

ORDINANCE NO. 2011-36

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE  
AUTHORIZING AND DIRECTING THE MAYOR  
TO ENTER INTO A DEVELOPMENT AGREEMENT  
WITH WINFIELD DEACON LIMITED PARTERSHIP  
AND DEACON'S CHRYSLER JEEP DODGE  
RELATIVE TO CERTAIN IMPROVEMENTS**

WHEREAS, the Village and Winfield Deacon Limited Partnership and Deacon's Chrysler Jeep Dodge, hereinafter "Deacon", desire to enter into an agreement involving the improvements to certain Deacon property currently used as a car dealership and certain other property proposed to be rezoned and improved into an overall expanded, commercial car dealership with an estimated project budget of \$2.5 million dollars (the "Improvement"); and

WHEREAS, the parties have agreed to certain terms, conditions and deed restrictions which have been reflected in a Development Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. The Mayor and Director of Finance are authorized and directed to enter into a Development Agreement with Deacon in a form substantially similar to that set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the

affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.



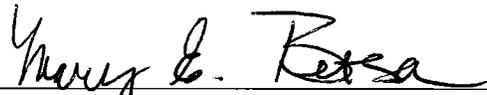
WILLIAM BUCKHOLTZ  
Council President

First Reading: October 17, 2011  
Second Reading: Suspended 2011  
Third Reading: Suspended 2011  
PASSED: October 17, 2011

  
BRUCE G. RINKER, Mayor

APPROVED AS TO FORM:

  
JOSEPH W. DIEMERT, JR.  
DIRECTOR OF LAW

ATTEST:   
MARY E. BETSA, Clerk of Council

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this "Development Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between MAYFIELD VILLAGE, OHIO, an Ohio Municipal Corporation, having a mailing address of 6622 Wilson Mills Road, Mayfield Village, Ohio 44143 ("the Village") and Winfield Deacon Limited Partnership and Deacon's Chrysler, Inc., 835 SOM Center Road, Mayfield Village, OH 44143 ("Deacon").

### R E C I T A L S:

WHEREAS, Deacon is the owner of approximately 2.35 acres of commercially zoned land located within the Village of Mayfield, Cuyahoga County, Ohio (the "Deacon Property") and is more specifically depicted in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, the Deacon Property is currently used as a car dealership; and

WHEREAS, Deacon also owns certain other property adjacent and contiguous to the Deacon Property and intends to rezone this additional property, comprising approximately 1.3 acres (the "Rezoned Property") specifically identified on Exhibit "B" from its current zoning of residential to commercial so as to facilitate the construction of an improved and expanded commercial car dealership with a estimated project budget of \$2.5 million dollars (the "Improvement"); and

WHEREAS, such rezoning is by Village Charter subject to a referendum vote, which the parties contemplate will take place on November 8, 2011 at the regularly scheduled election; and

WHEREAS, the Improvement will reduce current dealership obsolescence and will make the dealership more competitive with dealers in the region; and

WHEREAS, the Improvement will increase annual income and real estate tax revenue to the Village by approximately \$20,000.00 over current tax revenues being generated; and

WHEREAS, a Tax Incremental Financing Agreement, (the "TIF"), shall be executed in a form acceptable to the Village so as to facilitate certain public improvements to be more fully identified in that agreement; and

WHEREAS, the Improvement will ensure that that the public interest is protected and prohibit an independent commercial use on the Rezoned Property because the Rezoned Property if rezoned pursuant to a vote of the electorate shall only be so used in coordination and as part of the Improvement; and

WHEREAS, this Agreement shall be fully contingent upon a Village-wide referendum vote; 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 fully provided herein.

WITNESSETH:

For and in consideration of the covenants herein contained and upon the terms and conditions herein set forth, the Village and Deacon hereby agree as follows:

1. **Construction of Improvement.** Deacon shall construct and install on the Deacon Property, in a good and workmanlike manner, according to all applicable Village specifications and approvals, the Improvement, more fully identified and substantially depicted on Exhibit "C". All applications shall be submitted and fees paid in accordance with applicable laws, rules, regulations, codes and ordinances. Such permits necessary for the Improvements shall be issued by the Village as soon as practicable after submittal and in the usual course of business.

2. **Timing of Improvement.** Deacon shall commence work upon the Improvement no later than twelve (12) months after the Permit Contingency and Rezoning Contingency have been satisfied and shall thereafter, diligently pursue completion of such Improvement.

