

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2017-48

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO SIGN
A PRE-ANNEXATION AGREEMENT WITH PETER CARTRIDGE FACTORY, LLC,
AND DECLARING AN EMERGENCY**

WHEREAS, Peters Cartridge Factory, LLC is the current owner of two (2) parcels containing 12.993 acres in Hamilton Township, Warren County, Ohio, commonly known as the Peters Cartridge Factory (Sidwell #'s 16-12-453-004 and 16-12-453-005); and

WHEREAS, Peters Cartridge, LLC is proposing to redevelop the property into a mixed-use complex containing 130 loft-style apartments and 14,200 square feet of commercial space; and

WHEREAS, Peter Cartridge, LLC is requesting to the Village the creation of a post-1994 Community Reinvestment Area (CRA) for said property upon annexation to the Village; and,

WHEREAS, immediate action is required to expedite filing of annexation documents with the Warren County Board of Commissioners, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

Section 1. The Village Council does hereby authorize the Mayor and Fiscal Officer to execute the attached Agreement, as approved as to form by the Village Solicitor, attached hereto and incorporated by reference.

Section 2. That the Council is acting in its administrative capacity in passing this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 4. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

Section 5. That it is found and determined that all formal actions of the Council concerning and relating to passing this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 21st day of September, 2017.

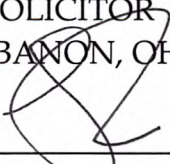
Attest: Nicole Armstrong
Nicole Armstrong, Fiscal Officer/Clerk

James D. Smith
James D. Smith, Mayor

Rules Suspended: <u>9/21/2017</u> (if applicable)	Effective Date – / /2017
Vote - <u>5</u> Yeas ___ Nays	
First Reading – / /2017	Effective Date – / /2017
Second Reading – / /2017	
Third Reading – / /2017	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 9/21/2017

AMENDED AND RESTATED ANNEXATION AGREEMENT

This Amended and Restated Pre-Annexation Agreement (this “Agreement”) is entered into this 14 day of August, 2017, by and between the Village of South Lebanon, Ohio, an Ohio municipality (“South Lebanon”) and Peters Cartridge Factory, LLC, an Ohio limited liability company (“Peters”) to amend a certain agreement between South Lebanon and Peters concerning the annexation of property to South Lebanon and certain related matters, dated September 30, 2016 (the “Pre-Annexation Agreement”).

WHEREAS, pursuant to the Pre-Annexation Agreement, Peters has agreed to petition South Lebanon for the annexation of certain real estate located in Warren County, Ohio as legally described in Exhibit A attached hereto and incorporated herein by reference (the “Peters Property”); and

WHEREAS, Kenneth E. Schon is one of the principals of Peters who resides at 860 Grandin Road, Maineville, OH 45039 comprised of 3.714 acres and being parcel # MS-1547 1611230009 of the Warren County Auditor’s Records (the “Schon Property”); and

WHEREAS, Peters is exploring the development of the Peters Property, including the renovation of 4 existing buildings thereon, into a mixed-use complex that is currently anticipated to include approximately 130 loft style apartment dwellings and approximately 14,200 square feet of commercial space which will include restaurants and a bar to be located in one or more of the buildings (collectively, the “Development”); and

WHEREAS, South Lebanon and Peters had previously agreed in the Annexation Agreement that South Lebanon would adopt an ordinance creating a “project TIF”, under Section 5709.41 of the Ohio Revised Code, for the purpose of exempting the incremental increase in taxes on the Peters Property (the “TIF”); and

WHEREAS, Peters has determined that implementing the TIF is not feasible and has requested that South Lebanon create a post-1994 Community Reinvestment Area over a portion of South Lebanon including the Peters Property and extend a 15-year real property tax exemption in the amount of one hundred percent (100%) of the value of new structures or remodeling classified as to use as residential, and a 15-year real property tax exemption in the amount of fifty percent (50%) of the assessed valuation of new structures or remodeling classified as to use as commercial, within the area included in the Community Reinvestment Area in the manner described in this Agreement; and

WHEREAS, for that purpose and to add an additional provision with respect to the Schon Property, Peters and South Lebanon now wish to amend and restate the Pre-Annexation Agreement in its entirety;

