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Filed for Record in
KENDALL COUNTY, ILLINOIS
PAUL ANDERSON
07-27-2004 At 02:25 pm.
ORDINANCE 49.00

RESOLUTION NO. 5377

A RESOLUTION APPROVING AN ANNEXATION AGREEMENT
FOR WINDSOR RIDGE SUBDIVISION

As adopted by the Council of the City of Joliet on the 17th day of February, 2004.

PIN: 06-35-300-003
ADDRESS: East of Arbeiter, Windsor Ridge Subdivision
CED DOC. NO.: A-5-04

Prepared by: Corporation Counsel, City of Joliet
Return to: City Clerk, City of Joliet, 150 W. Jefferson Street, Joliet, IL 60432

STATE OF ILLINOIS)
COUNTY OF WILL) SS.
CITY OF JOLIET)

I, Janet K. Traven Clerk of the City of Joliet, and
keeper of the papers, entries, records and Ordinances, do hereby
certify that the following is a true copy of Resolution No. 5377

passed at a meeting of the City Council of said City of Joliet, held
on the 17th day of February, A.D., 2004.

In testimony whereof I have hereunto
set my hand and affixed the corporate
seal of the said City of Joliet this
27th day of July
A. D., 2004.



City Clerk

RESOLUTION NO. 5377

**A RESOLUTION APPROVING AN
ANNEXATION AGREEMENT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOLIET,
ILLINOIS, AS FOLLOWS:**

SECTION 1: The annexation agreement between the City of Joliet and Montalbano Builders, Inc., a corporation, ("Owner") attached hereto and made a part hereof, is hereby approved.

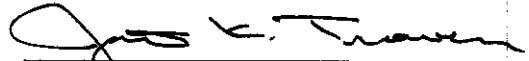
SECTION 2: The Mayor and the City Clerk are hereby authorized and directed to execute the annexation agreement on behalf of the City of Joliet.

SECTION 3: This Resolution shall be in effect upon its passage.

PASSED this 17th day of February, 2004



MAYOR



CITY CLERK

VOTING YES MAYOR SCHULTZ and COUNCILMEN BROPHY, DORRIS,
GIARRANTE, HACKER, LEDESMA, SHETINA, TURK and UREMOVIC.

VOTING NO NONE.

NOT VOTING NONE.

PIN: 06-35-300-003

ADDRESS: East of Arbeiter, Windsor Ridge
Subdivision

PLAN COMMISSION APPROVED: Yes

CED DOC. NO: A-5-04

COUNCILMANIC DISTRICT NO.: 1

PREPARED BY: Corporation Counsel, City of Joliet

RETURN TO:

JANEY TRAVIS
CITY CLERK
150 W. Jefferson St.
Joliet, Illinois 60438

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this ~~17th~~ day of February, 2004, by and between the City of Joliet, an Illinois home rule municipal corporation ("City") and MBC III, LLC., a Delaware Limited Liability Company ("Owner").

RECITALS

WHEREAS, the Owner is the owner of record of approximately 80 acres of land located in Section 35 of Na-Au-Say Township, Kendall County, Illinois, which property is referred to herein as the "Parcel" and is described in Exhibit "A"; and

WHEREAS, the Parcel is not within the corporate limits of any municipality but is or shall be contiguous to the City prior to its annexation by the City in accordance with the applicable provisions of the *Illinois Municipal Code*; and

WHEREAS, the City and the Owner desire that the City annex the Parcel and approve the development of the Parcel in accordance with this Agreement and the ordinances and regulations of the City; and

WHEREAS, a public hearing has been held by the corporate authorities of the City regarding the annexation and zoning classification of the Parcel and the adoption and approval of this Agreement as required by law; and

WHEREAS, by a favorable vote of at least two-thirds of its corporate authorities then holding office, the City has passed a resolution approving this Agreement and authorizing its execution by the Mayor and City Clerk.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the City and the Owner agree as follows:

1. **INCORPORATION OF RECITALS**

The foregoing recitals are hereby incorporated into the body of this Agreement. Similarly, any exhibit referred to in this Agreement is hereby incorporated by reference as if fully set forth and repeated.

2. **ANNEXATION OF THE PARCEL**

Concurrently with the approval of this Agreement, the City shall, by ordinance, annex the Parcel described in Exhibit "A" in accordance with applicable law. If the Parcel is not contiguous to the corporate limits of the City at the time of the approval of this Agreement, the City and the Owner shall take all necessary action to annex the Parcel within sixty (60) days of the date the Parcel becomes contiguous with the corporate limits of the City or annexation is otherwise permitted by law.

3. **ZONING OF THE PARCEL**

a) **Establishment of Zoning Parcels.**

Concurrently with the passage of an ordinance annexing the Parcel by the City, the City shall enact an ordinance classifying the Parcel described in Exhibit "B" as R-1B (single-family residential) and the Parcel in Exhibit "C" as R-4 (low-density multi-family residential). The Zoning Ordinance of the City of Joliet (Ordinance No. 5285, as re-adopted pursuant to home rule authority by Ordinance No. 8730, as amended from time to time) ("Zoning Ordinance"), shall apply in all respects to the Parcel, except as may be expressly and specifically provided for herein. The City shall be permitted to amend the Zoning Ordinance or reclassify the Parcel during the effective term of this Agreement and thereafter in the manner set forth in the Zoning Ordinance or under law. Any ambiguity or omission shall be resolved in favor of the applicability of the Zoning Ordinance.

