

RESOLUTION NO. 91-2006

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A SANITARY SEWER EASEMENT AGREEMENT WITH M&P RICHFIELD III, LLC 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 a Sanitary Sewer Easement Agreement with M&P Richfield III, LLC, a copy of which is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. 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 facilitate the installation of a sanitary sewer to improve the health, safety and welfare of the resident of Richfield; 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: 12/5/07




President of Council



Mayor

Dated: 12/5/06

ATTEST:



Clerk of Council

SANITARY SEWER EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is entered into as of the 28th day of November, 2006, by and between M&P RICHFIELD III, LLC, P.O. Box 3515, Akron, Ohio 44309-3515 ("Grantor") and THE VILLAGE OF RICHFIELD, a municipal corporation, 4410 West Streetsboro Road, P. O. Box 387, Richfield, Ohio 44286-0387 ("Grantee").

R E C I T A L S:

A. Grantor is the owner of certain land situated in the Village of Richfield, Summit County, Ohio, described as Permanent Parcel No. 50-02723 (the "Premises"); and

B. Grantor desires to grant Grantee a non-exclusive perpetual easement for the construction and maintenance of a pump station and sanitary sewer located on a portion of the Premises, a legal description of which is attached hereto as Exhibit "A" (the "Easement Area").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received to the full satisfaction of Grantor and in further consideration of the covenants, promises and agreements set forth herein, the parties agree as follows:

1. Grantor, for itself, its heirs, successors, legal representatives and assigns, and upon the terms and subject to the conditions of this Agreement, gives, grants and conveys unto Grantee, its successors, legal representatives and assigns, a perpetual non-exclusive easement and right-of-way upon, under and across that portion of the Premises outlined as the Easement Area as described in Exhibit A for the following purposes: (i) constructing, installing, maintaining, operating, inspecting, repairing, reconstructing and replacing utilities, including a pump station, sanitary sewer and its appurtenances including, without limitation, manholes, service connections and pipes; and (ii) do anything that may be necessary or advisable in the judgment of Grantee in order to operate utilities, including the pump station, sanitary sewer, manholes and their appurtenances in accordance with the applicable federal, state and local laws,

ordinances, regulations, rules, orders and government agency guidelines and for the management and protection of Grantee.

2. Grantee shall, at its expense, upon installing, constructing, operating, inspecting, maintaining, repairing or replacing the pump station, sanitary sewer and its appurtenances, restore the surface of the easement and replace and repair any driveways, curbs, sidewalks, fences, landscaping, lawns and the like to substantially the same condition as existed before any such work was performed. Such restoration, repair and replacement shall be performed and completed as weather conditions reasonably permit.

3. Grantee agrees to obtain all permits, if any, required by applicable law, including, but not limited to, Army Corps of Engineers Wet Lands Permits, if any, required in connection with the installation, inspection, repair, maintenance, replacement, construction and reconstruction of the pump station, sanitary sewer and its appurtenances. Permits will be obtained at Grantee's cost.

4. Grantor may not, without the prior written consent of Grantee, construct buildings, structures, improvements, landscaping, signage or fences on, over or under the easement.

5. In addition to the purposes described in paragraph 1 of this Agreement, Grantee shall have the right to use the easement for any and all purposes which are consistent with the rights granted in this easement including, without limitation, the installation, construction, operation, inspection, maintenance, repair or replacement of water lines and appurtenances, storm sewer and appurtenances, cable television lines, electric cables and telephone cables and gas lines.

6. Grantor warrants and represents that it has title in fee simple in and to the Premises. The easement granted herein is subject to all restrictions, conditions, reservations, limitations, covenants, rights of way and easements of record.

7. This Agreement shall bind and inure to the benefit of the parties hereto, their respective successors, representatives and assigns.

8. The easement herein granted and all covenants and agreements herein shall run with the land.

9. If requested by Grantee, Grantor will obtain from all persons or entities which have a lien, excluding Summit County with respect to real estate taxes and assessments, a written subordination of the lienholder's lien to the easement granted in this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the date first above written.

