

ORDINANCE NO. 2182

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A  
FIRST AMENDED ANNEXATION AGREEMENT FOR 129.777  
ACRES, MORE OR LESS, OF PROPERTY BELONGING TO  
THE AMERICAN HERITAGE LAND DEVELOPMENT, L. L.  
C., A MISSOURI LIMITED LIABILITY COMPANY  
AUTHORIZED TO DO BUSINESS IN ILLINOIS, TO THE CITY  
OF COLUMBIA, ILLINOIS**

STATE OF ILLINOIS  
CITY OF COLUMBIA  
FILED FOR RECORD

JUN 16 2003

  
City Clerk

WHEREAS, the Corporate Authorities of the City of Columbia, Illinois (the "City") have found and determined and do hereby declare that it is in the welfare and best interests of the City that a certain First Amended Annexation Agreement pertaining to a parcel of land comprising 129.777 acres, more or less, and which is contiguous and adjacent to the corporate limits of the City be made and entered into;

WHEREAS, said written First Amended Annexation Agreement has been prepared and a copy of same is attached hereto;

WHEREAS, the City Council has reviewed and approved the First Amended Annexation Agreement, following a public hearing pursuant to publication of proper legal notice pertaining thereto, in accordance with the requirements of Section 11-15.1-3 (PROCEDURE) of Division 15.1 (ANNEXATION AGREEMENTS) of the Illinois Municipal Code, as amended (65 ILCS 5/11-15.1-3);

WHEREAS, the American Heritage Land Development, L. L. C., as the owner of record of the Annexation Tract which is the subject of said First Amended Annexation Agreement, have executed and tendered said agreement to the City;

WHEREAS, the City Council has found and determined, and does hereby declare, that the annexation of the subject Annexation Tract to the City on the terms and conditions provided in the First Amended Annexation Agreement will further the orderly growth of the City, enable the City to control the development of the area, and serve the best interests and welfare of the citizens of the City as aforesaid; and,

WHEREAS, the Illinois Municipal Code provisions governing annexation agreements have been fully complied with in accordance with the statute and laws in such cases made and provided (65 ILCS 5/11-15.1-3, et. seq.).

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The Mayor is hereby authorized and directed to execute the First Amended Annexation Agreement, in the form attached hereto, which agreement is hereby approved as to form; and the City Clerk is hereby authorized and directed to attest the same and affix thereto the Corporate Seal of the City, in as many counterparts as the Mayor shall determine.

**Section 2.** All ordinances, resolutions or orders of the City in conflict herewith, to the extent of such conflict, are hereby repealed.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

**Section 4.** The City Attorney is authorized and directed to record a certified copy of this Ordinance, together with the First Amended Annexation Agreement, in the offices of the Monroe County, Illinois Recorder and the St. Clair County, Illinois Recorder following the enactment of this Ordinance.

Alderman Unnerstall moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Hutchinson, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Hutchinson, Koesterer,

Row and Mayor Schneider

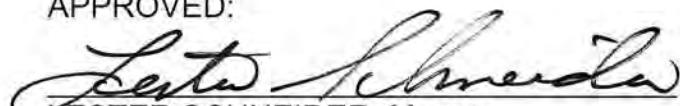
NAYS: None

ABSENT: Alderman Conrad

ABSTENTIONS: \_\_\_\_\_

PASSED by the City Council and APPROVED by the Mayor this 16<sup>th</sup> day of June, 2003.

APPROVED:



Lester Schneider

LESTER SCHNEIDER, Mayor

ATTEST:



WESLEY J. HOEFFKEN

City Clerk

(SEAL)

## FIRST AMENDED ANNEXATION AGREEMENT

THIS FIRST AMENDED ANNEXATION AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the CITY OF COLUMBIA, ILLINOIS, a Municipal corporation located in the Counties of Monroe and St. Clair, created and existing under and by virtue of the laws of the State of Illinois, (hereinafter referred to as the "City") and AMERICAN HERITAGE LAND DEVELOPMENT, LLC, a Missouri limited liability company in good standing and authorized to do business in the State of Illinois, (hereinafter referred to as the "Developer");

### WITNESSETH:

WHEREAS, the Developer is the sole owner of record of a tract of real estate comprising 129.777 acres, more or less, which is located in the Counties of Monroe and St. Clair, in the State of Illinois and which real estate is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").

