
The Space above this line is for Recorder's Use Only

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2006, by and between ESTATES AT PRAIRIE CROSSING DEVELOPMENT, L.L.C., an Illinois limited liability company ("Developer" or "Owner") and the CITY OF O'FALLON (the "City") a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois by and through its Mayor and City Council (collectively, "Corporate Authorities"). The Developer and City are sometimes referred to herein collectively as "Parties."

RECITALS

A. Owner is the owner of record of a certain parcel of real property situated in St. Clair County, Illinois, which is adjacent to the City and is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Development Parcel" or "Subdivision").

B. The Development Parcel consists of approximately 15.844 acres +/- and adjoins, abuts, and is contiguous to the corporate limits of the City and is proposed for a development of a residential subdivision known as ILLINI TRAILS 1ST ADDITION.

C. The Development Parcel has not been annexed to any municipality, is currently situated within unincorporated St. Clair County, Illinois.

D. The Development Parcel constitutes of territory that is contiguous to and may be annexed to the City, as provided under Section 7-1-1, *et seq.*, of the Illinois Municipal Code, 65 ILCS 5/7-1-1, *et seq.*

E. Developer desires to have the Development Parcel annexed to the City, on the terms and conditions provided herein and to qualify for such benefits or services as such annexation may so entitle it.

F. The Corporate Authorities, after due and careful consideration, have concluded that the annexation of the Development Parcel to the City would further the orderly growth of the City, enable the City to control the development of the Development Parcel, and serve the best interests of the City.

G. Pursuant to the provisions of 65 ILCS 5/11-15.1-1, *et seq.*, a proposed Annexation Agreement, in substance and form the same as this Agreement, was submitted to the Corporate Authorities and a public hearing was held thereon pursuant to notice, all as provided by statute and the ordinances of the City.

H. Any fire protection district, library district, and other entity or person entitled to notice prior to annexation of the Development Parcel to the City has been given notice thereof by the City as required by law.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and in compliance with ordinances, codes, and regulations of the City in effect as of the date of this Agreement, or as may hereinafter be enacted, subsequently, the parties hereto hereby agree as follows:

1. **Statutory Authority.** The Parties hereto enter into this Agreement pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1, *et seq.*

2. **Annexation.**

(a) Concurrent with this Agreement, Developer has filed with the City Clerk a Petition for Annexation of the Development Parcel to the City, conditioned on the terms and provisions of this Agreement, which petition has been prepared, executed, and filed in accordance with 65 ILCS 5/7-1-8, and the ordinances and other requirements of the City. A copy of said Petition is attached hereto and made a part hereof as Exhibit "B" and shall be binding on and effective as to all successors and assigns to any portion of the Development Parcel. To the extent that the Parcel is not yet contiguous to the City, Owner agrees to execute a Petition for Annexation as may be required by the City.

(b) Developer has filed with the City Clerk a Preliminary Plat of Annexation, which contains an accurate map of the Development Parcel and all of its phases, which is attached hereto and made a part hereof as Exhibit "C" ("Preliminary Plat").

(c) Subject to the terms of this Agreement, the Corporate Authorities shall hereinafter enact an ordinance annexing the Development Parcel to the City ("Annexation Ordinance"), which ordinance shall attach the Preliminary Plat.

3. **Rezoning and Subdivision.** Upon the Effective Date of the Annexation Ordinance as set forth herein, the following shall occur:

(a) The City shall concurrent with the approval of the annexation ordinance approve a Preliminary Plat substantially in the form as attached as Exhibit C hereto, and incorporated herein, and further adopt an ordinance zoning and classifying the Development

Parcel as “SR-1B Single Family Residence Dwelling District” pursuant to the City’s zoning code.

(b) Except as may be provided herein, all changes in land use or other activity on the Development Parcel shall be subject to the applicable ordinances of the City and laws authorizing or regulating such change or activity.

4. **Variations.** The City shall approve the Final Plat of the Development Parcel if submitted consistent with all applicable City regulations, including but not limited to the Subdivision and Development Control Ordinance (“Subdivision Ordinance”), except that the following variations are hereby authorized:

(a) **Box Culvert** - Developer agrees to construct a 3’ x 5 concrete box culvert under Illini Drive and a concrete swale on the Development Parcel to alleviate a potential drainage issue. Developer shall provide a lump sum fixed cost to the City for cost of the culvert, swale and related work. The City agrees to provide a credit in an amount up to \$ 40,000 to the Developer, which shall be used to offset Annexation Fees (hereafter defined) to be paid by the Developer as the City’s consideration for the box culvert installation.

