

# **Resolution**

Number 12-1391

Adopted Date October 09, 2012

DECLARING THE IMPROVEMENT TO CERTAIN REAL PROPERTY LOCATED IN THE COUNTY OF WARREN, OHIO TO BE A PUBLIC PURPOSE; DECLARING SUCH IMPROVEMENT TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING THE OWNER THEREOF TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; DESIGNATING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE THAT WILL DIRECTLY BENEFIT THE REAL PROPERTY; AND ESTABLISHING A REDEVELOPMENT TAX EQUIVALENT FUND FOR THE DEPOSIT OF SERVICE PAYMENTS

**WHEREAS**, an entity known as Miami Valley Gaming & Racing, LLC (the "Developer"), a Delaware limited liability company, is exploring the development of an approximately 120-acre site (as depicted and described in Exhibit A attached hereto and incorporated herein by this reference, the "TIF Site") located within the territorial boundaries of the County of Warren, Ohio (the "County"), on which it desires to construct a commercial racetrack and entertainment facility; and

**WHEREAS**, the development of commercial properties in the County will benefit the County and its residents by creating economic opportunities, enlarging the property tax base, enhancing County sales tax revenues, and stimulating collateral development in the County; and

**WHEREAS**, by providing public infrastructure improvements, as that term is defined in Ohio Revised Code Sections 5709.40(A)(7) and 5709.77(G) (as more fully described on Exhibit B attached hereto and incorporated herein by this reference, the "Public Infrastructure Improvements"), the County may facilitate the development of commercial properties for the benefit of the TIF Site, including, without limitation, by facilitating the financing, acquisition, and construction of the Public Infrastructure Improvements; and

**WHEREAS**, Ohio Revised Code Sections 5709.77, 5709.78, 5709.79, and 5709.80 provide for the use of county tax increment financing to pay the costs of Public Infrastructure Improvements, which costs may include, without limitation: (i) the payment for or reimbursement of costs of the Public Infrastructure Improvements incurred by the Developer or an affiliate of the Developer, the County, Turtlecreek Township, the City of Monroe, Ohio, the Warren County Port Authority, or any other public or private party in cooperation with the County, and (ii) payment of debt service charges, scheduled administrative expenses, and scheduled reserve fund deposits for any debt incurred to finance the costs of the Public Infrastructure Improvements; and

**WHEREAS**, Ohio Revised Code Sections 5709.77, 5709.78, 5709.79, and 5709.80 provide that this Board of Commissioners may, among other things, (a) declare the improvement to real property located in the County to be a public purpose, thereby exempting such improvement from real property taxation for a period of time, (b) specify public infrastructure improvements to be made to benefit those parcels, provide for the making of service payments in lieu of taxes by the owner or owners thereof, and (c) establish a redevelopment tax equivalent fund into which such service payments shall be deposited; and

**WHEREAS**, the County desires to grant a seventy-five percent (75%) exemption from real property taxation for a period of ten (10) years (the "TIF Exemption") for the improvement to the TIF Site (as defined in Section 1 hereof, the "Improvement"); and

**WHEREAS**, the County has determined that it is necessary and appropriate and in the best interests of the County to require the owners of the parcels included in the TIF Site and their successors and assigns (collectively, with their successors and assigns, as owners of the TIF Site, the "Owners") to make service payments in lieu of taxes (as defined in Section 1 hereof, the "Service Payments") with respect to the Improvement pursuant to Ohio Revised Code Section 5709.79; and

**WHEREAS**, the Lebanon County School District and the Warren County Career Center have each received notice of the TIF Exemption and the proposed text of this Resolution at least fourteen (14) days in advance of the date on which this Resolution is being adopted, in accordance with Ohio Revised Code Sections 5709.78(G) and 5709.83.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of the County of Warren, Ohio that:

**SECTION 1. Authorization of TIF Exemption.** Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.78(A), this Board of Commissioners hereby finds and determines that seventy-five percent (75%) of the increase in assessed value of each parcel comprising the TIF Site (the "Exempted Property") subsequent to the effective date of this Resolution (which increase in assessed value is hereinafter referred to as the "Improvement," as defined in Ohio Revised Code Section 5709.77(D)) is declared to be a public purpose, and shall be exempt from real property taxation (the "TIF Exemption") for a period commencing with the tax year to be specified in the DTE-24 exemption application to be filed with respect to a specific parcel comprising the Exempted Property, but in no case later than the tax year commencing on January 1, 2014 (for collection beginning no later than in the year 2015), in which an Improvement to such parcel first appears on the tax list and duplicate of real and public utility property and ending on the earlier of (a) the tenth (10th) anniversary after the commencement of the TIF Exemption with respect to such parcel, or (b) the date on which the Public Infrastructure Improvements are paid for in full. After the TIF Exemption becomes effective, such TIF Exemption shall apply with respect to any parcel when the Improvement to such parcel is made and an exemption therefor is claimed in the manner provided for hereinabove.