WHEREAS, the Property is not situated within the corporate limits of any municipality but is contiguous to the City; and

WHEREAS, the Developer has filed with the City Clerk a proper annexation petition ("Annexation Petition") pursuant to 65 ILCS 5/7-1-1 and 5/7-1-8 of the Illinois Municipal Code signed by the owners of record of the Property requesting the City to annex the Property; and

WHEREAS, the Developer has demonstrated to the City that significant potential public benefits attend the development of the Property at some time in the future as a residential development within the City in accordance with the preliminary plat of residential development attached hereto as **Exhibit B** and incorporated herein by this reference ("Preliminary Plat"); and

WHEREAS, the City acknowledges that the Developer's proposed use of the Property will be compatible with and will further the planning objectives of the City as set forth in the "Master Plan for the City of Columbia, Illinois, dated October 8, 2001" (the "Master Plan"), and that annexation of the Property to the City will be of substantial benefit to the City; will extend the corporate limits and jurisdiction of the City; will permit orderly growth, planning and development of the City; will increase the tax base of the City; and will promote and enhance the general welfare of the City and its residents; and

WHEREAS, in connection with the annexation of the Property, Developer is requesting that after annexation of the Property into the City, the City zone the Property as an "R-2" district; and

WHEREAS, pursuant to the provisions of 65 ILCS 5/11-15.1-1, et seq., the City and the Developer desire to enter into this Agreement to set forth certain terms and conditions upon which the City will annex the Property into the City; will zone the Property as further set forth herein and will approve the Preliminary Plat of the Property; and

WHEREAS, all notices, publications, procedures, public hearings, and other matters attendant to the consideration and approval of this Agreement, the annexation of the Property, the zoning of the Property and the approval of the Preliminary Plat have been given, made, held, and performed by the City as required by 65 ILCS 5/7-1-1, 5/7-1-8 and 5/11-13-14 and 5/11-15.1.1, et seq., and all other applicable statutes, ordinances, regulations and procedures of the City; and

WHEREAS, the City Council of the City (the "Corporate Authorities") by a super-majority vote of two-thirds (2/3) or more of the City Council holding office per 65 ILCS 5/11-15.1-3 of the Illinois Municipal Code, adopted Ordinance No. \_\_\_\_\_ on June 16, 2003, authorizing the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:

1. INCORPORATION OF RECITALS. The parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Section 1.

2. ANNEXATION OF THE PROPERTY. On or before the 15<sup>th</sup> business day following the full execution of this Agreement, the Corporate Authorities shall do all things necessary or appropriate to cause the Property to be validly annexed to the City. All ordinances, plats, affidavits, and other documents necessary to accomplish the annexation of the Property shall be recorded by the City in the Offices of the Recorders in and for Monroe and St. Clair Counties, Illinois at the Developer's expense.

This Agreement in its entirety, at the option of Developer, shall be null, void and of no force and effect unless the Property is validly annexed to the City and validly zoned and classified in accordance with and as contemplated by this Agreement at the times specified herein. Without Developer's prior written consent, no action shall be taken by the Corporate Authorities to annex the Property to the City unless: (i) this Agreement has been fully executed by all parties; and (ii) the City approves annexation of the entire Property concurrently with approval of this Agreement.

3. ZONING AND DEVELOPMENT OF THE PROPERTY.

(A) At the next regular meeting of the City Council following the annexation of the Property, the Corporate Authorities shall enact such ordinances, adopt such resolutions, and take such other actions as are necessary to:

- (i) re-zone the Property in its entirety as legally described in **Exhibit A** attached hereto and incorporated herein as an "R-2 District"; and
- (ii) approve the Preliminary Plat (attached hereto as **Exhibit B**).

