

HUDSON INDUSTRIAL PARK  
DEVELOPMENT AGREEMENT

THIS AGREEMENT entered into between the municipality known as Hudson, Ohio ("City") and Fabri-Centers of America, Inc. ("Owner") as of the date of approval by the City Council of Hudson, Ohio.

WHEREAS, the Municipal Planning Commission ("MPC") of the City granted preliminary plan approval to the Owner on March 25, 1996 for the Hudson Industrial Park project ("Park") located on the south side of the convergence of Terex Road and Barlow Road in the City, being a 101.3 acre parcel of real estate located in the City of Hudson, Summit County, Ohio, and being more specifically described on Exhibit "A" attached hereto and made a part of this Agreement; and

WHEREAS, the MPC's conditions of record contained in its decision of March 25, 1996 required, inter alia, the Owner to enter into a Development Agreement to satisfy the requirements of the City's Interim Development Control Ordinance, the Comprehensive Plan, and the Codified Ordinances of the City as to the following issues:

- (A) MPC Condition #2: The applicant shall provide a 30' utility easement to the Hudson Electric Department along the entire frontage of Hudson Industrial Park along Barlow and Terex Roads for construction and permanent access to the proposed 69KV transmission line planned for this corridor;
- (B) MPC Condition #3: The applicant shall construct the fitness trail as conceptually shown on Page 1. The placement and timing for construction of the fitness trail shall be mutually agreed upon by the applicant and the City Manager. The applicant shall post a bond to ensure the timely completion of the fitness trail;

- (C) MPC Condition #11: The applicant shall mitigate the loss of woodland pursuant to a Draft Agreement written by the City Solicitor. The formula for woodland mitigation for the construction of the road shall be applied to tree loss in future parcel development;
- (D) MPC Condition #15: The applicant shall enter into an agreement to mitigate the off-site traffic impacts to offset anticipated level of service impacts on the Barlow-Terex transportation corridor pursuant to a Draft Agreement written by the City Solicitor;
- (E) MPC Condition #17: The applicant shall provide a letter of intent honoring and addressing these conditions of record prior to final plat approval and before April 22, 1996, and voluntarily enter into a development agreement to secure all off-site mitigation measures and bind the applicant to comply with all MPC site plan conditions of record; and

WHEREAS, the parties have voluntarily negotiated the aforesaid issues and wish to memorialize their agreement as follows:

1. Owner shall pay \$113,498 to the City for completion of the Stow Road/Barlow Road improvement project as mitigation of identified transportation impacts on the Barlow Road-Terex Road transportation corridor resulting from the Park development as required by MPC Condition #15 set forth above, which shall be paid as follows:

(a) Owner shall pay an assessment of \$1,120.41 per acre, or prorated based upon a percentage thereof, calculated upon a total site acreage of 101.3 acres, to be paid to the City upon issuance of a zoning certificate for each development parcel in the Park. The first assessment payment shall be due from the Owner within ten (10) days of the execution of this

Agreement for the development of the roadway and other improvements which encompass 4.43 acres as set forth on the approved preliminary plan;

(b) To the extent any acreage in the Park is devoted to common areas and/or infrastructure used in common, other than the 4.43 acres set forth in paragraph (a) above, the assessment shall be paid at the time such common area is designated on a plat and recorded with Summit County; and

(c) Owner shall be permitted a credit to the \$113,498 obligation to the extent of twenty-five percent (25%) of any funds received from the federal or state governments by the City for road and infrastructure improvement purposes as a result of the Park project.

