

Ordinance #O.16.18

**An Ordinance AUTHORIZING THE EXECUTION OF A ANNEXATION AGREEMENT WITH PATRICK MCCARTHY AND KRISTINE MCCARTHY FOR A 31.88 ACRE PARCEL COMMONLY KNOWN AS THE PALACE CAMPGROUND.**

Adopted by the City Council of the City of Galena this 8<sup>th</sup> Day of August 2016.

Published in pamphlet form by authority of the City Council of the City of Galena, Jo Daviess County, Illinois, this 8<sup>th</sup> Day of August 2016.

STATE OF ILLINOIS            )  
  )        City of Galena  
COUNTY OF JO DAVIESS )

CERTIFICATE

I, Mary Beth Hyde, certify that I am the duly elected municipal clerk of the City of Galena, JoDaviess County, Illinois.

I further certify that on the 8<sup>th</sup> Day of August 2016, the Corporate Authorities of said municipality passed and approved Ordinance No. O.16.17 entitled **AN ORDINANCE AUTHORIZING THE EXECUTION OF A ANNEXATION AGREEMENT WITH PATRICK MCCARTHY AND KRISTINE MCCARTHY FOR A 31.88 ACRE PARCEL COMMONLY KNOWN AS THE PALACE CAMPGROUND**, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. O.16.18 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing the 8<sup>th</sup> Day of August 2016 and commencing for at least ten (10) days thereafter.

Dated at Galena, Illinois, this 9<sup>th</sup> Day of August 2016.



Mary Beth Hyde  
City Clerk

(Seal)

**ORDINANCE NO. O.16.18**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A  
ANNEXATION AGREEMENT WITH PATRICK MCCARTHY AND KRISTINE MCCARTHY FOR  
A 31.88 ACRE PARCEL  
COMMONLY KNOWN AS THE PALACE CAMPGROUND**

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**WHEREAS**, it is in the best interests of the City of Galena, Jo Daviess County, Illinois, that a certain annexation agreement with Patrick McCarthy and Kristine McCarthy, pertaining to the land described below and commonly known as the Palace Campground, be entered into; and

**WHEREAS**, a copy of such agreement is attached hereto and incorporated herein; and

**WHEREAS**, the legal owners of record of the property that is the subject of the annexation agreement are ready, willing and able to enter into that agreement and to perform the obligations as required thereunder; and

**WHEREAS**, the statutory procedures provided in Division 15.1 of Article 11 of the Illinois Compiled Statutes, as amended, 65 ILCS 5/11-15.1, for the execution of the annexation agreement have been fully complied with;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GALENA, JO DAVIESS COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** That the property covered by the Annexation Agreement is described in EXHIBIT A, and

**SECTION 2:** That the Mayor be and is hereby authorized and directed to execute, and the City Clerk is directed to attest, a document known as "Annexation Agreement" (a copy of which is attached hereto and made a part hereof), and

**SECTION 3:** The invalidity of any section part, provision, term or phrase of this Ordinance shall not affect the validity of the remainder hereof, and

**SECTION 4:** All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance shall be repealed to the extent of any such conflict or inconsistency, and

**SECTION 5:** This Ordinance shall be in full force and effect from and after its passage; approval and publication as provided by law.

**PASSED AND APPROVED THIS 8th DAY OF August, 2016.**

**AYES:**

**Lincoln, Westemeier, Bernstein,  
Fach, Hahn, Kieffer, Renner**

**NAYS:**

**None**



**Terry Renner  
Mayor**

**ATTEST:**



**Mary Beth Hyde  
City Clerk**

**Prepared by and Return to:**

**Joseph Nack, City Attorney  
City of Galena  
312 ½ North Main Street  
Galena, Illinois 61036**

**TYPE OF DOCUMENT: Annexation Agreement**

**Prepared by: Joseph Nack, City Attorney  
City of Galena  
101 Green Street  
Galena, IL 61036**

**Return to: Mary Beth Hyde, City Clerk  
City of Galena  
101 Green Street  
P.O. Box 310  
Galena, IL 61036**

# **ANNEXATION AGREEMENT**

THIS AGREEMENT is made on or as of the 8 day of September, 2016, by and between the **CITY OF GALENA, an Illinois Municipal Corporation** (the "City") and **Patrick McCarthy, Kristine McCarthy, or their grantees, heirs, successors or assigns**, (the "Owners").

## **RECITALS**

A. The Owners hold title to or have an interest in the Property hereinafter more particularly described in "Exhibit A."

B. Section 11-15.1-1 of the Illinois Municipal Code authorizes municipalities to enter into annexation agreements providing for the annexation of certain property upon the property becoming contiguous to the municipality and further states that lack of contiguity to the municipality of the property that is the subject of an annexation agreement does not affect the validity of an agreement.

C. Section 11-15.1-2.1 of the Illinois Municipal Code provides that the property that is the subject of an annexation agreement adopted under Division 15.1 is subject to the ordinances, control and jurisdiction of the annexing municipality in all respects, the same as property that lies within the annexing municipality's corporate limits.

