEC Richfield, LLC and the Revere Local School District approving the foregoing TIF Program.

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

SECTION 1. That Ordinance No. 90-2005 be amended to read its entirety as follows:

"AN ORDINANCE DECLARING IMPROVEMENTS TO CERTAIN PROPERTY IN THE VILLAGE TO BE A PUBLIC PURPOSE, DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENT TO BENEFIT THE PROPERTY, EXEMPTING SUCH IMPROVEMENTS TO THE PROPERTY FROM REAL PROPERTY TAXATION, AUTHORIZING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY, AND ESTABLISHING A TAX INCREMENT EQUIVALENT FUND

FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS AND RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40, 5709.42 AND 5709.43 AND DECLARING AN EMERGENCY

WHEREAS, Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 provide that this Council may declare certain improvements to property within the Village to be a public purpose, thereby authorizing the exemption of those improvements from real property taxation for a period of time and provide for the making of service payments in lieu of taxes by the owner of such parcels for the purpose of paying for public infrastructure improvements which directly benefit the property for which the improvement was declared to be a public purpose and establish a municipal public improvement tax increment equivalent fund into which such service payments shall be deposited; and

WHEREAS, this Council desires to make the public infrastructure improvements in the Village described in Exhibit "A" hereto (the "Public Infrastructure Improvements") that once made would benefit or serve the property known as Permanent Parcel No. 50-02690 (described in Exhibit "B" hereto), the improvements to which are declared to be a public purpose, hereinafter referred to as the "Property"; and

WHEREAS, the Village has determined that it is necessary and appropriate and in the best interests of the Village to provide for service payments in lieu of taxes with respect to the Property (the "Service Payments") pursuant to Section 5709.42 of the Ohio Revised Code; and

WHEREAS, the Village wishes to enter into an agreement with MPEC Richfield, LLC, the owner of the Property, to pay Service Payments and to petition for special assessments to be levied against the Property to pay costs for the Public Infrastructure Improvements with the payment of special assessments subject to offset by the amount of Service Payments received by the Village (the "Development Agreement") attached hereto as Exhibit "C"; and

WHEREAS, the Property is located in the Revere Local School District and the Board of Education of the Revere Local School District has been provided notice in accordance with Section 5709.83 of the Ohio Revised Code.

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

SECTION 1. The Council hereby creates and confirms that the improvements to Property known as Permanent Parcel No. 50-02690 currently owned by MPEC Richfield, LLC, as described in Exhibit "B," are determined to be Public Improvements.

SECTION 2. The Public Infrastructure Improvements described in Exhibit "A" are hereby designated as those Public Infrastructure Improvements that benefit or serve directly the Property and are necessary for the public health, safety and welfare.

SECTION 3. Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.40, this Council hereby finds and determines that 100% of the increase in the assessed value of the Property that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is herein referred to as the "Improvement" or "Improvements" as defined in Section 5709.40) is a public purpose, and 100% of said Improvements is hereby declared to be a public purpose for a period of 30 years except that the Revere Local School District and the Cuyahoga Valley Joint Vocational School District shall receive their full portion of real estate taxes based on their tax rates and exempt from taxation commencing with the tax year in which the Improvements first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance and ending on the earlier of (1) the date the Improvements have been exempted from taxation for a period of 30 years or (2) the date on which the Village has collected into the Fund established in Section 5 hereof a total amount of Service Payments available for and sufficient (i) to pay costs of the Public Infrastructure Improvements, (ii) to pay the principal, interest and premium, if any, on financing for such costs of the Public Improvements, or (iii) to reimburse the Village for other Village funds used by the Village to pay such costs or such principal, interest or premium, prior to receipt of Service Payments, all as further provided in Section 5 hereof.

SECTION 4. As provided in Section 5709.42 of the Revised Code, "and as more specifically provided in the Contract, the owner or owners 'of the Improvement are hereby required to, and shall make, annual Service Payments to the County Treasurer on or before the final dates for payment of real property taxes, which Service Payments shall be deposited in the Municipal Public Improvement Tax Increment Equivalent Fund established in Section 5 hereof. This Council hereby authorizes the Mayor, Finance Director and Village Solicitor, and other appropriate officers of the Village, to provide such information and certifications, and execute and deliver or accept delivery of such

instruments, as are necessary and incidental to collect those Service Payments, and to make such arrangements as are necessary and proper for payment of said Service Payments and to enter into the Development Agreement attached hereto as Exhibit "C," the terms of which Development Agreement are hereby approved.