**SECTION 2. Payment of Service Payments.** As provided in Ohio Revised Code Section 5709.79, but only after the TIF Exemption is effective, the Owner of a parcel comprising Exempted Property shall be required to, and shall make, service payments in lieu of taxes with respect to the Improvement allocable thereto to the County Treasurer on or before the final due dates for payment of real property taxes. Each service payment in lieu of taxes shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against such parcel as if it were not exempt from taxation pursuant to Section 1 hereof. If any reduction in the levies otherwise applicable to such parcel is made by the County budget commission under Ohio Revised Code Section 5705.31, the amount of the service payment in lieu of taxes shall be calculated as if the reduction in levies had not been made. Any late payments of service payments in lieu of taxes shall be subject to penalty and bear interest at the then current rate established under Ohio Revised Code Sections 323.121(B)(1) and 5703.47, as the same may be amended from time to time, or any successor provisions thereto (the "Penalties and Interest"). Each Owner shall make any other payments in respect of such parcel which are received by the County Treasurer in connection with any reduction required by Ohio Revised Code Section 319.302, as the same may be amended from time to time, or any successor provisions thereto (the "Property Tax Rollback Payments," together with the service payments in lieu of taxes and the "Penalties and Interest," are collectively referred to herein as the "Service Payments"). The Service Payments shall be allocated and distributed in accordance with Section 3 hereof.

**SECTION 3. Creation of TIF Fund; Application of Service Payments.** This Board of Commissioners hereby establishes, pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.80, a Redevelopment Tax Equivalent Fund. The County Treasurer may create one or more accounts or sub-accounts within such fund as appropriate to distinguish the Service Payments received with respect to the TIF Exemption established pursuant to this Resolution from any tax increment financing programs that may be established by the County in the future and as are necessary to account for payment of the costs of the Public Infrastructure Improvements, including any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and debt service on, and other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure Improvements. As used in this Resolution, "TIF Fund" shall refer to the specific fund or account that receives the Service Payments provided for in this Resolution. The TIF Fund shall be maintained in the custody of the County and shall receive all distributions of Service Payments required to be made to the County. Those Service Payments received by the County with respect to the Exempted Property, shall be used solely for the purposes authorized in Ohio Revised Code Sections 5709.77, 5709.78, 5709.79, and 5709.80, including, but not limited to, paying any costs of the Public Infrastructure Improvements, in a manner that is consistent with this Resolution. For purposes of this Resolution, "costs" of the Public Infrastructure Improvements payable from the TIF Fund shall also include the items of "costs of permanent improvements" set forth in Ohio Revised Code Section 133.15(B), and incurred with respect to the Public Infrastructure Improvements, which "costs" specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and debt service on any bonds issued to finance the Public Infrastructure Improvements. The TIF Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which time said TIF Fund shall be dissolved and any surplus funds remaining therein shall be transferred to the County's General Fund, all in accordance with Ohio Revised Code Section 5709.80. Service Payments received by the County in any year shall be applied to pay the costs of the Public Infrastructure Improvements at the sole discretion of the County.

**SECTION 4. Public Infrastructure Improvements.** This Board of Commissioners hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto as "public infrastructure improvements" (as such term is defined in Ohio Revised Code Sections 5709.40(A)(7) and 5709.77(G)) made, to be made, or in the process of being made, and that, once made, will directly benefit the TIF Site.

**SECTION 5. Application for Real Property Tax Exemption and Remission.** This Board of Commissioners further hereby authorizes and directs the County Administrator, the Director of Economic Development of the County, the County Prosecutor, or other appropriate officers of the County, to sign and execute all documents and make such arrangements as are necessary and proper for collection of said Service Payments from the Owners of real property located in the TIF Site, which are to be deposited into the TIF Fund.

**SECTION 6. Further Authorizations.** This Board of Commissioners further hereby authorizes and directs each of the County Administrator, the Director of Economic Development of the County, the County Prosecutor, or other appropriate officers of the County, to prepare and sign all agreements, and any amendments thereto such that the character of those changes is not substantially adverse to the County, which shall be established conclusively by their signatures thereon, and to prepare and sign all instruments and to take all other actions as may be necessary and appropriate to implement this Resolution.