(b) Prohibited and Permitted Uses.

In addition to the prohibitions and requirements of the Zoning Ordinance, the following uses shall be prohibited on the Parcel:

- Outdoor Advertising, Except For Real Estate Sales And Marketing Signs Announcing Availability Of Property Within The Parcel;
- Excavation, Stockpiling Or Relocation Of Materials, Except If Incidental To Permitted Construction And Only For A Period Not To Exceed One Year;
- Unscreened Outdoor Storage, Other Than Storage Incidental To A Permitted Agricultural Use;
- Mobile Homes or Recreational Vehicle Park;
- Sexually Oriented Businesses

The enumeration of certain prohibited uses in this Agreement shall not be construed as permitting other uses.

(c) Use of Brick in Exterior Elevations

At least twenty-five per cent (25%) of the gross front elevations of not less than one-half of the detached single-family dwelling units and not less than one-half of the two-family dwelling units constructed on the Parcel shall be comprised of brick or stone. In addition, at least fifty per cent (50%) of the gross front elevations and twenty-five per cent (25%) of the gross side and rear elevations of all multi-family dwelling units constructed on the Parcel (including townhomes and other attached single family dwelling units but not including duplexes) shall be comprised of brick or stone.

For the purposes of this sub-paragraph only, "gross front elevation" shall mean the entire exterior wall adjoining the front yard of a lot, including windows, doors and other building openings, but excluding the roof. The term "gross side elevation" shall mean the entire exterior wall adjoining a side yard of a lot, including windows, doors and other building openings, but excluding the roof. The term "gross rear elevation"

shall mean the entire exterior wall adjoining a rear yard of a lot, including windows, doors and other building openings, but excluding the roof. For the purposes of this subparagraph only, conflicting provisions in the Zoning Ordinance notwithstanding, a corner lot and a through lot shall only have one front yard as designated in a plat, building permit, certificate of occupancy or other instrument approved by the City.

4. **SUBDIVISION OF THE PARCEL**

The Subdivision Regulations of the City of Joliet (Ordinance No. 7208, as amended), shall apply in all respects to the Parcel. Any ambiguity or omission shall be resolved in favor of the applicability of the Subdivision Regulations.

5. **MUNICIPAL AND PUBLIC UTILITIES**

(a) **City Water and Sewer Code to Apply to Parcel**

Article 31 of the Code of Ordinances, as amended, re-codified or succeeded from time to time (the "Joliet Water and Sewer Code"), including, but not limited to, the payment of water and sewer connection charges, shall apply in all respects to the Parcel and to the provision of water and sanitary sewer collection and treatment services for the Parcel to the Owner by the City, except as may be expressly and specifically provided for herein. Any ambiguity or omission shall be resolved in favor of the applicability of the Joliet Water and Sewer Code.

(b) **IEPA Permits**

The Owner, at its expense and without reimbursement by the City, shall prepare Illinois Environmental Protection Agency (IEPA) permit applications required for the sanitary sewer and water improvements to be constructed by the Owner and shall submit the same to the City for its review, approval and subsequent submittal to the IEPA. All modifications or supplements to IEPA permit applications, or successor IEPA

permit applications, filed in connection with the sanitary sewer and water improvements to be constructed by the Owner shall also be prepared by the Owner at its sole cost and expense. The City shall review, approve and submit to the IEPA proper applications, modifications and supplements in a reasonably timely manner.

(c) Public Water Supply

(i) *Right to Connect*

Upon annexation of the Parcel to the City, and the issuance of required permits and approvals by the City and the IEPA, and any other agency having jurisdiction thereof, the Owner shall be permitted to connect the Parcel to the City public water supply in order to provide municipal water service to the Parcel.

(ii) *Engineering Plan*

The specifications, depth, location and connection points of the water supply system shall be depicted by the Owner in a municipal utilities engineering plan prepared by a professional engineer and submitted to the City for its approval as part of the subdivision platting process. Subject to compliance with said municipal utilities engineering plan, as approved by the City, the City shall approve such permits and shall consent to such permits to be issued by third party agencies having jurisdiction over the right-of-way, as may be necessary to construct and install the aforesaid water supply system improvements in the public right-of-way.

(iii) *Design, Permitting and Construction of Facilities*

The Owner, at its expense and without reimbursement by the City, shall be responsible for the acquisition of all necessary permits and approvals, the design, construction, installation and testing of the water mains, laterals, valves, meters,

hydrants, manholes and other appurtenances necessary to connect the Parcel to City water facilities.

(d) Sanitary Sewer Service

(i) *Right to Connect*

Subject to the other terms and conditions of this Agreement and the Joliet Water and Sewer Code, the Owner shall be permitted to connect the Parcel to the City sanitary sewer utility system and the City shall provide sanitary sewer service to the Parcel upon and following the annexation of the Parcel to the City, the inclusion of the Parcel within the Joliet Facilities Planning Area (FPA) and the issuance of all required permits and approvals by the City and the IEPA, and any other agency having jurisdiction thereof. Except as may otherwise be provided herein, all wastewater from the Parcel shall be treated at a new facility to be constructed by the City and located in the southeast quarter of Section 11 of Seward Township in Kendall County (the "New Wastewater Treatment Plant").