D. In 2011, the Owners petitioned the City to annex and to rezone the property from Limited Agricultural district to Planned Unit Development district with an underlying default district of Planned Commercial.

E. On July 13, 2011, after duly published notice, the Zoning Board of Appeals of the City conducted a public hearing on Owner's request for a rezoning from the Limited Agricultural district to the Planned Unit Development District with the underlying default district as Planned Commercial. Upon adjournment of the public hearing, the Zoning Board of Appeals of the City made recommendations regarding such items to the City Council of the City in the manner provided by law.

G. On August 8, 2011, after duly published notice, the City Council of the City conducted a public hearing on the Annexation Agreement in accordance with applicable law.

H. On August 22, 2011 the City Council of the City unanimously approved an ordinance authorizing the execution of the Annexation Agreement and an ordinance annexing the property and rezoning the property to Planned Unit Development district with an underlying default district of Planned Commercial.

I. Following the 2011 approval by the City, the legal description for the Property was determined to be inaccurate. A corrected legal description was not produced and the Owners did not sign the annexation agreement. The property was not annexed.

J. In 2015, the Owners sold part of the Property. The remaining property was surveyed in May 2016 and determined to be 31.88 acres as shown on Exhibit A, "Plat of Annexation".

K. The Owners and the City intend to rescind the 2011 annexation agreement and annexation ordinance and enter into this new Agreement.

L. Given the proximity to the City and the possible provision of City utilities to the Property, this development will have a far greater impact on the City than upon any other unit of local government having the authority to undertake regulation of those operations.

M. Performance by both the Owners and the City of their respective obligations under this Agreement is critical to the health, safety and welfare of the general public, and to the enjoyment and use of property located in the vicinity of the Property.

N. As part of this agreement, the Owners and the City seek to settle a long-standing dispute regarding damage to the Property incurred from storm water originating from a source(s) outside of the Property, with some of the sources being development approved by the City. An abatement of property taxes is proposed as a means of settling the dispute without the outlay of public funds. Under the authority of the Illinois Compiled Statutes (35 ILCS 200/18-184) the City intends to abate the City property taxes annually for the Property for a period not to exceed 20 years beginning on the effective date of this Agreement. The cumulative amount of taxes abated shall not exceed \$40,000, or extend more than 20 years, whichever comes first. Said abatement shall be valid for the current owners of the Property only and shall not be transferrable to any future owner of the Property. As part of this agreement, Owners will release and relieve the City from any liability associated with damage from storm water to their Property, whether said damage occurred prior to or after the execution of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and in consideration of the mutual covenants and agreements hereinafter set forth, the City and the Owners agree as follows:

## **ARTICLE I**

### **INCORPORATION OF RECITALS AND EXHIBITS**

1.1 **Incorporation of Recitals.** The recitals herein above set forth are incorporated into and made a part of this Agreement.

1.2 **Incorporation of Exhibits.** The exhibits attached hereto are incorporated into and made a part of this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

2.1 **Definitions.** As used in this Agreement, the following terms shall have the meaning set forth opposite each of them except where the use or context clearly indicates that a different meaning is intended:

2.1.1 **“Agreement” or “this Agreement”** shall mean this Annexation Agreement between the City and the Owners.

2.1.2 **“City”** means the City of Galena, a municipal corporation organized and existing under the laws of the State of Illinois and located in Jo Daviess County, Illinois.

2.1.3 **“County”** means the County of Jo Daviess in the State of Illinois.

2.1.4 **“Owners”** means Patrick McCarthy, Kristine McCarthy, or their grantees, heirs, successors or assigns.

2.1.5 “**Property**” means the real property legally described on “Exhibit A” and consisting of 31.88 acres.

2.1.6 “**Zoning Code**” means the City of Galena Zoning Ordinance found at Chapter 154 of the City Code of the City.

### **ARTICLE III**

#### **ANNEXATION AND ZONING OF THE PROPERTY**

3.1 **Annexation of the Property.** Within thirty (30) days after the execution of this Agreement, the City shall, subject to the terms and conditions of this Agreement, do all things necessary or appropriate to cause the Property to be annexed to the City and to comply with the provisions of this Agreement. In particular and without limitation, the City shall pass and approve an ordinance annexing the Property to the City, and prepare and serve any notices as may be required for any township road district, fire protection district or library district, as appropriate. The City shall record as necessary the ordinance annexing the Property and record or file any other documents as may be necessary to effectuate the terms of this Agreement.

3.2 **Adoption of Ordinances Addressing Zoning Matters.** No later than thirty (30) days after the adoption of this Agreement, the City shall, subject to the terms and conditions of this Agreement, do all things necessary or appropriate to cause the City to adopt an ordinance for the purpose of establishing the zoning of the Property and parts thereof, being Planned Unit Development District zoning with the underlying default district as Planned Commercial and in

accordance with the approved Planned Unit Development Plan attached hereto and made part hereof as "Exhibit B".