SECTION 5. This Council hereby establishes pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Downtown Public Improvement Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited all of the Service Payments distributed to the Village with respect to the Improvements on the Property, by or on behalf of the County Treasurer as provided in Section 5709.42 of the Ohio Revised Code, and hereby provides that all of the moneys deposited in the Fund shall be used for any or all of the following purposes:

(i) to pay any and all acquisition, construction, installation, financing costs, and any and all other direct and indirect costs of the Public Improvements, including those costs set forth in Ohio Revised Code Section 133.15(B), other than those costs paid from special assessments collected by the Village as provided in the Contract;

(ii) to pay the interest on, principal of, and any premium on bonds or notes or other obligations, including refunding bonds or notes or other obligations, issued by the Village to finance costs of the Public Improvements until such notes or bonds or other obligations are paid in full, other than those costs paid from special assessments collected by the Village as provided in the Contract; and

(iii) to reimburse the Village for any funds used by the Village to pay costs of the Public Improvements, or to pay interest, principal, or premium, on any of the aforesaid notes, bonds, loans or other obligations, other than those costs or financing to be paid from special assessments collected by the Village as provided in the Contract, prior to receipt of Service Payments.

No money in the fund will be used for the purpose of housing renovation and The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which said Fund shall be dissolved in accordance with said Section 5709.43.

SECTION 6. Pursuant to Section 5709.40 of the Ohio Revised Code, the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development of the State of Ohio within fifteen days after its passage. On or before March 31 of each

year that the exemption set forth in Section 2 hereof remains in effect, the Mayor of the Village or other authorized officer of this Village shall prepare and submit to the Director of the Department of Development of the State of Ohio the status report required under Section 5709.40 of the Ohio Revised Code.

SECTION 7. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 8. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this Village, and for the further reason that this Ordinance is required to be immediately effective to allow for the Village's undertaking of the Improvements, which are necessary to revitalize the Village in an environmentally safe and sound manner; wherefore, this Ordinance shall be in full force and effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto or six affirmative votes if all members of Council are present at the meeting at which it is passed; otherwise it shall be in full force and effect after the earliest period allowed by law."

SECTION 2. Pursuant to Section 5709.40 of the Ohio Revised Code, the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development of the State of Ohio within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 2 hereof remains in effect, the Mayor of the Village or other authorized officer of this Village shall prepare and submit to the Director of the Department of Development of the State of Ohio the status report required under Section 5709.40 of the Ohio Revised Code.

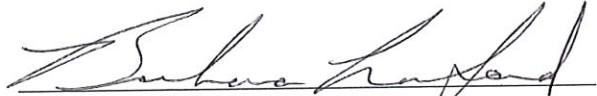
SECTION 3. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 4. This Ordinance 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 allow for the Village's undertaking of the Improvements, which are necessary to revitalize the Village in an environmentally safe and sound manner; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed thereto, it shall take effect immediately upon its passage and execution by the Mayor;

*ok, she looked
at Sullivan*

~~of the Improvements, which are necessary to revitalize the Village in an environmentally safe and sound manner; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed thereto, 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: 10/17/06




President of Council



Mayor

Dated: 10/17/06

ATTEST:



Clerk of Council

EXHIBIT A

1. Traffic control and road improvements and major repairs and resurfacing, recently completed and to be done upon or in the vicinity of Brecksville Road, Congress Parkway, Wheatley Road, Broadview Road and/or Highlander Parkway.
2. Communications infrastructure, including but not limited to fiber optic lines and wireless internet communications systems, for new and existing facilities in the vicinity of Highlander Parkway, Broadview Road, Brecksville Road, Wheatley Road, and the areas served by those roads.
3. Public sanitary sewer and/or water line improvements and major repairs for those facilities that serve users in the vicinity of Highlander Parkway, Congress Parkway, Brecksville Road, Wheatley Road and Broadview Road.
4. Village of Richfield building and capital equipment projects and purchases to facilitate the services of the Village roads, grounds, sewer, water, and general service departments for the purposes of ongoing road maintenance, right of way maintenance, sewer and water facilities maintenance, snow plowing and other services generally provided by the Village of Richfield.
5. Village of Richfield facilities, buildings and capital equipment purchases to facilitate the provision of police, fire, emergency medical services and general administrative services provided by the Village of Richfield.
6. The acquisition of real property for the purposes stated above, for buffering between economic development areas and residential areas and for purposes of economic development within the Village of Richfield.

EXHIBIT B

Legal Description

DEVELOPMENT AGREEMENT
between
THE VILLAGE OF RICHFIELD
and
MPEC RICHFIELD, LLC

This Development Agreement is entered into as of October 18, 2006 between the Village of Richfield, Ohio (the "Village") and MPEC Richfield, LLC (the "Owner"), under the following circumstances (capitalized terms are used with the meanings given them in Schedule 1):