Signed and acknowledged in the presence of:

"Grantor"

M&P RICHFIELD III, LLC

Barbara J. Tarsena
Julie J. Kerner

By: Jeffrey C. Mockbee
Jeffrey C. Mockbee, its Managing
Member

"Grantee"

VILLAGE OF RICHFIELD, OHIO

Edmund M. Ludvig
Julianne Butcher

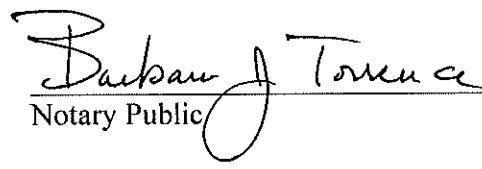
By: Michael K. Lyons
Michael K. Lyons, Mayor

And: Eleanor Lukovics
Eleanor Lukovics, Finance Director

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Jeffrey C. Mockbee, Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed and the free act and deed of M&P Richfield III, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 28th day of November, 2006.



Notary Public

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the Village of Richfield, Ohio by Michael K. Lyons, its Mayor and Eleanor Lukovics, its Finance Director, who acknowledged that they did sign the foregoing instrument and that the same was their free act and deed as Village officials and the free act and deed of the Village.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 6th day of December, 2006.



Notary Public



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

This Instrument Prepared By:

Charles T. Riehl, Esq.
Law Director, Village of Richfield

GBC DESIGN, INC.

3378 West Market Street Akron, OH 44333-3386
Phone 330-836-0228 Fax 330-836-5782
www.GBCdesign.com

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

November 13, 2006

LEGAL DESCRIPTION
M & P Richfield III LLC
Access & Utility Easement
0.1438 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 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 M & P Richfield III LLC as recorded in Reception #55370037 of the Summit County records and more fully described as follows:

Beginning at a 5/8" capped rebar (GBC Design, Inc.) found at a northwesterly corner of Highlander Parkway (60' wide) as recorded in Reception #55088363 of the Summit County records, said point being the True Place of Beginning for the easement herein described;

Thence S 52° 36' 39" W, along a northerly line of the lands now or formerly owned by EMP Real Estate Enterprises, LLC as recorded in Reception #55273812 of the Summit County records, a distance of 250.55 feet to a 5/8" capped rebar (GBC Design, Inc.) found;

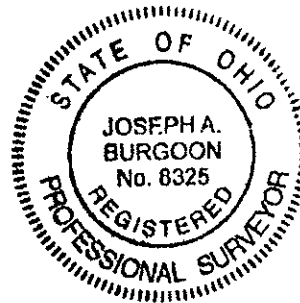
Thence N 37° 23' 21" W, continuing along a northerly line of said EMP Real Estate Enterprises, LLC lands, a distance of 25.00 feet to a point;

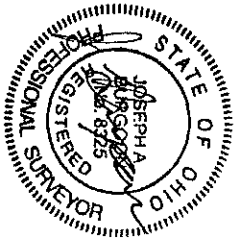
Thence N 52° 36' 39" E, along a line of new easement, a distance of 250.55 feet to a point;

Thence S 37° 23' 21" E, along a westerly line of an existing 25' utility easement as recorded in Reception #55088363 of the Summit County records, a distance of 25.00 feet to the True Place of Beginning and containing 0.1438 Acres of land, more or less, as determined in November, 2006 by Joseph A. Burgoon, Registered Surveyor No. 8325, with GBC Design, Inc., but subject to all legal highways and any restrictions, reservations or easements or record.



Joseph A. Burgoon -- Reg. No. 8325





SITUATED IN THE VILLAGE OF RICHFIELD
COUNTY OF SUMMIT, STATE OF OHIO AND KI
AS BEING PART OF LOT 2 & PART OF LOT
TRACT 3 IN SAID TOWNSHIP

25' UTILITY EAS
REC. #550836
12' UTILITY
EASEMENT REC.
#5508363

M&P RICHFIELD III LLC
PPN. 5002723
REC. #55370037

S 37°23'21" E
25.00'

LOT 2
LOT 7

ACCESS & UTILITY
EASEMENT
0.1438 AC.

N 52°36'39" E 250.55'

S 52°36'39" W 250.55'

30' SANITARY SEWER EASEMENT
REC. #5508363

N 37°23'21" W
25.00'

EMP REAL ESTATE
ENTERPRISES, LLC
REC. #55273812
STONEGATE CORP. PARK
PARCEL 4
REC. #54472112