(B) The zoning classification of the Property adopted pursuant hereto shall describe by metes and bounds the out-boundaries of the zoning district of the Property and shall create a zoning classification for the Property that shall remain in effect throughout the term of this Agreement and thereafter until amended in the manner provided by law for the amendment of zoning classifications.

(C) Developer shall submit to the City final plats for the Property reflecting not more than three (3) phases and a phasing development map and schedule will be provided with the preliminary subdivision plat as required by Subsection 34-3-7(U) of the Columbia Subdivision Code, with the final subdivision plat for the final phase to be submitted and approved not later than five (5) years from the date of approval of the Preliminary Plat. The City shall approve the phases of said final plat pursuant to the procedures set forth in Section 34-3-17 of the City's Subdivision Code, as it now exists or shall be hereafter amended, provided, however, all phases of such final plat shall substantially conform to the Preliminary Plat and shall conform to the requirements of the City Subdivision Code, Zoning Code and the Illinois Plat Act, as they now exist or shall be hereafter amended.

(D) In the event any City Code, ordinance, or regulation existing at the time the Property is annexed to the City does not permit the subdivision of the Property in accordance with the Preliminary Plat, the City shall promptly grant such variations as may be necessary to enable Developer's improvement of the Property in accordance with the Preliminary Plat.

(E) Subject to the terms of this Agreement, after the annexation and zoning of the Property as contemplated herein, the Property shall be used and developed

in compliance with the City's Zoning Code, the City's Subdivision Code, and the other codes and ordinances of the City and the State law, as they now exist or shall be hereafter amended during and after the term of this Agreement. It is understood and agreed that intervening changes in the Codes and Ordinances of the City and State law that pertain to the development of this property shall apply to the development of the property. The City Codes and Ordinances and State laws in effect at the time of annexation of property that pertain to the development of the property shall not be required to continue in effect for the term of this Agreement.

(G) No fee or charge of any description shall be imposed on Developer or on the development and use of the Property unless, such fee or charge is now or hereafter in existence and being collected by the City on a uniform basis from all similarly situated owners, users, and developers of property within the City. The City shall not increase the amount of any fee or charge for building permit fees, occupancy permit fees, plat review fees, plan review fees, inspection fees, utility fees, application fees, or user fees during the term of this Agreement unless such increases are:

- (i) made uniformly applicable to all owners, users and developers of similar property within the City; and
- (ii) reasonably related to increased costs incurred by the City in providing the services for which such fee is assessed. All building permit and building inspection fees for any improvement or construction on the Property shall be due and payable before issuance of a building permit for that improvement.

(H) The City agrees that if the City does not effect the zoning of the Property as described herein within the time period set forth above, the Corporate Authorities of the City, at the request of the Developer, shall immediately disconnect the Property by passing the appropriate ordinances, and taking all other action that may be required to disconnect the Property, all pursuant to the Illinois Municipal Code, as amended. Under such circumstances, disconnection of the Property shall be mandatory and, under the terms of this Agreement, the annexation of the Property shall be null and void. The remedies set forth in this paragraph shall in no way affect, diminish, or abrogate any of Developer's other rights or remedies set forth in this Agreement.

4. RUECK ROAD REALIGNMENT AND RECONSTRUCTION. The City Council has found and determined and does hereby declare that traffic on Rueck Road caused by residential development of the Property necessitates an upgrade and realignment of Rueck Road in order to promote and serve the safety and welfare of vehicular traffic. When the City fulfills all its obligations under Section 1 (ANNEXATION OF THE PROPERTY) and Subparagraphs (A), (B) and (D) of Section 3 (ZONING AND DEVELOPMENT OF THE PROPERTY) the Developer hereby agrees to construct, perform, and pay for the following improvements to Rueck Road; and the same are to be constructed and installed by the Developer and inspected, approved and dedicated to the City prior to any building permits

being issued for development of the Property comprising the subdivision, or any part thereof:

