

**A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH BRECKSVILLE ROAD ASSOCIATES, LLC, AND DECLARING AN EMERGENCY**

WHEREAS, Brecksville Road Associates, LLC (the “Developer”) is the owner of property located at 5145 Brecksville Road that intends to Developer intends to develop the Property and subdivide the parcel of property; and

WHEREAS, in connection with its intended development and subdivision of the Property, the Developer and the Village have agreed upon a set of stipulations applicable to the development of the Property; and

WHEREAS, the Administration recommends that Council authorize the Development Agreement with the Developer in order to set forth the respective rights, agreements and obligations of the parties as more specifically provided therein; and

WHEREAS, Council determines that entering into the Development Agreement with Developer is in the best interest of the Village because the intended improvements contemplated by the Development Agreement will alleviate traffic congestion on Brecksville Road.

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

- SECTION 1. The Mayor and Finance Director are hereby authorized and directed to enter into the Development Agreement with Brecksville Road Associates, LLC a copy of which is attached hereto and expressly incorporated herein as Exhibit A, subject to final approval from the Director of Law.
- SECTION 2. 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 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. This Resolution is hereby declared to be an emergency measure for the immediate preservation of the public health, safety, and welfare and for the further reason that it is immediately necessary to begin instruction of the public and private improvements as soon as possible.; 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: 9-6-2022

Bobbie Bashaw  
President of Council

ATTEST:  
Jill Army  
Clerk of Council

Michael Wood  
Mayor

Dated: 9/6/2022

# Exhibit A

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, (“Agreement”) is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Brecksville Road Associates, Limited, an Ohio limited liability company the “Developer”) and the VILLAGE OF RICHFIELD, OHIO, a municipal corporation organized as a village under the laws of the State of Ohio (the “Village”).

### WITNESSETH:

WHEREAS, Developer is the owner of property located at 5145 Brecksville Road, Richfield, Ohio 44286 (the “Property”); and

WHEREAS, Developer intends to develop the Property; and

WHEREAS, in connection with its intended development of the Property, the Developer and the Village have agreed upon a set of stipulations applicable to the development of the Property; and

WHEREAS, the parties desire to enter into this Development Agreement in order to set forth the respective rights, agreements and obligations of the parties as more specifically provided herein.

NOW, THEREFORE, IT IS AGREED THAT:

1. The Village consents to the lot split of the Property as follows:
  - A. The lot where existing Buildings Three and Four are located may be split by the Developer and sold as separate lots despite not being located on a dedicated public roadway and not meeting all the area requirements such as for example frontage and setback. A site plan identifying Buildings Three and Four and the proposed lot splits of such buildings is attached hereto and made a part hereof as Exhibit A, hereinafter “Site Plan.” The final plan will be substantially in accordance with Exhibit A.
  - B. The lot where Buildings One and Two are located shall remain on one lot under common ownership. Developer shall add a restriction to any deed to enforce this stipulation.

2. Developer grants the Village temporary future access on that portion of the Property located along the south edge of the parking lot and identified on the Site Plan as Temporary Easement Area (hereinafter “Temporary Easement Area”) necessary for the Village to construct certain public improvements consisting of a driveway apron and public road extension connecting the south portion of the Property to the new access drive and the public street known as Allega Way (the “Public Improvements”). The Temporary Easement Area is identified on Exhibit A and the Public Improvements are identified on Exhibit B.

3. In connection with the intended construction of the Public Improvements, Developer agrees to install, at Developer's sole costs and expense, subject to the Village's design standards, a driveway access and a curb cut on the Property in the area identified on Exhibit A as "Developer's South Access Drive" after the Public Improvements have been completed. After installation of Developer's South Access Drive, vehicle access from the Property for vehicle's that are leaving the Property and are intending to travel south on Brecksville Road shall exit the Property at the Developer's South Access Drive to the Public Improvements connecting to Allega Way. Allega Way will provide public access south on Brecksville Road from a future controlled intersection at Brecksville Road and Allega Way.