3.3 **Use of the Property Prior to Annexation.** Until the City annexes the Property as provided in Section 3.3 of this Agreement, the City and Owners agree that the Property may be used in accordance with and consistent with the terms of this Agreement and with all ordinances of the City regarding such development in place at the time of the execution of this Agreement.

## **ARTICLE IV**

### **ZONING**

4.1 **Zoning.** The City shall enact such ordinances, adopt such resolutions and take such other actions as are necessary to zone the Property with a Planned Unit Development District zoning with the underlying default district as Planned Commercial and shall approve the Planned Unit Development Plan attached hereto and made part hereof as "Exhibit B".

4.2 **Highway Corridor Overlay Compliance.** Prior to the issuance of any City building permit for new construction, the Owner shall comply with the provisions of the Highway Corridor Overlay District as found in Zoning Code Section 154.303 for those portions of the Property to which the Corridor District applies. According to Section 154.922, a Non-Administrative Highway 20 Development permit shall be required. As a condition to the issuance of a permit in said District by the City, Owner shall be required to submit plans and obtain approval or waiver from the City with respect to the following: (a) the location of each

proposed structure on the site, the number of stories and height thereof, gross floor area, and the location of entrances and exits to buildings; (b) the dimension and capacities of parking and loading areas, and the character and location of illumination facilities and landscaping for same shown on a dimensional drawing; and (c) the location and height of all walls, fences and screen plantings, landscaping and buffer areas. City approval or waiver of the aforesaid after review by the Zoning Board of Appeals and approval by the City Council shall not be unreasonably withheld.

4.3 **Screening.** Pursuant to Zoning Code Section 154.301 and Section 154.923, Owners shall be required to provide City with the proposed location and screening of all onsite facilities for refuse collection, loading areas, outdoor storage areas and HVAC or other utility equipment prior to the issuance of a building permit for the construction of any new such improvements on the Property.

4.4 **Site Plans.** Consistent with City of Galena Zoning Ordinance Section 154.914, site plans shall be submitted to the Zoning Administrator and shall be reviewed and, if in compliance with City ordinances and this Agreement, approved by the City pursuant to the provisions found in Zoning Code Section 154.134 of the Galena Zoning Ordinance.

4.5 **Materials to be Used.** All new buildings shall be erected on the Property using a façade of brick, stone, brick veneer, stucco, wood or other similar materials, all subject to approval by the City.

4.6 **Permits.** Prior to commencing construction of any buildings, Owners shall at their sole cost and expense acquire any and all licenses or permits which may be required by

applicable local ordinances of the City, as well as may be required by all county, state or federal statutes or regulations.

## **ARTICLE V**

### **CODES AND ORDINANCES; FEES**

5.1 Except where specifically limited or reserved by this Agreement, to the extent of any conflict, ambiguity or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, by the City of Galena Code of Ordinances, the City of Galena Zoning Ordinance, the City of Galena Storm Water Detention Ordinance, and the City of Galena Subdivision Ordinance, or any other City code, ordinance or regulation, the terms, provisions and standards of this Agreement shall control and govern during the term of this Agreement. Notwithstanding the foregoing, if any City code, ordinance or regulation is hereafter adopted, amended or interpreted so as to be less restrictive upon the Owners with respect to the development of the Property, than is the case under the existing law, then at the option of the Owners, such less restrictive amendment or interpretation shall control during the term of this Agreement.

5.2 No fee or charge of any description shall be imposed upon the Owner or upon the development and use of the Property, unless, as of the date of this Agreement, such fee or charge is in existence and being collected by the City on a uniform basis from all Owners, users and developers of property within the City.

5.3 The Owners shall be issued, in accordance with Chapter 115 of the Galena Code of Ordinances, a Trailer Camp License by the City on an annual basis and at no cost provided the Owner maintains a valid campground license issued by the Illinois Department of Public Health.

5.4 Campfires shall be permitted at each camp site on the Property in accordance with the rules of the campground.

## **ARTICLE VI**

### **SANITARY SEWER SERVICE**

6.1 The City represents and warrants that it owns, operates and maintains a sanitary sewage collection, treatment and disposal system within its borders and contiguous to or abutting the Property. The campground facilities shall be permitted to continue to utilize private septic systems subject to the provisions of this paragraph. Any building or facility on the property that is required by the building code to have sanitary sewer facilities shall be connected to the public sewer system when the current septic system is no longer suitable to serve that building or facility or when the septic systems cannot be maintained or expanded in accordance with applicable rule or law. Once a building or facility is connected to the public sewer system, it shall not be permitted to utilize septic treatment or other alternative treatment or containment systems. At such time that a connection to the public sewer is requested by the Owners, the Owners shall provide, at the sole cost and expense of the Owners, a study by a professional engineer, approved by the City prior to the commencement of work to perform the study, which clearly demonstrates the capacity of the existing sanitary system to serve the expected needs of Owners, including all necessary lift stations and back-up

