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Carol "Cindy" Hol, Recorder
Dallas County IOWA

MTG.
REF.

PRE-ANNEXATION AGREEMENT

THE IOWA STATE BAR ASSOCIATION

Recorder's Cover Sheet

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Grantors	**Grantees:**
N/A	N/A

Legal description: [See Exhibit "A" attached to Agreement.]

Document or instrument number of previously recorded documents:

The Iowa State Bar Association 2005

CERTIFICATION

THE UNDERSIGNED, City Manager for the City of Waukee, Dallas County, Iowa, hereby certifies that the attached Pre-Annexation Agreement, being 11 pages in length (including legal description but exclusive of the certification page), is a true copy of the original Pre-Annexation Agreement that was entered into by the City of Waukee, Dallas County, Iowa, and William J. Hermann, Jr. and Carolyn Hermann.

DATED this 6th day of February, 2006.

STATE OF IOWA)
)ss:
COUNTY OF POLK)

On this 6th day of February, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared John R Gibson, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Beth Richardson
Notary Public in and for the State of Iowa

BETH RICHARDSON
MY COMMISSION NO. 701731 EXPIRES 2/15/06
IOWA NOTARIAL SEAL

PRE-ANNEXATION AGREEMENT

The Pre-annexation Agreement is entered into by and between the **City of Waukee, Iowa**, a municipal corporation (hereinafter referred to as "City") and **William J. Hermann, Jr. and Carolyn Hermann**, husband and wife, who are residents of Dallas County, Iowa (hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of record of that property described in the attached Exhibit 'A" which is by this reference incorporated herein (hereinafter referred to as the "Subject Property"); and

WHEREAS, Subject Property is presently located within Dallas County, Iowa and outside the corporate limits of any other city; and

WHEREAS, Owner does not desire to have Subject Property annexed to City unless Owner is confident that certain conditions and provisions are met by City coincidentally or subsequent to annexation, to ensure that annexation is in Owner's best interest; and

WHEREAS, Owner and City agree that those conditions are as follows:

1. Owner shall not be required to hook on or connect to City water (assuming City water is available to Subject Property line) until such time as Owner's water well shall no longer be in working order (to Owner's satisfaction and/or to applicable government standards). Owner is presently connected to Xenia Rural Water and Owner will consent to City assuming to operate the water service of Xenia subject to City agreeing with Xenia, in writing, to enable City to purchase said water service.

2. Owner shall not be required to hook on or connect to City's sanitary sewer service for a period of ten (10) years from the time the sanitary sewer service becomes available to Subject Property. Subsequent to the ten (10) year period of time (referred to above), Owner shall only be required to connect or hook on to the City's sanitary sewer service upon the failure of the Owner's sanitary septic system, or when repairs exceed fifty percent (50%) of the full replacement value of the sanitary sewer service, or the Subject Property is developed, whichever event shall first occur. Upon the happening of one of the events referred to herein, then the requirement of connection or hook on to the sanitary sewer service shall apply and said connection or hook on shall be subject to all of the then applicable government regulations and the normal rate for any other customer in City.

3. Owner shall be entitled to tax abatement, as authorized under the Code of Iowa and City, in order to permit Owner to assist in making the transition from County to City. The tax abatement schedule is as follows:

(a) In the first year the property is taxed by City - 75% abatement.

(b) Second year - 60% abatement.

(c) Third year - 45% abatement.

(d) Fourth year - 30% abatement.

(e) Fifth year - 15% abatement.

4. Subject Property is, coincidentally with annexation to City, and pursuant to the existing City Ordinances, zoned as A-1 zoning classification.

Notwithstanding the above, in consideration of Owner's consent to a Voluntary Annexation Petition (hereafter "Annexation Petition") to be executed simultaneously and conditioned upon approval of the Pre-Annexation Agreement between City and Owner as

to the Subject Property, City acknowledges that the existing Waukee Comprehensive Plan for Land Use (hereafter "Comprehensive Plan") does not provide what Owner may desire as to future development of Subject Property. However, City acknowledges that the Comprehensive Plan, Zoning Ordinance and Zoning Map may be amended, following proper procedures pursuant to the Zoning Ordinance of the City at the time of the request of Owner. City further acknowledges that City will, upon proper application of Owner, or their successors or assigns, if any, review possible amendments to the Comprehensive Plan, Zoning Ordinance and Map of City, and will review. at a future date, the proposed redevelopment of the Subject Property as possible commercial use.

City acknowledges, at the time of execution of the Pre-Annexation Agreement, and the simultaneous execution by Owner of a Petition for Voluntary Annexation, that Owner contemplates that the Subject Property may, in the future, be a commercial district pursuant to the Comprehensive Plan, Zoning Ordinance and Map of the City.