Recitals

- A. The Village adopted Ordinance No. 90-2005 on November 21, 2005, establishing a tax increment financing program ("TIF Program") authorizing the Village to declare improvements to certain parcels of real property to be a public purpose, and authorizing the Mayor to negotiate agreements for tax increment financing.
- B. The Village amended Ordinance No. 90-2005 by Ordinance No. 55-2006 adopted October 17, 2006 (the "TIF Ordinance").
- C. In order to create and preserve jobs and employment opportunities within the jurisdiction of the Village and to improve the economic welfare of the people of the Village, Village Council adopted the TIF Ordinance on October 17, 2006, in accordance with the Act and the TIF Program for the development and financing of the Project within the boundaries of the Village.
- D. The Village will acquire, construct, install and pay the costs of the Public Improvements, which Public Improvements directly benefit and serve the Development Property and the people of the Village in general.
- E. In order to carry out the public purpose and to comply with the requirements of the Act and the TIF Program, the Village desires to enter into this Development Agreement to provide for tax increment financing and the construction of the Public Improvements. The Owner is willing to complete the Development Improvements on the Development Property, to make the Service Payments, and to perform such other actions required by the Owner as described in this Development Agreement.
- F. As part of carrying out the Village's obligations, the Village intends to provide funds for the Public Improvements in an amount presently estimated at \$300,000.00. The Village has determined that it is necessary and in the best interests of the Village to provide for the making of Service Payments in lieu of taxes by the Owner with respect to the New Construction, in accordance with the Act, the TIF Program, and the TIF Ordinance and, therefore, the Village has declared that 100% of the assessed value of the New Construction is a public purpose and will be exempt from real property taxation for thirty (30) years (the "Exemption Period") except that the Revere Local School District and the Cuyahoga Valley Joint Vocational School District shall receive their full portion of real estate taxes based on their tax rates.

- G. The Village has determined that the development of the New Construction by the Owner on the Development Property and fulfillment generally of the terms of this Development Agreement, are in the best interests of the Village and the health, safety, morals and welfare of its residents.
- H. The Village has, by notice delivered to the Board of Education of the Revere Local School District (the “Revere Local School Board”) on June 15, 2006, given notice of the Village’s intent to declare New Construction to be a public purpose in accordance with the TIF Program.
- I. The Revere Local School Board, on October 17, 2006, passed a resolution waiving the right to approve exemptions from taxation under Section 5709.43, Revised Code, for any improvements declared to be a public purpose and for an development agreements entered into under the TIF Program on the condition that a compensation agreement be negotiated in accordance with Section 5709.40, Revised Code, and waiving any notice under Section 5709.83, Revised Code.
- J. The Village and the Revere Local School Board have entered into an Agreement to provide that 100% of the assessed value of the New Construction will be exempt from real property taxation for thirty (30) years provided that the Revere Local School District and the Cuyahoga Valley Joint Vocational School District shall receive their full portion of the real estate taxes based on their tax rates.

The parties agree as follows:

**Article I
The Village**

Section 1.1 Representations. The Village makes the following representations:

- (a) It is a political subdivision, duly organized and validly existing under the laws of Ohio and its Charter.
- (b) It has performed all acts required of it as a condition to signing and delivering this Development Agreement.
- (c) It is not in violation of any laws of Ohio or its Charter, to an extent that would impair its ability to carry out its obligations under this Development Agreement.
- (d) It has the power to enter into and perform its obligations under this Development Agreement.
- (e) Its Village Council has duly authorized the signing, delivery, and performance of this Development Agreement.

Section 1.2 Village Agreement to Construct Public Improvements.

Subject to the terms of this Development Agreement, the Village agrees to acquire, construct, and install the Public Improvements described in Exhibit "D" in accordance with the time schedule and improvement descriptions provided in this Development Agreement.

**Article II
The Owner**

Section 2.1 Owner Representations. The Owner makes the following representations:

- (a) It is a Limited Liability Company duly organized, validly existing, and in good standing under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Development Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Development Agreement.
- (d) It has the power to enter into and perform its obligations under this Development Agreement.
- (e) Its Managing Member duly authorized the signing, delivery, and performance of this Development Agreement.

Section 2.2 Acquisition of Development Property. As of the date of this Development Agreement, the Owner has acquired fee title to all of the Development Property, which is located on Parcel No. 50-02690 within the boundaries of the Village, and has paid all costs associated with this acquisition of title.

Section 2.3 Agreement to Make Service Payments. The Owner agrees to make Service Payments to the Village as described in Section 3.3 during the Exemption Period.

**Article III
Exemption from Real Property Taxation**

Section 3.1 Exemption of New Construction. The Village hereby declares that the increase in assessed valuation of the Development Improvements by reason of all New Construction is a public purpose and determines that 100% of the assessed valuation of the New Construction is exempt from real property taxation by all political subdivisions and taxing districts, except the Revere Local School District and the Cuyahoga Valley Joint Vocational School District, which shall receive their full portion of real estate taxes based on their tax rates. The exemption will commence separately for each portion of the New Construction, as of the first tax year that each and any portion of the value of the New Construction appears on the tax list and duplicate, or would appear on the tax list and duplicate but for the exemption, and will extend for the Exemption Period.

