

RESOLUTION NO. 43 -2005

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN ANNEXATION AGREEMENT WITH RICHFIELD TOWNSHIP CONCERNING THE ANNEXATION OF APPROXIMATELY 2.153 ACRES OF LAND

WHEREAS, BCAM Corporation has petitioned for annexation of approximately 2.153 acres of land in the Township to the Village; and

WHEREAS, the Village and the Township have agreed to enter into an agreement concerning the annexation of this property pursuant to Revised Code Section 709.191.

NOW, THEREFORE, 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 an agreement with Richfield Township pursuant to Revised Code Section 709.191 pertaining to the annexation of approximately 2.153 acres of land petitioned for by BCAM Corporation, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 7/19/05



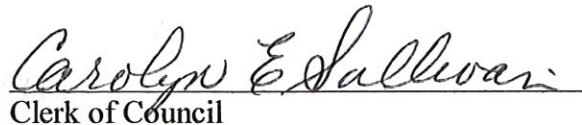
President of Council



Mayor

Dated: 7/20/05

ATTEST:



Clerk of Council

**Walter &
Haverfield** LLP
attorneys at law

20-2005 was for
services
36-2005

Charles T. Riehl
criehl@walterhav.com
216.928.2895 direct line
216.916.2334 direct fax

March 15, 2005

Carolyn Sullivan, Clerk of Council
Village of Richfield
4410 West Streetsboro Road
P. O. Box 387
Richfield, OH 44286-0387

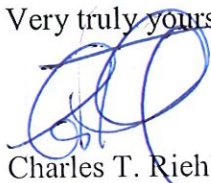
Re: Petition for Annexation of 2.1530 Acres
Situating at 5171 Brecksville Road

Dear Ms. Sullivan:

I am in receipt of the letter and Petition sent to you by John Curtis Alberti, agent for the Petitioners in the captioned matter. This letter is being sent to you pursuant to the requirements of Revised Code §709.03(B)(1). The Summit County Council has established a date of May 9, 2005 for the hearing on this matter.

Pursuant to Revised Code §709.03(D), the Council of Richfield is required to adopt a resolution indicating what services the municipal corporation will provide, and an approximate date by which it will provide them to the territory proposed for annexation, upon annexation. This resolution must be filed with the County Council at least twenty-one (21) days before the hearing. For your consideration, I am enclosing a copy of a proposed Resolution to be presented to Council for adoption. If I can answer any further questions on this matter, please do not hesitate to contact me.

Very truly yours,



Charles T. Riehl

CTR:kaw
Enclosure

AGREEMENT

THIS AGREEMENT made at Summit County, Ohio, this ____ day of May 2005, by and between the TOWNSHIP OF RICHFIELD, 4410 West Streetsboro Road, Richfield, Ohio 44286-0387 (hereinafter the "Township"); the VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, Richfield, Ohio 44286-0387 (hereinafter the "Village") and BCAM Corporation, (hereinafter "Owner").

WHEREAS, Owner has petitioned for annexation of approximately 2.153 acres of land in the Township, a map of which land is attached hereto as Exhibit A, and a legal description of which land is attached hereto as Exhibit "B" (the "Parcel"); and

WHEREAS, the Parcel is adjacent to and connects to the Village; and

WHEREAS, the Parcel can be serviced off of Route 21 located in the Village; and

WHEREAS, the Village owns and operates a water system and sanitary sewer system (the "Utilities") which Owner wishes to have made available to service the Parcel; and

WHEREAS, the Village has indicated that it will continue to make the Utilities available to the Parcel if the Parcel is annexed to the Village; and

WHEREAS, Owner, being a one hundred percent (100%) owner of the Parcel, desires to have the Parcel become a part of the Village through annexation; and

WHEREAS, the Parcel is adjacent to a separate parcel of property owned by Owner and located in the Village ("Village Parcel"), which currently has a hotel located upon it, which hotel is also partially located on the Parcel in the Township. (See, Exhibit B for site plan of the existing hotel.)

WHEREAS, the Township has indicated a policy of opposing annexations; and

WHEREAS, the Township and the Village agree that it would be in the best interest of both communities for both parcels to be administered under a single zoning law and that the

Owner's desire to consolidate both parcels and treat such as a single use would be furthered by such annexation.