3. **Restoration.** Upon completion of the Improvement, Deacon shall repair and restore, to at least the same or similar condition as existed prior to the Improvement, any damage caused to any Village Property as a result of such Improvement being constructed and installed.

4. **Improvement Terms, Conditions and Deed Restrictions.**

- a) The Rezoned Property shall only be used in conjunction and coordination with a car dealership. If its use as a car dealership is discontinued in any way for more than twelve (12) months the Rezoned Property shall automatically revert to its prior U-1 Single Family Residential zoning. Notwithstanding, this time period may be shortened or extended by mutual agreement of the Parties hereto in writing.
- b) In the event that the rezoning for the Rezoned Property is approved by a referendum vote, then promptly and forthwith, all properties, including the Rezoned Property, currently used and to be used by Deacon for the car dealership shall be consolidated pursuant to an approved and recorded lot consolidation plat.
- c) The following provisions shall be subject to final site plan approval, pursuant to established Village procedures:
  - i. A landscaped setback for the Rezoned Property shall be constructed and maintained along Wilson Mills Road and shall not be less than thirty (30) feet. The setback shall be developed, mounded and

landscaped in a manner generally consistent with the provisions more substantially depicted in Exhibit "D" attached hereto and incorporated herein by reference.

ii. The eastern driveway proposed on Wilson Mills Road shall be constructed so as to be across the street from the eastern most driveway to what is known as the Musca development located on the north side of Wilson Mills Road. The proposed western driveway on Wilson Mills shall have a ground sign that shall be no higher than three (3) feet.

iii. The proposed eastern driveway on Wilson Mills Road shall not have a ground identification sign.

iv. No light poles shall be installed in any landscaped or setback areas. In addition, the maximum height of any light pole, within 50 feet of any adjacent or adjoining residential property line, shall be no greater than twenty (20) feet.

v. The illumination, as measured on the ground, of any lights when viewed from any adjacent, adjoining and nearby residential property shall not exceed 0 to 1 foot-candles, with the possibility of a higher measurement on the ground at the street right of way and at the adjacent existing commercial property lines along SOM Center Road and Wilson Mills Road . The light fixtures shall be "cut-off" type to minimize illumination and brightness on any adjacent, adjoining and nearby residential properties.

vi. A green space easement to be more fully negotiated between the parties and recorded of record, in the range of thirty (30) to fifty (50) feet wide, shall be granted to the Village along the east and south property lines of the Improvement in the locations more fully illustrated on the engineer's survey as set forth in Exhibit "E" and as further described and identified in the legal description set forth in Exhibit "F" , both attached hereto and incorporated herein by reference.

## 5. Miscellaneous.

a. **Contingency.** Notwithstanding anything contained herein to the contrary, Deacon, shall have no obligation to perform any of the obligations here unless and until it shall have obtained final non-appealable site plan, (and if required) subdivision approval, issuance of certain building permits by the Village for the Improvements and the rezoning of the Rezoned Property (the "Rezoning Contingency" and "Permit Contingency" respectively). If for any reason whatsoever, either the Rezoning Contingency or Permit Contingency is not satisfied within two (2) years after the date hereof, either party shall have the right to terminate this Development Agreement by providing written notice to the other and thereafter, this Development Agreement shall terminate as of the date of such notice. In

addition, notwithstanding anything contained herein to the contrary, Deacon may only avail itself of the proposed rezoning for the Rezoned Property, if approved by the electorate, and after all requisite deed restrictions and requirements set forth herein have been complied with and appropriately recorded.

b. **Village Council.** This Development Agreement and all terms and provisions hereof are subject to and conditioned upon the approval or ratification by duly enacted ordinance or resolution of Mayfield Village Council.

c. **Approvals of the Village.** Any provision of this Development Agreement requiring the approval of the Village, the satisfaction or evidence of satisfaction from the Village, certificate or certification by the Village or the opinion of the Village, shall be interpreted as requiring action by the Mayor (or such other applicable official as the Mayor may from time to time appoint or designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision or the administrative procedures applicable to the Village expressly provide otherwise.

d. **Estoppel Certificate.** Each party agrees that within twenty (20) days after receipt of written request from the other party, it will issue to such party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of such party's knowledge that as of such date:

- i) whether it knows of any default under this Development Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;
- ii) whether this Development Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- iii) whether this Development Agreement is in full force and effect; and
- iv) any other reasonable matters relating to this Development Agreement.

e. **Termination of Agreement.** Upon completion of the Improvements and acceptance thereof by the Village and all other obligations of Deacon hereunder or in the event of termination of this Development Agreement in connection with paragraph 5 a above, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Development Agreement. It is also explicitly understood and agreed that in the event the Rezoned Property is NOT approved by the electorate, this Agreement shall automatically terminate.

f. **Severability.** If anyone or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Development Agreement, but this Development Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

g. **Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Development Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but same shall continue and remain in full force and effect. The continued performance by either party of this Development Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

h. **Notices.** All notices herein authorized or required to be given to the Village shall be sent by certified mail, registered mail or overnight express, postage prepaid to:

Mayfield Village, Ohio  
Attn: Mayor Bruce G. Rinker  
6622 Wilson Mills Road  
Mayfield Village, Ohio 44143

with a copy to:  
Joseph W. Diemert, Jr.  
Director of Law  
Joseph W. Diemert, Jr. & Associates, Co., L.P.A.  
1360 SOM Center Road  
Cleveland, Ohio 44124

or such other address as the Village may from time to time designate in accordance with this paragraph. All notices herein authorized or required to be given to Deacon shall be sent by certified mail, registered mail or overnight express, postage prepaid to:

Deacon's Chrysler, Inc.  
Attn: Richard Deacon and James Deacon  
835 SOM Center Road  
Mayfield Village, Ohio 44143

with a copy to:

**Michael J. Occhionero Co., LPA**  
12429 Cedar Road  
Suite 20  
Cleveland Heights, Ohio 44106  
216-721-1460  
Email: [MjoCoLpa@sbcglobal.net](mailto:MjoCoLpa@sbcglobal.net)

or to such other address as Deacon may from time to time designate in accordance with this paragraph.

i. **Entire Agreement.** This Development Agreement sets forth the complete understanding and agreement of the parties with respect to the Deacon Property and the transaction that is the subject of this Development Agreement. No oral statements, representations or agreements other than this Development Agreement shall have any force or effect and the Village and Deacon agree that they will not rely on any representations or agreements other than those contained in this Development Agreement.

j. **Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents and instruments as such other party may reasonably deem appropriate to carry out the terms and conditions of this Development Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Development Agreement.

k. **Survival.** All agreements, representations, warranties and indemnifications hereof shall be considered to have been relied upon and shall survive the execution and delivery of this Development Agreement and any conveyance or consolidation of the Deacon Property which is the subject of this Development Agreement.

l. **Headings.** The headings in this Development Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

m. **Exhibits.** The Exhibits attached hereto are made a part of this Development Agreement.

n. **Applicable Law and Binding Effect.** This Development Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. This Development Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

o. **Counterparts.** This Development Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

EXECUTED on the date first written above.

