

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH DEER CREEK RESERVE DEVELOPMENT CO., LTD., DEER CREEK PARTNERS, INC. AND MICHAEL TALLAL FOR ANNEXATION AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into an Agreement for Annexation with Deer Creek Reserve Development Co., Ltd., Deer Creek Partners, Inc. and Michael Tallal, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference, and a Memorandum of Understanding dated October 15, 1999, a copy of which is attached hereto as Exhibit "B" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to allow the property owner to file for annexation by November 1, 1999; 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: October 19, 1999

Michael Peterson  
President of Council

Ronald W. Jensen  
Mayor

Dated: 10/25/99

ATTEST:  
Carole Gibson  
Clerk of Council

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, made at Summit County, Ohio, this 1<sup>st</sup> day of November, 1999, between the VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, P. O. Box 387, Richfield, Ohio 44286-0387 ("Village") and DEER CREEK RESERVE DEVELOPMENT CO., LTD., 1340 Corporate Drive, North Building, Suite 500, Hudson, Ohio 44236, and DEER CREEK PARTNERS, INC., 17 West Streetsboro Road, Hudson, Ohio 44236 (hereinafter jointly referred to as "Developer").

WHEREAS, Developer and the Village have entered into an Agreement for Annexation; and

WHEREAS, Paragraph 9 of the Agreement for Annexation provides that prior to acceptance of the sewers in Phase I and Phase II, all sewers shall be inspected by the Village Engineer and Property Owner, and Property Owner, if necessary, shall bring the sewers up to the standards of Summit County which originally approved the sewers; and

WHEREAS, the Village and the Developer, as a further inducement to enter into the Agreement for Annexation, wished to set forth this Memorandum of Understanding concerning the duties of each party pertaining to inspection and construction of improvements.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The Village of Richfield, through its Acting Service Director Larry Wilson, will conduct inspections of the sewer, roadway and other improvements in Phase I and Phase II of the Deer Creek Development.

2. The Village shall prepare a punch list that identifies the deficiencies in the improvements in Phase I, and the Developer shall bring the improvements in Phase I up to the original plans approved by Summit County. Further, Developer agrees prior to tying in the sewer

for Phases I and II, it shall bring the sewer up to the original plans approved by Summit County, and correct any deficiencies identified by the Village.

3. The Developer will, at its cost, extend the maintenance bond for all improvements in Phase II of the development including, but not limited to, sanitary sewers and storm sewers, roads, ditches and culverts from one year to 18 months from the original date, and upon annexation shall either transfer bonds to the Village, or if the transfer is not possible, post equivalent bonds with the Village for that time.

4. As of the date of the signing of the Agreement for Annexation, test tees will be installed by the builder at the time of the lateral extension to the house to be built on any existing undeveloped lots in Phases I and II.

5. The Developer will require all builders to install or repair culverts on sublots to meet Village standards.

6. The Developer will, as of the date of the signing of the Agreement for Annexation, allow the Village to participate in inspection of all improvements in Phases I and II.

7. The Developer will cooperate with the Village and Summit County in transferring responsibility for the inspection of improvements and maintenance responsibilities from the County to the Village in anticipation of annexation.

8. Developer shall restore sludge pond areas to standards acceptable to the Village Engineer and the Ohio Environmental Protection Agency.


IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date and place first above written.

VILLAGE OF RICHFIELD

By:   
Its Mayor

And:   
Its Finance Director

DEER CREEK RESERVE DEVELOPMENT  
CO., LTD.

By:   
Its MEMBER

DEER CREEK PARTNERS, INC.

By:   
Its Pres

APPROVED AS TO FORM.