2. Owner shall make payments to the City as mitigation to comply with the MPC Condition #11, as set forth above, and Comprehensive Plan and Codified Ordinances of the City for tree removal caused by Park site development as follows:

(a) A one time payment of \$1,000 per acre, or a prorated amount based upon a percentage of an acre, for all land upon which trees are removed, such payments to be made as follows:

- (i) The first payment shall be made within ten (10) days of the MPC's final approval of the final plat for the Park, and it shall be based on the projected removal of 8.1 acres of trees for roadway, associated improvement, and retention basis construction; and
- (ii) As each individual parcel within the Park undergoes development, the identification of the extent of necessary tree removal will be made by the MPC at the time of site plan approval for each phase of development. The MPC will conduct an assessment of the

environmental conditions on each parcel proposed for development and will exercise reasonable avoidance and minimization techniques for overall site design and improvement authorization. All tree removal authorized by MPC action shall be assessed and shall be paid by Owner prior to issuance of a zoning certificate by the City for development for that particular parcel. Site plan approval shall also include an approved comprehensive landscape plan. Owner, or other applicant for a particular site plan approval, shall, however, have the option following authorization by MPC action, to provide a reforestation plan above and beyond any required comprehensive landscape plan and apply the \$1,000 per acre assessment amount to provide replacement of trees in areas where trees have been removed from that particular site. The caliper diameter and species of replacement trees will be specified by the City Arborist. In the event this assessment obligation is not satisfied by the Owner prior to transfer of ownership of a particular parcel in the Park to another person(s), this assessment obligation and, if necessary, the caliper diameter and species of replacement trees shall be a condition placed upon any individual site plan approval by the MPC. The trees planted as replacements for trees removed on a particular parcel shall not be included as part of any required comprehensive landscape plan for any particular parcel; and

(b) Prior to removal of trees from any of the 101.3-acre Park property, including any parcel within the Park, the City shall be notified by the Owner or other applicant of the need to remove trees and the City shall have the right to select a tree removal/timbering service to enter upon the property and to perform the work in an expeditious manner upon such notification to the City. The City shall be entitled to receive the net proceeds from the sale of the standing timber, through whatever means yields the highest net value, for trees that are removed from the entire Park property.

(c) Any funds received by the City pursuant to paragraphs (a) and (b) herein shall be placed in a special revenue account of the City and encumbered for woodland acquisition, conservation easements, and City tree planting programs.

3. Owner agrees, pursuant to MPC Condition #2, to provide a thirty-foot (30') utility easement along the entire Barlow/Terex Road frontage of the Park property for location of the proposed 69KV transmission line planned for the frontage of the Owner's currently existing complex, at no cost to the City. The City agrees to locate the line on the north side of Terex Road, crossing the public roadway at a point represented by the boundary of property currently owned by Clarke Ford and having Permanent Parcel No. 30-06934 and the existing Kobelco Stewart Bolling, Inc. property which currently is designated as Permanent Parcel No. 30-06314. Owner shall reimburse the City the actual cost associated with this relocation, but which amount of reimbursement shall not exceed \$20,000.00. Upon notice from the City, the Owner shall deposit \$20,000.00 with the City thirty (30) days prior to commencement of the proposed work, which shall be held in escrow by the City and used for such relocation costs. The actual cost of the relocation shall be certified to Owner upon completion of the work and in the event the actual cost is less than \$20,000.00, the difference.

shall be reimbursed to the Owner by the City, without interest, within thirty (30) days of such certification.

4. Owner agrees to all conditions set forth in the MPC Decision in Case No. 95-05, approved by the MPC on March 25, 1996, which Decision is attached hereto and incorporated herein as Exhibit B.

5. Concurrent with the execution of this Agreement, Owner shall execute and comply with the provisions of a "Final Plat Agreement" in a form similar to the City's standard form and which is attached hereto as Exhibit C.

6. To the extent permitted by law, the City agrees to assist Owner in the development of the Park and further agrees that additional mitigation beyond that required by this Agreement and the MPC's Decision (Exhibit "B") will not be required of Owner by the City.

7. Execution of this Agreement shall constitute satisfactory performance of Condition #17 of the MPC's Decision in Case No. 95-05 of March 25, 1996 (Exhibit "B").