DEACON'S CHRYSLER , INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

WINFIELD DEACON LIMITED  
PARTNERSHIP

By: \_\_\_\_\_

Its: \_\_\_\_\_

MAYFIELD VILLAGE, OHIO

By: \_\_\_\_\_

Bruce G. Rinker

Its: Mayor

By: \_\_\_\_\_

William Buckholtz

Its: President of Council

## EXHIBIT LIST

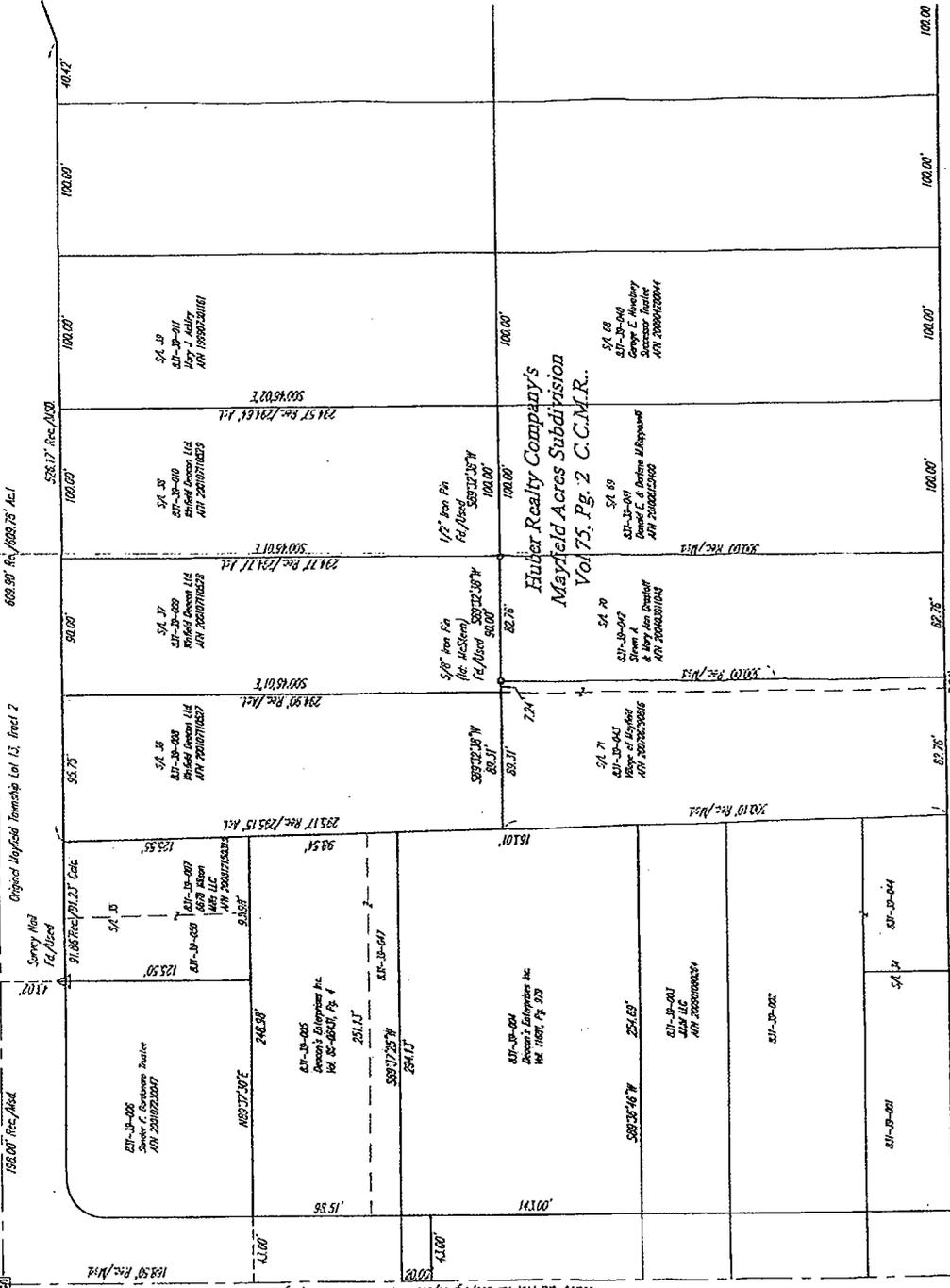
EXHIBIT	A	SITE MAP OF DEACON PROPERTY
EXHIBIT	B	PARCELS TO BE REZONED
EXHIBIT	C	THE IMPROVEMENT
EXHIBIT	D	LANDSCAPE SETBACK
EXHIBIT	E	GREEN SPACE EASEMENT ENGINEER'S SURVEY
EXHIBIT	F	GREEN SPACE EASEMENT LEGAL DESCRIPTIONS

Wilson Mills Road - Width Varies

185.00' Rec./Awd  
1" Iron Pin Rd./Awd

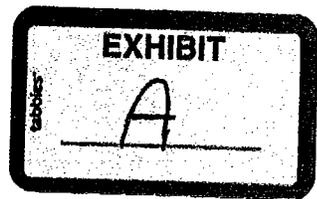
Original Mayfield Township Lot 14, Tract 1