  
Charles T. Riehl, Law Director  
Village of Richfield

AGREEMENT FOR ANNEXATION

THIS AGREEMENT FOR ANNEXATION, made at Summit County, Ohio, this 15<sup>th</sup> day of November, 1999, by and between the VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, P. O. Box 387, Richfield, Ohio 44286-0387 ("Richfield") and DEER CREEK RESERVE DEVELOPMENT CO., LTD., 1340 Corporate Drive, North Building, Suite 500, Hudson, Ohio 44236, and DEER CREEK PARTNERS, INC., 17 West Streetsboro Road, Hudson, Ohio 44236, and MICHAEL TALLAL, 3939 Brush Road, Richfield, Ohio 44286 (hereinafter jointly referred to as "the Property Owner").

WHEREAS, the Property Owner owns property in Richfield Township comprising approximately 265 acres ("the Property"); and

WHEREAS, the Property Owner has had the Property surveyed; and

WHEREAS, a map showing the outline of the Property and its Permanent Parcels are attached hereto as Exhibit "A" and a legal description of which is attached hereto as Exhibit "B"; and

WHEREAS, Phase I of the Property has been platted as shown in Exhibit "C" attached hereto; and

WHEREAS, Phase II of the Property has been platted as shown in Exhibit "D" attached hereto; and

WHEREAS, the Property Owner has plans for the development of the property for Phase III; and

WHEREAS, the Property Owner has commenced development of Phase I and has sold lots in Phase I for development; and

WHEREAS, the Property Owner has developed as residential land Phase II and has proposed for development as residential land Phase III; and

WHEREAS, the Property is further contiguous to Richfield Village, Summit County, Ohio; and

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

WHEREAS, Richfield has a policy of not extending Utilities outside of its boundaries; and

WHEREAS, the Property Owner is desirous of obtaining immediate access to water and sewer utilities from Richfield Village; and

WHEREAS, Richfield Village is willing to make available to the Property Owner water and sewer utilities provided the Property Owner makes application for annexation of the Property under the conditions set forth in this Agreement; and

WHEREAS, the Property Owner is further willing to diligently pursue annexation of the Property to Richfield Village in order to obtain access to water and sewer utilities as well as other Village services; and

WHEREAS, the Property Owner has further represented to the Village that it will, in good faith, use all best efforts to diligently pursue annexation of the Property to the Village of Richfield including, if necessary, prosecution or defense of the annexation matter through final decision in the Courts; and

WHEREAS, upon annexation, the currently developed Phase I of the Property may continue to be developed as platted and Phase II may be developed as platted as shown on Exhibit "D"; and

WHEREAS, upon annexation, the Property Owner is willing to have the remainder of the Property rezoned into the current R-1 Residential District or other agreed-upon open space development plan for the property; and

WHEREAS, the Village of Richfield commits that it will not in the interim amend the current R-1 Residential District zoning to make it less favorable to the Property Owner.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agree as follows:

1. That the prefatory paragraphs set forth in this agreement are incorporated herein by reference.
2. The Property Owner shall, on or before November 1, 1999, apply to the Summit County Council for annexation of the Property pursuant to the provisions of the Ohio Revised Code. Recognizing that the Property Owner has sold 36 lots in Phases I and II and still retains ownership of 41 lots and 19 additional parcels, the Property Owner understands and agrees that prior to allowing extension of Utilities, the Property Owner shall furnish proof to the Village that a majority of the land owners in the Property will have given their irrevocable approval to the Property Owner to file the annexation petition and pursue annexation under the terms and conditions set forth herein. Property Owner shall, in good faith, take all necessary actions to diligently pursue the annexation of the Property through the process of the Summit County Council and, if necessary, to prosecute or defend an action until final decision in the courts thereafter with the goal of obtaining a successful annexation.
3. Richfield shall approve annexation of the Property pursuant to the provisions of the Ohio Revised Code and shall allow immediate connection of said Property to Richfield's water and

sewer systems provided that the Property Owner's applies for and diligently and successfully pursues its request for annexation before the Summit County Council and thereafter, if necessary.