8. This Agreement and all the terms, covenants and conditions herein are covenants running with the land and shall bind the Parties, their respective successors, legal representatives, assigns and all future owners of the Park, or any portion thereof.

9. Upon execution by the Parties, this Agreement shall be filed for record with the Summit County Recorder. Recording fees are to be paid by the City.

10. This Agreement shall not be effective until it is approved by the MPC and City Council.

IN WITNESS WHEREOF, the Parties sign this Agreement as of the last date appearing below.

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:

FABRI-CENTERS OF AMERICA, INC.

Marc Rotenberg  
(Signature)

By: Francis C. Piccirillo  
(Signature) (Date)

Marc Rotenberg  
(Print Name)

Francis C. Piccirillo  
(Name) (please print)

Patricia Heilmann  
(Signature)

Sr. V.P. / Treasurer  
(Title)

Patricia Heilmann  
(Print Name)

STATE OF OHIO )  
COUNTY OF Summit ) SS:

BEFORE ME, a Notary Public, in and for said County and State, appeared Francis C. Piccirillo, the Sr. V.P. / Treasurer of Fabri-Centers of America, Inc., and states that he/she has signed the foregoing Agreement and that the same was the free act and deed of the Corporation and his free act and deed as an authorized officer of the Corporation.

In testimony whereof, I have set my hand and official seal at Summit, Ohio this 22<sup>nd</sup> day of April, 1996.

Wendy E. Stewart  
Notary Public

WENDY E. STEWART, Notary Public  
STATE OF OHIO  
Resident Summit County  
My Commission Expires April 27, 1999

CITY OF HUDSON, OHIO

John M. Leaman  
(Signature)  
JOHN M. LEAMAN  
(Print Name)

Elizabeth A. Sullivan  
(Signature)  
Elizabeth A. Sullivan  
(Print Name)

By: James C. Smith 5/3/96  
(Signature) (Date)  
James C. Smith  
(Name) (please print)  
City Manager  
(Title)

STATE OF OHIO )  
) SS:  
COUNTY OF Summit )

BEFORE ME, a Notary Public, in and for said County and State, appeared James C. Smith, City Manager of the City of Hudson, Ohio, and states that he has signed the foregoing Agreement and that the same was the free act and deed of the City of Hudson and his free act and deed as an authorized officer of the City.

In testimony whereof, I have set my hand and official seal at Hudson, Ohio this 3rd day of May, 1996.

R. Todd Hunt  
Notary Public

R. TODD HUNT, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date,  
Section 147.03 R. C.

APPROVED AS TO LEGAL FORM:

Charles T. Riehl  
Charles T. Riehl, Solicitor

This Agreement was prepared by:  
R. Todd Hunt, Assistant to the  
Solicitor for the City of Hudson, Ohio





Legal Description  
 Industrial Parkway Subdivision  
 May 28, 1996  
 File No. 10749.028

Situated in the Township of Hudson, County of Summit, State of Ohio and known as being part of Original Lot Nos. 16 and 17 in said Township and is further bounded and described as follows:

Beginning at the intersection of the center line of Barlow Road (60 feet wide) with the Southerly line of Tarax Road (120 feet wide);

- Course 1 Thence South  $56^{\circ}-38'-43''$  East, along said center line of Barlow Road, a distance of 892.57 feet to the most Northerly corner of a parcel of land conveyed to The Little Tikes Co. by deed recorded in O.R. 1917, Page 775 of Summit County Records;
- Course 2 Thence South  $33^{\circ}-21'-48''$  West, along the Northwesterly line of land so conveyed to The Little Tikes Co., a distance of 774.20 feet to an angle point therein;
- Course 3 Thence South  $00^{\circ}-21'-56''$  East, along the Westerly line of land so conveyed to The Little Tikes Co., a distance of 1421.37 feet to the Southwesterly corner thereof and the Northerly line of a parcel of land conveyed to the Ohio Edison Co.;
- Course 4 Thence South  $89^{\circ}-37'-34''$  West, along said Northerly line of land so conveyed to the Ohio Edison Co., a distance of 1506.67 feet to an angle point therein;
- Course 5 Thence South  $89^{\circ}-41'-28''$  West, continuing along said Northerly line of land so conveyed to the Ohio Edison Co., a distance of 551.58 feet to a point;
- Course 6 Thence North  $00^{\circ}-43'-49''$  West, a distance of 1278.02 feet to the Southerly line of a parcel of land conveyed to Clarke Ford;

