
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 _____ 2007, by and among ERIC LITTEKEN ("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 City and Owners are sometimes collectively referred to as "Parties."

RECITALS

A. Owners are the owners of record of certain parcels of real property situated in St. Clair County, Illinois, and is adjacent to the City of O'Fallon in St. Clair County, Illinois, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Subject Property"), which parcel consists of approximately .61 acres and adjoins, abuts, and is contiguous to the corporate limits of the City.

B. The Subject Property has not been annexed to any municipality, is currently situated within unincorporated St. Clair County, Illinois, and is contiguous to the City of O'Fallon, Illinois.

C. The Subject Property constitutes 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.*

D. Owners desire to have the Subject Property annexed to the City, on the terms and conditions provided herein and to qualify for such benefits or services as such annexation may be required;

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

F. Pursuant to the provisions of 65 ILCS 5/11-15.1-1, *et seq.*, a proposed Pre-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.

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

NOW, THEREFORE, in consideration of the premises 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 hereof, or as may hereinafter be enacted, 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) Owners have filed with the City Clerk a Petition for Annexation of the Subject Property to the City of O'Fallon, Illinois, 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 as Exhibit C and made a part hereof.

(b) Owners have filed with the City Clerk a Plat of Annexation, which contains an accurate map of the Subject Property, which Plat is attached hereto as Exhibit B and made a part hereof.

3. **Ordinance.** Subject to the terms of this Agreement, the Corporate Authorities shall hereinafter enact an ordinance annexing the Subject Property to the City (Annexation Ordinance), which ordinance shall attach a Plat of Annexation in form and substance as Exhibit B and shall be effective immediately.

4. **Rezoning.** Upon effectiveness of the Annexation Ordinance as set forth herein, the City shall do the following:

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(a) Pursuant to the City zoning code, after annexation the Property shall assume the zoning classification _____ Zoning District classification as presently ascribed to the Subject Property.

(b) All changes in land use or related activity on the Subject Property shall be subject to the applicable ordinances and laws authorizing or regulating such change or activity.

(c) The Owners agree to comply with all laws and ordinances of the City in the use of this Subject Property.

5. Owner Improvement Obligations.

(a) In addition to any other improvement requirements relative to the Subject Property, Owners shall be responsible for connecting to the City's utilities and paying all customary connection fees. Any such improvements and right-of-way or fee simple dedication needed in order to serve the property with said utilities shall be dedicated to the City in the form reasonably required by the City Attorney.

(b) Nothing contained in this Agreement shall affect the Owner's right to mortgage, encumber, or convey the Subject Property as a whole or each Phase separately to one or several third parties, subject to 65 ILCS 5/11 – 15.1-4.

6. Water Supply and Service. The City shall supply when facilities are adjacent and available, or shall continue to supply, fresh, potable water to the Parcel in quantities and pressure sufficient in all respects to serve the needs of the Parcel and the persons therein and subject to otherwise applicable conditions and usage, tap-in, extension, or other related charge; provided that any change in the use of the property is 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.

7. Sewers, Drainage and Treatment Facilities. The Owners shall be permitted to maintain the existing on-site sanitary sewer systems serving the owners properties. However, if the present systems located thereon become either inadequate to properly handle such sanitary sewage, or is not functioning in a sanitary manner, or that waters or wastes are being discharged into the public sewers in violation of the City Ordinances and provided that the public sewer is within 100 feet of the Owner's property line, then Owners shall connect to the public sewer within 90 days after the day of official notice to do so.

8. Construction and Dedication of Public Improvements and Easements. The Owner shall grant to the City any nonexclusive utility easements (Easement) necessary for maintenance and repair of any roadway, water, sewer, storm sewer or other municipal utility to serve the property subject of the Agreement. The easements shall be no less than ten (10) feet in width. For the purposes of this Section, underground utilities shall include ground-level facilities

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and above-ground-level facilities of a height not greater than three (3) feet associated with said utilities, including by way of example manholes and hydrants.

9. 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 not inconsistent with 65 ILCS 5/11-15.1-1.

(b) The Subject Property 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 Owner, 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, provided that neither the Owner nor the Owners shall have any right to assign this Agreement except in connection with conveyances of all or any portion of the Subject Property. This Agreement and the obligations of Owner 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 Subject Property, and may be recorded.

(d) Nothing herein shall in any way prevent the alienation, encumbrance, or sale of the Subject Property or any portion thereof, and the new owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed

(1) 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 Owner in the Office of the Recorder of St. Clair County, Illinois.

(2) 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 the Agreement shall waive the City's sovereign immunity or permit or give rise to an action in damages against the City.

(e) Except for specific enforcement 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 is hereby released by execution of this Agreement to the full extent of the law which shall survive as to all parties the termination of this Agreement.

(f) It is understood by the parties hereto that time is of the essence of this Agreement. 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

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such default is given 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.

(g) 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.

(h) 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; provided, 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 deannex the Subject Property from the City and may terminate any City services; provided that the City shall not terminate water and sewer if the invalidity results from action or challenge taken by a party other than the Owner (or its assignees or parties in privity) (1) compensates the City for any damage or lost benefit resulting from the invalidity and (2) the Owner takes all action required by the City to retain the Subject Property within the City boundaries, and (3) provide that continued service is paid for and the use continues to 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 if deemed by the City appropriate in the public interest, in which event the obligations of all parties hereto shall terminate and the Annexation Ordinance shall not be effective.

(i) Unless stated otherwise elsewhere 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, to the respective parties at their addresses listed below:

If to the Owners: Eric Litteken
662 E. State Street
O'Fallon, IL 62269

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

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

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

CITY OF O'FALLON
A Municipal Corporation,
County of St. Clair
State of Illinois

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

OWNER:

Eric Litteken

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LIST OF EXHIBITS

- A. Legal Description of Subject Property
- B. Plat of Annexation
- C. Annexation Petition

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EXHIBIT A

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EXHIBIT B
ANNEXATION PLAT

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EXHIBIT C

PETITION FOR ANNEXATION

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

The undersigned Petitioners hereby respectfully petition to annex to the City of O'Fallon, St. Clair County, Illinois, the territory described as follows:

(See attached Exhibit "A")

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 _____ electors residing on the territory hereinbefore described.
4. Your Petitioners are the sole owners of record of all land within the territory hereinbefore described, and they have also executed this Petition as such owners.
5. This Petition is conditioned on the provisions of a certain Annexation Agreement between the City of O'Fallon by and through its Mayor and City Council and Petitioners.

WHEREFORE, Petitioners 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.

DATED: _____
Eric Litteken

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

Notary Public

My Commission expires:

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