(A) The Developer will acquire from the adjoining property owner, Virginia Payne, fee title to a strip of property of sufficient width to create a sixty-five (65) foot wide right-of-way for Rueck Road (Rueck Road being currently a Road District road which will become a City street upon annexation of the property) along the west boundary of the property from the intersection of Columbia Quarry Road and Rueck Road on the north side of Columbia Quarry Road (Columbia Quarry Road being owned by the City at the subject location) and running north to a location in the northwest corner of the Property where the Rueck Road right-of-way will connect with Rueck Parkway in the proposed Brellinger Subdivision in the City (as determined, agreed upon, and depicted by the Preliminary Plat for the proposed Briar Lake Estates Subdivision and the preliminary plat for the proposed Brellinger Subdivision contemplated to be developed in the City by D & A Builders (Developer Dennis Brand) on property that belongs to or formerly belonged to Joseph and Hilda Pfeffer located north of the Property that is the subject of annexation in this Agreement. Alternatively, the additional right-of-way for the to be constructed Rueck Road (65 feet in width) may be created as a result of Monroe County Road District No. 5 ownership of right-of-way for Rueck Road to be conveyed to the City if and only if the Developer can provide sufficient proof of the City acquiring good title to the right-of-way the City needs for relocation and reconstruction of Rueck Road by that means. The City's Attorney will determine if the Road District right-of-way can be used for that purpose, without the need to acquire additional right-of-way from Virginia Payne. In the platting of the subdivision, the Developer shall include the sixty-five (65) foot Rueck Road right-of-way aforesaid.

(B) The Subdivider of the Briar Lake Estates Subdivision, in the platting of the Subdivision, will dedicate to the City a strip of land of sufficient width (thirty-two and one-half [32.5] feet anticipated) which when combined with the dedication from the adjoining property for the proposed Brellinger Subdivision will result in a sixty-five (65) foot wide right-of-way for Rueck Road along the north boundary of the property as depicted on the **Exhibit "B"** Preliminary Plat for the future widening and improvement of Rueck Road at that location (between the proposed Brellinger Subdivision property and the proposed Briar Lake Estates Subdivision Property). Neither the Owner or Subdivider shall be under any obligation to make any improvements in that right-of-way or to improve the pavement and right-of-way of the existing Rueck Road at that location along the north boundary of the annexation Property; except at the extension of Rueck Road to connect to Rueck Parkway in the Brellinger Subdivision.

(C) The Subdivider/Developer shall construct and install realigned and reconstructed Rueck Road along, over and across the west boundary of the annexation Property according to the following specifications:

(1) Twenty-two (22) foot wide Portland cement concrete pavement, eight (8) inches thick, constructed on either a compacted four (4) inch thick

aggregate sub-base or a twelve (12) inch thick lime modified earthen sub-grade;

(2) Six (6) foot wide bituminous shoulders on each side of pavement; and,

(3) Five (5) foot wide Portland cement concrete sidewalk, four (4) inches thick, located on the east side of realigned and reconstructed Rueck Road, located one (1) foot behind top of back slope of ditch.

The Developer shall pay for all costs in connection with the design engineering, construction engineering, and the construction of the realigned and reconstructed Rueck Road described above.

**5. APPROVAL OF IMPROVEMENT PLANS FOR RUECK ROAD REALIGNMENT AND RECONSTRUCTION.** Prior to commencing construction of the realignment and reconstruction of Rueck Road, the Developer shall submit to the City for its approval the improvement plans to be utilized for the realigned and reconstructed Rueck Road (the "Improvement Plans"). The City shall approve or reject, in writing, the Improvement Plans within thirty (30) days after submittal by the Developer to the City, otherwise, the Improvement Plans shall be deemed approved. If the City rejects the Improvement Plans, said rejection shall specify any and all deficiencies in the improvement Plans relating to applicable City codes, ordinances and regulations; provided that the City's failure to specify deficiencies in the Improvement Plans relating to City codes, ordinances, and regulations shall not relieve the Developer of the Developer's obligation to perform the realignment and reconstruction of Rueck Road in accordance therewith. If the City shall reject the Improvement Plans, the Developer shall submit new or corrected Improvement Plans, within thirty (30) days after the date the Developer receives written notice of the City's rejection of the Improvement Plans referred to in the latest such notice. The provisions of this subparagraph relating to approval, rejection and resubmittal of the Improvement Plans shall continue to apply to resubmittal of corrected Improvement Plans until the Improvement Plans have been approved by the City or the Developer shall request deannexation of the Property as set forth below. The City shall not unreasonably withhold, condition or delay its approval of the Improvement Plans.