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- Course 7 Thence North  $89^{\circ}-58'-25''$  East, along said Southerly line of land so conveyed to Clarke Ford, a distance of 261.94 feet to the Southeasterly corner thereof;
- Course 8 Thence North  $01^{\circ}-45'-41''$  West, along the Easterly line of land so conveyed to Clarke Ford, a distance of 376.00 feet to the Northeasterly corner thereof and the Southerly line of a parcel of land conveyed to the Kobelco Stewart Bolling, Inc. by deed recorded in O.R. 334, Page 177 of Summit County Records;
- Course 9 Thence North  $89^{\circ}-20'-19''$  East, along said Southerly line of land so conveyed to the Kobelco Stewart Bolling, Inc., a distance of 524.12 feet to the Southeasterly corner thereof;
- Course 10 Thence North  $00^{\circ}-40'-36''$  West, along the Easterly line of land so conveyed to the Kobelco Stewart Bolling, Inc., a distance of 912.36 feet to the Southerly line of Terex Road, as aforesaid;
- Course 11 Thence South  $89^{\circ}-57'-32''$  East, along said Southerly line of Terex Road, a distance of 981.96 feet to the place of beginning and containing 106.9383 Acres of land.

Be the same more or less but subject to all legal highways.

CITY OF HUDSON  
MUNICIPAL PLANNING  
COMMISSIONCASE NO. 95-05  
HUDSON INDUSTRIAL PARK  
PRELIMINARY PLAN REVIEW  
INDUSTRIAL PARK INFRASTRUCTURE PLAN  
O-1 DISTRICT/IDC DISTRICT 8

## DECISION

Based on the evidence and representation to the Commission by the applicant, Fabri-Centers of America, represented by Bill McGraw of Ostendorf-Morris, City Staff, and other interested parties, at the regular meeting of the Municipal Planning Commission held in the Meeting Room of the Town Hall, 27 East Main Street, on Monday, March 25, 1996, the Commission hereby approves the Preliminary Plan to allow infrastructure development subject to the following conditions:

1. The storm water management system shall be approved by both the City Manager and the Summit Soil and Water Conservation District with evidence of final approval provided in writing by the City Engineer to the file of record.
2. The applicant shall provide a 30' utility easement to the Hudson Electric Department along the entire frontage of Hudson Industrial Park along Barlow and Terex Roads for the construction and permanent access to the proposed 69 Kv transmission line planned for this corridor.
3. The applicant shall construct the fitness trail as conceptually shown on Page 1. The placement and timing for construction of the fitness trail shall be mutually agreed upon by the applicant and the City Manager. The applicant shall post a bond to ensure the timely completion of the fitness trail.
4. Erosion control measures shall be installed at the perimeter of the proposed clearing, grading, and filling limits denoted on Page 6, and further, that the installation of erosion control fencing shall be inspected by both the City Arborist and the City Engineer prior to any and all earth movement. In addition, all stockpile areas shall be determined by the contractor and the City Manager, with erosion control measure installed and maintained, meeting the Arborist's and Engineer's specification and requirements.
5.
  - (a) The applicant shall preserve and improve the 150 ft. width by approximately 500 ft. length forest grove which parallels the south side of Terex Road. The recommended timber stand improvement will remove dead or diseased trees, remove dangerous cull of wolf trees, eliminate grape vine infestation and prepare the woodlot for additional deciduous or coniferous plantings. The woodland improvement and additional plantings are to be provided by the developer at the direction of the City Manager. The building line for the aforementioned portion of the parcel shall be set at no closer to Terex Road than 180'
  - (b) East of the 150 ft. wide forest grove and paralleling Terex and Barlow Roads, an earth berm will be constructed up to the Little Tikes property line and wrap back towards the South. This berm is to be constructed with subsoil as the core and the topsoil as the cap. Construction of the mound shall provide effective visual screening