4. After the Public Improvements are completed, the Developer shall construct an extended landscape median at their currently existing Brecksville Road driveway apron that shall be designed to restrict access to and from the Property by permitting right turns only ("West Driveway Access") into and out of the Property, the location of the existing West Access Drive and the extended improvements to the median are identified on Exhibit B. The above described improvements to the West Driveway Access shall be subject to the Village's review and approval. Developer shall begin and diligently pursue completion of the West Driveway Access and Developer's South Access Drive, which will be completed no longer than 12 months from notification from the Village regarding completion of the Public Improvements, subject to a reasonable extension mutually agreed upon by both parties. Developer shall install, at Developer's sole costs and expense, signage providing notice of the restricted access for the West Driveway Access and Developer's South Access Drive as set forth above, subject to the Village's review and approval. The improvements to be performed by the Developer are hereinafter defined as "Developer's Improvements."

5. Prior to commencement of construction of the West Driveway Access and Developer's South Access Drive, Developer shall provide a financial guarantee to the Village in an amount equal to 100% of the construction costs, as determined by the Village's engineer, of the Developer's Improvements to the West Driveway Access and Developer's South Access Drive. The release of the financial guarantee shall be conditioned upon completion of Developer's Improvements to the West Driveway Access and Developer's South Access Drive.

6. The Village shall provide written notice of default in the event that the Developer fails to perform its obligations hereunder. After written notice of default is provided by the Village to the Developer, Developer shall have 30 days to cure such default. If Developer has failed to cure such default in 30 days, the Village 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, including the right to collect the proceeds of the financial guarantee and to enter upon the property of the Developer to construct the West Driveway Access and Developer's South Access Drive. 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.

7. This Development Agreement will not be amended, supplemented, or modified except by an instrument in writing, signed by the Village and the Developer.

8. 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.

9. 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) an electronic or 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.

10. 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 or other electronic transmission), and, unless otherwise expressly provided herein, will be deemed to have been sufficiently given or made when physically delivered, when mailed by U.S. registered or certified mail and delivered or, in the case of notice by facsimile or other electronic transmission, when received and confirmed, addressed as follows, or to any address as may be notified in writing by the parties:

(a) Notices to the Village:

Mayor Michael Wheeler  
Village of Richfield  
4410 West Streetsboro Road  
P. O. Box 387  
Richfield, Ohio 44286-0387  
Telephone: (330) 659-9201  
Facsimile: (330) 659-4906  
mwheeler@richfieldvillageohio.org

With a copy to:

Alejandro V. Cortes, Esq.  
Walter & Haverfield LLP  
The Tower at Erieview  
1301 East Ninth Street, Suite 3500  
Cleveland, Ohio 44114-1821  
Telephone: (216) 619-7877  
Facsimile: (216) 575-0911  
acortes@walterhav.com

(b) Notices to the Developer:

Brecksville Road Associates, Limited  
4645 Richmond Road, Suite 101  
Warrensville Heights, OH 44128  
Attn. Stuart Graines  
sgraines@aol.com

(c) With a copy to:

Tucker Ellis, LLP  
950 Main Avenue, Suite 1100  
Cleveland, OH 44113  
Attn: John P. Slagter, Esq.  
(216)570-3700  
john.slagter@tuckerellis.com

11. 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.

12. 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.

13. 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.

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

**VILLAGE OF RICHFIELD**

\_\_\_\_\_  
Michael Wheeler, Mayor

**DEVELOPER**

Brecksville Road Associates, Limited, an Ohio limited liability company

By: Richfield Associates, Limited  
Its: Member

By: \_\_\_\_\_  
Stuart Graines, Trustee

and

By: Richfield Office Development, LLC  
Its: Member

By: \_\_\_\_\_  
Robert G. Risman, Trustee

\_\_\_\_\_  
Sandy Turk, Finance Director

APPROVED AS TO LEGAL FORM.