**SECTION 7. Non-Discriminatory Hiring Policy.** In accordance with Ohio Revised Code Section 5709.832, this Board of Commissioners hereby determines that no employer located in the TIF Site shall deny any individual employment based solely on race, religion, sex, disability, color, national origin or ancestry.

**SECTION 8. Notices.** This Board of Commissioners hereby finds and determines that notice of this proposed Resolution has been delivered to all affected school districts, including the Lebanon City School District and the Warren County Career Center, in accordance with Ohio Revised Code Sections 5709.78(G) and 5709.83, and hereby ratifies the giving of that notice.

Pursuant to Ohio Revised Code Section 5709.78, the Clerk of Board of Commissioners is hereby directed to deliver a copy of this Resolution to the Director of the Department of Development of the State of Ohio within fifteen (15) days after its adoption. On or before March 31 of each year that the exemption set forth in Section 1 hereof remains in effect, the Director of Economic Development of the County or other authorized officer of this County shall prepare and submit to the Director of the Department of Development of the State of Ohio the status report required under Ohio Revised Code Section 5709.78(G).

**SECTION 9. Tax Incentive Review Council.** The County has created the Warren County Tax Incentive Review Council with the membership of that Council constituted in accordance with Ohio Revised Code Section 5709.85. That Council shall, in accordance with Ohio Revised Code Section 5709.85, review annually all exemptions from taxation resulting from the declarations set forth in this Resolution and any other such matters as may properly come before that Council, all in accordance with Ohio Revised Code Section 5709.85.

**SECTION 10. Open Meetings.** This Board of Commissioners finds and determines that all formal actions of this Board of Commissioners and any of its committees concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board of Commissioners, and that all deliberations of this Board of Commissioners and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Ohio Revised Code Section 121.22.

**SECTION 11. Effective Date.** This Resolution shall be effective from and after the earliest period provided by law.

Mr. Ariss moved for adoption of the foregoing resolution, being seconded by Mrs. South. Upon call of the roll, the following vote resulted:

Mr. Young – yea  
Mr. Ariss – yea  
Mrs. South – yea

Resolution adopted this 9<sup>th</sup> day of October 2012.

BOARD OF COUNTY COMMISSIONERS

  
Laura Lander, Deputy Clerk

cc: Auditor \_\_\_\_\_  
Commissioners' file  
Warren County Port Authority  
Turtlecreek Township (file)  
Caleb Bell – Bricker & Eckler

City of Monroe (file)  
Lebanon City Schools  
Warren County Career Center  
Ohio Department of Development (certified)  
RPC (file)

## EXHIBIT A

### Legal Description of TIF Site

The TIF Site includes the real property described below and shown on the attached site map.

Situated in Turtlecreek Township, City of Lebanon, County of Warren, State of Ohio and being part of Warren County Parcel Nos. 11064000140 and 12363000030 and being all of the real property conveyed by the State of Ohio pursuant to Section 6 of Amended and Substituted House Bill 386 enacted by the 129th General Assembly of the State of Ohio, with the following legal description:

Situated in Sections 6 T3E R3N and 36, Township 4 East, Range 3 North MRS, Township of Turtlecreek, County of Warren, State of Ohio, and being part of that real estate conveyed to the State of Ohio by deed recorded in Deed Book 124, Page 110 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Warren County, Ohio Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

BEGINNING at the southeast corner of Section 6, also being in the centerline of State Route No. 63;

Thence North 5°33'50" East, leaving the centerline of said State Route No. 63, along the east line of said Section 6 for a distance of 30.00 feet to the existing north right-of-way of State Route No. 63;

Thence leaving the east line of said Section 6 along the existing north right-of-way of State Route No. 63 the following five (5) courses:

- 1) North 84°26'10" West for a distance of 783.45 feet;
- 2) North 5°33'50" East for a distance of 25.00 feet;
- 3) North 84°26'10" West for a distance of 35.61 feet;
- 4) South 5°33'50" West for a distance of 25.00 feet;
- 5) North 84°26'10" West for a distance of 181.51 feet to the west line of said State of Ohio tract also being the east line of a 5.223 acre tract conveyed to HLF Financial LLC by deed recorded in Official Record Volume 4946, Page 341;

Thence leaving the existing north right-of-way of State Route No. 63 along the west line of said State of Ohio tract and east line of said HLF Financial LLC tract the following four (4) courses:

- 1) North 29°34'19" West for a distance of 1062.09 feet;
- 2) North 20°56'35" West for a distance of 234.30 feet;
- 3) North 4°26'35" West for a distance of 270.60 feet;
- 4) North 20°03'25" East for a distance of 702.17 feet;

