PLANNING AND GROWTH MANAGEMENT

CITY OF PEORIA

August 2, 2004

Sandra Birdsall
Hasselberg, Williams, Grebe & Snodgrass
124 SW Adams St., Ste. 360
Peoria, IL 61602-1320

Other Interested Parties

RE: Case No. CPC 04-K

Please be advised that on Tuesday, July 6, 2004, the City Council approved the following request:

> RECOMMENDATION TO APPROVE THE ANNEXATION PETITION AND ANNEXATION AGREEMENT WITH A SITE PLAN FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF ALLEN ROAD AND ALTA ROAD WITH A TEMPORARY ADDRESS OF 2300 W ALTA ROAD. (CPC 04-K) [DISTRICT 5]

This request was approved as outlined in the enclosed copy of the approved documents. If you have any questions, please contact me at 494-8667.

Sincerely,

Leah Allison
Urban Planner

LA/ps

Enclosures

Twin Towers Building
456 Fulton Street, Suite 402
Peoria, Illinois 61602
309/494-8600
FAX 309/494-8680

RESOLUTION NO. 04-346

CITY OF PEORIA.

Peoria, Illinois JULY 6th 2004

A RESOLUTION APPROVING THE ANNEXATION AGREEMENT FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF ALLEN ROAD AND ALTA ROAD WITH A TEMPORARY ADDRESS OF 2300 W. ALTA ROAD, ALL LOCATED WITHIN ONE AND ONE-HALF MILES OF THE CITY OF PEORIA, ILLINOIS

Resolved

WHEREAS, Randall Peifer, Trustee of RBT Trust, is the owner of certain real estate near the corporate limits of the City of Peoria and is desirous of entering into an agreement providing for the annexation of this property to the City of Peoria upon certain conditions; and

WHEREAS, the City of Peoria is desirous of entering into an agreement providing for the annexation of this real estate, said agreement attached hereto as "Attachment A"; and

WHEREAS, the City Council of the City of Peoria believe that the vicinity and general welfare of the City will be served by entering into this agreement which establishes various conditions relating to, but not limited to, zoning and land use; and

WHEREAS, a public hearing upon said annexation agreement was conducted, with proper notice, by the City Council on July 6, 2004, and there has been compliance with all provisions of 65 ILCS 5/7-1 *et seq.*

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS:

Section 1. That the Mayor is hereby authorized to execute the annexation agreement attached hereto as "Attachment A" with the petitioners, and the City Clerk is hereby authorized to attest said agreement.

Section 2. This resolution shall be effective upon passage and approval according to law.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, THIS 6th DAY OF JULY 2004.

APPROVED:

David P Ransley

Mayor

ATTEST:

Mary L. Haynes

City Clerk

BY: Bobbie Ball

Deputy Clerk

EXAMINED AND APPROVED

Randall Peifer

Corporation Counsel

FILED

JUL 19 2004

JoANN THOMAS

PEORIA COUNTY CLERK

Attachment A

Prepared by:

Sandra J. Birdsall
Hasselberg, Williams, Grebe & Snodgrass
124 Southwest Adams Street, Suite 360
Peoria, IL 61602-1320

Return to:

Patricia Landes
City of Peoria
Department of Planning & Growth Management
4th Floor
456 Fulton Street
Peoria, IL 61602

FILED
JUL 19 2004
JoANN THOMAS
PEORIA COUNTY CLERK

ANNEXATION AGREEMENT

This Annexation Agreement ("Annexation Agreement") is made and entered into this _____ day of July, 2004, by and between the City of Peoria, Illinois, an Illinois Municipal Corporation, located in Peoria County, Illinois ("City"), by and through is Mayor and its City Council ("Corporate Authorities"), RBT Trust (hereafter "Developer") and Dennis P. Shealy and Theresa M. Cicciarelli as Trustee of the Theresa M. Cicciarelli Trust (hereafter "Owner").

WITNESSETH:

WHEREAS, the Developer is the holder of a contract to purchase the following described real estate:

> See Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Property")

WHEREAS, Developer intends to develop the Property for residential uses as generally depicted in a Site Plan attached hereto and made a part hereof as Exhibit B (the "Site Plan").

WHEREAS, the Developer desires to have the Property annexed to the City upon certain terms and conditions hereinafter set forth.

WHEREAS, the Corporate Authorities, after due and careful consideration, have concluded that the annexation of the Property to the City on the terms and conditions

herein set forth would further the growth of the City, enable the City to control the development of the area, increase the taxable value of the Property within the City, extend the corporate limits and jurisdiction of the City, permit the sound planning and development of the City, and serve the best interests of the City.