power supplies. Said study shall also identify and design requirements for the installation of all connecting mains, etc. to the existing City sewer system and any required system of mains within the Property for a fully functioning system to serve the sanitation sewer needs of the Property as developed. Any necessary upgrades of the system identified by said engineering study, including any infrastructure to be located outside of the Property, and including but not limited to, pipes, valves, lift stations, pumps, treatment facilities, SCADA, etc., shall be completed at the sole cost and expense of Owners prior to the City authorizing the Owners to connect to the system. Prior to the issuance of any construction or other permits related to any development of the Property, an Illinois Environmental Protection Agency permit must be obtained at the sole cost and expense of the Owners. The City does not warrant, guarantee or agree that the sanitary sewer system owned and operated by the City has sufficient capacity or functionality to serve the Property or any development thereof. Furthermore, the City shall not reserve any sewerage capacity for the Property until such time that the City issues construction permits for the construction of the sanitary sewer system for the Property in accordance with this paragraph.

6.2 Subject to the limitations set forth herein, the Owners shall have the right to connect to and use such sanitary sewer system and mains. Prior to the issuance of any building permits, Owners shall pay to the City all permit, tap-on and inspection fees based on the fee schedule in place at the time of permit application.

6.3 The Owners shall be responsible for obtaining any and all permissions, easements, or property necessary to install the sanitary sewer system needed to serve the Property. The City does not guarantee sufficient public right-of-way or public property to install

sanitary sewer service outside of the Property. Any and all costs incurred by the City in assisting Owners in obtaining permits, easements, completion of the engineering study and any other assistance including, but not limited to City staff time, additional engineering and other professional costs as well as reasonable attorney fees, all as reasonably identified by the City, shall be reimbursed in full to the City by Owners prior to authorization to connect either to the existing sewer system or any extension or expansion thereof accomplished by Owners or the City pursuant to the terms of this Agreement. City shall without cost to the City and to the extent reasonably possible, assist Owners/Developers in procuring easements or acquiring property interests necessary to extend the sanitary sewer from its current terminus to the boundary of the Property in order to effect the provision of sanitary service to the Property. All such work will be done in accordance with plans provided in said engineering study and approved by the City Engineer.

6.4 Owners acknowledge and agree that should a new sanitary lift station(s) be required to serve the Property, a generator sufficient to provide the back-up power necessary to assure ongoing operation of the lift station and sewer system used to serve the Property shall be provided at the sole cost and expense of Owners. In addition, Owners acknowledge and agree that a SCADA system interface must be provided with the lift station at the sole cost and expense of the Owners.

## **ARTICLE VII**

### **POTABLE WATER SERVICE**

7.1 The City represents and warrants that it owns, operates and maintains a potable water supply and distribution system within its borders and contiguous to (separated by US Route 20) the Property. The campground facilities shall be permitted to continue to utilize private wells subject to the provisions of this paragraph. Any building or facility on the Property that is required by the building code to have potable water service shall be connected to the City of Galena public water system when the current private well is no longer suitable to serve that building or facility or when the well cannot be maintained or improved in accordance with applicable rule or law. Once a building or facility is connected to the public water system, it shall not be permitted to utilize a well for its potable water supply. Owners shall provide, at the sole cost and expense of Owners, a study by a professional engineer, approved by the City prior to the commencement of work to perform the study, which clearly demonstrates the capacity and pressure of the existing potable water system to serve the expected needs of Owners, including all booster pumps, wells and storage. Said study shall also identify and design requirements for the installation of all connecting mains, etc. to the existing City potable water system and any required system of mains within the Property for a fully functioning system to serve the potable water needs of the Property as developed. Any necessary upgrades of the system identified by said engineering study, including any infrastructure to be located outside of the Property, and including but not limited to any pipes, valves, hydrants, pressure stations, towers, public wells, SCADA, etc., shall be completed at the sole cost and expense of the Owners prior to the City authorizing the Owners to connect to the system. Prior to the issuance

of any construction or other permits related to the use or development of the Property, an Illinois Environmental Protection Agency permit must be obtained at the sole cost and expense of the Owners. The City does not warrant, guarantee or agree that the potable water system owned and operated by the City has sufficient capacity or functionality to serve the Property, the current uses, or any development thereof. Furthermore, the City shall not reserve any potable water capacity for the Property until such time that the City issues construction permits for the construction of the water sewer system for the Property in accordance with this paragraph.

7.2 Subject to the limitations set forth herein, the Owners shall have the right to connect to and use such potable water supply system. Prior to the issuance of any building permits, Owners shall pay to the City all permit, tap-on and inspection fees based on the fee schedule in place at the time of permit application.