Thence leaving the west line of said State of Ohio tract along a new division line the following two (2) courses:

- 1) South 84°42'21" East for a distance of 2633.66 feet;

- 2) South 5°17'39" West for a distance of 2063.74 feet to the south line of Section 36, also being in the centerline of said State Route No. 63;

Thence North 84°36'40" West, along the south line of said Section 36 and the centerline of State Route No. 63 for a distance of 1055.66 feet to the place of beginning and containing 120.7273 acres, being 70.9643 acres from Warren County Ohio Auditor's parcel number 11064000140 (Section 6) and being 49.7630 acres, total (49.0360) acres net and 0.7270 acres existing right-of-way State Route No. 63) from Warren County Ohio Auditor's parcel number 12363000030 subject however to all covenants, conditions, reservations or easements of record contained in any instrument of record to the above described tract of land.

Being part of that real estate conveyed to the State of Ohio by deed recorded in Deed Book 124, Page 110 of the Warren County, Ohio Recorder's Office.

This description was prepared from a field survey performed by Woolpert, Inc. under my direction in November of 2011 with bearings based upon the State of Ohio State Plane Coordinate System for the State of Ohio (South Zone).

[Attach Map of TIF Site.]



Warren County, Ohio  
Customized Property Map

0	45	90	180
Feet			

1 inch = 500 feet

## **EXHIBIT B**

### **Public Infrastructure Improvements**

The Public Infrastructure Improvements consist generally of acquiring and constructing the infrastructure described below:

- Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, bridges (both roadway and pedestrian), traffic calming devices, sidewalks, bikeways, medians and viaducts accessible to and serving the public, and providing lighting systems, signalization, and traffic controls, and all other appurtenances thereto;
- Construction, reconstruction or installation of public utility improvements (including any underground publicly-owned utilities), storm and sanitary sewers (including necessary site grading therefore), police equipment and police station buildings and improvements, fire equipment and fire buildings and improvements, water and fire protection systems, and all other appurtenances thereto;
- Construction, reconstruction or installation of publicly-owned gas, electric, and communication service facilities, and all other appurtenances thereto;
- Construction or reconstruction of one or more public parks, including grading, trees and other park plantings, park accessories and related improvements, and all other appurtenances thereto;
- Construction or installation of streetscape and landscape improvements including trees and shrubs, landscaping mounds and fencing, tree grates, planting beds, signage, curbs, sidewalks, street and sidewalk lighting, trash receptacles, benches, newspaper racks, burial of overhead utility lines and related improvements, and all other appurtenances thereto;
- Construction of one or more public parking facilities, including public surface parking and public parking structures and related improvements, and all other appurtenances thereto;
- Demolition and excavation, including demolition and excavation on private property when determined to be necessary for economic development purposes;
- Acquisition of real estate or interests in real estate (including easements) necessary to accomplish the foregoing improvements;
- Any on-going administrative expenses relating to the Public Infrastructure Improvements and maintaining the TIF revenues, including but not limited to engineering, architectural, legal, and other consulting and professional services; and
- All inspection fees and other governmental fees related to the foregoing.

The Public Infrastructure Improvements specifically include the costs of financing the Public Infrastructure Improvements, including the items of "costs of permanent improvements" set forth in Ohio Revised Code Section 133.15(B), and incurred with respect to the Public Infrastructure Improvements, which "costs" specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and the debt service on any bonds or other obligations issued to finance the Public Infrastructure Improvements.

All of the Public Infrastructure Improvements described above are hereby determined to be "public infrastructure improvements" (as defined in Ohio Revised Code Sections 5709.40(A)(7) and 5709.77(G)) and will directly benefit the real property described in Exhibit A.



RECEIPT OF DIRECTOR OF DEVELOPMENT SERVICES OF THE STATE  
OF OHIO FOR LEGISLATION DECLARING CERTAIN IMPROVEMENTS  
TO REAL PROPERTY TO BE EXEMPT FROM REAL PROPERTY  
TAXATION PURSUANT TO OHIO REVISED CODE SECTION 5709.78(A)

The undersigned, ~~the Director~~ of Development Services of the State of Ohio, hereby certifies that a certified copy of a resolution duly adopted by the Board of Commissioners of Warren County, Ohio (the "County") on October 9, 2012, declaring the improvement of certain real property located in the County to be a public purpose and declaring a portion of such property to be exempt from real property taxation pursuant to Ohio Revised Code Section 5709.78(A) was filed in this office on 10/17, 2012.

WITNESS my hand and official seal at Columbus, Ohio this 19<sup>th</sup> day of October.

  
\_\_\_\_\_  
Director, Ohio Development Services Agency