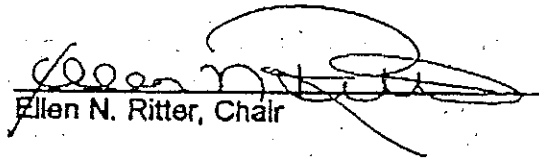
and sound buffering along Terex and Barlow Road. The berm shall have irregular height contours, with an average height of six (6) feet, and may meander as it follows the edge of right-of-way to avoid a contrived, monotonous mound effect. The berming shall occupy a 75' setback. The building line for the aforementioned portion of the parcel shall be set at no closer to Terex or Barlow Roads than 90'. The berming and planting shall be constructed as per the recommendations of the City Manager.

6. The applicant shall utilize 3:1 slope on blending the roadway to grade instead of 4:1 as depicted on the Preliminary Plan drawings.
7. The applicant shall demonstrate to the City Engineer that, at wetland and stream crossings (especially stations 4+50 and 15+50), the roadway shall adhere as close as practicable to the existing grade.
8. On the East-West road, the applicant shall demonstrate to the City Engineer the impact on woodland and wetland resources of evaluating the roadway to bring water to a single drainage pond, versus constructing the roadway closer to grade and building a second retention basin.
9. The applicant shall survey and stake the clearing line, as per the City Arborist specifications and will do their best to ensure that contractors do not disturb any vegetation outside the clearing limits.
10. No equipment, materials, trenching, or grading shall be allowed outside the clearing limits unless with the written approval of the City Manager. All trees left on the new edge or clearing line shall be avoided from construction impact. A distance of a 1' radius of protection for every 1" diameter of trunk should be maintained throughout the construction period. The clearing limit shall be marked with caution tape.
11. The applicant shall mitigate the loss of woodland pursuant to a Draft Agreement written by the City Solicitor. The formula for woodland mitigation for the construction of the road shall be applied to tree loss in future parcel development.
12. The applicant shall verify and limit wetland impact to nationwide permit limits.
13. The applicant shall provide a retention basin that shall be constructed with a 3:1 slope with 10:1 slopes to the original grade to allow the proliferation of wetland vegetation and wildlife.
14. The applicant shall plant street trees, per the City Arborist specifications, on 40' centers.
15. The applicant shall enter into an agreement to mitigate the off-site traffic impacts to offset anticipated level of service impacts on the Barlow-Terex transportation corridor pursuant to a Draft Agreement written by the City Solicitor.
16. Prior to any site construction activities, a pre-construction meeting should be called by the applicant with all necessary City personnel and agency representatives in attendance to coordinate construction activities and ensure compliance with conditions of record.

- 17. The applicant shall provide a letter of intent honoring and addressing these conditions of record prior to final plat approval and before April 22, 1996, and voluntarily enter into a development agreement to secure all off-site mitigation measures and bind the applicant to comply with all MPC site plan conditions of record.
- 18. Proactive tree protection, wetland protection and soil management measures shall be taken on all sites including the parkway where construction is proposed. Final engineering improvements including road construction, utility installation and storm water detention shall be designed and built to be sensitive to the amount of construction necessary for these improvements. It is the challenge of the developer to construct the improvements in ways which minimize the environmental impact on other woodlands or wetlands.