NOW THEREFORE, in consideration of the covenants and agreements herein contained to be performed by the parties hereto, South Lebanon and Peters agree as follows:

1. Annexation.

(A) Peters shall petition for annexation the Peters Property to South Lebanon at such time as South Lebanon may request annexation the Peters Property. Peters shall, within thirty (30) days following receipt of a written request of South Lebanon for annexation of the Peters Property to South Lebanon, cause a petition to be filed with the Warren County Commissioners requesting annexation to South Lebanon of the Peters Property requested by South Lebanon, and will support such petition in any and all proceedings before the Warren County Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation to South Lebanon of the Peters Property requested by South Lebanon.

(B) Peters may petition for annexation the Peters Property to South Lebanon at any time after the effective date of this Agreement and South Lebanon will support the petition in any and all proceedings before the Warren County Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all or part of the Peters Property to South Lebanon.

(C) Upon annexation and development of the Peters Property, Peters shall diligently pursue the completion of the Development on the Peters Property, which will include remediation of environmental conditions as required under applicable law and the issuance by the Director of the Ohio Environmental Protection Agency of a covenant not to sue under its Voluntary Action Program (“VAP”). As between Peters and South Lebanon, Peters shall be responsible for all costs of environmental remediation required under the VAP and any and all tap-in fees, assessments, and connection fees as may then be required for the Development.

2. Commitments by South Lebanon.

(a) The Peters Property (now in Hamilton Township) is currently zoned R-3 Planned Unit Development (PUD) with mixed use residential and commercial. Per Section 15.7.13(2) of the South Lebanon Zoning Code, South Lebanon agrees that, upon annexation to South Lebanon and upon request of Peters, the recommendation of South Lebanon for zoning of the Peters Property shall be for the district most closely related to the existing zoning of the Peters Property.

(b) As promptly as is reasonably possible after the annexation of the Peters Property to South Lebanon, and subject to the approval of the Village Council of South Lebanon, South Lebanon shall adopt a resolution creating a Community Reinvestment Area (the “CRA”) over a portion of South Lebanon including the Peters Property, which CRA shall be governed by the provisions of the Ohio Revised Code applicable to Community Reinvestment Areas created after July 1, 1994 (the “CRA Resolution”).

In the CRA Resolution, South Lebanon shall authorize:

(i) a 15-year real property tax exemption in the amount of one hundred percent (100%) of the value of new structures or remodeling classified as to use as residential under Section 3735.66 of the Ohio Revised Code (“O.R.C.”) within the CRA (collectively, the “Residential Improvements”), commencing with respect to each such improvement in the first year following the receipt of a final or temporary certificate of occupancy with respect to such improvement, and shall specify that new structures or remodeling composed of multiple dwelling units will be classified as to use as residential (rather than commercial); and

(ii) the negotiation and execution of a CRA agreement (the “CRA Agreement”), pursuant to O.R.C. Section 3735.671, including a 15-year real property tax exemption in the amount of fifty percent (50%) of the value of new structures or remodeling classified as to use as commercial under O.R.C. Section 3735.66 (collectively, the “Commercial Improvements”), commencing with respect to each such improvement in the first year following the receipt of a final or temporary certificate of occupancy with respect to such improvement. Peters explicitly agrees that construction with respect to the Commercial Improvements may not commence prior to the execution of the CRA Agreement.

Following the publication of the CRA Resolution in accordance with O.R.C. Section 3735.66, South Lebanon shall file a petition with the State of Ohio Department of Development for the approval of the CRA, together with any other documents required to be filed with the Ohio Department of Development. Following the approval of the CRA by the Ohio Department of Development, Peters may file an application for exemption of the Residential Improvements upon the substantial completion of the Residential Improvements, and an application for exemption of the Commercial Improvements upon the substantial completion of the Commercial Improvements (as may be further specified in the CRA Agreement), with the designated housing officer for the CRA and the housing officer shall (a) notify the Kings Local School District of such application in accordance with O.R.C. Section 5709.83, and (b) not less than fourteen (14) days thereafter, certify and forward the application to the County Auditor as provided for in O.R.C. Section 3735.67. Peters Property anticipates that the annual payroll of new employees (as defined in O.R.C. Section 5709.082) in the Commercial Improvements during the 15-year real property tax exemption to be provided under the CRA will not exceed one million dollars in any tax year. Subject to any necessary approval by its Village Council, South Lebanon agrees to execute all documents and enter into any agreements, including the CRA Agreement, that may be reasonably necessary to establish and maintain the CRA exemption with respect to the Peters Property.