Section 3.2 Service Payment. The Owner must make Service Payments to the Village as follows:

- (a) During the Exemption Period, in accordance with the Act, the TIF Program and the TIF Ordinance as amended and supplemented, the Owner, for itself and any successors in interest to the Development Property or any part thereof or interest therein, covenants and agrees to make (or cause to be made) semiannual Service Payments in lieu of real property taxes with respect to the New Construction pursuant to and in accordance with the requirements of the Act, the TIF Program, and this Development Agreement. The obligation to make Service Payments will run with the land. The Service Payments must be made semiannually to the County, or to the designated agent of the County for collection of the Service Payments, on or before the date on which real property taxes would otherwise be due and payable for the New Construction. Any late Service Payments must include interest and penalties at the same rate and in the same amount and payable at the same time as delinquent real property taxes. Each semiannual Service Payment must be in an amount equal to the real property taxes that would have been charged and payable against the exempted portion of the New Construction if an exemption from real property taxation had not been granted, plus all interest and penalties thereon for nonpayment, and must otherwise be in accordance with the requirements of the Act.
- (b) It is intended and agreed, and it must be provided in any future deed conveying the Development Property, or any portion thereof, to any person, that the covenants provided in Section 3.2(a) will be covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by, the Village, whether or not this Development Agreement remains in effect and whether or not this provision is included in any succeeding deed of the Development Property, or any portion thereof. It is further intended and agreed that these agreements and covenants will remain in effect for the full Exemption Period permitted in accordance with the requirements of the Act, the TIF Program, the TIF Ordinance, and this Development Agreement. The covenants running with the land will have priority over any other lien or encumbrance on the Development Property and the New Construction other than the Permitted Encumbrances. The parties agree to execute and record any and all instruments of record in Summit County, Ohio, including this Development, as may be necessary to preserve and protect such covenants running with the land.
- (c) The Owner must prepare and file or cause to be prepared and filed in cooperation with the Village any necessary applications and supporting documents to obtain the exemption from real property taxation for the New Construction to enable the Village to collect the Service Payments and to disburse these payments to or for the account of the Village. The Village will cooperate with the Owner in connection with the preparation and filing of any required exemption applications.

- (d) The Owner may sell, lease, or otherwise convey any portion of the Development Property. If the transfer provides that the transferee assumes the obligations under this Development Agreement to make Service Payments with respect to the New Construction on the portion of the Development Property transferred, the Owner will be released from its obligations under this Development Agreement to make those Service Payments with respect to that New Construction. The agreement to make Service Payments under this Development Agreement is a covenant running with the land. Subject to the foregoing, the obligations of the Owner to make the Service Payments will be absolute and unconditional, and will not be terminated for any cause, and the Owner agrees that there will be no right to suspend or set off the Service Payments for any cause, including without limitation failure to complete the Development Improvements, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Improvements, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or by or under authority of the State of Ohio, or any failure of the Village to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Development Agreement.
- (e) The Owner represents to the Village, and the Village acknowledges that upon completion of the Project, the expected appraised value for the New Construction will be approximately \$3,500,000.00. The parties acknowledge that this is an estimate and that the failure to achieve that level of New Construction will not constitute a failure of either party to perform under this Development Agreement. The Village will not unreasonably withhold, delay, or condition the permits that the Village issues or approves.

Article IV Events of Default

Section 4.1 Event of Default. It will be an "Event of Default" by the Village or the Owner, as applicable, under this Development Agreement if:

- (a) The Owner fails to observe or perform any of the material covenants and obligations of the Owner under this Development Agreement, and the failure continues for a period of 90 days after notice, for default other than failure to pay Service Payments, and for a period of 90 days without any required notice for failure to pay Service Payments.
- (b) The Village fails to observe or perform any of the material covenants and obligations of the Village under this Development Agreement, and the failure continues for a period of 90 days after notice.

Section 4.2 Remedies in Event of Default. During the continuance of an Event of Default, the Village or the Owner will have available as a remedy all rights granted under law or equity. Pursuit of any of the remedies will not preclude pursuit of any other remedies provided in this Development Agreement, or by law or equity. Pursuit of any remedy by either party will not constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation

of any of the other party's obligations under this Development Agreement. Forbearance by a party to enforce one or more of the remedies provided upon the occurrence of an Event of Default will not be construed to constitute a waiver of the default.

Article V Miscellaneous

Section 5.1 Term of Agreement. This Development Agreement will be effective as of its date and will continue in full force and effect for the Exemption Period as set forth in this Development Agreement.

Section 5.2 Progress Reports.