\_\_\_\_\_  
Alejandro V. Cortes, Law Director

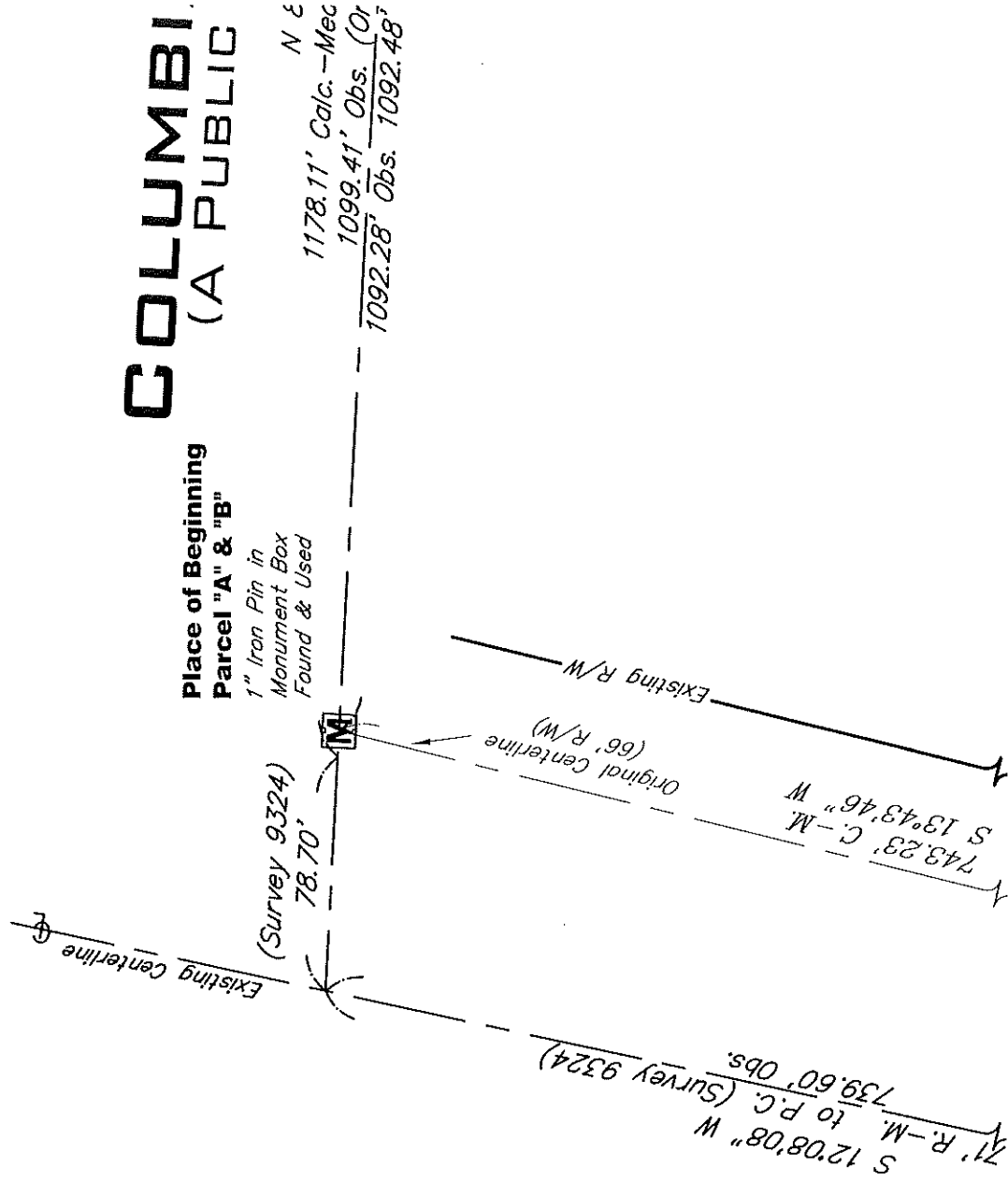
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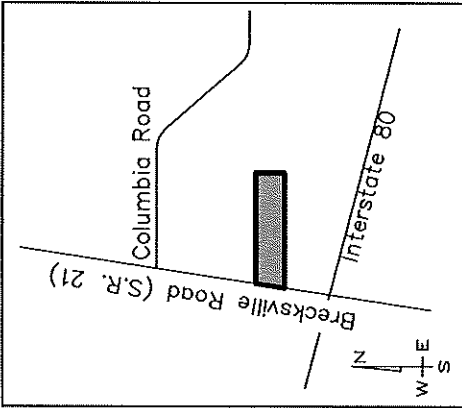
Place of Beginning  
Parcel "A" & "B"

1" Iron Pin in  
Monument Box  
Found & Used

N & E  
1178.11' Calc. - Mec  
1099.41' Obs. (Or  
1092.28' Obs. 1092.48'



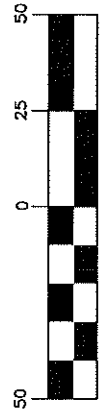
VICINITY MAP



NOT TO SCALE



GRAPHIC SCALE



( IN FEET )  
1 inch = 50 ft.

(IES)