(ii) *FPA Designation*

The City shall not be obligated to provide wastewater treatment services to the Parcel if it is not located within the Joliet Facilities Planning Area (FPA) as designated by the IEPA or other agency having jurisdiction thereof. The Owner shall not submit a FPA modification request to the IEPA, or any agency retained by the IEPA, unless the request has previously been submitted to the City for its review and approval.

(iii) *Engineering Plan*

Except as may otherwise be provided in this Agreement, the specifications, depth, location and connection points of the sanitary sewer

improvements to be constructed on the Parcel shall be depicted by the Owner in a municipal utilities engineering plan prepared by a professional engineer at the Owner's expense and submitted to the City for its approval as part of the subdivision platting process. Subject to compliance with said municipal utilities engineering plan, as approved by the City, the City shall approve such permits, and shall consent to such permits to be issued by third party agencies having jurisdiction over the right-of-way, as may be necessary to construct and install the aforesaid sanitary sewer system improvements in the public right-of-way.

(iv) *Arbeiter Road Interceptor*

The City and the Owner acknowledge that the Parcel will outfall to the New Wastewater Treatment Plant via a sanitary sewer interceptor to be constructed within the Arbeiter Road right of way (the "Arbeiter Road Interceptor"). The parties also acknowledge and anticipate that the Arbeiter Road Interceptor will be constructed by Concord Homes, Inc. pursuant to a certain Annexation Agreement approved by the City on February 3, 2004 by and between the City and the L-T Farms, L.P., a Delaware Limited Partnership, Anna Mae Testin and Concord Homes, Inc. an Illinois corporation, a copy of which has been provided to the Owner.

Based on the foregoing, development of the Parcel, or any portion of the Parcel, shall subject and require the Owner to pay an Arbeiter Road Interceptor Recapture Fee pursuant to a certain Annexation Agreement dated February 3, 2004 by and between the City and the L-T Farms, L.P., a Delaware Limited Partnership, Anna Mae Testin and Concord Homes, Inc. an Illinois corporation, a copy of which was recorded on June 8, 2004 with the Kendall County Recorder as Document No. 200400015367 (hereinafter referred to as the "Concord Recapture").

Payment of the Concord Recapture shall not be required if the Owner installs the improvements covered by said recapture obligation at its sole cost and expense and dedicates said improvement to the City free and clear of any claim or other encumbrance or if the Owner tenders to the City proper releases duly executed by authorized representatives of the beneficiaries of the Concord Recapture.

In the event development of the Parcel precedes the adoption of one or more ordinances by the City imposing the Concord Recapture in an amount certain, the City may require, as a condition of plat, permit or occupancy approvals, that the Owner pay an Estimated Recapture in an amount reasonably determined by the City. Within 30 days of being notified by the City in writing of the adoption of one or more ordinances imposing the Concord Recapture on the Parcel in an amount certain, the Owner shall be required to pay the difference between the Estimated Recapture and the actual Concord Recapture, or receive a refund for said difference if the Estimated Fee is greater than the actual Concord Recapture.

(v) *Interim Service*

The parties acknowledge that, as of the effective date of this Agreement, the City has not received the requisite approvals to construct or operate the New Wastewater Treatment Plant. The City shall permit the Owner to connect the Parcel to the City sanitary sewer system and receive City sanitary sewer services prior to the commencement of normal operations of the New Wastewater Treatment Plant; provided that, in accordance with this Section, at no cost or expense to the City, and subject to the approval of the IEPA, certain interim sanitary sewer facilities are constructed that will provide additional sanitary sewer system capacity (the "Interim Sanitary Sewer Facilities"), which facilities outfall to the City's West Side Wastewater

Treatment Plant located near the Des Plaines River in Troy Township, Will County (the "West Side Treatment Plant").

The City acknowledges that: (a) the Owner intends to enter into a sanitary sewer construction and contribution agreement with and among the Other Developers (as defined below) to construct, and share the cost of, the Interim Sanitary Sewer Facilities; (b) the Owner may delegate to, or share with, one or more of the Other Developers (or an entity representing the Owner and the Other Developers), all or any part of the Owner's responsibilities under this Section pertaining to the construction of the Interim Sanitary Sewer Facilities, subject to the conditions contained herein; provided, however, that the Owner shall not be relieved of any obligations it may have under this Paragraph as a result of such delegation or sharing of responsibilities; (c) the Owner may accept the delegation of, or sharing with, all or any part of one or more of the Other Developers' responsibilities pertaining to the construction of the Interim Sanitary Sewer Facilities, if any, so long as such acceptance of delegation or sharing of responsibilities would in no way be inconsistent with the provisions of this Agreement; and (d) references in this Paragraph to the Owner's "assigns" is intended to include the Other Developers as applicable.