The City and the Developer acknowledge and agree that if the City does not approve the Improvement Plans within one hundred twenty (120) days after the date that the Developer submits the first draft of the Improvement Plans to the City, the City Council shall immediately upon written request from the Developer, disconnect the Property by passing the appropriate ordinances, and taking all other action that may be required to disconnect the Property, all pursuant to the Illinois Municipal Code. Under such circumstances, disconnection of the Property shall be mandatory and, under the terms of this Agreement, the annexation of the Property shall be null and void.

6. RUECK ROAD RIGHT OF WAY DEDICATION. After the Improvement Plans for the realigned and reconstructed Rueck Road have been approved by the City, the Developer shall dedicate to the City a right-of-way, sixty-five (65) feet in width, for realigned Rueck Road as well as for municipal and public utility and drainage uses and purposes (which may be, but is not required to be, by final subdivision plat dedication).

7. GUARANTEE OF IMPROVEMENTS. The performance guarantee to be approved by and posted with the City for infrastructure improvements required in the subdivision to be constructed on the Property by the Developer shall include one hundred twenty-five percent (125%) of the City Engineer approved cost estimate to reconstruct the realigned and relocated Rueck Road.

8. WATER AND SANITARY SEWER RECOUPMENT FEES. The parties hereby acknowledge and agree that public sanitary sewer service and public water service for the Property may be provided by a sanitary sewer main and water main of the City that are subject to recoupment agreements made and entered into between the City and RANDALL R. ECKERT, DAVID P. ECKERT AND DONALD R. ECKERT, d/b/a DRD ECKERT and CO., INC., which provide and require that subsequent users of those services are required to contribute to the costs of the same, and pay interest on said costs. Prior to the Developer connecting the Property to the City's water main, the Developer shall pay to the City Clerk the recoupment fee due and required under the Water Recoupment Agreement between RANDALL R. ECKERT, DAVID P. ECKERT AND DONALD R. ECKERT, and the City by their 'Recoupment Agreement for Lakefield Place Subdivision Water Line' dated June 21, 1990 which the parties stipulate to be in the sum of Fifty-Four Thousand Two Hundred Twelve Dollars (\$54,212.00) as of June 20, 2003. Prior to any lot owner, connecting any lot in the Briar Lake Estates Subdivision to be located on the Property to the sanitary sewer trunk line in the subdivision (which in turn connects to the City sanitary sewer main that is subject to recoupment), each such lot owner shall pay to the City Clerk, the recoupment fee required by the First Amended Sanitary Sewer Recoupment Agreement for the sanitary sewer service dated November 12, 1999, Five Hundred Eleven Dollars Seventy-Two Cents (\$511.72) (or other applicable water meter size rate charge) plus accumulated interest at the applicable rate of seven percent (7%) per annum from November 12, 1999.

9. OFF-PREMISES SANITARY SEWER LINE EXTENSION. For sanitary sewer service to the Exhibit "A" Annexation Tract, the Developer shall be required to acquire the easement right-of-way, (minimum twenty [20] feet in width) for an interceptor sanitary sewer line to be located generally along the route depicted on the "Columbia, Illinois Facility Planning Area Expansion" Figure 6 map, dated May, 2000, which is attached hereto as **Exhibit "C"**, (on said map shown as a solid line between point "C" located at or near the west boundary of the annexation property of Developer and the east boundary of the property belonging to Virginia Payne, and running then in a generally southwesterly direction, diagonally, to a point "D" at or about "Millstadt Junction" on the map) which interceptor sewer line is highlighted in yellow on the **Exhibit "C"** map. The sanitary sewer

right-of-way easement shall be granted and conveyed to the City on or before the City accepts ownership of the sewer line and appurtenances.