3. Developer’s Representations and Warranties. Peters represents and warrants to South Lebanon to the best of its knowledge as follows:

(a) Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by Peters of any contract, agreement, understanding or instrument to which Peters is a party or by which Peters is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

(b) There is no pending litigation, investigation or claim which affects or which might affect Peters' performance of this Agreement and to the best of Peters' knowledge, there is no threatened litigation, investigation or claim that affects or that might affect Peters' performance of this Agreement; and

(c) The representations and agreements of Peters made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by Peters are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of South Lebanon (except as expressly stated in this Agreement), South Lebanon is placing complete reliance thereon and that such representations are to be treated as material South Lebanon entering into this Agreement and Peters further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

4. South Lebanon Expenses. To induce South Lebanon to establish the CRA pursuant to Section 2 hereof, and to enter into the CRA Agreement, Peters agrees to reimburse South Lebanon from time to time for all out-of-pocket expenses incurred by South Lebanon in connection with the transactions contemplated by this Agreement, including the reasonable fees and out of pocket expenses of its special counsel, Thompson Hine, LLP. Peters also agrees to reimburse South Lebanon for (i) the reasonable fees and expenses of its Village Solicitor in reviewing this Agreement and the applicable CRA proceedings, (ii) the fees and out of pocket expenses of South Lebanon's engineer or any engineering consultant engaged by South Lebanon with respect to the Peters Property that are not otherwise paid by Peters under the applicable ordinances, codes and regulations of South Lebanon, and (iii) the costs of the housing survey required by O.R.C. Section 3735.66 for purposes of establishing the CRA. Such amounts shall be paid for by Peters, upon demand by South Lebanon, and South Lebanon shall have no responsibility for such costs.

5. Remedies. Subject to Section 7(j) hereof, in the event of any default in or breach of this Agreement by either party hereto, or any successor to such party, such party (or successor) shall (a) in the case of a default by Peters (or its successor) under Section 4 hereof, cure such default by paying any delinquent amounts to South Lebanon within five (5) business days after receipt

of a notice of default from the Village, or (b) in the case of any other default by Peters or South Lebanon, proceed to cure or remedy such default or breach within fifteen (15) days of receipt of written notice from the other. In case any such delinquent amounts are not paid by or on behalf of Peters (or its successor) prior to the expiration of the applicable cure period, or, with respect to any other default action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity.

6. Special Provision Regarding Schon Property. South Lebanon agrees that it will not annex the Schon Property without the prior written consent of the owner of such property.

7. Miscellaneous.

(a) Conflict of Interest: Representatives of South Lebanon Not Individually Liable. No official or employee of South Lebanon shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any company, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of South Lebanon shall be personally liable to Peters, or any successor in interest, in the event of any default or breach by South Lebanon or for any amount or amounts which may become due to Peters or any successor to Peters or on any obligations under the terms and conditions of this Agreement.

(b) Severability. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect.

(c) Waiver. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(d) Authority. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

(e) Binding on Successors and Assigns; Assignment. This Agreement shall be binding on the parties hereto and their respective successors and assigns. Any assignment of this Agreement by Peters shall be subject to the prior written consent of South Lebanon, which

consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Peters may assign this Agreement to an affiliate entity to facilitate the Development's receipt of historic tax credits and other project financing for the Development without written consent from South Lebanon but with prior written notice to South Lebanon.

(f) Merger and Amendment. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Peters Property, and contains all of the covenants, agreements, and other terms and conditions between the parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all parties hereto.

(g) Counterparts; Captions. This Agreement may be executed in counterpart, and in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for convenience only and shall not affect the construction or interpretation of this Agreement.

(h) Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

(i) Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against either South Lebanon or Peters. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way defining, limiting, or amplifying the provisions hereof. South Lebanon and Peters agree that in the event any term, covenant, or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of such term, covenant, or condition shall in no way affect any other term, covenant, or condition herein contained.