The plans and specifications of the Interim Sanitary Sewer Facilities shall be prepared or caused to be prepared by the Owner or its assigns at no cost or expense to the City and shall be subject to the City's approval in accordance with the provisions of the Subdivision Regulations. The Interim Sanitary Sewer Facilities shall be placed in service when an operating permit for such facilities has been issued to the City by the IEPA and such facilities have been dedicated to and accepted by the City. The City shall: (1) approve the engineering plans for such facilities if they have been designed in accordance with the Subdivision Regulations and applicable IEPA

requirements; (2) issue such permits as may be necessary to construct such facilities in accordance with the approved engineering plans, including without limitation, such permits as may be necessary to construct and install the Interim Sanitary Sewer Facilities in the public right-of-way and consent to permits to be issued by third party agencies having jurisdiction over the right-of-way; (3) inspect and approve the construction of such facilities in accordance with the Subdivision Regulations and applicable IEPA requirements; (4) accept dedication of such facilities if they have been constructed in accordance with the Subdivision Regulations and applicable IEPA requirements and thereafter operate and maintain such facilities; (5) issue such operating permits and authorizations, including cooperation with the IEPA in issuance of operating permits, as may be necessary to place such facilities into service and maintain such service if the existing and applicable requirements therefore have been satisfied; and (6) cause such facilities to be placed in service and continuously provide such service if the existing and applicable requirements therefore have been satisfied.

Based on the available capacity at the West Side Treatment Plant, the capacity of the interceptors and lift stations needed to transmit wastewater from the Interim Sanitary Sewer Facilities to the Plant, the extent of similar commitments made by the City to the Other Developers and the reasonable judgment of the City, the City may limit the number of dwelling units on the Parcel that may be connected to the Interim Sanitary Sewer Facilities and building permits may be withheld accordingly; provided, however, that the Parcel shall be entitled to no fewer than seven hundred forty one (741) Population Equivalents (defined below) of sanitary sewer service following commencement of normal operations of the Interim Sanitary Sewer Facilities. "Population Equivalents" mean the number of gallons of effluent per person per day. One (1) Population Equivalent is equal to one hundred (100) gallons per day per-person

of effluent. For purposes of this Agreement, all calculations of allocated Population Equivalents have been based upon the projection that single family homes demand three and one-half (3.5) Population Equivalents per dwelling unit.

Until and after the New Wastewater Treatment Plant is placed in service, the City shall not permit any party to connect to the Interim Sanitary Sewer Facilities constructed by or caused to be constructed by the Owner or its assigns unless: (a) such party is the Owner (or its successors in interest) or such party is one of the following entities or their successors in interest: Pulte Homes, Inc., with respect to the Augsburg property located in Section 1 of Seward Township and consisting of approximately 160 acres for which one thousand four hundred forty (1,440) Population Equivalents have been allocated; Concord Homes, Inc., with respect to the Testin property located in Section 35 of Na-Au-Say Township and consisting of approximately 228.61 acres for which one thousand five hundred seventy-five (1,575) Population Equivalents have been allocated; or Kennedy Homes Limited Partnership, with respect to the Egan property located in Section 1 of Seward Township and consisting of approximately 80.789 acres for which seven hundred four (704) Population Equivalents have been allocated (Concord Homes Inc., Pulte Homes, Inc. and Kennedy Homes Limited Partnership may individually and collectively be referred to herein as the "Other Developers"); (b) said party has financially participated in the original construction of the Interim Sanitary Sewer Facilities in accordance with an agreement with the Owner and that such party is not in default of said agreement; and (C) sanitary sewer capacity arising from the Interim Sanitary Sewer Facilities is available after taking into account the Population Equivalents reserved for the Owner and for each of the Other Developers in connection with their respective properties described above, as said Population Equivalents may have been reallocated in the event that one or more of the

Other Developers does not financially participate as described above. In the absence of such financial participation as aforesaid, the City may nonetheless permit one or all of said parties to connect to the Interim Sanitary Sewer Facilities; provided that said parties consist of one or more of the Other Developers and, prior to such connection, the Owner is reimbursed for allocable costs and expenses actually paid or incurred by the Owner pursuant to an ordinance duly adopted by the City after adequate written notice to Owner, which ordinance: (x) authorizes imposition of a recapture fee upon said parties as payment for their equitable share of the Owner's costs of the Interim Sanitary Sewer Facilities, such share being determined and equitably allocated on an acreage basis among the Parcel and properties of such other parties; (y) provides that no connection shall be allowed between said parties' properties and the Interim Sanitary Sewer Facilities until said recapture fee is paid; and (z) directs that upon its collection, such recapture fee shall be promptly paid to the Owner in reimbursement as aforesaid.

After the New Wastewater Treatment Plant has commenced normal operations, the City may require the Owner to modify or cause to be modified the Interim Sanitary Sewer Facilities, at the Owner's expense, so as to redirect to the New Wastewater Treatment Plant all wastewater outfalling from the Parcel.

The provisions contained in this Section under which the Owner or its assigns is required to undertake or cause the undertaking of the design, construction and modification of the Interim Sanitary Sewer Facilities (as a condition to providing interim sanitary sewer service to the Parcel prior to the New Wastewater Treatment Plant being placed in service), shall be deemed satisfied if such design, construction and modification, or any portion thereof, is undertaken by parties other than the Owner

(whether in conjunction with the Owner or not in conjunction with the Owner), including without limitation the Other Developers, so long as such provisions and requirements are otherwise fully satisfied. In no event, however, shall the Owner be entitled to recapture or payment for any costs or expenses of design, constructing or modifying the Interim Sanitary Sewer Facilities unless such costs or expenses have actually been paid or incurred by the Developer and the other provisions hereof have been satisfied.

