

A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH F&T HOSTETLER FARMS, LLC.

WHEREAS, the owner of certain real property located at 10885 LaFayette-Plain City Road desires to annex said property into the Village of Plain City; and

WHEREAS, the owner of the subject property to be annexed also desires to seek a rezoning of the property and approval of a preliminary development plan in order to facilitate its future development; and

WHEREAS, the owner desires to seek said rezoning and preliminary development plan approval concurrently with the processing of the annexation petition related to the property; and

WHEREAS, the owner and the Village have agreed it is in the best interest of both parties to enter into a pre-annexation agreement pertaining to the pending submittal of an annexation petition for the property.

NOW THEREFORE BE IT RESOLVED by the Council of the Village of Plain City, Ohio, as follows:

Section 1. The Village Council hereby authorizes and directs the Village Administrator to enter into a pre-annexation agreement with the property owner in general accordance with the draft agreements identified as Exhibit A, attached hereto and made a part hereto.

Section 2. The Village Administrator is further authorized and directed to take subsequent action, upon execution of said agreement, to fulfill the Village's requirements under said agreement.

Section 3. This Resolution shall be effective from and after the earliest period provided by law.

Passed: May 13, 2019.

Attest: Renee Sonnett
Village Fiscal Officer

Darrin Lane
Mayor

First reading: April 22, 2019.

Second reading: May 8, 2019.

Third reading: May 13, 2019. Vote: 6 yea ___ nay ___ abstain

- b. The Parties agree to cooperate and provide information necessary for the county commissioners to review the annexation as required by Section 709.023 of the Ohio Revised Code.
- c. Should the annexation be approved, the Parties agree to process the annexation as provided by law subject to the terms of this Agreement.
- d. Petitioner, at its own expense, agrees to file or arrange to be filed an annexation petition, map, and plat that complies with Section 709.023 of the Ohio Revised Code within thirty (30) days after the execution of this Agreement.

2. Municipal Services:

- a. Plain City agrees to enact, within twenty (20) days after the date of the filing of the annexation petition with the board of county commissioners, the appropriate service and zoning buffer resolutions as required by Chapter 709 of the Ohio Revised Code. The resolutions, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners.

3. Zoning:

- a. The Property sought to be annexed is currently zoned Agricultural in Darby Township. The Parties acknowledge that Petitioner desires to rezone the Property to Planned Residential District under the Village of Plain City Zoning Code. The Petitioner intends to file a request to rezone the Property concurrently with the filing of the annexation petition. Once filed, the rezoning request will be reviewed and decided upon by Plain City utilizing the regular process for processing an application to rezone in the village and there is no guarantee that any particular zoning will be granted.
- b. Plain City recognizes that once the annexation is placed before the Plain City Fiscal Officer, Plain City has one hundred twenty (120) days to accept or reject the annexation. Plain City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property to Planned Residential District. At any time during the one hundred twenty (120) day acceptance period for the annexation, Plain City may, on its own initiative or at the request of Petitioner, delay its acceptance of the annexation until the rezoning is settled to the satisfaction of the Parties. In the event that the Parties determine that the proposed rezoning cannot be accomplished, Petitioner exhausts its appeals of

Plain City's zoning determination, or the proposed rezoning is rejected by the voters, the Parties acknowledge that Plain City will not annex the Property.

4. Representations and Warranties of Plain City:

a. Plain City hereby represents and warrants to Petitioner:

- i. The Village is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to law, and to perform its obligations hereunder;
- ii. The Village, acting by and through its agents, has taken all such actions which are necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and
- iii. This Agreement is the valid and binding act of the Village, enforceable against the Village in accordance with its terms.

5. Representations and Warranties of Petitioner:

a. Petitioner hereby represents and warrants to Plain City that:

- i. Petitioner is the owner of the Property to be included in the annexation petition; and
- ii. Petitioner, acting by and through its agents, has taken all such actions which are necessary to appropriate to authorize the execution of this Agreement by the person executing the same.

6. Waiver:

- a. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

7. Execution:

- a. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement.
- b. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other party, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

8. Severability:

- a. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein.

9. Governing Law:

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

10. Relationship of the Parties:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

11. No Third Party Beneficiary:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

12. Time is of the Essence:

- a. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

13. Force Majeure:

- a. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

14. Approvals:

- a. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

15. Binding Effect:

- a. This Agreement and all of the provisions herein shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

16. Entire Agreement/Merger:

- a. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all agreements, oral or written.

17. Survival:

- a. The representations, warranties, and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

18. Notice:

- a. All required notices, requests, consents, approvals, demands, and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by e-mail or facsimile telephone transmission, if given below, or later provided, addresses as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Petitioner:

F&T Hostetler Farms, LLC
6015 Taylor Blair Rd.
Plain City, Ohio 43064
Attn: Tammy and Fred Hostetler

with a copy to:

Highland Realty Development, LLC
720 E. Broad Street
Columbus, OH 43215
Attn: Randy Loebig

Mallory Law Office, LLC
720 E. Broad Street, Suite 202
Columbus, OH 43215

Village of Plain City:
213 Chillicothe Street
Plain City, Ohio 43064
Attn: Nathan Cahall, Village Administrator

PETITIONER:

F&T Hostetler Farms, LLC
an Ohio limited liability company

By: Tammy Hostetler
Tammy Hostetler

PLAIN CITY:

Village of Plain City
an Ohio municipal corporation

By: Keith Echall

Approved as to form:

By: [Signature]
Village Solicitor

Village of Plain City