The interceptor sanitary sewer line will be constructed and installed in the sanitary sewer line easement in accordance with the specifications and requirements of the City, by the Developer and at the Developer's sole expense. For the installation and construction of the interceptor sanitary sewer line the Developer shall be entitled to a recoupment agreement in accordance with Item 10 of this Agreement. The ownership of the sanitary sewer line, once it is installed, inspected and approved by the City as having been constructed and installed in compliance with the City's requirements, shall be transferred and conveyed to the City by the Developer, by the Developer executing and delivering to the City a good and sufficient Bill of Sale for the same, in a form acceptable to the City's Attorney. Prior to acceptance of ownership and the maintenance responsibility for the interceptor sanitary sewer line by the City, the Developer shall provide to the City a maintenance guarantee in form, amount and for a term as required by the City's Ordinances Numbered 1868 and 1886, copies of which are attached to this Agreement as Exhibits "D-1" and "D-2", respectively.

10. DEVELOPER RECOUPMENT AGREEMENT. For all expenses incurred by the Developer for off-premises extensions of public sanitary sewer and/or water services sized according to City requirements and constructed and installed according to Subdivision Code requirements and which are required to be made by the Developer to provide public sanitary sewer and/or City public water service to the Property, the Developer shall be eligible to have and obtain a recoupment agreement from the City in accordance with the requirements of and pursuant to City Ordinance No. 2127 enacted January 2, 2003, and Sections 9-5-1 and 9-5-2 of the Illinois Municipal Code. (65 ILCS 5/9-5-1 and 5/9-5-2).

11. SURPLUS SURFACE WATER MANAGEMENT. In the Storm Water Management Plan for the subdivision and development of the Property to be provided by the Developer, and approved by the City, the Developer will attempt to provide surface water retention/detention areas and facilities which will provide surface water management for the Property as well as adjacent properties. The Developer shall sponsor the surplus water management and the City and the Developer will share in the cost involved for the surplus water management as they shall mutually agree.

12. ANNEXATION EXPENSES. In accordance with the requirements of Section 17.50.010 of the City's Municipal Code, the annexation petitioner shall pay for or reimburse the City for all costs incurred by the City for survey work, land title work, legal fees and engineering fees incurred in connection with the proposed annexation and all other out-of-pocket expenses incurred by the City in connection with the proposed annexation (including mailing of the notices to necessary parties).

13. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, administrators, other legal

representatives, successors and assigns, including successor owners of record of the Property, and all parts thereof, and upon any successor of the City. Nothing herein shall prevent the alienation or sale of the Property or portions thereof, except that said transfer and conveyance shall be subject to the provisions hereof and of the Zoning Code, Subdivision Code, Storm Water Management Code, and other codes and ordinances of the City then in effect and the new owners or transferees shall be both benefitted and bound by the terms, conditions, and restrictions therein and herein expressed.

14. ENFORCEMENT. The parties to this Agreement may either in law or equity, by suit, action, mandamus or other proceedings in court enforce and compel performance of this Agreement and seek damages for its breach. In the event that either party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement or for any alleged breach or default thereof, or for any other acts arising out of this Agreement, the prevailing party to such action shall be entitled to an award of all of its costs, including reasonable attorneys' fees, and any court costs incurred in said action or proceeding in addition to other damages or relief awarded, regardless of whether final judgment is entered in such action or proceeding.

15. TERM. In accordance with Section 5/11-15-5 of the Illinois Municipal Code, this Agreement shall be in effect for a term of twenty (20) years from the date of its execution, unless sooner terminated as otherwise provided herein or by mutual agreement of the parties.