(vi) *Limited Commitment*

Nothing in this Agreement shall require the City to construct a new wastewater treatment facility and the City shall not be obligated, indebted or liable to the Owner in any way should the New Wastewater Treatment Plant not be constructed, if its construction is delayed or postponed or if the location of the plant is changed; provided, however, that until and unless the New Wastewater Treatment Plant is placed in service, if at all, sanitary sewer service shall be provided from the West Side Treatment Plant to the Parcel and shall continue unabated, so long as the provisions of this Section have been satisfied.

Nothing in this Agreement constitutes a representation to the Owner that sufficient capacity exists or will be reserved in the City sanitary sewer system or at the West Side Wastewater Treatment Plant to provide service to the entire Parcel in quantities that are over and above the Population Equivalents described in this Paragraph.

(e) *Easement Requirements*

The Owner shall dedicate municipal and public utility easements to the City in, over, through and upon the Parcel in each instance where, according to the preliminary municipal utilities engineering plan, municipal or public utilities or drainage facilities are planned or constructed outside of dedicated roadways. These easements shall be

conveyed to the City as part of the plat approval process set forth in the Subdivision Regulations, as amended, or as the City may otherwise direct.

All easements shall be permanent, unless otherwise required by the City and shall be a width no less than twenty (20) feet or in such lesser amount depicted in a plat of subdivision. All easements required by this Agreement shall be in writing and shall also be depicted in a Plat of Subdivision or Plat of Easement in recordable form prepared by a professional land surveyor retained by the Owner at its expense. All such easements shall grant and convey the property rights customarily conveyed in a public utility easement including, but not limited to, the right of access thereto for personnel and equipment as may be necessary to install, operate, repair, maintain and replace such facilities.

In addition, at any time during the effective term of this Agreement the City may require the Owner to grant one or more easements to the City for access, public roadway, water, sanitary sewer, drainage, storm sewer, public utility and any other public purpose within twenty feet of any boundary of the Parcel. The Owner shall deliver to the City a duly executed recordable instrument granting the easement requested by the City within sixty (60) days of the City's request.

(f) Ownership of Municipal Utilities

At the direction of the City, the Owner shall deliver to the City duly executed written instruments conveying to the City all right, title and interest the Owner may have in and to the water and sanitary sewer mains, lines and associated appurtenances constructed in and on the Parcel (but not the service lines on private property connected to individual buildings). The Owner shall first remove all liens, encumbrances or other adverse claims of right prior to making these conveyances. Further, submittal of a maintenance bond or similar security to the City for said

improvements shall estop the Owner from thereafter asserting any right, claim or title to such improvements.

6. **DEVELOPMENT FEES**

(a) General

In consideration of the approval of this Agreement by the City and the provision of municipal services to the Parcel, the Owner hereby agrees, for itself and its respective Successors as hereinafter defined, to timely pay in full the following items ("Development Fees") in accordance with the applicable ordinances, as such ordinances may be presently constituted or as may hereafter be amended.

- (1) Donations of Land and/or Cash in Lieu of Land for School Grounds, Section VII of the Subdivision Regulations;
- (2) The School Facilities Impact Fee as set forth below;
- (3) Donations of Land, Cash in Lieu of Land and Fees for Construction of Park Improvements and Related Infrastructure, Section VIII of the Subdivision Regulations;
- (4) Water Connection Charge, Section 31-54 of the Code of Ordinances;
- (5) Sanitary Sewer Connection Charge, Section 31-54 of the Code of Ordinances;
- (6) Fire Protection District Disconnection Fee, Section 23-43 of the Code of Ordinances;
- (7) Public Library District Disconnection Fee, Section 23-47 of the Code of Ordinances;
- (8) Development Impact Fee, Section 23-60 of the Code of Ordinances;
- (9) Assurances for Public Improvements, Section IV of the Subdivision Regulations, including, but not limited to, sub-section 4.5(B) thereof; and
- (10) The Arbeiter Road Interceptor Recapture Fee (Concord Recapture).

(b) Special Provisions Relating to Parks

In the event that at the time of subdivision or development of the Parcel, the Parcel is not located within the territory of a local park district, then the dedications and contributions required by Section VIII of the Subdivision Regulations, as amended, shall be made to a public entity acceptable to the City that agrees to use the property and contributions for public park purposes and for the benefit of the Parcel. If no public entity acceptable to the City is willing to accept the dedications and contributions, then the Owner shall make the dedications and contributions to a not-for-profit organization acceptable to the City that agrees to use the property and contributions for public park purposes and for the benefit of the Parcel. The Owner may be required, at its expense, to form such an organization and provide it sufficient institutional and financial resources in order to comply with this sub-paragraph.

The Owner agrees that, should the City amend its park donation requirements after the effective date of this Agreement, then the Owner shall increase its park donation as to any portion of the Parcel for which final plat approval has not been given by the City, subject to the following limitations:

- (1) Up to, but not more than 7.5 acres of land per 333 dwelling units, and in the event the requirement exceeds 7.5 acres the Owner shall provide cash in lieu of land for that portion of the donation exceeding 7.5 acres;
- (2) The Owner's cash equivalent shall be used only for the purchase and installation of park improvements and equipment on the Parcel;
- (3) The Owner will install the park improvements and equipment on the Parcel pursuant to the specifications and reasonable approval of the entity that will operate the park.