(b) **Model Home Construction.** The City Council shall grant a variance to Section 6.4 of the Subdivision Ordinance granting to the Developer the right to construct, maintain, and display to the public up to two model home units within the Development prior to installation of utilities to serve the Development Parcel, but only after approval of a final plat by the City and after issuance of building permits for the model units by the City,

5. **Developer Improvement Obligations.**

(a) All improvements, except for the sanitary sewer, and right-of-way or fee simple dedication contemplated by this Agreement and as shown on the Final Plat for each phase shall be dedicated to the City or other appropriate utility entity in the form and as reasonably required by the City Attorney.

(b) Nothing contained in this Agreement shall affect the Developer’s right to mortgage, encumber, or convey the Development Parcel as a whole or each phase separately to one or several third parties, subject to 65 ILCS 5/11–15.1-4.

6. **Development; Dedication of Improvements.** The Developer shall construct and dedicate to the City the roadways, easements, public improvements, water lines, and storm sewers as may be required consistent with law and accepted by the City in conjunction with development approvals, provided such requirements bear a rational relationship to development. To the full extent permitted by law and except as otherwise set forth herein, the Development Parcel shall be subject to the applicable laws of the City in effect prior to the annexation contemplated by this Agreement, including the zoning and subdivision laws; provided that prior to annexation, Developer shall be given prior notice and reasonable opportunity to cure any violation prior to enforcement by the City.

7. Water Supply and Electric Service.

(a) The City agrees to supply fresh, potable water to the edge of Development Parcel in quantities and pressure sufficient to serve the proposed use of the Development Parcel as shown on the Preliminary Plat. So long as City water is available, Developer and Development Parcel shall be required to use water exclusively from City. The Development Parcel shall be subject to applicable service rates and tap fees and charges of the City, out-of-town rates and fees applicable only for such time until the Development Parcel is annexed into the City. The Developer shall only be responsible to pay for the size of the water pipe to service the Development Parcel, and the difference in cost or expense to upsize and/or construct water lines to service other sites not located within the Development Parcel shall be at the sole cost and expense of the City. Any change in the use of Development Parcel requested or initiated by the Developer shall be subject to and in compliance with the provisions of the City's ordinances and regulations, whether prior to or after the effective date of the annexation. The obligations of the City hereunder shall be conditioned on continued material compliance by Developer with this Agreement.

8. Sewers, Drainage and Treatment Facilities.

(a) The Developer shall be permitted to connect to public sewer facilities subject to otherwise generally applicable conditions and usage, tap-in, extension or pro-rata or other related charges to the existing sanitary sewer owned by the City.

(b) The Developer shall use and exercise all reasonable means and facilities to install storm sewer trunk lines, sanitary sewer trunk lines ("Storm Sewers" and "Sanitary Sewers," respectively) and retention basins sufficient to serve the Development Parcel. Such facilities and basins shall be constructed in conformity with the Preliminary Plat and in compliance with applicable City ordinances and standards.

9. Roadways/Sidewalks.

(a) The Developer shall use and exercise all reasonable means and facilities to construct the roadways to be located on the Development Parcel all as shown on the Preliminary Plat. Said construction shall be completed in accordance with the City's Subdivision Ordinance and shall include installation of curbs, gutters, streetlights, sidewalks, and other public improvements required under said Subdivision Ordinance (collectively, "Public Improvements"), except as expressly varied by the City Council. Sidewalks shall be constructed at time as of building of each home.

(b) The Developer shall construct sidewalks along the south side of Kyle Road and the east side of Illini Drive as shown on the preliminary plat as each plat is developed, unless otherwise mutually agreed with the City.

10. Dedication of Improvements.

(a) The Developer shall dedicate to the City the Roadways, the Public Improvements, the Water Lines, the sanitary sewers, and the Storm Sewers by recording with the

St. Clair County, Illinois Recorder, in a form acceptable to the City Attorney, the appropriate subdivision plat, which dedicates the Public Improvements as provided herein. Nothing herein shall require the City to accept such improvements for maintenance or liability that are not in satisfaction of the City's specifications or that have not been inspected by the City and found to be in acceptable condition.

(b) All Streets shown on the preliminary plat, and subsequently shown on all final plats, shall be dedicated to the City upon their proper installation, inspection and acceptance by the City.

(c) The Developer shall grant to the City nonexclusive utility easements ("Utility Easements") for maintenance and repair of the aforesaid utilities to be constructed on the Development Parcel and dedicated to the City as shown on the Final Plat.