(j) Force Majeure. Neither party shall be considered in breach of its obligations under this Agreement due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, orders of courts, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of contractors, suppliers or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such unforeseeable delay, the time for performance of the obligations shall be extended for the period of the unforeseeable delay. The party seeking the benefit of the provisions of this subsection shall, within ten (10) calendar days after the beginning of any such unforeseeable delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the unforeseeable delay.

(k) Indemnification. Peters will indemnify and hold harmless South Lebanon, its officials, agents, attorneys and employees (collectively, the “Indemnified Parties” and when any one is intended, the “Indemnified Party”), against any losses, claims, damages or liabilities, joint or several, or actions in respect thereof, to which any Indemnified Party may become subject as a result of this Agreement and the transactions contemplated hereby. The foregoing indemnity shall include reimbursement for any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such action or claim. This indemnity does not cover any losses, claims, damages or liabilities incurred by an Indemnified Party arising out of the gross negligence or willful misconduct of such Indemnified Party.

[Balance of Page Intentionally Omitted]

IN WITNESS WHEREOF, South Lebanon and Peters have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date hereinbefore written.

VILLAGE OF SOUTH LEBANON, OHIO

By: James D. Smith
Mayor

By: Mark Gunderson
Fiscal Officer

PETERS CARTRIDGE FACTORY, LLC

By: [Signature]

Its: MEMBER

APPROVED AS TO FORM:

[Signature]

Village Solicitor
Village of South Lebanon, Ohio.

Exhibits:

Exhibit A – Peters Property

1134811

EXHIBIT A
PETERS PROPERTY

EXHIBIT A

PARCEL ONE:

16-12-453-04

W.C. GEOR
S. GR
Map. Dept.

Situated in Military Survey No. 1548, Hamilton Township, Warren County, Ohio and being more particularly described as follows:

Beginning at a point in the dividing line between Military Survey Nos. 1547 and 1548, N. 43 degrees, 52' 30" W., 2,145.54 feet from the intersection of said survey line with the centerline of Grandin Road;

Thence S. 67 degrees 35' 00" W., 267.00 feet to a PK nail in Grandin Road;

Thence N. 22 degrees 46' 00" W., 160.00 feet to a PK nail;

Thence S. 43 degrees 35' 00" W., 181.48 feet to a one-half inch diameter iron pin;

Thence S. 54 degrees 27' 40" W., 36.17 feet to a one-half inch diameter iron pin;

Thence S. 65 degrees 21' 50" W., 229.49 feet to a one-half inch diameter iron pin;

Thence N. 72 degrees 55' 00" W., 225.00 feet to a one-half inch diameter iron pin;

Thence S. 62 degrees 45' 00" W., 327.12 feet to a one-half inch diameter iron pin;

Thence S. 76 degrees 18' 30" W., 211.60 feet to a one-half inch diameter iron pin;

Thence S. 88 degrees 28' 30" W., 110.49 feet to a one-half inch diameter iron pin;

Thence N. 10 degrees 38' 20" W., 53.00 feet to a one-half inch diameter iron pin;

Thence on a curve to the left, with a radius of 1,375.54 feet, 152.93 feet to a one-half inch diameter iron pin (Chord of said curve bears N. 76 degrees 54' 12" E., 152.85 feet);

Thence N. 73 degrees 43' 06" E., 100.00 feet to a one-half inch diameter iron pin;

Thence N. 72 degrees 05' 00" E., 100.00 feet to a one-half inch diameter iron pin;

Thence N. 71 degrees 47' 49" E., 200.00 feet to a one-half inch diameter iron pin;

Thence N. 69 degrees 15' 18" E., 106.78 feet to a one-half inch diameter iron pin;

Thence N. 70 degrees 43' 12" E., 242.12 feet to a one-half diameter iron pin;

Thence N. 70 degrees 37' 00" E., 93.80 feet to a one-half inch diameter iron pin;

Thence N. 69 degrees 19' 00" E., 101.68 feet to a one-half inch diameter iron pin;

Thence N. 66 degrees 48' 00" E., 102.20 feet to a one-half inch diameter iron pin;

Thence N. 64 degrees 22' 00" E., 35.70 feet to a railroad spike in Grandin Road;

Thence S. 22 degrees 46' 00" E., 59.06 feet to the place of beginning.