(c) Special Provisions Relating to School Facilities

In addition to any other tax or fee levied or imposed by the City, the Developer and the Owner shall also pay a School Facilities Impact Fee as set forth herein as a mandatory condition of receiving each permit to construct a dwelling unit on the Parcel.

(1) Unit School Districts

The School Facilities Impact Fee shall be paid by the Developer and the Owner in accordance with the following schedule for a unit school district consisting of kindergarten through twelfth grade:

<u>School Facilities Impact Fee – Unit School District (K-12)</u>							
Number of Bedrooms	1/1/04 to 6/30/04	7/1/04 to 12/31/04	1/1/05 to 6/30/05	7/1/05 to 12/31/05	2006	2007	2008
<u>Detached Single Family Dwelling Units</u>							
4+ bedroom	\$2640	\$3307	\$3974	\$4640	\$4826	\$5019	\$5220
3 bedroom	\$1763	\$2430	\$3097	\$3763	\$3914	\$4070	\$4233
2 bedroom	\$681		\$708		\$736	\$766	\$796
<u>Attached Single Family Dwelling Units</u>							
4+ bedroom	\$1569	\$1902	\$2236	\$2569	\$2672	\$2779	\$2890
3 bedroom	\$900	\$1067	\$1234	\$1400	\$1455	\$1514	\$1575
2 bedroom	\$806		\$838		\$872	\$907	\$943
<u>Apartments</u>							
3+ bedroom	\$1846		\$1920		\$1997	\$2077	\$2160
2 bedroom	\$651		\$677		\$704	\$732	\$761
1 bedroom	\$16		\$16		\$17	\$18	\$18

(2) Elementary School Districts

The School Facilities Impact Fee shall be paid by Developer and the Owner in accordance with the following schedule for an elementary school district consisting of kindergarten through eighth grade:

<u>School Facilities Impact Fee – Elementary School District (K-8)</u>							
Number of Bedrooms	1/1/04 to 6/30/04	7/1/04 to 12/31/04	1/1/05 to 6/30/05	7/1/05 to 12/31/05	2006	2007	2008
<u>Detached Single Family Dwelling Units</u>							
4+ bedroom	\$1977	\$2477	\$2976	\$3476	\$3615	\$3760	\$3910
3 bedroom	\$1215	\$1674	\$2134	\$2593	\$2697	\$2805	\$2917
2 bedroom	\$581		\$604		\$628	\$653	\$679
<u>Attached Single Family Dwelling Units</u>							
4+ bedroom	\$1041	\$1262	\$1484	\$1705	\$1773	\$1844	\$1918
3 bedroom	\$688	\$815	\$943	\$1070	\$1113	\$1158	\$1204
2 bedroom	\$621		\$646		\$672	\$699	\$727
<u>Apartments</u>							
3+ bedroom	\$1266		\$1317		\$1370	\$1425	\$1481
2 bedroom	\$441		\$458		\$477	\$496	\$515
1 bedroom	\$11		\$11		\$12	\$12	\$12

(3) High School Districts

The School Facilities Impact Fee shall be paid by Developer and the Owner in accordance with the following schedule for a high school district consisting of ninth grade through twelfth grade:

School Facilities Impact Fee – High School District (9-12)

Number of Bedrooms	1/1/04 to 6/30/04	7/1/04 to 12/31/04	1/1/05 to 6/30/05	7/1/05 to 12/31/05	2006	2007	2008
<u>Detached Single Family Dwelling Units</u>							
4+ bedroom	\$663	\$830	\$998	\$1164	\$1211	\$1259	\$1310
3 bedroom	\$548	\$756	\$963	\$1170	\$1217	\$1265	\$1316
2 bedroom	\$100		\$104		\$108	\$113	\$117
<u>Attached Single Family Dwelling Units</u>							
4+ bedroom	\$528	\$640	\$752	\$864	\$899	\$935	\$972
3 bedroom	\$212	\$252	\$291	\$330	\$342	\$356	\$371
2 bedroom	\$185		\$192		\$200	\$208	\$216
<u>Apartments</u>							
3+ bedroom	\$580		\$603		\$627	\$652	\$679
2 bedroom	\$210		\$218		\$227	\$236	\$246
1 bedroom	\$5		\$5		\$5	\$6	\$6

(4) **Annual Adjustments**

Unless otherwise agreed to by the parties by an amendment to this Agreement, beginning in 2009 the amount of the School Facilities Impact Fee shall be annually increased by 4% per year.

(5) **Time of Payment of School Facilities Impact Fees**

School Facilities Impact Fees shall be paid in full for a particular dwelling unit prior to the application for a permit to construct said dwelling unit. Payment shall be made directly to the school district or districts in which the dwelling unit is located.

Evidence of payment shall be issued by the school district and shall be submitted to the City Manager at the time of building permit application. The failure to provide sufficient evidence of the required payment shall constitute sufficient grounds for the denial of the application for a building permit, or for the suspension or revocation of a building permit. In addition, the City Manager may refuse to issue a certificate of occupancy, or may suspend or revoke the same, if sufficient evidence of payment of the School Facilities Impact Fee is not presented.