10. Annexation Fee. Notwithstanding any other City Ordinance to the contrary, Developer shall only be required to pay the City, a fee of TWO THOUSAND TWO HUNDRED FIFTY DOLLARS (\$2,250.00) per lot ("Annexation Fee") for units located on lots 25-68 (a total of 44 units) as payment to the City, intended in part to defray the City's costs relating to this annexation and in providing services to the Subdivision and services as may benefit the residents of the Subdivision. The Owner (and its successors in title) shall pay such Annexation Fee for each lot at the time of and as a condition of application for a building permit to build a dwelling on each lot in the Development Parcel. The payment obligation herein shall survive expiration (but not termination by the City) of the Agreement and shall be a Developer obligation that shall be deemed to run with the land. Payment of this annexation fee shall be a fundamental condition of any building permit and shall be binding as to such permits issued both prior to and after annexation and expiration of this agreement.

11. Maintenance Obligations and Special Service Area. The Developer shall record restrictive covenants as part of the Final Plat that will provide for the formation of a common interest association or homeowner's association ("Association"), which shall have maintenance responsibility for all common areas within the Final Plat and compliance with the provisions herein ("Maintenance Obligations"). The provision relative to the Association Maintenance Obligation shall be subject to City approval and shall be submitted by Developer to the City as part of the Final Plat approval. To the extent the Association fails to perform its Maintenance Obligations within the subdivision, as required in this Paragraph 13 or by the Final Plat or Subdivision and Development Control Ordinance of the City, then the City, after written notice to the Association and if such failure of the Association continues beyond thirty (30) days after receipt of the written notice from the City, the City shall have the right to enforce such Maintenance Obligations and recover its costs and attorneys' fees including by any legal means available, including but not limited to, the right to establish a Special Service Area pursuant to 35 ILCS 200/27-5, et. seq. as supplemented and amended in order to accomplish same in addition to any other such enforcement remedies as may exist. The Developer shall also include in the recorded restrictive covenants required herein, a covenant approved by the City that will run with the land, and for the benefit of the City that prohibits the owner of record and future owners of record from signing an objection petition pursuant to 35 ILCS 200/27-35 or otherwise seeking to invalidate and/or set aside the City's authority to establish a Special Assessment Area or exercise any power available under Special Service Area Tax Law, 35 ILCS 200/27-5, et. seq. The

developer shall further include notice of obligations in this paragraph in any sale contract, for any lot or parcel within the subdivision plat or land subject to this Agreement.

12. Park Fee In Lieu of Land. Developer shall pay a park fee in lieu of dedication of park land in the amount of ONE THOUSAND TWO AND 00/100 DOLLARS (\$1002.00) per lot) payable upon the issuance of a Building Permit and shall apply to all sixty-eight (68) lots in the Development Parcel all pursuant to Developer's obligation pursuant to Article V, Park Lands Dedication of the City's Subdivision Ordinance.

13. Miscellaneous.

(a) Notwithstanding any other provision contained herein to the contrary, with respect to the Parcel, this Agreement shall be effective for a term of twenty (20) years from the date hereof, provided that any continuing obligations to the City shall survive any termination or expiration to the extent consistent with 65 ILCS 5/11-15.1-1.

(b) Except for the variances expressly authorized in Section 4 in this Agreement, the Development Parcel shall be subject to all laws, codes, ordinances and regulations of the City, now existing or as may hereinafter be amended, enacted or enforced, and nothing herein shall be interpreted to limit the enforceability of such.

(c) This Agreement shall bind the heirs, successors, and assigns of the Developer, the City, the Corporate Authorities, and their successors in office. This Agreement shall inure to the benefit of the parties hereof, their successors, and assigns. This Agreement and the obligations of Developer hereunder shall be a covenant that shall run with the land, shall be a provision of any sale or other contract for transfer of interest in the Development Parcel, and may be recorded.

(d) Nothing herein shall in any way prevent the alienation, encumbrance, or sale of the Development Parcel or any portion thereof, provided that any new owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed. Developer represents that it has not and will not sell the Development Parcel or any portion thereof prior to the recording of this agreement.

(e) Within thirty (30) days after the execution hereof, the text of this Agreement (or a suitable memorandum hereof) shall be recorded at the sole cost and expense of the City in the Office of the Recorder of St. Clair County, Illinois.

(f) It is further agreed that any party to this Agreement, either in law or in equity, by suit, action, mandamus, or other proceeding may enforce or compel the performance of this Agreement, or have other such relief for the breach thereof as may be authorized by law or that by law or in equity is available to them, provided that nothing in this Agreement shall waive the City's sovereign immunity or permit or give rise to an action in damages of any kind against the City.