7.3 The Owners shall be responsible for obtaining any and all permissions, easements, or property necessary to install the potable water system needed to serve the Property. The City does not guarantee sufficient public right-of-way or public property to install water service outside of the Property. Any and all costs incurred by the City in assisting Owners in obtaining permits, easements, completion of the engineering study and any other assistance including, but not limited to City staff time, additional engineering and other professional costs as well as reasonable attorney fees, all as reasonably identified by the City, shall be reimbursed in full to the City by Owners prior to authorization to connect either to the existing potable water system or any extension or expansion thereof accomplished by Owners or the City pursuant to the terms of this Agreement. Such action to complete such extension of the

potable water main or mains shall be taken no later than the date water service is required for occupancy of the improvements to be serviced by said water main extension. City shall, without cost to the City and to the extent reasonably possible, assist Owners in procuring easements or acquiring property interests necessary to extend the potable water from its current terminus to the boundary of the Property in order to effect the provision of potable water service to the Property. All such work will be done in accordance with plans provided in said engineering study and approved by the City Engineer. Water within the Property shall be extended only with Illinois Environmental Protection Agency approval and only pursuant to permits from the City.

## **ARTICLE XIII**

### **STORM DRAINAGE**

8.1 In the event new buildings are constructed on the Property, Owners shall be responsible for providing all necessary storm sewers, detention systems and compensatory storage in compliance with the City of Galena Storm Water Detention Ordinance as amended, the existing City of Galena Flood Plain Ordinance and all other applicable laws and regulations, as modified or amended pursuant to the terms of this Agreement.

## **ARTICLE IX**

### **OTHER REQUIREMENTS REGARDING INFRASTRUCTURE**

9.1 All public infrastructure including, but not limited to, sanitary sewer system, potable water system, storm drainage system and streets shall be installed on the Property consistent with all City ordinances, specifications, rules, regulations and the terms of this Agreement and same shall be subject to inspection and testing by appropriate officials of the City prior to the required dedication to and acceptance of same by the City. All costs and expenses of such testing and inspections to facilitate City approval and acceptance thereof shall be paid by Owners.

9.2 Prior to taking any action with regard to installation of any such public infrastructure systems, Owners shall provide at least twenty-four (24) hour advance notice to the City that such work is about to commence. Failure to provide such notice prior to the beginning of any such work shall be a breach of this Agreement and shall subject the Owners to possible stop work order(s) of a temporary or permanent nature as the City may determine to be appropriate under the circumstance.

9.3 Owners acknowledge and agree that no public infrastructure shall be approved or accepted by the City nor will any building permits be issued without the delivery to the City by Owners of "As Built" plans and/or drawings of all such public infrastructure installations in both paper and electronic form compatible with the Jo Daviess County Geographic Information System (GIS) or any similar system used by Jo Daviess County at the time of submission of same.

9.5 Prior to acceptance of any dedication of any public infrastructure by the City, Owners shall provide to the City copies of all recorded easements needed for such public infrastructure. Owners agree that all such easements shall not be created nor recorded without prior City Attorney acceptance and approval of the language, terms and descriptions set forth therein. All such easements shall reference that maintenance and repairs of said public infrastructure shall be completed by Owners prior to acceptance of same by the City under the terms of this Agreement.

9.6 Owners shall warrant all infrastructure accepted by the City for a period of one year commencing on the date of acceptance of the infrastructure by ordinance. During the warranty period, Owners shall be responsible for all repairs necessary to maintain the public infrastructure free from defects or damage and in the same condition as at the date of acceptance.

## **ARTICLE X**

### **BUILDING PERMITS**

10.1 It is agreed that the City will not issue building permits for any redevelopment of the subject area unless and until City staff has completed all approvals as set forth above as well as approval of the site plan consistent with zoning of the Property and the requirements as imposed upon Owners pursuant to this Agreement and any amendment thereto. Such plan or plans shall conform to the requirements of the Galena Zoning Ordinance and the municipal codes applicable at the date of this Agreement. Such plan or plans, when submitted, shall be promptly considered by City staff and, if necessary, by the Galena Zoning Board of Appeals, the

Zoning Administrator and/or the City Council, as the case may be. Owner/Developers shall pay all building permit fees required of properties located within the municipal limits at the time of application therefore.

## **ARTICLE XI**

### **TAX ABATEMENT**

11.1 Under the authority of the Illinois Compiled Statutes (35 ILCS 200/18-184) the City shall annually abate the property taxes levied by the City for the Property for a period not to exceed 20 years beginning on the effective date of this Agreement. The cumulative amount of taxes abated shall not exceed \$40,000, or extend more than 20 years, whichever comes first. Said abatement shall be valid for the current owners of the Property only and shall not be transferrable to any future owner of the Property. This abatement is made in consideration of Paragraph N of the Recitals of this Agreement.

11.2 Owners hereby release and relieve the City from any liability associated with damage incurred on the Property from storm water prior to the date of this agreement or subsequent to the date of this agreement from any source outside the Property. This release is made in consideration of Paragraph N of the Recitals of this Agreement.

## **ARTICLE XII**

### **TERM**

12.1 This Agreement shall be binding upon the parties and their respective grantees, heirs, 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 Agreement, or the annexation or 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 be included in calculating said twenty (20) year period.

