

PLANNING AND GROWTH MANAGEMENT



January 18, 2007

Scott Brunton
Miller, Hall & Triggs
416 Main Street, Suite 1125
Peoria, IL 61602

RE: Case No. CPC 06-LL - First Amendment to Annexation Agreement for
Garmer Property

Please be advised that on Tuesday, December 5, 2006, the City Council approved the following:

RESOLUTION NO. 06-691 APPROVING THE FIRST AMENDMENT TO THE ANNEXATION AGREEMENT FOR THE GARMER PROPERTY, A RESIDENTIAL/COMMERCIAL DEVELOPMENT LOCATED NORTH OF IL ROUTE 6, SOUTH OF ALTA LANE, EAST OF RADNOR, ALONG THE WEST SIDE OF ALLEN ROAD WITH A TEMPORARY ADDRESS OF 9801 N. ALLEN ROAD, ALL LOCATED WITHIN ONE AND ONE-HALF MILES OF THE CITY OF PEORIA, ILLINOIS. (CPC 06-LL) [District 5]

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Leah Allison'.

Leah Allison, AICP
Senior Urban Planner

LA/ps

Attachments

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

RESOLUTION NO. 06-691
CITY OF PEORIA.

Peoria, Illinois December 5, 2006

A RESOLUTION APPROVING THE FIRST AMENDMENT TO ANNEXATION AGREEMENT FOR PROPERTY LOCATED NORTH OF IL ROUTE 6, SOUTH OF ALTA LANE, EAST OF RADNOR, ALONG THE WEST SIDE OF ALLEN ROAD WITH A TEMPORARY ADDRESS OF 9801 N. ALLEN ROAD, ALL LOCATED WITHIN ONE AND ONE-HALF MILES OF THE CITY OF PEORIA, ILLINOIS

Resolved

WHEREAS, Larry F. Hundman of LFH-100 LLC, is the owner of certain real estate near the corporate limits of the City of Peoria and has entered into an agreement providing for the annexation of this property to the City of Peoria upon certain conditions; and

WHEREAS, Larry F. Hundman of LFH-100 LLC and the City of Peoria are desirous of amending the Annexation Agreement, which provides for the annexation of this real estate, said amendment attached hereto as "Attachment A"; and

WHEREAS, the City Council of the City of Peoria believes that the vicinity and general welfare of the City will be served by amending this agreement, which establishes various conditions relating to, but not limited to, a Special Assessment Process; and

WHEREAS, a public hearing upon said First Amendment to Annexation Agreement was conducted, with proper notice, by the City Council on December 5, 2006, 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 First Amendment to 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 .

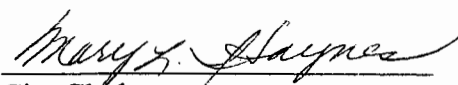
PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, THIS 5th DAY OF December, 2006.

APPROVED:



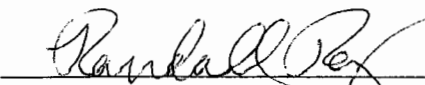
Mayor

ATTEST:



City Clerk

EXAMINED AND APPROVED



Corporation Counsel

FILED

DEC 21 2006

R. STEVE SONNEMAKER
PEORIA COUNTY CLERK

**FIRST AMENDMENT TO
ANNEXATION AGREEMENT - -
Peoria County**

**THIS DOCUMENT PREPARED BY
and
AFTER RECORDING MAIL TO:**

**SCOTT A. BRUNTON
MILLER, HALL & TRIGGS
416 Main Street, Suite 1125
Peoria, Illinois 61602-1161**

FILED

DEC 21 2006

**R. STEVE SONNEMAKER
PEORIA COUNTY CLERK**

**FIRST AMENDMENT TO
ANNEXATION AGREEMENT**

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT (the "Amendment") is made and entered into this 20th day of December, 2006, by and among the **CITY OF PEORIA, an Illinois municipal corporation**, located in Peoria County, State of Illinois ("City"), by and through its Mayor and the Members of its City Council (hereinafter sometimes referred to collectively as the "Corporate Authorities"); and **LFH-100, L.L.C., an Illinois limited liability company** ("Developer");

WITNESSETH:

WHEREAS, as contemplated by the Annexation Agreement, the Developer has acquired and is the owner of record of the following described real estate (the "Property"), to-wit:

Parcel I: (PIN: 09-31-151-002)

The Southwest Quarter of the Northwest Quarter of Section 31, Township 10 North, Range 8 East of the Fourth Principal Meridian, County of Peoria, State of Illinois; and