(g) Except for specific performance of this Agreement, all claims, loss, damage or other action against the City of any kind arising on or before the effective date of this

Agreement are hereby released by execution of this Agreement. This provision shall survive as to all parties upon the termination or expiration of this Agreement.

(h) It is understood by the Parties hereto that time is of the essence. It is further understood that upon the occurrence of a default of any of the provisions of this Agreement, which default continues for ten (10) days after a notice specifying such default is given to the defaulting party, the injured party hereto may in law or in equity, by suit, action, mandamus, or other proceeding, including specific performance, enforce or compel the performance of this Agreement by such defaulting party.

(i) The undersigned persons, whether signing individually, on behalf of a municipal corporation, or by an attorney-in-fact warrant themselves: (i) to be of lawful age, (ii) to be legally competent to execute this Agreement, (iii) to be fully authorized to execute this Agreement on behalf of themselves or the municipal corporation or other entity indicated below, and (iv) to have signed this Agreement on their own behalf or on behalf of such municipal corporation or other entity as their own free acts and deeds and/or the free acts and deeds of such municipal corporation or other entity after opportunity to consult with legal counsel.

(j) In the event any portion of this Agreement or part thereof shall be deemed invalid, such invalidity of said provision or part thereof shall not affect the validity of any other provision hereof. However, any invalidity of any material section of this Agreement shall, at the option of City, make this entire Agreement void and of no force or effect, whereupon the City may promptly de-annex the Development Parcel from the City and may terminate any City services. Notwithstanding the foregoing, the City shall not terminate water service if the invalidity results from action or challenge taken by a party other than the Developer (or its assignees or parties in privity) and the Developer (1) compensates the City for any damage or lost benefit resulting from the invalidity; (2) takes all action required by the City to retain the property within the City boundaries; and (3) pays for continued service; and (4) continues to materially comply with applicable City requirements. Additionally, the City may terminate this Agreement prior to effective date of the Annexation on written notice to the Owner and Developer, if deemed by the City appropriate in the public interest. In such event, the obligations of all parties hereto shall terminate and the Annexation Ordinance shall not be effective.

(k) Unless stated otherwise herein, any notice required or permitted under this Agreement shall be in writing and shall be deemed given when mailed by registered or certified mail, return receipt requested, to the respective parties at their addresses listed below:

If to the City:

City of O'Fallon, Illinois
225 S. Lincoln Avenue
O'Fallon, IL 62269
Attention: Planning Director

with a copy to

Mr. Dale Funk, Esq.
Attorney at Law
807 W. Highway 50, Suite #1
O'Fallon, IL 62269

If to the Developer/Owner: Mr. Mark Fulford
775 Sunset Blvd., Suite A
O=Fallon, IL 62269

with a copy to: Rand Juliano, Esq.
J U L I A N O, a professional corporation
772 Wall Street
Suite A
O'Fallon, IL 62269

(1) Nothing in this Agreement shall waive the police powers of the City or preclude the City from enforcing its laws as to the Development Parcel regarding public health, welfare or safety irrespective of any claim of estoppel or otherwise.

[Remainder of Page Intentionally Left Blank, Proceed to Signature Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY:

CITY OF O'FALLON
an Illinois municipal corporation,

ATTEST:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

DEVELOPER

ESTATES AT PRAIRIE CROSSING
DEVELOPMENT, L.L.C., an Illinois limited
liability company

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS

- A. Legal Description of Development Parcel
- B. Petition for Annexation
- C. Preliminary Plat of Annexation

EXHIBIT "A"

DEVELOPMENT PARCEL LEGAL DESCRIPTION

Illini Trails 1ST Addition Residential Subdivision — *15.844 Acres*

Job No. 06035-01

May 15, 2006

ALL THAT PART OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, ST. CLAIR COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF NINTH ADDITION TO THE MANORS AT FAIRWOOD HILLS AS RECORDED IN PLAT BOOK 99 PAGE 31 OF THE ST. CLAIR COUNTY RECORDS;

THENCE ALONG THE EAST LINE OF CENTRAL CHRISTIAN CHURCH AS DESCRIBED IN BOOK 3230 PAGE 1309 OF THE ST. CLAIR COUNTY RECORDS THE FOLLOWING COURSES AND DISTANCES:

NORTH 00 DEGREES 13 MINUTES 36 SECONDS EAST, A DISTANCE OF 235.19 FEET;

SOUTH 89 DEGREES 46 MINUTES 24 SECONDS EAST, A DISTANCE OF 3.60 FEET;

NORTH 00 DEGREES 08 MINUTES 32 SECONDS EAST, A DISTANCE OF 980.10 FEET TO THE SOUTHERLY LINE OF KYLE ROAD AS RECORDED IN PLAT BOOK 125 PAGE 6 OF THE ST. CLAIR COUNTY RECORDS;