4. Property Owner acknowledges Richfield would not allow extension of the water and sewer lines without the annexation.

5. The Property Owner may continue to develop Phase I and Phase II of the Property as platted. Upon completion of annexation, Richfield shall rezone the remainder of the Property into the R-1 Residential District or an agreed-upon open space residential plan as approved by the Planning Commission under open space guidelines. If an open space residential plan is selected, the Property Owner further agrees that for preservation of open space, it shall deed open space easements to the Revere Land Conservancy or similar organization. Property Owner shall not develop the Property, except for Phase I and Phase II, in a manner inconsistent with the rezoning to either the R-1 Residential District or the agreed-upon open space residential plan.

6. Prior to development of Phase III, the Property Owner will, at its expense, acquire a second access to the Property.

7. The Property Owner may extend all water and sewer lines to service its Property at its expense. Property Owner will agree to be bound by all rules and regulations of Richfield for construction and operation of the water and sewer lines. Prior to extension, Property Owner will have all plans for extension reviewed and approved by Richfield. Upon completion of annexation and approval of construction, Richfield shall accept ownership and maintenance of the sewer lines, and shall cause ownership and maintenance of the water lines to be accepted by the City of Cleveland, Department of Public Utilities.

8. Should, for any reason, the annexation, after a final decision of a court, which shall be unappealable, be unsuccessful, the Property Owner shall reimburse Richfield for the capacity of



sewer use it obtained in Phase I and Phase II at the rate of \$1,000 per lot. Further, the Property Owner agrees not to extend sewers to Phase III if annexation does not occur. Recognizing that the Village policy is not to allow extension of Utilities outside the boundaries of the Village, should the annexation be unsuccessful, the Property Owner agrees that the Village will not allow extension of the Utilities beyond the boundaries of the Property and the Village shall have the right to establish a user fee for those users of the Utilities in the Property at a rate higher than that paid by Village residents equal to that charged to other non-Village residents.

9. Prior to acceptance of the sewers in Phase I and Phase II, the sewers shall be inspected by the Village Engineer and the Property Owner, if necessary, shall bring the sewers up to the standards of Summit County, which originally approved the sewers.

10. This Agreement shall be binding upon the Property Owner and their respective heirs, successors and assigns. The Agreement may not be assigned by the Property Owner without the written consent of Richfield, which consent shall not be unreasonably withheld, provided that such consent shall first be authorized by a Resolution passed by the Council of Richfield.

11. This Agreement shall be governed by and construed in accordance with the laws of Ohio.

12. Any notices required under this Agreement shall be submitted as follows:

If to the Village: Village of Richfield  
4410 West Streetsboro Road  
P. O. Box 387  
Richfield, Ohio 44286-0387  
Attn: Mayor

with a copy to: Charles T. Riehl, Esq.  
Law Director  
Walter & Haverfield P.L.L.  
1300 Terminal Tower  
Cleveland, Ohio 44113

If to Deer Creek Reserve: Deer Creek Reserve Development Co., Ltd.  
1340 Corporate Drive  
North Building, Suite 500  
Hudson, Ohio 44236  
Attn: Darrel L. Seibert, II

If to Deer Creek Partners: Deer Creek Partners, Inc.  
17 West Streetsboro Road  
Hudson, Ohio 44236  
Attn: Perry Bourn

If to Michael Tallal: Mr. Michael Tallal  
3939 Brush Road  
Richfield, Ohio 44286

13. This Agreement shall constitute the entire agreement between the Property Owner and Richfield. This Agreement shall not become effective until it is specifically approved by a Resolution adopted by the Council of the Village. The Agreement may not be amended or supplemented unless by agreement of all parties in writing which amendment or supplementation must be approved by a Resolution of the Council of the Village.

IN WITNESS WHEREOF, the parties sign this Agreement as of the date and place first above written.

VILLAGE OF RICHFIELD

By:   
Its Mayor

And:   
Its Finance Director

DEER CREEK RESERVE DEVELOPMENT  
CO., LTD.

By:   
Its MEMBER

DEER CREEK PARTNERS, INC.

By:   
Its Partner

  
Michael Tallal

APPROVED AS TO FORM.

  
Charles T. Riehl, Law Director  
Village of Richfield