185.00' Rec./Awd  
1" Iron Pin Rd./Awd



S.O.M. Road - Width Varies

Seneca Road - 50' Wide

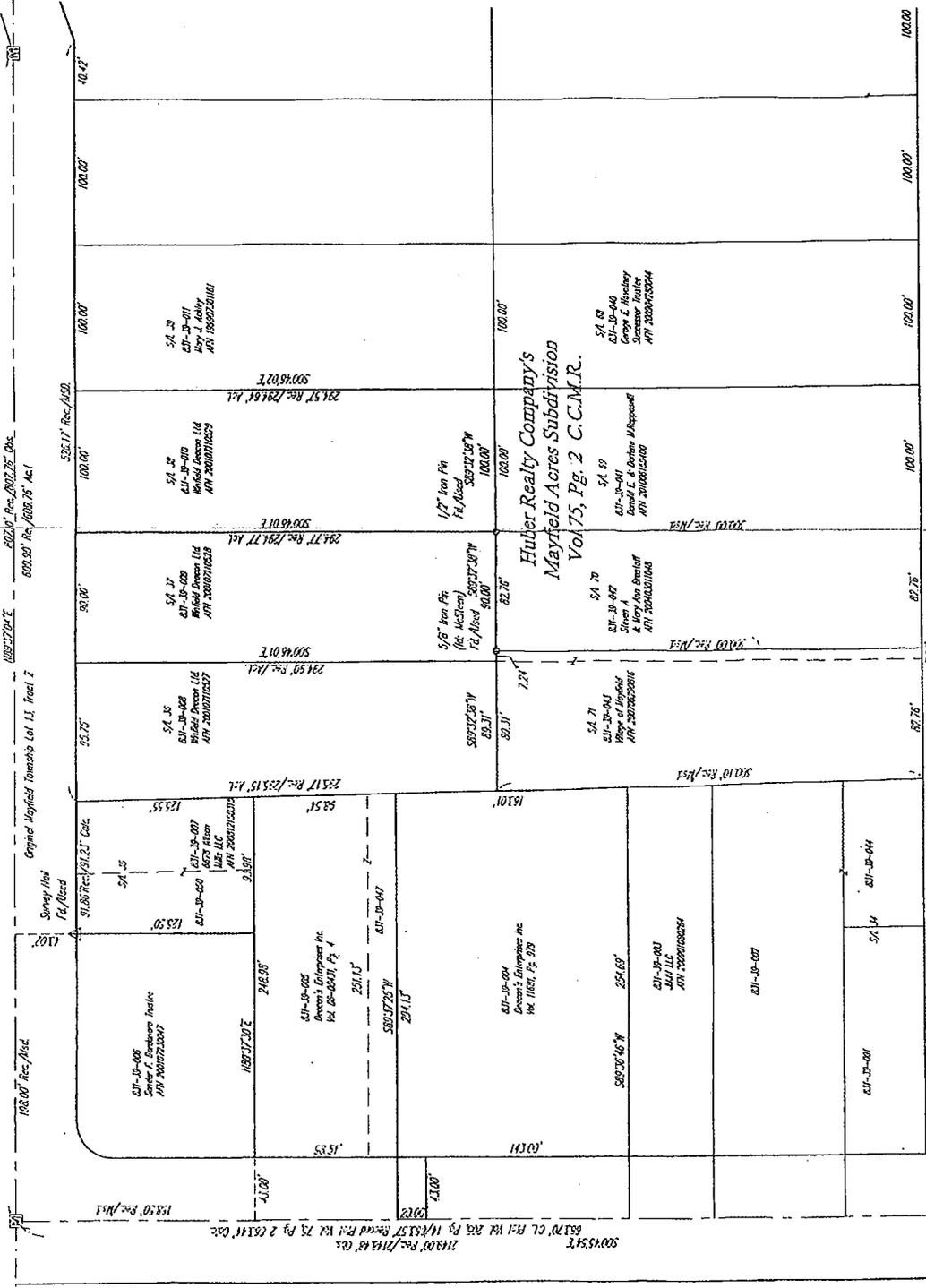


Wilson Mills Road - Width Varies

Original Mayfield Township Lot 14, Tract 1

Iron Box With  
1" Iron Pin Fd/Used

Iron Box With  
1" Iron Pin Fd/Used



Seneca Road - 50' Wide

S.O.M. Road - Width Varies

BOUNDARY SURVEY LEGEND

○	5/8" IRON PIN SET	A, ACT.	ACTUAL MEASUREMENT OR CALCULATION
●	IRON PIN/PIPE FOUND	U, USED	USED MEASUREMENT OR MONUMENT
Ⓜ	MON BOX FOUND WITH PIN/PIPE	M, MSD	MEASURED
Ⓜ	MONUMENT BOX FOUND EMPTY	D, R, REC.	DEED OR RECORD
▲	SURVEY NAIL SET	CALC.	CALCULATED
▲	SURVEY NAIL FOUND	C/L	CENTERLINE
⊕	STONE/CONCRETE MONUMENT FOUND	O, OBS.	OBSERVED
⊕	DRILLHOLE SET	P.P.N.	PERMANENT PARCEL NUMBER
⊕	DRILLHOLE FOUND	C.C.M.R.	CUYAHOGA COUNTY MAP RECORDS