City further acknowledges that Subject Property could be in the future, upon the application of Owner and/or its successors or assigns, if any, developed as commercial and could further be considered as a Tax Increment Financing (TIF) District as part of the development of the commercial property.

Owner and City acknowledges that possible commercial development has been discussed as a possible redevelopment of the Subject Property, but neither City nor Owner have committed to future development of the Subject Property at the time of the execution of this Agreement.

5. Owner or their heirs shall not be assessed or charged in any manner for any future street improvements to L.A. Grant (said street being adjacent to Subject Property).

However, Owner and City agree that when, and if, Subject Property shall be developed, either by Owner or any third party, additional charges for normal development costs, any and all public improvements required in subdividing the Subject Property, and subject to the provisions of the then city ordinances and the laws of the State of Iowa pertaining thereto.

Owner and City agree that Owner, as well as their heirs, if any, shall be liable only for charges of an eighty (80) foot (½ of a residential paved street), the 80 foot dimension being multiplied by One Hundred Sixteen Dollars ($116.00) per lineal foot, which totals the sum of Nine Thousand Two Hundred Eighty Dollars ($9,280.00) for the paving of L.A. Grant.

It is contemplated that L.A. Grant will be paved by a third party prior to the end of the calendar year 2004.

When the paving is complete (to the satisfaction of City), and the public improvement (paving) of L.A. Grant is dedicated to City, then within sixty (60) days after the acceptance of L.A. Grant by City, Owner or their heirs or assigns, if any, shall, at Owner's option, either pay in full or part the sum of Nine Thousand Two Hundred Eighty Dollars ($9,280.00) as set forth in the preceding paragraph.

Owner and City agree that there shall be no lien as against Subject Property until such time that the public improvement (paving of L.A. Grant) shall be accepted by dedication to City and payment shall be made as contemplated above.

Notwithstanding anything to the contrary above provided, Owner shall have (excluding the calendar year 2004) not to exceed ten (10) years to pay the sum of Nine Thousand Two Hundred Eighty Dollars ($9,280.00) for the paving of L.A. Grant. The

payment contemplated above (assuming the payment has not been paid in full or part) shall bear interest on the then unpaid balance at the rate determined at the time when the lien referred to herein shall have been created with interest being the prime lending rate of interest as determined by Wells Fargo Bank plus one percent (1%). Interest shall be paid only on the unpaid principal balance and shall accrue on said unpaid principal balance only.

Although the payment is not a special assessment or special charge, Owner and City agree that any unpaid principal balance shall be paid in the manner provided herein with interest accruing only as against any unpaid principal balance. Owner and City agree that Owner, or its successors or assigns, if any, shall prepay without penalty the then unpaid principal balance, plus accrued interest, if any, during the ten (10) consecutive years referred to above (calendar years 2005 through 2014).

In the event of development and/or subdivision of the Subject Property, any and all outstanding liens, plus accrued interest, if any, shall be paid in full.

6. Notwithstanding anything to the contrary provided above, in the event Subject Property is developed, either by Owner and/or their successors in interest or assigns, if any, at the time of a subsequent subdivision of the Subject Property, Owner (presuming Owner is developer), or their successors or assigns, if said parties are developers, shall be required to pay a sum determined as $116.00 per lineal foot, to be multiplied by the frontage of Subject Property (438 lineal feet), or a total of $50,808.00 (less the sum of Nine Thousand Two Hundred Eighty Dollars ($9,280.00)) (assuming said payment has been made), said being a deduction or a credit as against the total charges.

The above amount shall not constitute a lien as against Subject Property notwithstanding the fact that the public improvement has been put in place, the lien being

only at the time the Subject Property is developed, by the Owner or any third party developer, and/or subdivided for future development.

City and Owner concur that there is no lien at the time of the execution of this Agreement. A lien shall apply only in the event that L.A. Grant has been paved, the pavement has been dedicated to the City, and notice shall have been given by City to Owner as to the amount of Nine Thousand Two Hundred Eighty Dollars ($9,280.00) to be due and payable in the manner as set forth above.

The above provision as to any future lien, if any, in any amount, shall be junior and inferior to any present or future mortgages which would or may be paramount as against the Subject Property. City shall, upon receipt of written notice from Owner, within three (3) business days, either release and/or subordinate said lien (if any) which may constitute a cloud or an encumbrances against the Subject Property and, if requested by Owner or its heirs, successors in interest or assigns, if any.

Notwithstanding anything to the contrary herein provided, if the Subject Property is developed and/or subdivided, then the entire amount of charges and/or liens, if any, at that time shall be due and payable in full including principal and accrued interest, if any.

7. Owner and City acknowledges that, since the Subject Property is located on the northwest corner of L.A. Grant and 312th Street Place, it is not anticipated, at the time of the execution of this Agreement, that 312th Street Place would be paved and charged or assessed to Owner.

