

RESOLUTION NO. 21-2024

**A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE
ADMINISTRATOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH
GRAND COMMUNITIES LLC**

WHEREAS, the owner of certain real property, parcel ID 02-00028.000, desires to annex said properties 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 in order to facilitate its future development; and

WHEREAS, the owner desires to seek said rezoning 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, a majority of the members elected or appointed thereto concurring, 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 agreement identified as Exhibit A, as 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 1, 2024

Attest: *Austin Rhein*
Clerk of Council

Jody Carney
Mayor

First reading: April 22, 2024

Vote: ___ yea ___ nay ___ abstain

Second reading: May 1, 2024

Vote: 5 yea 0 nay 0 abstain

Certificate of Publication

The undersigned, being Clerk of Council of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 4.15 of the Codified Ordinances. The posting was done from May 2, 2024 to May 18, 2024 at the Office of the Clerk of Council located at 800 Village Boulevard; being in the Village of Plain City, Ohio, and the Village of Plain City Website at www.plain-city.com.

Date: May 2, 2024 Austin R. Meier
Clerk of Council

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement ("Agreement") is entered into as of _____, 2024 by and between Grand Communities, LLC, an Ohio Limited Liability Company ("Company" and/or alternatively "Developer"), whose mailing address is 3940 Olympic Boulevard, Suite 400, Erlanger, Kentucky 41018 and the Village of Plain City ("Plain City"), an Ohio municipal corporation, whose mailing address is 800 Village Boulevard, P.O. Box 167, Plain City, Ohio 43064 (referred to collectively as "Parties").

RECITALS

1. WHEREAS, the Company is in contract to purchase certain real property located in Darby Township, Madison County, Ohio with address of 0 Cemetery Pike, Plain City, Ohio 43064 (Parcel ID# 02-00028.000) (the "Property"), being more fully described in the Madison County Auditor's information attached as Exhibit "A" and incorporated herein; and
2. WHEREAS, the Property is located beyond the present corporate boundaries of the Village of Plain City; and
3. WHEREAS, the Company desires to annex the Property to Plain City in order to obtain municipal services to support the Property and its future development; and
4. WHEREAS, Plain City desires to annex the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Annexation:

- a) The Village and Company acknowledge and agree that the Property will be annexed in two separate annexation petitions and procedures due to the requirements of contiguity with the Village boundaries under annexation law. Company will, at its own expense, prepare the necessary annexation petitions with accompanying maps or plats. The petitions shall appoint attorney Thomas L. Hart with the law firm of Painter and Associates, LLC, whose mailing address is 5029 Cemetery Road, Hilliard, Ohio 43026, as agent for the current owners of the Property ("Agent"). The annexation petitions shall be filed by Agent as an "Expedited Type II" annexation as provided in Section 709.023 of the Ohio Revised Code. Agent shall file the signed and completed petitions with the board of county commissioners and shall provide notice and service to all parties required under the Ohio Revised Code. Company agrees to pay any filing fee(s) charged by the board of county commissioners for the filing and processing of the petition. Company agrees that it will take all reasonable actions which are necessary to cause the current owners of the property not to withdraw their names from, or request withdrawal of, the petitions during the annexation processes and/or any subsequent administrative or legal action involving the annexations.
- b) The Parties agree to cooperate and provide information necessary for the county

commissioners to review the annexations as required by Section 709.023 of the Ohio Revised Code.

- c) Should the annexations be approved, the Parties agree to process the annexations as provided by law subject to the terms of this Agreement.
- d) Company, at its own expense, agrees to file or arrange to be filed the first of two annexation petitions, maps, and plats that comply with Section 709.023 of the Ohio Revised Code within thirty (30) days after the execution of this Agreement. The filing of the second annexation petition shall timely follow the approval of the first annexation as governed by Ohio law.