Thence with the southerly line of a 0.258 acre tract of land conveyed to Taft Broadcasting Company and recorded in Deed Book 415, Page 533, N. 67 degrees 35' 00" E., a distance of 199.30 feet to a point;

Thence S. 43 degrees 52' 30" E., a distance of 187.99 feet to a point of beginning;

Containing 3.650 acres of land subject to all legal highways, easements and restrictions of record.

. Subject to legal highways.

Above description based on a survey by Leo A. Brausch, Registered Surveyor No. 4046 in Ohio, on November 15, 1984.

Prior Instrument Reference for Parcel Two: Vol. 483 Page 693 of the Deed Records of Warren County, Ohio.

PARCEL TWO:

Parcel I (Sidwell No. 16-12-453-0050)



Situated in the Township of Hamilton, County of Warren and State of Ohio and being part of Military Survey No. 1548, and being more particularly described as follows:

Beginning at a point in the dividing line between Military Survey Nos. 1547 and 1548, N 43° 52' 30" W., 1,946.03 feet from the intersection of said survey line with the centerline of Grandin Road;

Thence S. 67° 14' 00" W., 338.84 feet to a railroad spike in the centerline of Grandin Road, and the place of beginning for this description;

Thence with the centerline of Grandin Road, S. 22° 46' 00" E., 122.27 feet to a railroad spike;

Thence continuing with the centerline of Grandin Road, S. 38° 35' 14" E., 71.38 feet to a pk nail;

Thence S. 41° 58' 04" W., 287.22 feet to an iron pin;

Thence N. 80° 06' 00" W., 616.52 feet to an iron pin;

Thence N. 02° 40' 10" W., 125.14 feet to an iron pin;

Thence N. 83° 35' 00" W., 91.82 feet to an iron pin;

Thence N. 87° 40' 30" W., 84.34 feet to an iron pin;

Thence N. 67° 59' 15" W., 86.47 feet to an iron pin;

Thence N. 20° 12' 00" W., 100 feet to an iron pin in the southerly line of the property conveyed to Little Miami, Inc. in Deed Book 483, Page 693, Warren County, Ohio Recorder's Office;

Thence with the said southerly line of the Little Miami, Inc. property the following five courses and distances:

- 1) N. 62° 45' 00" E., 327.12 feet to an iron pin;
- 2) S. 72° 55' 00" E., 225.00 feet to an iron pin;
- 3) N. 65° 21' 50" E., 229.49 feet to an iron pin;
- 4) N. 54° 27' 40" E., 36.17 feet to an iron pin;
- 5) N. 43° 35' E., 181.48 feet to a pk nail in the centerline of said Grandin Road;

Thence with the centerline of Grandin Road, S 22° 46' E., 347.76 feet to the place of beginning.

Containing 9.343 acres.

Subject to all legal highways

Subject to easements of record

Brausch/Schildhauer, Inc.

Leo N. Brausch, P.S.

November 16, 1987

Parcel II (Sidwell 16-12-400-012)

Situated in the Township of Hamilton, County of Warren and State of Ohio and being a part of Military Survey No. 1548 and being more particularly described as follows:

Beginning at a point in the dividing line between Military Survey Nos. 1547 and 1548, N. 43° 52' 30" W., 1,946.03 feet from the intersection of said survey line with the centerline of Grandin Road, to the point of beginning;

Thence from said beginning point, S 67° 14' 00" W., 338.84 feet to a railroad spike in the center of Grandin Road;

Thence with this centerline of Grandin Road, N. 22° 46' 00" W., 187.76 feet to a pk nail;

Thence N. 67° 35' 00" E., 267.00 feet to an iron pin in the east line of said Military Survey No. 1548;

Thence with said line, S. 43° 52' 30" E., 199.51 feet to the place of beginning.

Containing 1.298 acres

Subject to all legal highways

Subject to easements of record

Brausch/Schildhauer, Inc.

Leo N. Brausch, P.S.

November 16, 1987