EXHIBIT

B

tabbles



# Know All Men By These Presents

That, **Richard W. Deacon** (married), Grantor, who claims title by or through instrument, recorded in Volume 15671, Page 907, County Recorder's Office, for the consideration of Ten Dollars (\$10.00) received to his full satisfaction of **Winfield Deacon Limited Partnership**, an Ohio limited partnership, Grantee, whose TAX MAILING ADDRESS will be 6194 Norman Lane, Mayfield Village, OH 44143,

Has Given, Granted, Remised, Released and Forever Quit-Claimed, and does by these presents absolutely give, grant, remise, release and forever quit-claim unto the said Grantee, its successors and assigns forever, all such right and title as the said Grantor has, or ought to have, in and to the following described piece or parcel of land, situated in the Village of Mayfield, County of Cuyahoga and State of Ohio, and being further described as follows:

And known as being Sublot No. 38 in the Haber Realty Co.'s Mayfield Acres Subdivision of part of Original Mayfield Township, Lot No. 46, Tract 1, and part of Original Mayfield Township Lot 13, Tract 2, as shown by the recorded plat in Volume 75 of Maps, Page 2 of Cuyahoga County Records, and being 100 feet front on the Southerly side of Wilson Mills Road and extending back 294.57 feet on the Easterly line, 294.74 feet on the Westerly line and has a rear line of 100 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

PP #831-39-010  
Property Address: 6704 Wilson Mills Road, Mayfield Village, Ohio 44143

To Have and to Hold the premises aforesaid, with the appurtenances thereunto belonging to the said Grantee, its successors and assigns, so that neither the said Grantor nor his heirs, nor any other persons claiming title through or under him, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

And for valuable consideration, **Carol M. Deacon** hereby remises, releases and forever quit-claims unto the said Grantee, its successors and assigns, all of her respective rights and expectancy of dower in the above-described premises.

In Witness Whereof, I have hereunto set my hand, the 18<sup>TH</sup> day of JUNE, 2001.

Signed and acknowledged in presence of

Print Name: Richard W. Deacon Richard W. Deacon

Print Name: Carol M. Deacon Carol M. Deacon

STATE OF OHIO  
COUNTY OF CUYAHOGA

CUYAHOGA COUNTY RECORDER  
PATRICK J. O'MALLEY  
DEQC 07/11/2001 02:28:15 PM  
200107110529

ROBERT KLAIBER P.E., P.S.  
Legal Description complies with  
Cuyahoga County Conveyance  
Standards and is approved for  
transfer:  
Agent h JUL 11 2001 Date

Before me, a Notary Public in and for said County and State, personally appeared the above named, Richard W. Deacon and Carol M. Deacon, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at Cleveland, Ohio this 18<sup>TH</sup> day of JUNE, 2001.

Frank Russo  
CUYAHOGA COUNTY AUDITOR

Elizabeth O'Neill  
NOTARY PUBLIC

THIS INSTRUMENT RECORDED BY: 831-39-010  
CONVEYANCE IS IN COMPLIANCE WITH SEC. 319.202 O.R.C.  
James M. Mackey, Esq. PAID \$

CHATTMAN, GAINES & STERN  
1400 Renaissance Building  
1350 Euclid Avenue  
Cleveland, OH 44115  
(216) 781-1700 TYPE

JUL 11 2001

ELIZABETH O'NEILL, Notary Public  
State of Ohio-Cuyahoga County  
My Commission Expires Feb. 10, 2008

CUYAHOGA COUNTY RECORDER  
200107110529 PAGE 1 of 2

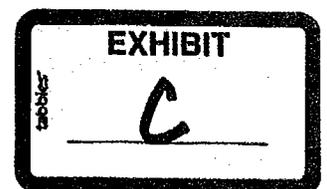
Receipt No. 15814E  
ARMS LENGTH YES ( ) NO ( )  
FRANK RUSSO, Cuyahoga County Auditor By FR Deputy