- (a) Until completion of all the Development Improvements, the Owner must make quarterly reports, in such detail as may reasonably be requested by the Village, as to the actual progress of the Owner with respect to construction of the Development Improvements.
- (b) To the extent required under the Act and any other Applicable Law, the Owner must supply or cause to be supplied to the Village from time to time such information as the Village may reasonably request in connection with the preparation of reports required by the State of Ohio, the County, or any other public agency, under the Act and any other Applicable Law.

Section 5.3 Discrimination Prohibited. The Owner must not, in the use and redevelopment of the Development Property, discriminate against any person or group of persons based upon race, creed, sexual orientation, religion, color, age, national origin or ancestry in the sale of other transfer of the Development Property, and must bind its successors by appropriate agreements and covenants running with the land enforceable by the Village.

Section 5.4 Force Majeure. If the Owner is delayed or hindered in, or prevented from the performance of any covenant or obligation of the Owner with respect to performance of the New Construction as a result of strikes, lockouts, shortages of labor, fuel or materials, acts of God, causes associated with unusual weather conditions enemy acts, fire or other casualty, or other cause beyond the reasonable control of the Owner (including failure to obtain necessary governmental approvals after the Owner's good faith efforts to obtain them), then the performance of the covenant or obligation will be excused for the period of the delay, hindrance or prevention and the period for the performance of the covenant or obligation will be extended by the number of days equivalent to the number of days of the delay, hindrance or prevention. The Owner's right to this extension will only be permitted if the Owner provides written notice of the delay within 90 days of the date the Owner obtains knowledge of the delay. In no event will any delay or hindrance in or prevention from the performance of any covenant or obligation described in this Section 5.4 constitute a termination of this Development Agreement.

Section 5.5 Amendments and Waivers. This Development Agreement will not be amended, supplemented, or modified except by a instrument in writing, signed by the Village and the Owner.

Section 5.6 Entire Agreement. This Development Agreement sets forth the entire agreement between the parties as to its subject matter and merges and supersedes all previous discussions, agreements, and undertakings between the parties with respect to the subject matter of this Development Agreement.

Section 5.7 Counterparts. This Development Agreement may be signed in any number of counterparts, each of which constitute an original but all of which constitute one agreement. Any party to this Development Agreement may sign this Development Agreement by signing any counterpart. Additionally, the parties agree that for purposes of facilitating the signing of this Development Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Development Agreement may be combined to form multiple fully signed counterparts and (b) a facsimile transmission will be deemed to be an original signature for all purposes. All executed counterparts of this Development Agreement will be deemed to be originals, but all counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

Section 5.8 Notice. All notices, communications, requests and demands between the parties required or permitted to be given under this Development Agreement to be effective must be in writing (including without limitation by facsimile transmission), and, unless otherwise expressly provided, will be deemed to have been sufficiently given or made when physically delivered or mailed by U.S. registered or certified mail or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows, or to any address as may be notified in writing by the parties:

(a) Notices to the Village:

Village of Richfield
Attention: Michael K. Lyons, Mayor
4410 West Streetsboro Road
P. O. Box 387
Richfield, Ohio 44286-0387
Telephone: (330) 659-9201
Facsimile: (330) 659-4906

With a copy to:

Charles T. Riehl, Esq.
Walter & Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114-1821
Telephone: (216) 781-1212
Facsimile: (216) 575-0911

(b) Notices to the Owner:

MPEC Richfield, LLC
Attention: Jeffrey C. Mockbee
P. O. Box 3515
Akron, Ohio 44309-3515
Telephone: (330) 896-3253
Facsimile: (330) 896-3304

Section 5.9 Successors and Assigns. This Development Agreement will be binding upon and inure to the benefit of the Village and the Owner, and their respective successors and assigns. The Owner may not assign this Development Agreement or any of its rights or obligations in whole or in part to any person without the prior written consent of the Village, which consent must not be unreasonably withheld.

Section 5.10 Governing Law. This Development Agreement and the rights and obligations of the parties under this Development Agreement will be governed by, and construed and interpreted in accordance with, the law of the State of Ohio without regard to conflict of laws principles.


Section 5.11 Severability. Any provision of this Development Agreement that is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable the provision in any other jurisdiction.

Section 5.12 Headings and Table of Contents. The headings and table of contents contained in this Development Agreement are for convenience of reference only and will not limit or otherwise affect the meaning.

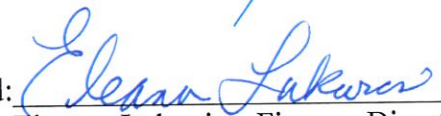
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IN WITNESS WHEREOF, the Village and the Owner have each caused this Development Agreement to be executed after due authorization as of the date aforesaid.

VILLAGE OF RICHFIELD


By: 
Michael K. Lyons, Mayor

Date: 12/6, 2006

And: 
Eleanor Lukovics, Finance Director


Date: Dec 6, 2006

MPEC RICHFIELD, LLC

By: 
Jeffrey C. Mockbee, Managing Member

Date: Dec 5, 2006

The legal form of the within instrument is hereby approved.