16. SEVERABILITY. In the event any part or portion of this Agreement is held partially or wholly invalid or unenforceable by a court of competent jurisdiction, the City shall make a diligent and good-faith effort to remedy and cure any such defect and shall take such actions as are reasonably necessary to provide Developer with all of the material benefits of the terms of this Agreement. In all events, the remaining portions hereof shall continue in full force and effect; provided however, that if any of the City's obligations hereunder are held to be partially or wholly invalid, the Developer may elect to have the City deannex the Property, and if the Developer does so elect to have the City deannex the Property, the City shall immediately take each and every step and action necessary to complete the deannexation as permitted by law.

17. CITY COVENANTS. The City covenants with the Developer that the City has the lawful authority to execute and deliver this Agreement, that this Agreement constitutes the legal, valid, and binding obligation of the City, enforceable in accordance with its terms, and the City hereby waives, to the extent permitted by law, all rights, if any, the City may have under any laws of the State of Illinois which may limit or impair the effectiveness or enforceability of this Agreement. The City has not taken and will not take any action which might prevent Developer from deriving all of the material benefits of any of the terms of this Agreement. The City further agrees not to solicit, procure, or assist any person in any third party claim challenging the validity of this Agreement or against the Developer or the City arising directly or indirectly out of any of the transactions set forth or described in this Agreement. In no event shall the City settle or compromise any third party claim or action

regarding this Agreement without the prior approval of the Developer, which approval shall not be unreasonably withheld. During any litigation, unless prohibited by court order, the City agrees to continue to timely process all grading plans, improvement plans, and other plans and to issue permits to which the Developer is entitled which are required for development of the Property in accordance with the terms of this Agreement.

18. TIME OF THE ESSENCE; MUTUAL ASSISTANCE AND COOPERATION.

Time is of the essence with respect to all obligations under this Agreement. The parties agree to take such actions, including the adoption of ordinances and resolutions, and the execution and delivery of such documents, instruments, petitions, and certifications supplemental hereto, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent. Further, the City agrees that the City shall not unreasonably withhold or delay any City action required to carry out the terms, provisions and intent of this Agreement, but this Agreement shall not obligate the City, acting as a party hereto, to grant municipal permits or other approvals it would not be obligated to grant, acting as a political subdivision, absent this Agreement; provided further, notwithstanding the execution of this Agreement by the City, this Agreement shall not be effective nor binding on the City until authorized by an Ordinance of the City duly passed and adopted by the City Council and approved by the Mayor.

19. NOTICES. All notices, requests and demands shall be in writing and shall be delivered personally or made by registered mail, return receipt requested, as follows:

If to the City:

City of Columbia, Illinois  
Columbia City Hall  
208 South Rapp Avenue  
Columbia, Illinois 62236  
Attention: City Clerk

With a copy to:

Adams & Huetsch, Attorneys at Law  
321 Wedgewood Square  
P.O. Box 647  
Columbia, Illinois 62236  
Attention: Tom D. Adams

If to the Developer:

American Heritage Land Development, LLC  
Attention: Sean Flower, Chief Operating Officer  
1395 Dougherty Ferry Road  
St. Louis, MO 63021

With a copy to:

Husch & Eppenberger, LLC  
190 Carondelet Avenue, Suite 600  
St. Louis, MO 63105  
Attention: Caroline Saunders

and/or to such other addresses or addressees as the parties shall hereafter designate in writing to the other.

IN WITNESS WHEREOF, the parties hereto have made and entered into this First Amended Annexation Agreement on the date first above written.

CITY OF COLUMBIA, ILLINOIS, A Municipal Corporation, the Party of the First Part

By: \_\_\_\_\_  
LESTER SCHNEIDER, Mayor

ATTEST:

WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS      )  
                            )  
COUNTY OF MONROE    )  
                            )

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that LESTER SCHNEIDER and WESLEY J. HOEFFKEN, personally known to me and known to me to be the Mayor and the City Clerk, respectively, of the City of Columbia, Illinois, a Municipal Corporation, appeared before me, in person, this date, and

acknowledged that they signed and delivered the above and foregoing document as their free and voluntary act and deed and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth, pursuant to Ordinance of said City duly enacted.