# EXHIBIT C

Deacon's Chrysler Plymouth Jeep Dodge Proposed Additions and Renovations

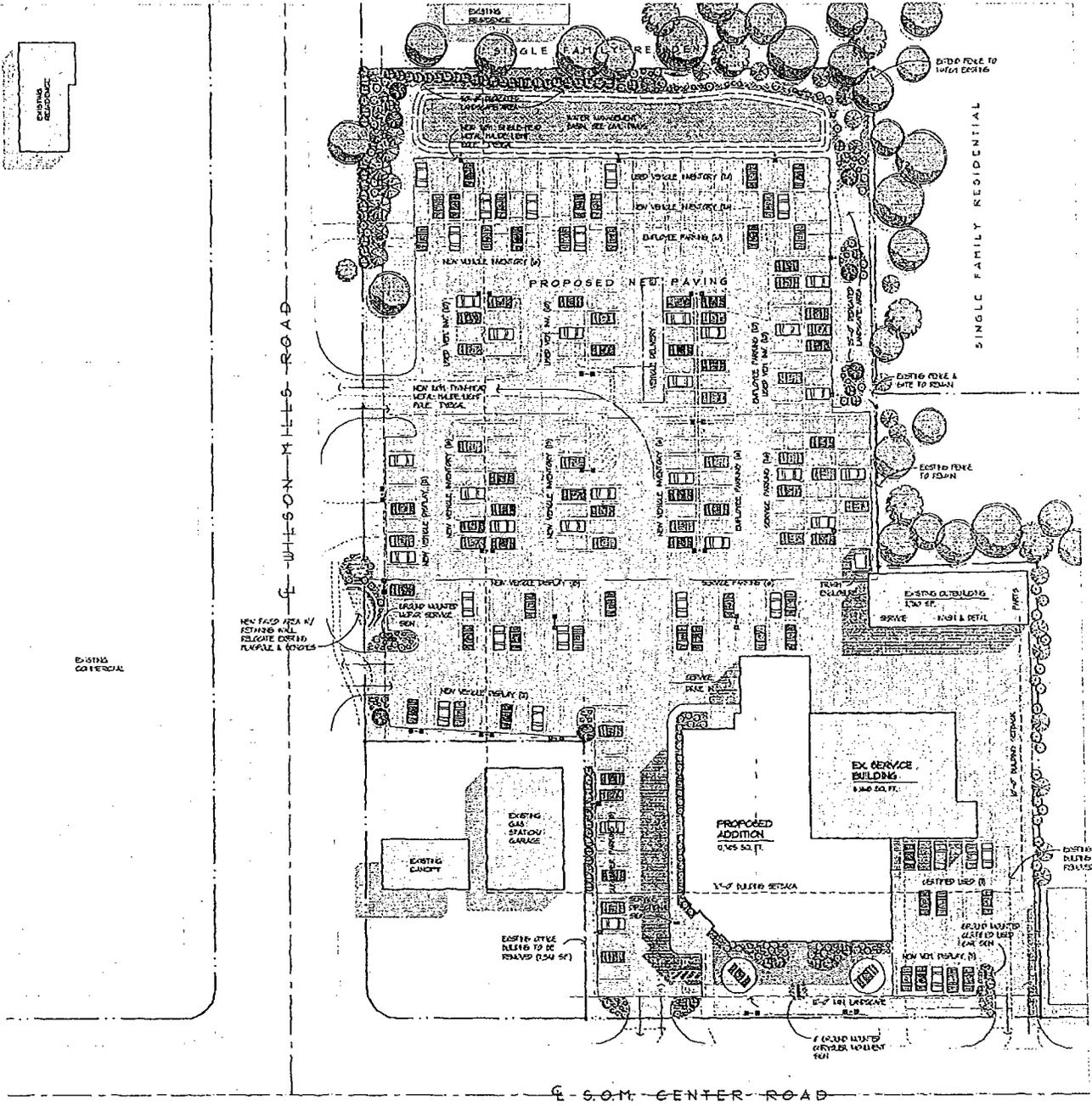
Prepared by Carey Construction Group, Inc. and Davison Smith  
Certo Architects, Inc. Dated July 12, 2011

Preliminary plans as submitted to the Mayfield Village Planning Commission.









EXISTING RESIDENCE

EXISTING COMMERICAL

**EXHIBIT**  
**E**

SINGLE FAMILY RESIDENTIAL