Parcel II: (PIN: 09-31-176-002)

The Southeast Quarter of the Northwest Quarter of Section 31, Township 10 North, Range 8 East of the Fourth Principal Meridian, County of Peoria, State of Illinois, EXCLUDING all public rights of way, and EXCLUDING part of the South Half of the Northwest Quarter of Section 31, Township 10 North, Range 8 East of the Fourth Principal Meridian, Peoria County, Illinois, more particularly described as follows: Commencing at the Southeast corner of the South half of the Northwest Quarter of Section 31, thence North 89 degrees 08 minutes, 27 seconds West along the South line of the South half of the Northwest Quarter of Section 31, as established by H. W. McFadden, Peoria County Surveyor on July 5, 1843, 85.22 feet to the intersection of said South line with the Proposed Westerly Right-of-Way line of F. A. P. 405; said intersection

to be the Point of Beginning of the tract to be described: From the Point of Beginning, thence North 4 degrees 13 minutes 28 seconds East along the Proposed Westerly Right-of-Way line of F. A. P. 405, said Proposed Right-of-Way line being parallel with and 100.00 feet measured perpendicular West of the Centerline of Illinois Route 174, 46.93 feet; thence North 12 degrees, 10 minutes 36 seconds East along the Proposed Westerly Right-of-Way line of F. A. P. 405, 442.29 feet to the intersection of said Proposed Right-of-Way line with the East line of the South Half of the Northwest Quarter of Section 31, thence North 1 degree, 22 minutes, 47 seconds East along the East line of the South half of the Northwest Quarter of Section 31, 119.24 feet; thence North 89 degrees, 08 minutes, 27 seconds West, parallel with the South line of the South Half of the Northwest Quarter of Section 31, as established by H. W. McFadden, Peoria County Surveyor on July 5, 1843, 599.50 feet; thence South 1 degrees, 22 minutes, 47 seconds West parallel with the East line of the South Half of the Northwest Quarter of Section 31, 600.00 feet to the intersection of said parallel line with the South line of the South Half of the Northwest Quarter of Section 31 as established by H. W. McFadden, Peoria County Surveyor on July 5, 1843; thence the South 89 degrees, 08 minutes, 27 seconds East along said South line, 514.28 feet to the Point of Beginning, containing 7.74 acres, more or less.

WHEREAS, the Developer and the City entered into an Annexation Agreement on June 22, 2005, with regards to the Property which was recorded in the Peoria County Recorder's office on June 23, 2005, as Document No. 05-19801;

WHEREAS, the Developer and the City have agreed to use the statutory special assessment process pursuant to Division 2 of Article 9 (Local Improvements) of the Illinois Municipal Code (65 ILCS 5/9-2-1, et seq.), as well as the Supplemental Bond and Procedures Act (50 ILCS 460/1 et seq.) (both statutory provisions collectively referred to as the "Special Assessment Process"), as a means to undertake the construction and completion of the Allen Road Intersection Improvements;

WHEREAS, the "Allen Road Intersection Improvements" shall include those improvements as this term is defined in the Annexation Agreement and as otherwise provided by all other provisions of the Annexation Agreement;

WHEREAS, the City is willing, and desires, to facilitate the Developer's development of the Property consistent with the terms of the Annexation Agreement as amended by this Amendment before the annexation of the Property to the City becomes effective;

WHEREAS, consistent with the above, the City is willing, and desires, to cooperate with the Developer in initiating and completing the Special Assessment Process upon request by Developer to do so under terms consistent with the Intersection Development Agreement executed by the parties on June 16, 2006;

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

WHEREAS, all notices required by law have been sent by the City to, and received by, all entities to whom notices may be required by law to be given;

WHEREAS, the City after due deliberation has, by resolution, duly adopted and approved the entering into this Amendment;

NOW, THEREFORE, in consideration of the above and the mutual covenants and agreements herein contained **IT IS HEREBY AGREED**, as follows:

1. **Authoritative Law.** This Amendment is made pursuant to the provisions of 65 ILCS 5/11-15.1-1, et seq.

2. **Special Assessment Process.**

Upon the approval of this Amendment, the Corporate Authorities shall enact such ordinances, adopt such resolutions and take such other actions (where not previously done) as are necessary to initiate the Special Assessment Process for the construction and financing of the Allen Road Intersection Improvements.