By: 
Charles T. Riehl, Law Director

Date: _____, 20__

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on December 6th, 2006, by Michael K. Lyons, Mayor, and Eleanor Lukovics, Finance Director of the Village of Richfield, Ohio, an Ohio political subdivision, on behalf of the Village.

[SEAL]



STEPHANIE M. LANDRY
Resident Summit County
Notary Public, State of Ohio
My Commission Expires 01/26/11

Stephanie M. Landry
Notary Public

My Commission Expires: 1/26/11

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on December 5, 2006, by Jeffrey C. Mockbee, Managing Member of MPEC Richfield, LLC, a Limited Liability Company, on behalf of the Owner.

[SEAL]



Denise R. Bloom
Notary Public

DENISE R. BLOOM, Notary Public
Residence-Summit County
State Wide Jurisdiction, Ohio
My Commission Expires May 5, 2009

INDEX OF EXHIBITS

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Exhibit A	-	The Property
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Exhibit C	-	The Development Improvements
Exhibit D	-	The Public Improvements

Schedule 1 Definitions

The following defined terms are used in the Development Agreement:

“Act” means Sections 5709.40, et seq., Revised Code.

“Applicable Laws” means all federal, state, and local laws, ordinances, resolutions, regulations, and codes, including the Act, governing the design, planning, construction, and installation of the Public Improvements.

“County” means Summit County, Ohio.

“Cuyahoga Valley Joint Vocational School District” means the Board of Education of the Cuyahoga Valley Joint Vocational School District.

“Development Agreement” means this Development Agreement, between the Village and the Owner dated as of October 18, 2006, as amended and supplemented in accordance with its terms.

“Development Improvements” means the land acquisition, utility extensions, engineering and inspections, building construction, and other improvements to the Development Property described in Exhibit B.

“Development Property” means the real property identified as Parcel No. 50-02690, shown in Exhibit A and described in Exhibit B.

“Event of Default” means any of the events described in Section 4.1.

“Exemption Period” means the twenty (20) year period of abatement of real property taxes on New Construction, established in the TIF Ordinance and beginning in the tax years described in Section 3.1 for each portion of the New Construction.

“Improvement Plans” means the plans, specifications, profiles, and cost estimates of the Development Improvements, prepared by or for the Owner, in accordance with the requirements of all applicable governmental authorities.

“Improvements” means collectively the Development Improvements and the Public Improvements.

“New Construction” means the buildings and other improvements constructed on the Development Property after the date of this Development Agreement during the Exemption Period, including the Development Improvements.

“Owner” means MPEC Richfield, LLC, a Limited Liability Company.

“Permitted Encumbrances” means the zoning resolutions, easements for utilities, and all other restrictions or conditions on title. The term does not include any mortgage lien, other liens

or title exceptions that are superior to or on a parity with the covenants running with the land contained in the Development Agreement, except liens for real property taxes and special assessments.

“Project” means the development and construction of the Improvements to the Development Property.

“Public Improvements” means the public infrastructure improvements to the land in connection with the development, including installation of additional sewer improvements, development and construction of public facilities, road extensions, intersection upgrades, reconstruction of roadways, and related public infrastructure improvements described in Exhibit D.

“Revere Local School Board” means the Board of Education of the Revere Local School District.

“Service Payments” means the payments in lieu of taxes paid by the Owner in accordance with Section 3.2 with respect to the Development Improvements and any other New Construction under this Development Agreement.

“TIF” means the tax increment financing by the Village for the Development Improvements.

“TIF Ordinance” means Ordinance No. 55-2006, adopted October 17, 2006 by Village Council declaring a portion of improvements to be a public purpose and approving an agreement for tax increment financing for public infrastructure improvements benefiting those parcels.

“TIF Program” means the program established by Ordinance No. 90-2005, adopted November 21, 2005 as amended by Ordinance No. 55-2006, adopted October 17, 2006 by Village Council establishing a tax increment financing program authorizing the Village to declare improvements to certain parcels of real property to be a public purpose, and authorizing the Mayor to negotiate agreements for tax increment financing.

“Village” means the Village of Richfield, Ohio.