(c) Stipulation Concerning Public Improvements and Development Fees

The City, the Developer and the Owner hereby irrevocably stipulate and acknowledge that the making of roadway improvements and other public improvements and the payment of the Development Fees required by this Agreement or the Subdivision Regulations are valid development requirements that are necessary to accommodate the increased population densities, increased vehicular and pedestrian traffic and increased need for additional public services and facilities and is specifically and uniquely attributable to the development of the Parcel.

Similarly, the City, the Developer and the Owner irrevocably stipulate and acknowledge that the requirement to provide the roadway improvements as set forth in this Agreement or the Subdivision Regulations are not subject to and do not violate the *Road Improvement Impact Fee Law* (605 ILCS 5/5-901 et seq.) or any other law of the State of Illinois.

(d) Waiver of Right to Contest Public Improvement Requirements or Development Fees

The Developer and the Owner, for themselves and their respective Successors, hereby waive and disclaim any and all right or claim either or both may have or hereafter acquire under which the Developer, the Owner or their respective Successors

may seek to avoid, reduce, condition or delay the payment of Development Fees or seek a refund or rebate thereof, or that would have the effect of invalidating such fees or impairing the collection thereof. In addition, the Developer, the Owner or their respective Successors, hereby waive and disclaim any and all right or claim either or both may have or hereafter acquire under which the Developer, the Owner or their respective Successors may seek to avoid, reduce, condition or delay the provision of the roadway improvements and other public improvements required by this Agreement or the Subdivision Regulations at the their sole cost and expense and without the right of recapture.

(g) Covenant Not to Sue

In addition to the foregoing, the Developer and the Owner warrant and covenant with the City that neither of them shall bring suit, or shall join or become included in any proceeding, including, but not limited to, a class action proceeding, that:

(1) seeks to enjoin, restrain, condition or impair the enforcement of ordinances imposing, implementing or amending Development Fees or the provision of public improvements;

(2) seeks a declaration regarding the validity, constitutionality or enforceability of such ordinances;

(3) seeks the mandatory approval or execution of subdivision plats or construction permits without the full and prompt payment of Development Fees or the provision of public improvements by a writ of mandamus or injunction; or

(4) seeks to enjoin, restrain, condition or impair the payment or collection of money or the transfer or improvement of property pursuant to ordinances imposing, implementing or amending Development Fees or requiring the provision of public improvements at the expense of the Developer or the Owner;

(5) claims that the enforcement of ordinances imposing Development Fees or requiring the provision of public improvements at the expense of the Developer or the Owner constitute a taking;

(6) claims the ordinances establishing, implementing or amending the Development Fees, the Zoning Ordinance or the Subdivision Regulations were not validly enacted.

(e) Reliance by City

The parties acknowledge that the City has agreed to annex the Parcel and provide municipal services in strict reliance upon the agreement by the Developer and the Owner to pay Development Fees and to provide public improvements as set forth in this Agreement and the Subdivision Regulations.

(f) Other Taxes and Fees

The payment of Development Fees and the provision of public improvements shall be in addition to any other tax, fee, charge, assessment or requirement levied or imposed by the City.

7. APPLICABILITY OF CITY CODES AND ORDINANCES

Unless otherwise specifically and expressly exempted by this Agreement, the Parcel and any use made of the Parcel shall be subject to, and shall comply with, all City Codes and Ordinances including, but not limited to, the Code of Ordinances, the Zoning Ordinance and the Subdivision Regulations. In addition, the reference herein to any City code, ordinance or regulation shall not be construed to waive, modify, limit or otherwise affect the applicability of any other City code, ordinance.

8. **NOTICES**

All notices required by this Agreement shall be in writing. The mailing of a notice by registered or certified mail, return receipt required, shall be sufficient service. Such notice shall be deemed served on the fourth day (excluding Sundays and legal holidays) after its deposit with the postal authorities.

Notice to City shall be addressed as follows:

City Manager
City of Joliet
150 West Jefferson Street
Joliet, Illinois 60432

with a copy to:

Corporation Counsel
City of Joliet
150 West Jefferson Street
Joliet, Illinois 60432

Notice to Owner shall be addressed as follows:

Anthony Possidoni
Montalbano Builders, Inc.
2208 Midwest Road
Oak Brook, IL 60523

with a copy to:

Michael McGurn
Montalbano Builders, Inc.
2208 Midwest Road
Oak Brook, IL 60523

The parties may hereafter agree in writing to accept service of notice in any other manner.

9. **AMENDMENTS**

This Agreement, including the attached exhibits, may be amended only with the mutual consent of the parties by a duly executed written Agreement.

Notwithstanding the foregoing, all or any portion of the Parcel may be rezoned upon the mutual Agreement of the City and the owner of record of the affected territory

without such reclassification constituting an amendment to this Agreement. In such event, notice and hearing shall be provided as may be required by ordinance with respect to zoning reclassifications. Notice and hearing that may be required by law for amendments to annexation Agreements shall not be required. Furthermore, approval of the zoning reclassification shall not require a supermajority as may be required by law for the amendment of an annexation Agreement.