WHEREAS, the Property constitutes territory which is contiguous to and may be annexed to the City as provided in 65 ILCS 5/7-1-1 et seq.

WHEREAS, pursuant to the provisions of 65 ILCS 5/11-15.1-1, et seq., this proposed Annexation Agreement was submitted to the Corporate Authorities and a public hearing was held thereon pursuant to notice, as provided by statute.

WHEREAS, notice has been sent to and received by the trustees of any Fire Protection Districts, School Districts and Public Library Districts having jurisdiction over the Property by the City, as required by statute.

WHEREAS, notice has been sent to and received by the Peoria County Soil and Water Conservation District and all entities required by law to receive notice.

WHEREAS, the Corporate Authorities of the City after due deliberation have, by resolution, duly adopted and approved the entering into this Annexation Agreement.

WHEREAS, Owners have filed a Petition for Annexation for the Property, such Petition subject to approval and execution of this Agreement and Developer's closing on the purchase of the Property as provided herein.

WHEREAS, Developer has expended substantial sums of money and has materially altered their position in reliance upon execution of this Agreement and the performance of its terms and provisions by the City.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and in reliance on the ordinance, codes and regulations to the City in effect as of the date hereof, the parties **HEREBY AGREE** as follows:

1. **Authoritative Law.** This Annexation Agreement is made pursuant to the provisions of 65 ILCS 5/11-15.1-1, et seq. and the Home Rule provisions of the 1970 Constitution of the State of Illinois; and the Property as depicted in Exhibit A and Exhibit B shall be annexed pursuant to the Petition filed by the Owner, and pursuant to the procedure for annexation as set forth in 65 ILCS 5/7-1 et seq and pursuant to the terms of this Agreement.

2. **Enactment of Ordinance.** The Corporate Authorities, upon execution of this Annexation Agreement and upon the filing of a proper Petition for Annexation by the Owner, as hereinabove provided, shall enact, without further hearing, ordinances

annexing the Property to the City, subject to the terms and conditions of this Annexation Agreement.

3. **Contingencies.** Developer has entered into a contract to purchase the Property. When the Developer notifies the City that it has closed on the purchase of the Property, the City shall annex the Property as provided in Section 6.4 of the City Zoning Ordinance. If Developer fails to close on the purchase of the Property from the Owner on or before August 30, 2004, the City shall not annex the Property and this Annexation Agreement shall be null and void and of no force and effect.

4. **Incorporation.** The Annexation Ordinance passed by the Corporate Authorities pursuant to the provisions hereof shall incorporate the provisions of this Annexation Agreement by reference, and this Agreement, including any and all addendums attached hereto, shall be made a part of said Ordinance.

5. **Zoning of Property.**

A. Upon annexation of each parcel to the City, the Corporate Authorities shall enact such ordinances, adopt such resolutions and take such other actions as are necessary to:

(1) Zone the parcel R-3 as provided in Section 6.4 of the Zoning Ordinance;

(2) Approve the Site Plan for the Property attached hereto and made a part hereof as Exhibit B as the final site plan for each parcel; provided, however, that Developer shall have the right to make modifications that do not substantially change the plan.

B. The City shall approve the preliminary plat of the Property administratively when submitted if substantially in accordance with the Site Plan or the modifications permitted under this paragraph as determined by the Director of Planning and Growth Management. The preliminary plat shall be deemed substantially in accordance if it contains no more than 53 single family and 35 duplex lots (2 units per lot) which conform to the standards set forth herein and contains no additional entrances onto public highways. Developer shall also have the right to increase by not more than 10% of the combined total of single family and duplex or decrease the number of lots or the lot sizes so long as they conform to R-3 standards. The Developer may make minor shifts in the location of streets and delineation of the flood plain to accommodate the actual survey and engineering study. Developer shall have the right to submit the final plat in phases. The duplex lots shall be replatted into two lots after the duplexes are staked.

C. Approval of Final Plat. The City shall administratively approve the final plat for each phase of development provided said final plat is substantially in conformance with the Preliminary Plat. Provided access and the circulation pattern remains the same and subject to administrative approval, Developer shall have the right to shift the boundaries and the number of lots (but not substantially) to accommodate actual survey, reduction in the flood plain as approved by FEMA, and other incidental changes. The Developer may submit the Preliminary and Final Plat as one document.