3. **Developer's Consent.**

A. The Developer hereby consents to the City's use of the Special Assessment Process for the construction and financing of the Allen Road Intersection Improvements. The Developer further consents to the City's extraterritorial jurisdiction over the Property pursuant to Division 4 of Article 9 (Local Improvements) of under the Illinois Municipal Code (65 ILCS 5/9-4-1, et seq.), hereby waiving any objection to or the ability to contest, in any manner, such extraterritorial jurisdiction being exercised by the City.

B. The Developer shall execute a waiver and consent document, in a form as approved by the City Attorney, whereby the Developer shall consent to the Special Assessment Process and the City's extraterritorial jurisdiction as provided herein, and the Developer waives any notice requirements provided by the Illinois statutes governing the Special Assessment Process (as provided by 65 ILCS 5/9-2-9, 5/9-2-47, 5/9-2-53, 5/9-2-79, and 5/9-2-108) and the City's extraterritorial jurisdiction under the Special Assessment Process (as provided by 65 ILCS 5/9-4-2). The Developer shall execute such waiver and consent documents as requested by City for any related special assessment proceedings in front of the City's Board of Local Improvements and in front of the Peoria County Circuit Court.

4. **Miscellaneous/General.**

A. If any provisions of this Amendment or any section, sentence, clause, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Amendment and the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby. If for any reason the Special Assessment Process or City's extraterritorial jurisdiction over the Property pursuant to Division 4 of the Local Improvements Act under the Illinois Municipal Code 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 intent of this Amendment

B. This Amendment shall inure to the benefit of, and be binding upon, successors of the Developer and its respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land.

C. Each of the parties agrees to mutually assist and cooperate with the other in effectuating the spirit and intent hereof, and in that regard, each party agrees to execute any and all documentation and take any and all actions as may be reasonably appropriate or required in connection therewith.

D. This Amendment and the rights of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of Illinois. Any litigation concerning this Amendment shall be commenced in the County of Peoria, State of Illinois. This Amendment may be enforced as provided by law and the parties may by civil action, mandamus, injunction or other proceeding, enforce and compel the performance of this Amendment.

E. The parties acknowledge and recognize that the current state of the law applicable to annexation agreements is to the effect that a parcel of land that is not necessarily contiguous with a municipality may nevertheless be solely subject to zoning, planning, and other laws of the municipality even before being annexed thereto and even without there being contiguity currently existing between such land and the municipality. Because this above-referenced situation is acknowledged to exist under the circumstances addressed and encompassed by this Amendment, therefore the parties further agree that they shall cooperate, in accordance with the other provisions of this Amendment and the Annexation Agreement, to otherwise complete the construction and financing of the Allen Road Intersection Improvements in a manner otherwise permitted by law.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Annexation Agreement the day and year first set forth above.

City:

CITY OF PEORIA, an Illinois municipal corporation

By: Charles R. Oliver
Its CITY MANAGER

APPROVED

SEAL DEPT.

Randy [Signature]

ATTEST:

By: Mary [Signature]
Its City Clerk

Developer:

LFH-100, L.L.C., an Illinois limited liability company

By: [Signature]
Its MARY

FILED

DEC 21 2006

**R. STEVE SONNEMAKER
PEORIA COUNTY CLERK**

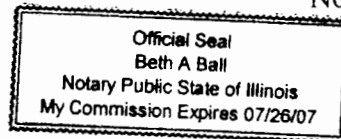
STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Charles R. Oliver personally known to me to be the City Manager of **CITY OF PEORIA**, a municipal corporation, appeared before me this day in person and severally acknowledged that he signed, sealed and delivered the said instrument as a free and voluntary act as such City Manager, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and on his oath stated that he was duly authorized to execute said instrument and that the seal affixed thereto is the seal of said corporation.

GIVEN under my hand and notarial seal this 20th day of December, A.D. 2006.

Beth A. Ball
 Notary Public

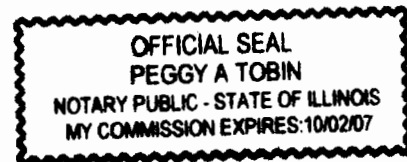
STATE OF ILLINOIS)
) SS.
 COUNTY McLean)



I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that **LARRY HUNDMAN**, personally known to me to be the Member of **LFH-100, L.L.C., an Illinois limited liability company**, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such Member, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth; and on his oath stated that he was duly authorized to execute said instrument.

GIVEN under my hand and notarial seal this 15th day of December, A.D. 2006.

Peggy A. Tobin
 Notary Public



FILED

DEC 21 2006

R. STEVE SONNEMAKER
PEORIA COUNTY CLERK