## **ARTICLE XIII**

### **PERFORMANCE BOND**

13.1 A bond shall be required prior to the issuance of any permits for the construction of infrastructure intended to be dedicated to the City upon completion. To assure performance and completion of the terms and conditions of this Agreement and all construction and other commitments made by Owners under the terms of this agreement, Owners shall provide to the City a Performance Bond either in cash or through a bank or an insurance carrier acceptable to the City in an amount to be determined by City to cover 100 percent of the cost of installing all public infrastructure. Said bond shall be in the name of the City, due within sixty (60) days of approval of the Final Planned Unit Development Plan, and shall authorize the City to use said funds if Owner were to fail to perform under the terms of this Agreement. Failure to perform shall be identified as follows:

1. The infrastructure is incomplete or deficient as required under this Agreement and the various applicable ordinances of the City; and
2. The work on any permitted phase of said infrastructure has ceased for more than twelve (12) months or the work on any permitted phase of infrastructure is incomplete twenty-four (24) months after the date the permit(s) was issued for said construction, and
3. The City has provided sixty (60) days written notice to Owners of the existence of such stoppage or deficiencies, or
4. The Owner is unable or unwilling to complete the public infrastructure to satisfy City requirements or has failed to otherwise comply with the terms of this Agreement.

The City shall be authorized to collect and use said bond proceeds, at the sole discretion of the City, acting in good faith, unless Owners/Developers obtain an Order of a court of competent jurisdiction stopping such use. The language of and the provider of any such bond shall be agreed by the parties prior to the issuance of any construction permits by the City.

## **ARTICLE XIV**

### **GENERAL PROVISIONS**

14.1 **Breach and Opportunity to Cure.** Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify in writing the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance is completed to the reasonable

satisfaction of the complaining party within thirty (30) days after receipt of such notice, or in the case of a failure which by its nature takes in excess of thirty (30) days to cure, such longer period of time as may be reasonably necessary to cure the same provided that the curing party is pursuing said cure with due diligence.

14.2 **Enforcement.** The terms and conditions of this Agreement shall be specifically enforceable by the parties hereto. In the event of litigation initiated by either party for the purpose of seeking enforcement of this Agreement, the Court shall award reasonable attorneys fees and costs to the prevailing party, whether such fees are incurred for purposes of negotiation, trial or appellate practice. A party will be deemed to have prevailed if it obtains a judgment or settlement which substantially provides the relief sought by such party as determined by the Court.

14.3 **Amendment.** This Agreement and any exhibits attached hereto may be amended only by the mutual consent of the parties including in the case of the City, by the adoption of an ordinance or resolution of the City approving said amendment as provided by law, and by the execution of said amendment by the parties or their successors in interest. Any language of this section which is inconsistent with Illinois law at the time such language is being construed regarding amendment of annexation agreements is hereby agreed by the parties as void.

14.4 **No Other Agreements.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and fully integrates the agreement of the parties.

14.5 **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, heirs, successors and permitted assigns.

14.6 **Consent.** Except as otherwise provided herein, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld or unduly delayed.

14.7 **Paragraph Headings.** Paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

14.8 **Severability.** If any provision, covenant 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 provisions, covenants or portions of this Agreement (and to that end, any provisions, covenants or portion of this Agreement are declared to be severable).

14.9 **Applicable Law.** This Agreement shall be construed in accordance with the laws and decisions of the State of Illinois.

14.10 **Notices.** All notices herein shall be in writing and shall be deemed to be effective as of the date of actual delivery if by personal delivery or as of the third day from and including the day of posting if mailed by certified or registered mail return receipt requested with postage prepaid:

To the City: City of Galena  
Attention: City Administrator  
101 Green Street, PO Box 310  
Galena, IL 61036

with a copy to: City Attorney  
101 Green Street, PO Box 310  
Galena, IL 61036

To Owners: Patrick and Kristine McCarthy  
9521 West Buckhill Road  
Galena, IL 61036

or to such replacement parties as may from time to time be identified by written notice.

14.11 **Mutual Assistance**. Subject to provisions of this Agreement requiring payment for or reimbursement to the City for costs by Owners, the City and Owners shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the City's and Owners compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the parties as reflected by said terms. This process shall proceed in a manner where there shall be no costs to the City.

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IN WITNESS WHEREOF, the City and Owners have caused this Annexation Agreement to be executed effective as of the day and year first above written.

CITY OF GALENA:

BY: Terry Renner  
Its Mayor

OWNERS:

BY: Patrick McCarthy  
Patrick McCarthy

ATTEST:

Mary Beth Hyde  
Its City Clerk

ATTEST: Jim Hony

BY: Kristine M. McCarthy  
Kristine McCarthy

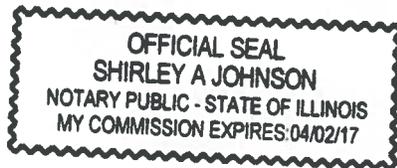
ATTEST: Jim Hony

STATE OF ILLINOIS )

) ss.