Date: March 25, 1996

THE CITY OF HUDSON  
MUNICIPAL PLANNING COMMISSION

  
Ellen N. Ritter, Chair

js

**FINAL PLAT AGREEMENT**

THIS AGREEMENT, made at Hudson, Ohio, this \_\_\_\_ day of April, 1996, by and between Fabri-Centers of America, Inc. (hereinafter referred to as "Developer") and Hudson, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter referred to as "City").

**WITNESSETH:**

WHEREAS, Developer is desirous of developing certain lands situated in the City, known as Hudson Industrial Park; and

WHEREAS, a plat for said Hudson Industrial Park has heretofore been filed with the Municipal Planning Commission of the City, and said Planning Commission has approved the plat which is to be recorded with the Summit County Recorder's Office; and

WHEREAS, Developer desires to comply with Ordinance No. 58-48, as amended, known as the "Subdivision Ordinance of the City of Hudson Village," so that it may proceed with the improvements for Hudson Industrial Park; and

WHEREAS, the Municipal Planning Commission recommends the execution of this Agreement between the City and Developer.

**NOW, THEREFORE, IT IS AGREED THAT:**

1. The Developer will complete the improvements within a period of two (2) years from the date of approval by the City of the Performance Bond(s), an irrevocable letter(s) of credit, or any other security acceptable to the City, for the various portions of construction with proper surety in the amount of One Hundred Ten Percent (110%) of such cost as a condition of the approval of the Planning Commission, and as a guarantee that such work will be completed. Such cost has been

determined by the engineer for the City as an estimate of cost in the amount of \_\_\_\_\_ All improvements are to be done in accordance with the plans and specifications for such improvements approved by the Planning Commission and City Engineer which by reference hereto are made a part hereof and are dated \_\_\_\_\_.

2. All such improvements shall be inspected during the course of construction and improvement by an inspector appointed by the City Manager, the compensation for which and other costs shall be paid by Developer. The estimated cost of inspection in the amount of \_\_\_\_\_ shall be deposited with the City prior to construction commencing, provided, however, that in the event the cost of inspection exceeds the amount on deposit at any time, the City shall have the right to demand a sum of money to bring the deposit equal to the actual cost of inspection within ten (10) days of written notice upon the Developer. Failure to comply with the written demand to bring the inspection deposit current shall be cause to stop all work upon the improvements until such demand is complied with.

3. The Performance Bond(s), an irrevocable letter(s) of credit, or any other security acceptable to the City, shall be conditioned upon completion of the improvements as shown on the improvement plans and conditioned that the Developer will construct and install all of said improvements at its own expense within two (2) years from the date hereof.

4. Upon completion of the improvements and receipt of the approval of the City Engineer and before the Performance Bond(s), irrevocable letter(s) of credit or other security is released by the City, the Developer shall submit a Maintenance Bond in an amount equal to Twenty Percent (20%) of the final construction cost to guarantee the workmanship and material for a period of two (2) years following the completion of the improvements.

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

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

7. Upon completion of construction of the improvements and approval by the City Engineer, Developer shall dedicate to the City all streets, lands and public improvements set forth in the final plat.

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



9. Upon execution of the Agreement and the deposit of all the items mentioned herein, the City will issue any applicable building and/or zoning permits provided that the applicants for said permits have met the necessary requirements for the issuance of said permits.

10. This Agreement shall be made a part of and incorporated into any and all bonds that may be issued pursuant hereto.

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

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

FABRI-CENTERS OF AMERICA, INC.  
("Developer")

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

\_\_\_\_\_  
Print Name and Title

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

HUDSON, OHIO  
(A Municipal Corporation -- Incorporated as  
a City in Ohio)

By: \_\_\_\_\_  
JAMES C. SMITH  
CITY MANAGER

MUNICIPAL PLANNING COMMISSION  
CITY OF HUDSON, OHIO

BY: \_\_\_\_\_  
ELLEN M. RITTER  
CHAIRMAN

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
CHARLES T. RIEHL  
CITY SOLICITOR