THENCE ALONG SAID KYLE ROAD THE FOLLOWING COURSES AND DISTANCES:

NORTH 89 DEGREES 43 MINUTES 14 SECONDS EAST, A DISTANCE OF 278.96 FEET TO THE POINT OF CURVATURE;

EASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 24582.11 FEET, AN ARC DISTANCE OF 319.12 FEET, A CHORD BEARING OF SOUTH 89 DEGREES 54 MINUTES 27 SECONDS EAST AND A CHORD DISTANCE OF 319.12 FEET TO THE WEST LINE OF PRESBYTERY OF GIDDINGS-LOVEJOY, INC. AS DESCRIBED IN BOOK 3411 PAGE 1796 OF THE ST. CLAIR COUNTY RECORDS;

THENCE ALONG SAID WEST LINE OF PRESBYTERY OF GIDDINGS-LOVEJOY, INC. AS DESCRIBED IN BOOK 3411 PAGE 1796, BOOK 3242 PAGE 2212 AND BOOK 3192 PAGE 2380 ALL OF THE ST. CLAIR COUNTY RECORDS AND THE PROJECTION THEREOF, SOUTH 00 DEGREES 19 MINUTES 23 SECONDS WEST, A DISTANCE OF 1073.15 FEET;

THENCE DEPARTING SAID WEST LINE OF PRESBYTERY OF GIDDINGS-LOVEJOY, INC., SOUTH 74 DEGREES 51 MINUTES 07 SECONDS WEST, A DISTANCE OF 153.35 FEET;

THENCE NORTH 15 DEGREES 08 MINUTES 53 SECONDS WEST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 74 DEGREES 51 MINUTES 07 SECONDS WEST, A DISTANCE OF 85.00 FEET;

THENCE NORTH 15 DEGREES 08 MINUTES 53 SECONDS WEST, A DISTANCE OF 34.09 FEET;

THENCE SOUTH 74 DEGREES 51 MINUTES 07 SECONDS WEST, A DISTANCE OF 23.62 FEET;

THENCE SOUTH 36 DEGREES 26 MINUTES 07 SECONDS WEST, A DISTANCE OF 78.34 FEET;

THENCE SOUTH 74 DEGREES 51 MINUTES 07 SECONDS WEST, A DISTANCE OF 85.00 FEET;

THENCE NORTH 15 DEGREES 08 MINUTES 53 SECONDS WEST, A DISTANCE OF 8.04 FEET;

THENCE SOUTH 74 DEGREES 51 MINUTES 07 SECONDS WEST, A DISTANCE OF 110.84 FEET;

THENCE SOUTH 22 DEGREES 50 MINUTES 06 SECONDS WEST, A DISTANCE OF 77.56 FEET;

THENCE NORTH 89 DEGREES 46 MINUTES 24 SECONDS WEST, A DISTANCE OF 67.07 FEET;

THENCE NORTH 00 DEGREES 13 MINUTES 36 SECONDS EAST, A DISTANCE OF 60.59 FEET TO THE POINT OF BEGINNING.

(Legal received via e-mail from Hoelscher Engineering, P.C. May 22, 2006)

EXHIBIT "B"

PETITION FOR ANNEXATION

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS

The undersigned hereby respectfully petition to annex to the City of O'Fallon, St. Clair County, Illinois, the territory described in Exhibit A of the Annexation Agreement, and states as follows:

- 1. The territory hereinbefore described is not within the corporate limits of any municipality.
- 2. The territory hereinbefore described is contiguous to the City of O'Fallon, St. Clair County, Illinois.
- 3. There are no electors residing on the territory hereinbefore described.
- 4. The undersigned is the developer of all land within the territory hereinbefore described, and they have also executed this Petition.
- 5. This Petition is conditioned on the provisions of a certain Annexation Agreement ("Agreement") between the City of O'Fallon by and through its Mayor and City Council and the undersigned Petitioner.

WHEREFORE, Petitioner respectfully request that the corporate authorities of the City of St. Clair County, Illinois, annex the territory hereinbefore described to said City in accordance with the provisions of this Petition and in accordance with the law in such case made and provided.

PETITIONER:

DATED: _____

ESTATES AT PRAIRIE CROSSING
DEVEOPMENT, L.L.C., an Illinois limited liability company

By: _____
Name: _____
Title: _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

Notary Public

My Commission expires:

EXHIBIT "C"

PRELIMINARY PLAT OF ANNEXATION



Illini Preliminary Plat.PDF