Neither the City nor the Owner shall be obligated to amend this Agreement during its term and no action shall lie to compel such action or to compensate a party for an election not to amend this Agreement. Similarly, the City may elect not to rezone the Parcel during the term of this Agreement and such election shall not be justiciable.

10. **FINAL AGREEMENT AND CONSTRUCTION**

This Agreement supersedes all prior Agreements, negotiations and exhibits and is a full and complete integration of the matters of assent existing between the parties. The express reference in this Agreement to a specific ordinance, resolution or other requirement of the City shall not be construed so as to waive any other such ordinance, resolution or requirement. It is the understanding of the parties that all ordinances and regulations of the City shall apply to the Parcel in all respects unless otherwise expressly and specifically provided for herein. For purposes of construction, both the City and the Owner shall be deemed the authors of this Agreement

11. **ENFORCEMENT**

This Agreement shall be enforceable by actions in law and at equity, including actions for specific performance and injunctive relief, provided however, that an action for money damages shall not lie against the City or its officials. The laws of the State of Illinois shall control the construction and enforcement of this Agreement. The parties

agree that all actions instituted on this Agreement shall be commenced and heard in the Circuit Court of Will County, Illinois, and not in any other county, and hereby waive venue in any other court of competent jurisdiction.

Before any failure of any party to perform any obligation arising from this Agreement shall be deemed to constitute a breach, the party claiming the breach shall notify the defaulting party and demand performance. No breach of this Agreement shall have been found to have occurred if performance is commenced to the satisfaction of the complaining party within thirty business days of the receipt of such notice.

12. **SUCCESSORS**

This Agreement shall bind and inure to the benefit of each party and their successors in interest, including, but not limited to, their respective corporate authorities, heirs, successors, assigns, lessees, transferees, and licensees ("Successors").

13. **AGREEMENT AS COVENANT**

The terms and conditions of this Agreement shall constitute restrictive covenants or equitable servitudes running with the land. The City shall record this Agreement with the Recorder of Deeds.

14. **SEVERABILITY**

If any provision, covenant, Agreement or portion of this 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 provision, covenant, Agreement or portion of this Agreement, and to that end, every provisions, covenants, Agreements or portions of this Agreement is declared to be severable.

15. DURATION

This Agreement shall take effect on the date hereinabove first written and shall remain in effect for a term of 20 years.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date hereinabove first written.

**CITY OF JOLIET,
a Municipal Corporation**

**MBC III, LLC., a Delaware Limited
Liability Company**

By: *Anthony Schaefer*
Mayor

By: *Anthony Montalto*
Member

Attest: *[Signature]*
City Clerk

Attest: *Michael McBurn*
General Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PARCEL

THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF NA-AU-SAY, KENDALL COUNTY, ILLINOIS.

Unofficial

EXHIBIT B

LEGAL DESCRIPTION OF R-1B ZONING PARCEL

THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THAT PART OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SAID NORTH HALF OF THE SOUTHWEST QUARTER; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 809.09 FEET ALONG THE NORTH LINE OF THE SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 130.00 FEET; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 20.00 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 180.00 FEET; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 124.50 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 375.00 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 124.50 FEET; THENCE NORTH 00 DEGREES 38 MINUTES 54 SECONDS EAST 5.60 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 306.00 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 130.00 FEET; THENCE SOUTH 11 DEGREES 03 MINUTES 16 SECONDS EAST 71.49 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 15.00 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 534.07 FEET TO THE WEST LINE OF THE SAID SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 25 MINUTES 24 SECONDS EAST 894.41 FEET ALONG THE SAID WEST LINE OF THE SOUTHWEST QUARTER TO THE POINT OF BEGINNING, AND CONTAINING 63.552 ACRES MORE OR LESS, ALL IN THE TOWNSHIP OF NAU-AU-SAY, KENDALL COUNTY, ILLINOIS.

EXHIBIT C

LEGAL DESCRIPTION OF R-4 ZONING PARCEL

THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SAID NORTH HALF OF THE SOUTHWEST QUARTER; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 809.09 FEET ALONG THE NORTH LINE OF THE SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 130.00 FEET; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 20.00 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 180.00 FEET; THENCE SOUTH 89 DEGREES 21 MINUTES 06 SECONDS EAST 124.50 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 375.00 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 124.50 FEET; THENCE NORTH 00 DEGREES 38 MINUTES 54 SECONDS EAST 5.60 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 306.00 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 130.00 FEET; THENCE SOUTH 11 DEGREES 03 MINUTES 16 SECONDS EAST 71.49 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 54 SECONDS WEST 15.00 FEET; THENCE NORTH 89 DEGREES 21 MINUTES 06 SECONDS WEST 534.07 FEET TO THE WEST LINE OF THE SAID SOUTHWEST QUARTER; THENCE NORTH 00 DEGREES 25 MINUTES 24 SECONDS EAST 894.41 FEET ALONG THE SAID WEST LINE OF THE SOUTHWEST QUARTER TO THE POINT OF BEGINNING, AND CONTAINING 16.506 ACRES MORE OR LESS, ALL IN THE TOWNSHIP OF NAU-AU-SAY, KENDALL COUNTY, ILLINOIS.