D. Development Standards. The City agrees that until completion no amendment to the zoning ordinance or subdivision regulations thereafter enacted shall be applied to be more restrictive to the Property or to the ability to construct in accordance with the site plan. The following design standards are approved:

(1) All streets in the subdivision shall be dedicated to the City and shall be constructed in accordance with the subdivision ordinance. The length of the cul-de-sacs and the dead end street as shown on the site plan are approved by the City. If the City makes changes to the zoning or subdivision ordinance which the Developer feels are favorable, the Developer shall have the right to construct in accordance with such changes.

(2) Because of the rural cross section of Allen Road and the City's desire to construct a bicycle path on the North side of Alta Road and the reconstruction and design of Allen by IDOT, no sidewalks will be required on Allen Road or Alta Road by the city. No lots shall have front yards or driveways on either Allen Road or Alta Road. Developer shall pay the fee in lieu of sidewalk for Allen Road and Alta Road. The fee shall be paid at the time of final plat approval for that phase. The City shall use the fee to extend a trail through the open space dedicated by the Developer or to provide access from the Development to the existing trail system, in the City's discretion.

(3) The Developer shall be permitted no more than 39 duplex lots as shown on the site plan.

(4) The Developer shall have the right to elect to construct its own street signs in accordance with City standards. If the Developer so elects, the sign design must be approved by

the City and signs will be maintained by the Homeowner's Association.

(5) The Developer acknowledges the City's intent to adopt an ordinance providing a 100' no-build stream buffer area. The Developer agrees to maintain an average of a 100' buffer area throughout the flood plain area shown on the site plan. On lots where the creek is less than 50' from the lot, the Developer shall create a 25' buffer in the rear yard of the lots which shall restrict building and filling and cutting of trees in excess of five inch (5") diameter in the buffer.

(6) Water mains and fire hydrants shall be provided in accordance with City codes.

(7). The entrance road off of Alta Road shall be delineated "no parking" on the West side of the road.

6. **Storm Drainage/Flood Plain.** Developer shall construct storm sewers and retention basins on the Property sufficient to serve the Property. The City shall approve said storm sewer and retention basin system prior to construction, such approval conditioned on the system being constructed in general conformity with the Site Plan, and in compliance with all applicable City ordinances and all other applicable laws and regulations. Developer shall maintain said storm sewer and retention basins. Developer shall comply with all state, federal and local regulations regarding the flood plain and soil erosion control.

7. **IDOT Improvements/ Access.** The access shown on the site plan to the southwest part of the Property from Allen Road is designed as a temporary access. According to the current IDOT design that access may become obsolete because of road alignment. At such time as IDOT constructs an alternate access on property to be acquired by IDOT to the south of the Developer's Property so that access is available from the south, Developer shall close the access shown on the site plan. That temporary access area shall then be available for the platting of an additional lot.

Access to ALTA road shall be as shown on the site plan. In addition, Developer shall provide a secondary access for fire and emergency access from Allen Road. This access shall consist of a fifteen foot perpetual access easement between lots which shall be shown on the final plat and constructed with pervious pavers which permit grass to grow on the easement.

8. **Building Permits.** Within three (3) days after receipt of an application by Developer for a building permit for construction of any single-family home or duplex on the Property, the City shall (1) issue a permit authorizing such construction; (2) issue a permit authorizing such construction subject to satisfaction of specified conditions consistent with the terms of this Agreement; or (3) issue a letter of denial of such permit

specifying the basis of said denial by reference to the provisions of the City's Building Code applied in accordance with this Agreement, which the subject construction allegedly would violate. If the City conditionally approves such a permit, the City shall issue the permit unconditionally within five (5) working days after satisfaction by the Developer of the specified conditions.

9. **Certificate of Occupancy.** The City shall issue certificates of occupancy to Developer within seven (7) working days of application thereof, or issue a letter of denial within such period informing Developer specifically as to what corrections are necessary as a condition to the issuance of a certificate and quoting the section of any applicable code, ordinance or regulation relied upon by the City in its request for correction. Developer's inability, due to adverse weather conditions or other conditions outside of the reasonable control of Developer, to install service walks, stoops, landscaping and final grading or other items not posing an unreasonable risk to life, safety or property, shall not delay the issuance of a temporary certificate of occupancy. The City shall have the right to require the posting of security, on issuance of such temporary certificate of occupancy, in order to ensure completion of such uncompleted items. Developer shall have the right to occupy a home constructed on a lot prior to the issuance of an occupancy certificate for the purpose of a sales office and showing of model units or to utilize a mobile home for purposes of a sales office. Developer may construct temporary fences and parking to service the sales office.

