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PLANNING, ZONING AND BUILDING SAFETY

**Public Health,
Housing Inspections &
Inspection Services**

MEMORANDUM

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Steven Boka, Director of Community Development
Date: April 5, 2011
Re: Voluntary Annexation Agreement – Parkview Condominium Association

INTRODUCTION: Over the last several years discussions have taken place with representatives of the Parkview Condominium Association to determine their interest in a voluntary annexation to the City of Muscatine. However, those efforts have failed to gain enough support of the residents to move forward. Earlier this year, a further discussion focused on the need for sanitary sewer to serve the property and the conditions under which the residents and the City could support a request for voluntary annexation. As many of the City Council members are aware, this annexation would also trigger the voluntary annexation of Irish Ivy, an adjoining residential subdivision.

BACKGROUND: City staff and the Association worked together to develop a pre-annexation agreement to address issues related to the annexation. The Association approved the pre-annexation agreement and on February 23, 2011, an application for voluntary annexation was filed with the City. The request was submitted to the Planning Commission for further review during their March 8th meeting. If approved, the Agreement stipulates that the City will extend public sewer to two separate points intended to serve the condominium property. The Association will provide the necessary easements for the sewer extension and will, at their expense, disconnect from their private disposal system and connect all units to the city sanitary sewer. All septic systems will be taken out of service and closed in accordance with applicable rules and regulations.

RECOMMENDATION/RATIONALE: It is therefore recommended that the City Council approve the attached pre-annexation agreement with the Parkview Condominium Association.

BACKUP INFORMATION:

1. Pre-Annexation Agreement

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

Preparer/Return Document To: Patrick T. Burk, 6701 Westown Parkway, Suite 100, West Des Moines, IA 50266

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement is entered into this _____ day of _____, 2011, by and between the Parkview Condominium Association (the "Association") and the City of Muscatine, Iowa (the "City").

WHEREAS, Parkview Condominium Association is the owner of Property located in unincorporated Muscatine County and legally described as follows: (the "Property")

WHEREAS, the Association desires to voluntarily annex its Property into the City of Muscatine, Iowa; and

WHEREAS, the Property is currently zoned **R3** under the Muscatine County Zoning Ordinance and wishes to be similarly zoned when annexed into the City; and

WHEREAS, the Association and the City both desire to enter into this Agreement to clarify and define its respective rights and responsibilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the parties hereto agree as follows:

1. **Annexation.** The City agrees to assist the Association to annex the Property into the City upon the terms and conditions set forth in this Agreement.

2. **Requirement to Annex.** The Association does hereby agree to immediately and voluntarily annex the Property out of Muscatine County and into the City or at such time as the City in its sole and absolute discretion is prepared to move the voluntary annexation forward.

3. **Code Compliance.** The Association agrees to comply with all existing or amended zoning and building codes.

4. **Fees and Costs of Annexation and Rezoning.** The City agrees to pay all costs of annexation, including drafting the petitions or other related documents and other customary filing and recording fees ("Fees"), but the Association shall pay its own attorney fees incurred, if any.

5. **Association Obligations.** The Association shall assume the following obligations under this Agreement:

- a. Assist in the voluntary annexation process by providing a plat, legal description of the Property, names and addresses of Association owners, and any other information that might be needed by the City to process the voluntary annexation.
- b. The Association agrees to cooperate with the City to determine the exact termination point for the public portion of the sanitary sewer intended to be located just inside the property lines of the Property. The Association agrees to provide any easement necessary on the Association property to facilitate the construction and maintenance of the public portion of the sanitary sewer line within the Property.
- c. The Association agrees to disconnect all private sewer disposal systems and promptly connect all units to the newly constructed public sewer at the expense of the Association. The Association further agrees that all private sanitary system(s) will be removed from service in accordance with local and state law.
- d. The Association agrees to connect all existing condominium units to the City sewer system through private contractor at its expense.
- e. The Association agrees to pay the normal residential sewer rate plus a 10% sewer surcharge for sanitary sewer service until the voluntary annexation is completed. Upon completion of the voluntary annexation, the Association will discontinue payment of the surcharge.