WHEREAS, to settle legal claims and disputes and to mutually agree on certain tax sharing considerations as set forth in this Agreement, the parties desire to enter into this Agreement; and

WHEREAS, Revised Code §709.191 provides that the legislative authority of a municipal corporation and the Township Trustees may enter into an agreement, whereby the municipal corporation agrees to make annual payments to the Township to compensate the township for lost revenues; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the parties hereby agree as follows:

1) The prefatory paragraphs set forth in this Agreement are hereby incorporated herein by reference.

2. Consideration Given by the Village. The Village will remit to the Township all real estate tax revenue the Township would have received if the Parcel was not annexed to the Village, commencing with the receipt of tax revenue after the Parcel is annexed to the Village, including any increase in the real estate tax revenue from improvements to such Parcel and buildings thereon. For purposes of calculating the Tax Revenue due to the Township, the Village and the Township agree that the Township will receive the Township's share of the property tax revenue by applying the Township's tax rates for real property taxes existing as of the date of assessment for the Township's current milage only based upon fifty percent (50%) of the Real Property Assessed Tax value of both the Parcel and the Village Parcel, which parcels may be consolidated and if so, fifty percent (50%) of said value of such consolidated parcels. Said consideration due under this Section shall be made sixty (60) days from the date the Village receives the revenue from the County of Summit. In the event the Village fails to remit said

revenue within 60 days, the payment shall include interest at ten percent (10%) per annum, accrued from the date the payment was due.

- A. The real estate tax revenue remitted to the Township by the Village shall include any tax abatement which may, in the future, be granted by the Village to any owner of the Parcel. That is, tax revenue received under this Agreement by the Township should not be affected by any tax abatement and the Township shall receive revenue as if there were no tax abatement, TIF or other tax incentive. The real estate property tax revenue remitted to the Township shall not include any monies received by the Village for assessments, if any, for the installation of any public improvements.
- B. The remission of real estate tax revenues under this Section shall be made by the Village to the Township in perpetuity, commencing with the first receipt of tax revenue after the Parcel is annexed to the Village.

3. Annexation. The Owner has filed an annexation petition with the Summit County Council to annex the Parcel from the Township to the Village. The Village shall support and accept the annexation. The Township agrees not to oppose the annexation, and covenants not to sue and not to challenge the annexation in court, should the annexation be granted by the Summit County Council.

Should the annexation not be granted by the Summit County Council or should a third party challenge the annexation in court, and the final unappealable order of a court overturns the annexation, this Agreement shall be null and void.

4. Water and Sewer. The Village agrees to continue to make available to Owner, Village utilities on the same terms and conditions as are available to all other property owners in the Village.

5. Consideration by the Township. Each Township and Village, on behalf of itself, its agents, servants, members, trustees, officials, employees, representatives, assigns and successors, as the case may be, hereby fully release and discharge the other and its agents, servants, members, employees, trustees, officials, representatives, assigns and successors, as the case may be, from any and all rights, claims and actions, known or unknown, which the other and its above-mentioned successors have or might have stemming from any differences or claims arising from the above-mentioned annexation.

6. Effect of the Agreement. This Agreement is a complete resolution of the matters of the annexation of the Parcel between the parties and shall not be treated as any admission by either party for any purpose.

7. Length of Contract and Termination. This Agreement will continue to run and be binding on the parties in perpetuity. This Agreement may not be terminated for any reason without the written consent of both the Village and the Township.

8. Modification. This Agreement may not be modified in any manner, except by the written consent of the Village and the Township.

9. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties, its agents, servants, members, trustees, officials, employees, representatives, assigns and successors when permitted by this Agreement.

10. Legal Construction. In the event any or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

11. Prior Agreements Superseded. This Agreement constitutes the entire Agreement of the parties and supersedes any prior understanding or previous oral or written agreement between the parties respecting the subject matter of this Agreement.

12. Governing Law. This Agreement, and all rights, duties and obligations of the village and the Township, shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties created hereunder are performable in Summit County, Ohio.

13. Remedies. If any action at law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursement in addition to any other relief to which that party may be entitled.

Executed, in duplicate, at Summit County, Ohio, on the day and year first above written.

Witness:

VILLAGE OF RICHFIELD

By: _____
Its Mayor

And: _____
Its Clerk

TOWNSHIP OF RICHFIELD

By: _____
Its Trustee

By: _____
Its Trustee

By: _____
Its Trustee

OWNER

By: _____
Its _____

and

By: _____
Its _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Law Director, Village of Richfield

Attorney for Richfield Township

«CL2:248216_3»