10. **Subdivision Security.** As security for the construction of public improvements (streets, sidewalks, and erosion control), Developer shall have the right to establish an escrow account at a title company in the full amount of the cost of construction of the public improvements and to pay the construction costs from the escrow account as incurred. The final 10% of the account shall not be released until the improvements are inspected and accepted by the City. If Developer utilizes the escrow account option, no additional subdivision bond shall be required by the City.

11. **Fees.** The City represents that no annexation fees are payable by Developer or Owner as a result of the annexation of the Property to the City. No additional fees other than those normally required by City code shall be levied against the Property. If the City or Park District elect to accept conveyance of the open space land shown on the site plan, no recreational fees as required by the subdivision ordinance shall be required to be paid to the City by the Developer. The City shall notify the Developer of such election at the time of approval of the final plat and if the City so elects, the plat shall designate the area as open space to be dedicated to the City.

12. **Signage.** The Developer shall have the right to erect a permanent monument sign identifying the development at each entrance to the project, adjacent to road, on private property. The signage shall not exceed twenty square feet in area or five feet in height. The Sign may be illuminated. Temporary signs advertising the development availability will also be permitted at this location.

13. **Controlling Provisions.** The provisions of this Annexation Agreement shall control over the provisions of any ordinances, codes or regulations of the City which are in conflict with the provisions of this Annexation Agreement. Notwithstanding the foregoing, if any ordinance, code or regulation of the City is hereafter adopted, amended or interpreted so as to be less restrictive upon Developer with respect to the development of the Property than is the case under the existing law, then at the option of Developer, such less restrictive adoption, amendment or interpretation shall control. Other than life safety codes, the City shall not amend its building codes to affect this development for a period of five (5) years.

14. **Commencement of Work by Developer.** Developer shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of a final plat, to undertake excavation, preliminary grading work, filling and soil stockpiling on the Property in preparation for the development of the Property upon receipt of a grading permit and soil erosion control permit from the City. The City shall approve the Developer's grading and soil erosion and sedimentation control plans or issue a letter of denial specifying why approval is withheld within twenty (20) days of submission of said plans. If the City neither approves such plans or issues a letter of denial within twenty (20) working days of submission, such plans shall be approved. Such work shall be undertaken at Developer's sole risk and without injury to the property of surrounding property owners. No letter of credit bond or other security shall be required of Developer as a condition precedent to the commencement of such work.

15. **Duration of Agreement.** This Annexation Agreement shall be binding upon the parties and their respective successors and assigns for twenty (20) years, commencing as of the date hereof, and for such further term as may hereinafter be authorized by statute and by City ordinance. If any of the terms of this Annexation Agreement, or the annexation of zoning of the Property, is challenged in any court proceeding, then, to the extent permitted by law, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year period. The expiration of the term of this Annexation Agreement shall not affect the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Annexation Agreement.

16. **Amendments.** This Annexation Agreement, and the exhibits attached hereto, may be amended only by the mutual consent of the parties, by adoption of an ordinance by the City approving said amendment as provided by law, and by the execution of said amendment by the parties or their successors in interest. Amendments agreed to by the City and the Developer which do not affect zoning or changes in codes which would require a public hearing shall not require further public hearing.

17. **Enforceability and Severability.** If any provision, covenant, agreement or portion of this Annexation Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Annexation Agreement are declared to be severable. If for any reason the annexation or zoning of the Property is ruled invalid, in

whole or in part, the Corporate Authorities, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Annexation Agreement, provided that the foregoing shall be undertaken at the expense of the Developer.

18. **Entire Agreement.** This Annexation Agreement sets forth all agreements, understandings and covenants between and among the parties. This Annexation Agreement supersedes all prior agreements, negotiations and understandings, written and oral and is a full integration of the entire agreement of the parties.

19. **Obligations of Successors.** This Annexation Agreement shall inure to the benefit of, and be binding upon, successors of the Developer and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successors municipalities and shall constitute a covenant running with the land. This Annexation Agreement may be assigned without City approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations it may have under this Agreement which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Annexation Agreement as it relates to the portion of the Property conveyed. Individual purchasers of lots after the subdivision improvements are completed shall have no obligations under this agreement.

20. **Notices.** Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested or personally delivered, to the parties at the following addresses, or at such other address as the parties may, by notice, designate:

If to City:	City of Peoria Attn: City Clerk 419 Fulton Street Peoria, Illinois 61602
With Copy to:	City of Peoria Attn: Legal Department 419 Fulton Street Peoria, Illinois 61602
If to Developer:	RBT Trust Attn: Randall Peifer 1607 Visa Drive Suite 7 Normal, Illinois 61761
With Copy to:	Sandra J. Birdsall