



CITY OF PATASKALA

RESOLUTION 2015-035

Passed April 20, 2015

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH THE FANNIN LIMITED PARTNERSHIP AND JAMES L. DEAGLE FOR THE ANNEXATION OF 128.134 ACRES OF PROPERTY LOCATED ON SR310, NORTH OF BROAD STREET, INTO THE CITY OF PATASKALA.**

**WHEREAS**, the Fannin Limited Partnership and James L. Deagle has advised the City of Pataskala, via their legal counsel, that they intend to pursue the annexation of 128.134 acres of property on SR310 North into the City of Pataskala; and

**WHEREAS**, the Fannin Limited Partnership and James L. Deagle desires to enter into a pre-annexation agreement with the City of Pataskala as a first step in the annexation process; and

**WHEREAS**, the Fannin Limited Partnership and James L. Deagle has requested that the City enter into the proposed pre-annexation agreement as provided in the attached Exhibit A.

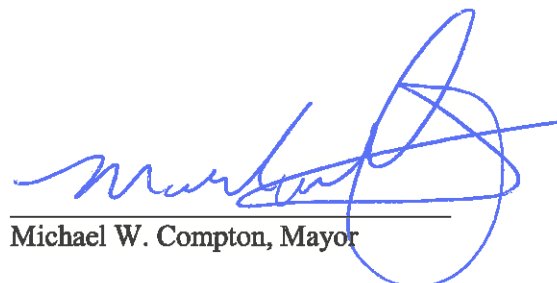
**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS CONCURRING THAT:**

**Section 1:** The City Administrator is hereby authorized to enter into a pre-annexation agreement, provided in the attached Exhibit A, for the annexation of 128.134 acres of property located on SR310 north of Broad Street, by the Fannin Limited Partnership and James L. Deagle.

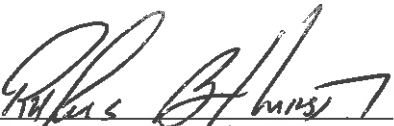
**Section 2:** This Resolution shall become effective from and after the earliest period allowed by law.

**ATTEST:**

  
Kathy M. Hoskinson, Clerk of Council

  
Michael W. Compton, Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Rufus B. Hurst, Law Director

**PRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement ("Agreement") is made and entered into this 20<sup>th</sup> day of April, 2015, by and between Fannin Limited Partnership, an Ohio limited partnership, James L. Deagle (singularly and jointly referred to herein as "Landowners") and the City of Pataskala, Ohio, an Ohio municipal corporation organized and existing under the Constitution and laws of the State of Ohio and its municipal charter ("City"), under the circumstances summarized in the following recitals.

**Recitals:**

**Whereas**, Landowners own approximately 128.134 acres of real property located in the Township of Harrison, County of Licking, which is contiguous with the boundaries of the City as described and delineated in the legal descriptions and map attached hereto and made a part hereof as Exhibit "A" ("Property");

**Whereas**, the Property would benefit from certain City services, including in particular public water and sewerage services and comprehensive planning and zoning services;

**Whereas**, the City is capable of providing such services and hereby agrees to approve the annexation and provide those and other municipal services to the Property if the Property is approved for annexation by the Licking County Commissioners; and

**Whereas**, the City and Landowners (sometimes referred to herein jointly as the "Parties") agree that it is in their mutual interest to enter into this Agreement for the annexation and development of the Property for the mutual benefit of the Parties.

**Now Therefore**, in consideration of the covenants and agreements contained herein, Landowners and the City covenant and agree as follows:

**A. Landowners**

**Petition for Annexation by Landowners:** Landowners shall prepare, at their expense, an annexation petition, map, legal description ("Petition") and other related documents as may be required by the Ohio Revised Code ("ORC") to annex the Property to the City. The annexation shall be by ORC Section 709.023, also known as an "Expedited Type II" annexation. Landowners are the only owners of the Property and Landowners shall execute the Petition and will execute other documents reasonably necessary to effectuate the annexation as may be required by law. The Petition will be filed with the Licking County, Ohio, Board of County Commissioners ("Commissioners"). The Parties agree that in the event a correction or revision to the map and/or legal description submitted as part of the Petition is required to be corrected or revised to address issues unknown at the time of submittal, the City will review and agree to said correction and/or alteration in a timely manner and said correction and/or revision shall not be considered an alteration to the terms of this Agreement unless so altered by mutual agreement, in writing, by the Parties. Landowners agree that costs for their engineer, surveyor, and other such professionals participating in the annexation process, including Landowners' attorney(s) representing their interests with regard to the annexation, will be borne by Landowners. Landowners

shall pursue the annexation of the Property in accordance with this Agreement subject to and conditioned upon the City's approval of this Agreement and performance of its duties and obligations delineated in this Agreement and the economic vitality to Landowners to annex the Property. In the event the Commissioners do not approve the annexation of the Property, this Agreement shall terminate and the Parties shall have no further obligation hereunder.