JO DAVIESS COUNTY )

The foregoing instrument was acknowledged before me by Terry Renner, City Mayor, and Mary Beth Hyde, City Clerk, this 8<sup>th</sup> day of September, 2016.



Shirley A. Johnson  
Notary Public

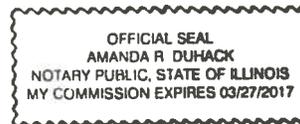
STATE OF ILLINOIS )  
 ) ss.  
JO DAVIESS COUNTY )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, Do Hereby Certify that **PATRICK MCCARTHY**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 26<sup>th</sup> day of August, 2016.

Amanda R. DuHack  
Notary Public

STATE OF ILLINOIS )  
 )ss.  
JO DAVIESS COUNTY )



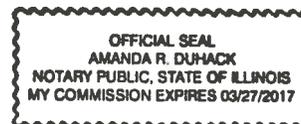
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, Do Hereby Certify that **KRISTINE MCCARTHY**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this 26<sup>th</sup> day of August, 2016.

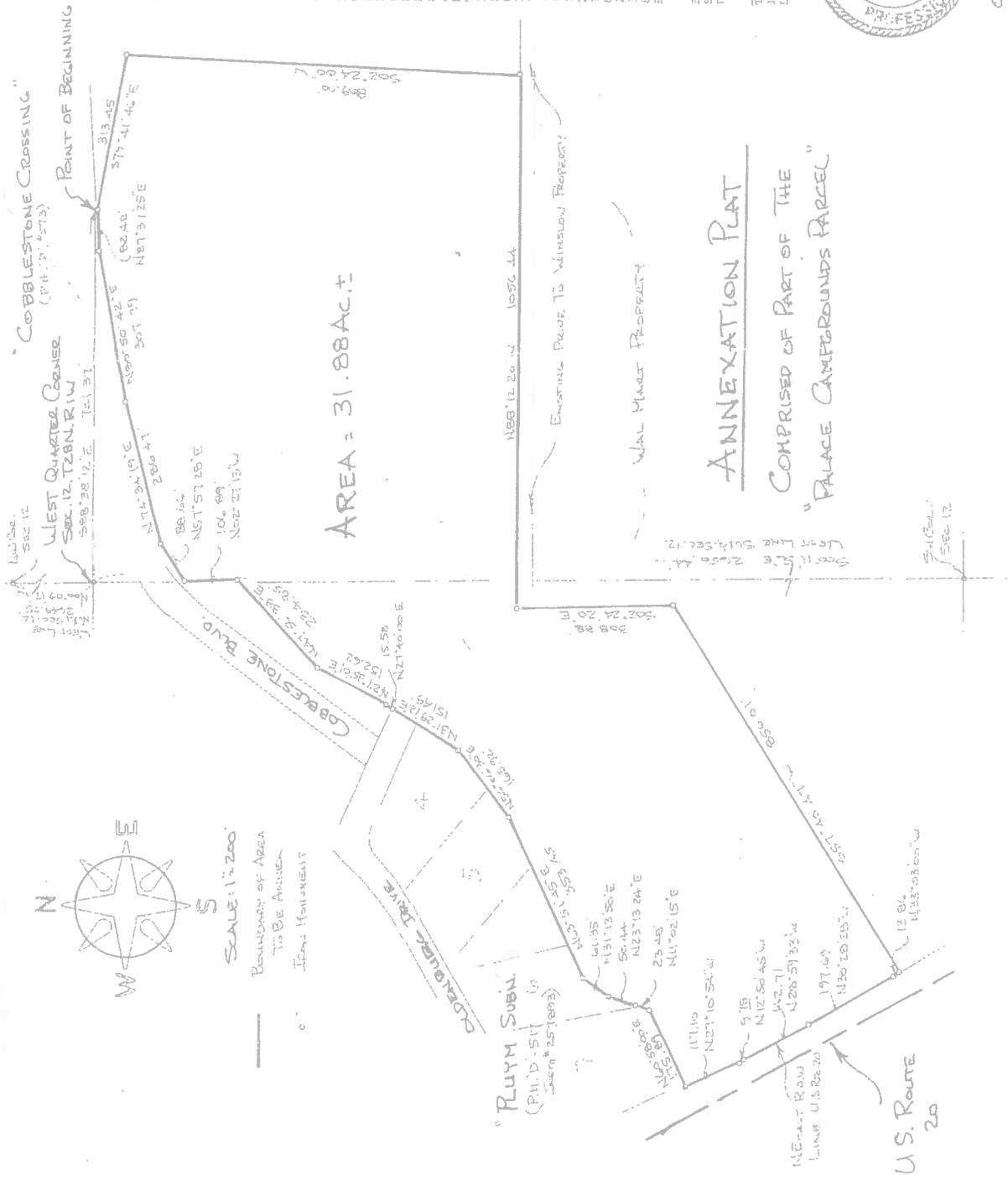
Amanda R. DuHack  
Notary Public

PREPARED BY AND RETURN TO:

Joseph Nack  
City Attorney  
City of Galena  
101 Green Street, PO Box 310  
Galena, IL 61036  
815-777-1050



**EXHIBIT A**



I, TERENCE H. LEIFKER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ILLINOIS, HEREBY CERTIFY THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS OF PRACTICE FOR A BOUNDARY SURVEY.