2. Municipal Services:

- a) Plain City agrees to enact, within twenty (20) days after the date of the filing of each of the annexation petitions with the board of county commissioners, the appropriate service and zoning buffer resolutions as required by Chapter 709.023 of the Ohio Revised Code. The resolutions, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners by Plain City.
- b) The Parties acknowledge that centralized water and sanitary sewer services will be provided by the Mid-Ohio Regional Water and Sewer District ("MOWSD"). Such services are projected to come on line at some point in the future. The Company's development plans and plats shall be planned and approved to have extended validity to allow necessary infrastructure and capacity to be constructed.
- c) Upon annexation, the Developer or Owners will be entitled to fire protection, police protection, recreation services, sanitation services, street maintenance, and related street services, provided that the streets are properly installed and dedicated to public service.

3. Zoning:

- a) The Property sought to be annexed is currently zoned Agricultural in Darby Township. The Parties acknowledge that Company desires to rezone the Property to Planned Residential District under the Village of Plain City Zoning Code. Once filed, any rezoning request will be reviewed and decided upon by Plain City utilizing the regular procedure for processing an application to rezone in the village and there is no guarantee that any particular zoning will be granted.
- b) Plain City agrees to promptly cooperate and assist the Owner, its successors or assignees, to facilitate the annexation, zoning, and development, including, but not limited to, required meetings or hearings.
- c) Plain City recognizes that once each annexation is placed before the Plain City Council (i.e., after the expiration of 60 days from the date when the transcript of the proceedings of the Madison County Board of Commissioners has been delivered to Plain City) Plain City has one hundred twenty (120) days to accept or reject the annexation. Plain City

agrees that it will not accept the second annexation of the Property unless and until it is prepared to contemporaneously rezone the entire Property into a zoning classification as detailed in the immediately preceding subsection (a). Plain City agrees that it will accept a complete application to rezone the entire property to a Planned Residential District and conduct rezoning hearings under its normal procedures contemporaneously with the filing and during the pendency of the second annexation, so that the rezoning application and second annexation are considered and finally voted on concurrently. At any time during the one hundred twenty (120) day acceptance period for the second annexation, Plain City may, on its own initiative, or shall, at the request of Company, delay its acceptance of the annexation until the rezoning is settled to the satisfaction of the Parties. In the event that the Property is annexed but the Property is then not rezoned in a manner that is satisfactory to Developer, or if Developer exhausts its appeals of Plain City's zoning determination, or the proposed rezoning is subject to referendum and/or rejected by the voters, and/or if water and sewer capacity is not made available to service the development of the Property in order to satisfy the Developer's schedule, Plain City agrees to execute a petition to detach the entire Property from its jurisdiction upon the request of Developer or Company.

4. Representations and Warranties of Plain City:

- a) Plain City hereby represents and warrants to Company:
 - i. Plain City 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. Plain City, 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 Plain City, enforceable against the Village in accordance with its terms.
 - iv. The Parties to this Agreement acknowledge that, at this time sufficient water service and sanitary sewer treatment capacity necessary to support and service the Company's proposed development of the Property as it is contemplated under this Agreement are not constructed and available from the Village and are not expected until 2026. For this reason, the Village's Services Resolution shall state that with regard to water and sewer services, the provision of such services to the Property are subject to and conditioned upon the then available service and treatment capacities at the time of development which shall be provided by the Village in its normal course of allocation when such capacities are available.

5. Representations and Warranties of Company:

- a) Company hereby represents and warrants to Plain City that:
 - i. Company is in contract to purchase the Property to be included in the annexation petition; and

- ii. Company, acting by and through its agent, has taken all such actions which are necessary and 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:

Company:

Grand Communities, LLC
ATTN:
3940 Olympic Blvd., Suite 400
Erlanger, KY 41018

Village:

Village of Plain City
800 Village Boulevard
P.O. Box 167
Plain City, OH 43064
Attn: Haley Lupton, Village Administrator

COMPANY:

PLAIN CITY:

By: _____
Name
Title

By: _____
Haley Lupton
Village Administrator

Approved as to form: _____
Law Director
Village of Plain City