## B. City

1. **City Service Resolution & Obligations:** In accordance with ORC 709.023, the City shall enact, prior to twenty (20) days after the date of Landowners' filing of the Petition with the Commissioners, a Service Resolution stating the services the City will provide, and the approximate date by which it will provide them, to the Property. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners. The Service Resolution will specifically provide, in addition to police protection and other City services:

a. **Public Water & Sanitary Services:** It is understood between the Parties that the extension of the City's public water and sanitary services to the Property is of prime importance to the Landowners and without said services, the annexation of the Property by Landowners would not be pursued. The City agrees that it will provide public water and sanitary services to the Property and that its provision of public water and sanitary services to the Property will be on the following terms:

(i) The City agrees to secure and provide any and all easements and agreements needed for the extension of a ten inch (10") City public water line and twelve inch (12") City public sanitary line ("Water/Sanitary Lines") for the provision of City public water and sanitary services to the Property at its southern property line ("Water/Sanitary Services"). Said easements and agreements shall be at the City's own cost, said cost including but not limited to attorneys' fees, engineering costs, surveying costs, etc. It is understood by the Parties that the Landowners will bear the cost of the physical extension/construction of the Water/Sanitary Lines.

(ii) The City agrees that the connection, tapping, usage fees, and any other such fee associated with the connection to and use of the Water/Sanitary Services to the Property will be at the rates provided for "In-Town" property owners.

## C. City & Landowners

**Zoning:** The City understands that Landowners' intended use of the Property is a single family residential subdivision with approximately 243, more or less, single family lots to be served by the City's public services as conceptually designed in the "Concept Plan" attached hereto and made a part hereof as Exhibit "B". The Parties agree that upon filing the Petition with the County, Landowners will file an application with the Concept Plan with the City ("Zoning Application") to zone the Property to the R-15 District (Chapter 1233 Codified Ordinances of Pataskala) under Cluster Housing regulations (Chapter 1257 Codified Ordinances of Pataskala). Upon filing, the City Planning and Zoning Commission shall

review the Zoning Application in accordance with applicable provisions of the Codified Ordinances. Such review and consideration shall occur during the pendency of the annexation process. The City planning staff and administration agree that, if the Zoning Application is generally consistent with Exhibit "B", the Zoning Application will be supported by staff. The City understands that it has one hundred twenty (120) days to accept the annexation after the Petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of the City and laid before Council (ORC 709.04). The City agrees to delay acceptance of the annexation until legislative approval of the Zoning Application can be contemporaneously accomplished with the acceptance of the annexation. The City enters this Agreement acknowledging that the Landowners do not wish to annex the Property unless the zoning described herein is approved by the City. If the Zoning Application generally consistent with Exhibit "B" is not approved by the City, and said disapproval is not the result of a breach of this Agreement, at Landowners' request, the City and Landowners shall terminate this Agreement.

#### **D. City's Obligation**

The City agrees that in the event there is opposition, authorized prohibition, court order, or other such act that serves to delay or prevent the City's acceptance of the Property for annexation or the City's extension of the Water/Sanitary Lines to the Property and/or the use by the Property of the Water/Sanitary Services, whether occurring during or after the annexation, whether directed against Landowners or the City, and whether asserted by Southwest Licking Community Water & Sewer District or by any other entity or person, the Landowners shall have the right, in their sole discretion, to terminate this Agreement and pursue any and all legal remedies available at law and in equity. This clause shall survive the annexation.

#### **E. Process Requirements**

1. **Compliance:** Nothing in this Agreement shall absolve the Parties from the responsibility to comply with the zoning and development plan process before the Planning & Zoning Commission, Board of Zoning Appeals, and the City Council of the City.

2. **Council Action:** The obligations of and agreements by the City contained herein shall be effective and enforceable upon the approval of all necessary legislation and/or motions by Council. It is acknowledged by the Parties that Council's legislative approval of this Agreement is the first in a series of legislative acts to implement this Agreement. All subsequent Council actions implementing this Agreement shall be in furtherance of this Council Action.

3. **Permits:** Landowners will obtain all permits necessary and required to build and develop the Property consistent with the zoning as finally approved.

#### **F. Miscellaneous**

1. **Binding Agreement:** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and/or assigns, and by execution hereof, all Parties represent

that they are duly authorized to sign it. By passage of Resolution 2015-035 on April 20, 2015 the City authorized the execution of this Agreement.

2. **Cancellation or Termination:** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties or pursuant to the terms of this Agreement.

3. **Remedies:** Except as otherwise limited by ORC 2744 as to action for or against the City, the Parties shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges and rights of this Agreement and the enforcement thereof.

4. **Enforcement:** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of execution of this Agreement by both Parties.

5. **Assignment:** Landowners shall not assign this Agreement without the written consent of the City, which shall not unreasonably be withheld, unless such assignment is to a single purpose limited liability company which the Landowners control, in which case no consent is required.

6. **Entire Agreement:** This Agreement merges all of the oral negotiations, representations, discussions, and understanding between the Parties, their legal counsel, agents and representatives. This Agreement contains the entire Agreement of the Parties with respect to the subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

7. **Severability:** If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force and effect.

8. **Modifications of Agreement:** No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing approved and signed by the Parties.

9. **Recitals:** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are integral to this Agreement and as such are incorporated herein by reference.

10. **Executed Counterparts:** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

11. **Captions:** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

12. **Survival of Representations and Warranties:** All representations and warranties of Landowners and the City in this Agreement shall survive the execution and delivery of this Agreement.

13. **Effective Date:** This Agreement shall be effective when signed by all the Parties.

14. Time: Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