TERENCE H. LEIFKER  
 ILLINOIS PROFESSIONAL LAND SURVEYOR 35-2423  
 LICENSE RENEWAL DATE: 11/19/2015

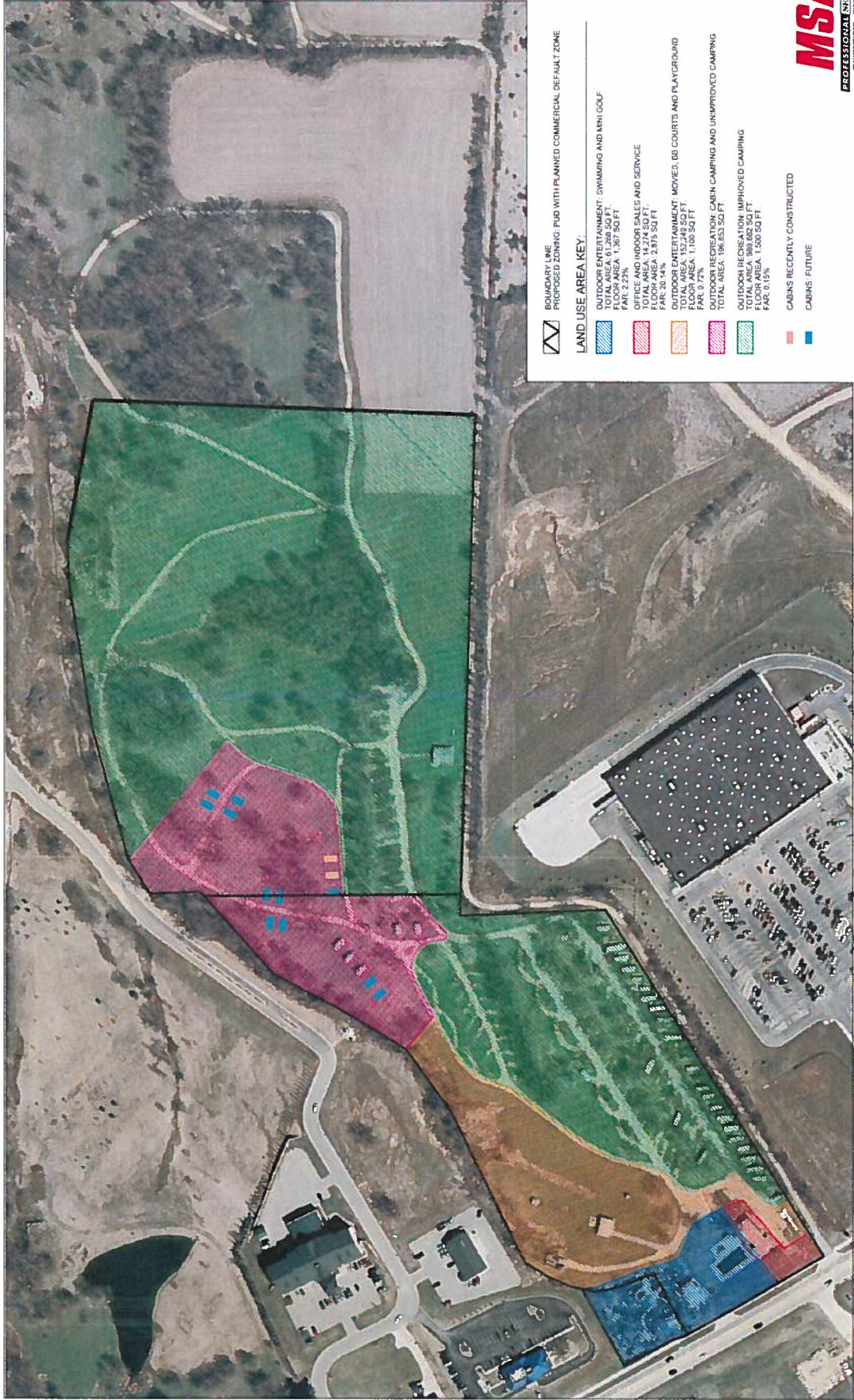


05/25/2016

ANNEXATION PLAT  
 Located in Part of West 1/2 of Sec. 12 & East 1/2 of Sec. 11, T28N, R12W of 4th P.M.  
 Surveyed by Terence H. Leifker, Professional Land Surveyor, License No. 35-2423, State of Illinois, on 05/25/2016.

# EXHIBIT B

## Proposed Land Use Areas



**PROFESSIONAL SERVICES**  
MANAGEMENT • ARCHITECTURE  
ENGINEERING • ENVIRONMENTAL