However, when and if 312th Street Place is paved, City and Owner agree that said paving may be pursuant to a special assessment procedure as permitted by the Code of Iowa or, in the alternative, may be paid by a subsequent developer pursuant to the Ordinances of

the City.

Neither City nor Owner make any commitments, at the time of the execution of this Agreement, as to future charges, if any, as to the paving of 312th Street Place. The laws of the State of Iowa pertaining to special assessments, as applicable, shall be applied as to future paving of 312th Street Place.

8. Open burning shall be permitted provided Owner shall first notify the City Fire Department prior to any burning being conducted.

9. All livestock shall be permitted on the Subject Property (which also permits fencing on Subject Property as may be necessary) for so long as Owner resides on Subject Property. However, Owner agrees to keep all livestock in a clean and well kept surrounding to avoid the creation of any nuisance as to any adjoining properties. However, when the Subject Property is developed, no livestock will be permitted on the Subject Property subsequent to development.

Owner agrees to release City from all claims or demands of third parties arising out of the retention of said livestock on the Subject Property. City and Owner concur that, if necessary, in order to enforce remedies as to nuisances, if any, City shall have those rights and remedies to abate nuisances as provided by City's Ordinances and the laws of the State of Iowa, as applicable.

10. All of the terms, conditions and provisions of this Agreement and Amendments, if any, shall survive annexation by City of Subject Property. The subdividing of Subject Property, or any part thereof, shall be governed by the Ordinances of City and the laws of the State of Iowa, as they now exist or may hereafter be amended.

11. As consideration between Owner and City, and subject to the approval of the

terms, conditions and provisions of this Agreement by City as a condition precedent, Owner agrees to file with City an Application for Voluntary Annexation of Subject Property and subject to all the provisions contained herein.

Failure of City to comply with any of the terms, conditions and provisions as set forth herein shall constitute reasonable cause for Owner, or Owner's representatives, to withdraw their Application for Voluntary Annexation (all within Owner's sole discretion), either before the City Council of City or with the City Development Board of the State of Iowa prior to any annexation of Subject Property.

The parties agree, as well as it or their successors in interest or assigns, if any, that this Agreement and amendments, if any, shall survive annexation of the Subject Property and shall be binding upon Owner and City, and further bind and inure to the benefit of the heirs, successors in interests, assigns and grantees, if any, of either City or Owner.

12. All applicable ordinances of City and the laws of the State of Iowa shall apply as to the performance of the terms, conditions and provisions of this Agreement and amendments hereto, if any.

William J. Hermann, Jr. — Dated: July 07, 2004.

Carolyn Hermann — Dated: July 07, 2004.

(OWNER)

STATE OF IOWA)
)ss
COUNTY OF DALLAS)

On this 7th day of July, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared William J. Hermann, Jr. and Carolyn Hermann, husband and wife, to me known to be the persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

Russell D. Lundy
Notary Public in and for the State of Iowa

RUSSELL D. LUNDY
Commission Number 225612
My Commission Expires
December 3, 2005

City of Waukee, Iowa,
A Municipal Corporation

By _____ Dated: July 8, 2004.
Mayor Tony Oberman

ATTEST:
_____
City Clerk

(CITY)

STATE OF IOWA)
)ss
COUNTY OF DALLAS)

On this 8 day of July, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mayor Tony Oberman and the City Clerk, Mark J. Acuntsen, to me known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Waukee, Iowa; that the seal affixed to the foregoing instrument was signed and sealed on behalf of the corporation by authority of its City Council as contained in ~~Ordinance~~ Resolution No. 04-150 passed by the City Council under Roll Call No. 04-150, of the City Council on the 28 day of June, 2004, and that the Mayor and City Clerk, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of the corporation, but it voluntarily executed.

CATHERINE A. PAARDEKOOPER
Commission Number 706982
My Commission Expires
November 20, 2006

_____
Notary Public in and for the State of Iowa

Exhibit "A"

Legal Description for William J. Hermann, Jr. and Carolyn K. Hermann

A tract of land in Government Lot 9, in the Northeast Fractional Quarter of Section 5, Township 78 North, Range 26 West of the 5th Principal Meridian, Dallas County, Iowa, more particularly described as follows:

Beginning at the Southeast Corner of Gov't Lot 9, in the NE Frac. 1/4 of Section 5, T78N, R26W of the 5th P.M., Dallas County, Iowa; thence along the South line of said Gov't. Lot 9, South 83°01'22" West 438.28 feet; thence North 03°58'45" West 453.20 feet; thence North 85°00'47" East, 468.25 feet to the East line of said Gov't. Lot 9; thence South 00°00'00", 439.57 feet to the point of beginning.

(The above property has approximately 4.00 acres, more or less.)