6. **City Obligations.** The City shall assume the following obligations under this Agreement:

- a. The City agrees to provide City sewer extension from Irish Ivy to inside property line on east side of the Property and place a manhole just inside that property line. The City also agrees to provide a sewer connection on the north side of the creek by bridging the creek and placing a manhole inside Association property within the designated easement provided by the Association for that purpose.
- b. The City shall provide all engineering, plans, and specifications related to the extension of public sanitary sewer intended to serve the Property, to include any regulatory permits related to the City extension, and all construction cost associated with the public sewer extension. Said costs will be restricted to the actual cost associated with the design and construction of the extension needed to bring the public sanitary sewer to location just inside the property lines of the Association.
- c. The City shall cooperate in a zoning change of this Property from county zoning to a compatible city zoning district as a part of the annexation.

- d. The City agrees to permit the Association to connect to the newly constructed public sanitary sewer at their cost and without requiring any additional connection fees.
- e. The City will complete the installation of the public sanitary sewer to the just inside the property lines of the Association prior to final annexation taking place.

7. **Assignment.** Except as provided below, this Agreement may not be assigned by any party without the express written permission of the other parties.

8. **Successors and Assigns.** The rights, duties, and obligations of the parties as contained in this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, liabilities or obligations under or by reason of this Agreement. In order to ensure proper notice to all successors and assigns, a copy of this Agreement shall be filed with the Muscatine County Recorder.

9. **Governing Law.** All rights and obligations arising out of or related to this Agreement, and the application and interpretation hereof, shall be governed by and construed in accordance with the laws of the State of Iowa.

10. **Dispute Resolution.**

- a. All disputes, controversies, and questions directly or indirectly arising under, out of, in connection with, or in relation to this Agreement or its subject matter, including without limitation, all disputes, controversies and questions relating to the validity, negotiation, interpretation, construction, performance, termination, and enforcement of the Agreement shall be resolved finally and conclusively in accordance with this section, which shall be the sole and exclusive procedure for the resolution of any dispute.
- b. The parties shall promptly attempt in good faith to resolve any dispute by negotiation. If the matter has not been resolved within twenty (20) days after receipt of a party's written request for negotiation, any party may initiate arbitration as provided herein.
- c. If this good-faith twenty-day (20-day) period does not resolve the dispute, the disputing parties will agree on an independent arbitrator within ten (10) days of written notification by either party of request for formal arbitration. An arbitrator will be selected by agreement of the parties and an arbitration meeting will be set within thirty (30) days, with all remaining disputes submitted to the arbitrator. If the parties fail to agree upon an arbitrator, each party shall select their own who shall in turn select a third and final arbitrator. All disputes will be finalized by the decision of the arbitrator and based upon the rules of the American Arbitration Association.

11. **Recitals Inclusive.** The above listed recitals are incorporated into this Agreement.

12. **Execution of Documents.** All parties agree to execute and deliver whatever documents or assurances as may be reasonably necessary to implement the terms and conditions of this Agreement and effectuate the intent thereof. The parties hereto will cooperate fully.

13. **Entire Agreement.** This Agreement, the exhibits attached and the documents delivered and recorded pursuant hereto constitute the entire agreement and understanding among the parties and supersede and revoke any prior agreements or understandings relating to the subject matter of this Agreement.

14. **Amendments.** No change, amendment, termination, or attempted waiver or variation of the terms and conditions of this Agreement shall be valid unless the same follow applicable statutes.

15. **Captions.** The headings, captions, or titles of articles, sections, and paragraphs of this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement, and such titles or captions do not define, limit, extend, explain, or describe the scope or extent of this Agreement of any of its terms or conditions.

16. **Severability.** In the event any provisions of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid, legal, and enforceable. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable as written, but valid, legal, and enforceable if modified, then such provision shall be deemed to be amended to such extent as shall be necessary for such provision to be valid, legal, and enforceable and it shall be enforced to that extent. Any finding of invalidity, illegality, or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17. **Attorney Fees and Court Costs.** Should legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs, including reasonable attorney, paralegal, and expert fees.

18. **Counterparts.** This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2011.

PARKVIEW CONDOMINIUM ASSOCIATION

By: _____

Clayle McCaw, President

CITY OF MUSCATINE, IOWA

By: _____

Richard O'Brien, Mayor

ATTESTED TO:

[SEAL OF CITY OF MUSCATINE, IOWA]

By: _____

City Clerk, City of Muscatine, Iowa