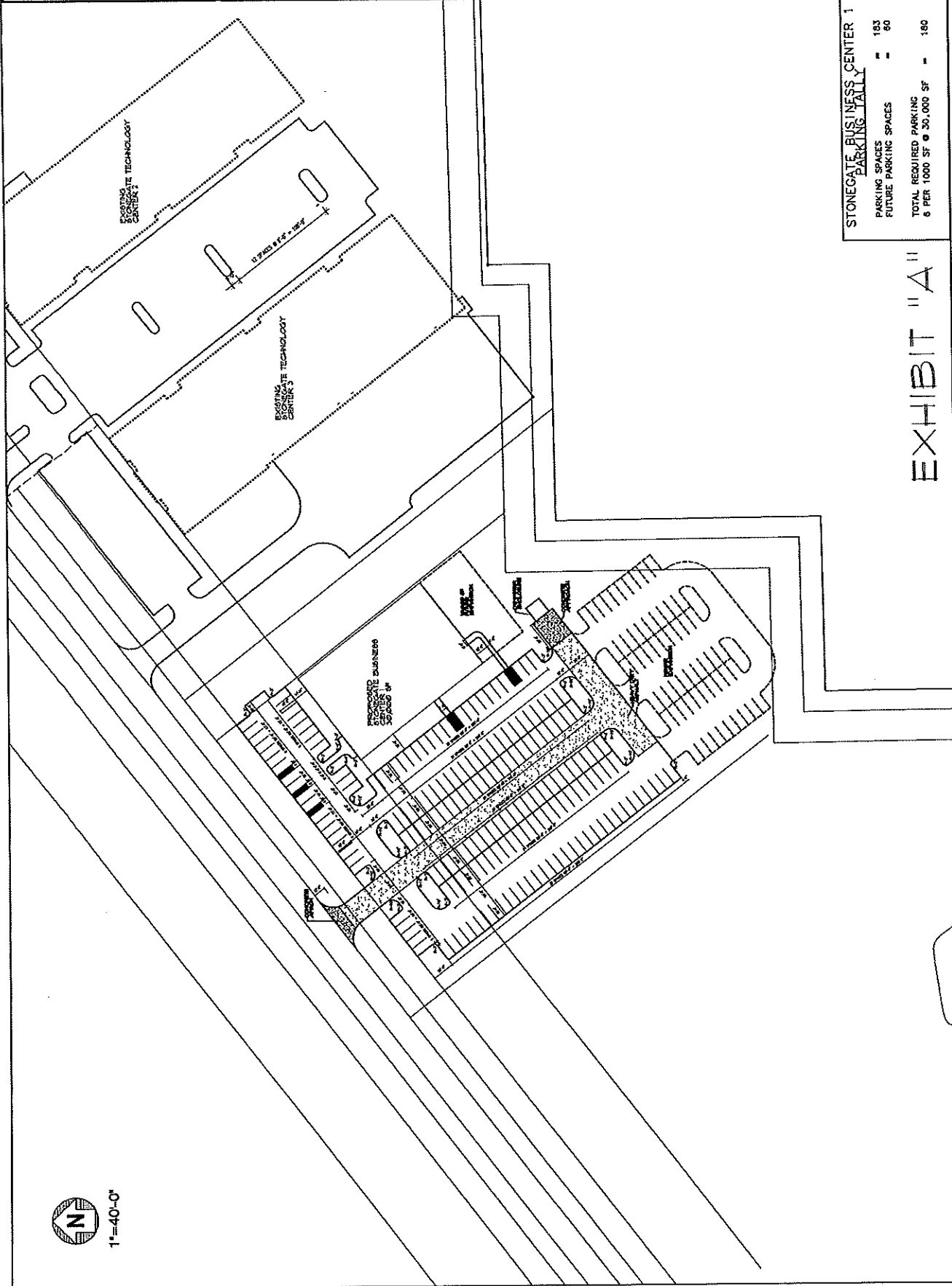
EXHIBIT A

MAP OF PROPERTY

To be inserted by the Village of Richfield for Final Agreement



1"=40'-0"



STONEGATE BUSINESS CENTER 1
PARKING TALLY

PARKING SPACES	=	183
FUTURE PARKING SPACES	=	60
TOTAL REQUIRED PARKING	=	180
6 PER 1000 SF @ 30,000 SF		

EXHIBIT "A"

SITE DEVELOPMENT PLAN

SD1

contract no.
18-01
1/22/06

CSM INC.
BUILDER / DEVELOPER
285 DEPOT WARE PARKWAY
MAYFIELD, OHIO 44130
PHONE: 330-930-3200
FAX: 330-930-3204

STONEGATE BUSINESS CENTER 1
400 HIGHLANDER PARKWAY
RICHFIELD, OHIO

revisions

EXHIBIT B

LEGAL DESCRIPTION

For: MPEC Richfield, LLC
P. O. Box 3515
Akron, Ohio 44309-3515

Parcel Number 50-02690

The Development Property

EXHIBIT B

GBC DESIGN, INC.

3378 West Market St. Akron, OH 44333-3386
Phone 330-836-0228 Fax 330-836-5782
E-mail gbc@gbcdesign.com

Sy Cymerman, A.I.A.
Michael A. Gardina, P.E.
Gary R. Rouse, P.E., P.S.
John E. Walsh, P.E., P.S.

April 13, 2005

LEGAL DESCRIPTION

M & P Richfield LLC

Consolidation Parcel – 4.3584 Acres

Situated in the Village of Richfield, County of Summit, State of Ohio and known as being part of Lot 2 and part of Lot 7, Tract 3 of former Richfield Township, also known as being part of Parcel 2 and part of Parcel 4 of Stonegate Corporate Park as recorded in Reception #54472112 of the Summit County records, also known as being part of the lands now or formerly owned by Seabreeze North Corp. as recorded in Reception #50524884 of the Summit County records and part of the lands now or formerly owned by M & P Richfield LLC as recorded in Reception #54673960 of the Summit County records and more fully described as follows:

Beginning at a 5/8" capped rebar (GBC Design, Inc.) found at a southeasterly corner of said Parcel 4;

Thence S 89° 39' 11" W, along the northerly line of lands now or formerly owned by Seabreeze North Corp. as recorded in Official Record 1494, Page 222 of the Summit County records, a distance of 250.00 feet to a 5/8" capped rebar (GBC Design, Inc.) found, said point being the True Place of Beginning for the parcel of land herein described;

Thence continuing S 89° 39' 11" W, along the northerly line of said Seabreeze North Corp. lands recorded in Official Record 1494, Page 222 of the Summit County records, a distance of 171.18 feet to a capped rebar (Kukis #5078) found;

Thence N 37° 23' 21" W, along a line of new division, a distance of 496.40 feet to a 5/8" capped rebar (GBC Design, Inc.) to be set;


Thence N 52° 36' 39" E, along the southerly line extended and southerly line of Highland Parkway (60 feet wide) as recorded in the plat of Stonegate Corporate Park Phase Two as recorded in Reception #55088363 of the Summit County records, passing over a 5/8" capped rebar (GBC Design, Inc.) found at 18.78 feet, a distance of 380.25 feet to a 5/8" capped rebar (GBC Design, Inc.) found;

Thence S 37° 23' 21" E, along the westerly line of lands now or formerly owned by M & P Richfield LLC as recorded in Reception #55086942 of the Summit County records, passing over a 5/8" capped rebar (GBC Design, Inc.) found at 384.84 feet, a distance of 460.05 feet to a 5/8" capped rebar (GBC Design, Inc.) found;

Thence S 89° 41' 31" W, along the northerly line of lands now or formerly owned by Emil Pawuk & Associates as recorded in Reception # _____ of the Summit County records, a distance of 109.10 feet to a 5/8" capped rebar (GBC Design, Inc.) found;

Thence S 00° 03' 00" E, along the westerly line of said Emil Pawuk & Associates lands, a distance of 258.15 feet to the True Place of Beginning and containing 4.3584 Acres of land, more or less, as surveyed in April, 2005 by Gary R. Rouse, Registered Surveyor No. 6867, with GBC Design, Inc., but subject to all legal highways and any restrictions, reservations or easements or record.

**Basis of Bearing for this survey is the plat of Stonegate Corporate Park as recorded in Reception #54472112 of the Summit County records.



Gary R. Rouse – Reg. No. 6867

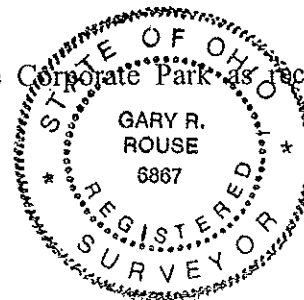


EXHIBIT C

DEVELOPMENT IMPROVEMENTS

The Development Improvements consist of the following:

Two story office building structure and site improvements located at 4180 Highlander Parkway, Richfield, Ohio.

Such other New Construction constructed by the Owner during the Exemption Period on the Development Property.

EXHIBIT D

PUBLIC IMPROVEMENTS

The Public Improvements consist of the following:

1. Traffic control and road improvements and major repairs and resurfacing, recently completed and to be done upon or in the vicinity of Brecksville Road, Congress Parkway, Wheatley Road, Broadview Road and/or Highlander Parkway.
2. Communications infrastructure, including but not limited to fiber optic lines and wireless internet communications systems, for new and existing facilities in the vicinity of Highlander Parkway, Broadview Road, Brecksville Road, Wheatley Road, and the areas served by those roads.
3. Public sanitary sewer and/or water line improvements and major repairs for those facilities that serve users in the vicinity of Highlander Parkway, Congress Parkway, Brecksville Road, Wheatley Road and Broadview Road.
4. Village of Richfield building and capital equipment projects and purchases to facilitate the services of the Village roads, grounds, sewer, water, and general service departments for the purposes of ongoing road maintenance, right of way maintenance, sewer and water facilities maintenance, snow plowing and other services generally provided by the Village of Richfield.
5. Village of Richfield facilities, buildings and capital equipment purchases to facilitate the provision of police, fire, emergency medical services and general administrative services provided by the Village of Richfield.
6. The acquisition of real property for the purposes stated above, for buffering between economic development areas and residential areas and for purposes of economic development within the Village of Richfield.