Given under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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Notary Public

AMERICAN HERITAGE LAND DEVELOPMENT,  
L.L.C., a Missouri limited liability company,  
Authorized to do Business in Illinois

By: \_\_\_\_\_  
SEAN M. FLOWER, Chief Operating Officer

ATTEST:

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MATHEW KIEHNE, Secretary

STATE OF MISSOURI      )  
                            ) SS  
COUNTY OF ST. LOUIS    )

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that SEAN M. FLOWER and MATHEW KIEHNE, personally known to me to be the Chief Operating Officer and Secretary, respectively, of AMERICAN HERITAGE LAND DEVELOPMENT, LLC, a Missouri limited liability company authorized to do business and in good standing in the State of Illinois, whose names are subscribed to the above and foregoing document, appeared before me this day in person, and acknowledged that they signed and delivered the said document as their free and voluntary act and deed and as their free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notary Seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003.

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Notary Public

My Commission expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

Part of the Northeast quarter of Section 9, and part of the Fractional West one-half of Section 10 and part of U.S. Survey 557, claim 598, all in Township 1 South, Range 10 West, of the Third-Principal Meridian, Monroe and St. Clair County, Illinois, being more particularly described as follows:

Beginning at a 2" square steel post on the North line of Section 10, being distant South 89° 31' 53" East 2557.70 feet from the Northwest corner of said Section; thence departing said North line, South 00° 21' 47" West 1323.30 feet to a point; thence South 77° 43' 49" West 765.60 feet to an old concrete post found for the Northwest corner of U.S. Survey 557 Claim 598; thence, with the Northwest line of said U.S. Survey, South 21° 25' 00" West 725.03 feet to a point from which a found 1 inch iron bar bears South 39° 14' 21" East a distance of 2.29 feet; thence, departing the said U.S. Survey line, South 39° 14' 21" East 661.35 feet to an old "T" post; thence, South 22° 41' 42" West 399.34 (400.00 record) feet to a found iron rod; thence, North 52° 44' 20" West 141.60 feet to a point of curvature and from which point a found iron rod bears South 54° 33' 31" West 0.28 feet; thence, with a curve to the left, having a radius of 1005.37 feet, an arc distance of 563.55 feet to a point of tangency and from said point a found iron rod bears North 64° 01' 42" West 0.16 feet; thence, North 84° 51' 20" West 58.74 feet to a point from which a found iron rod bears North 00° 04' 24" East 106.00 feet to a stone found for the Northeast corner of Tax Lot 3 being also on the East/West quarter line of aforesaid Section 10; thence, with said quarter line, North 88° 45' 21" West 1122.00 feet to an iron rod set for the West quarter corner of said Section 10; thence, with the East/West quarter line of Section 9, North 88° 34' 40" West 646.80 feet to a set iron rod; thence, North 00° 08' 37" East 2639.63 feet to a concrete monument found on the North line of said Section 9; thence, with said Section line, South 88° 37' 06" East 650.89 feet to an old "T" post found for the common North corner of Sections 3, 4, 9 and 10; thence, departing said Section line, South 00° 24' 31" West 1317.83 feet to an iron rod set for the Northwest corner of the Southwest quarter of the Northwest quarter of Section 10; thence, with said quarter-quarter line, South 89° 09' 24" East 705.52 feet to a found concrete monument; thence, departing said quarter-quarter section line, North 64° 14' 54" East 733.14 feet to a concrete monument found on the on the West line of the Northeast quarter of the Northwest quarter Section 10; thence with said quarter-quarter section line, North 00° 18' 31" East 272.44 (264.00 record) feet to a found pin; thence, departing said quarter-quarter section line, North 45° 15' 20" East 1023.04 (1023.00 record) feet to an old "T" post found on the aforesaid North line of Section 10 being distant South 89° 31' 53" East 2084.53 feet from the aforesaid Section corner; thence, with said Section line, South 89° 31' 53" East 473.17 feet to the Point of Beginning and containing 129.777 acres, more or less

**EXHIBIT B**

PRELIMINARY PLAT  
(Attached)

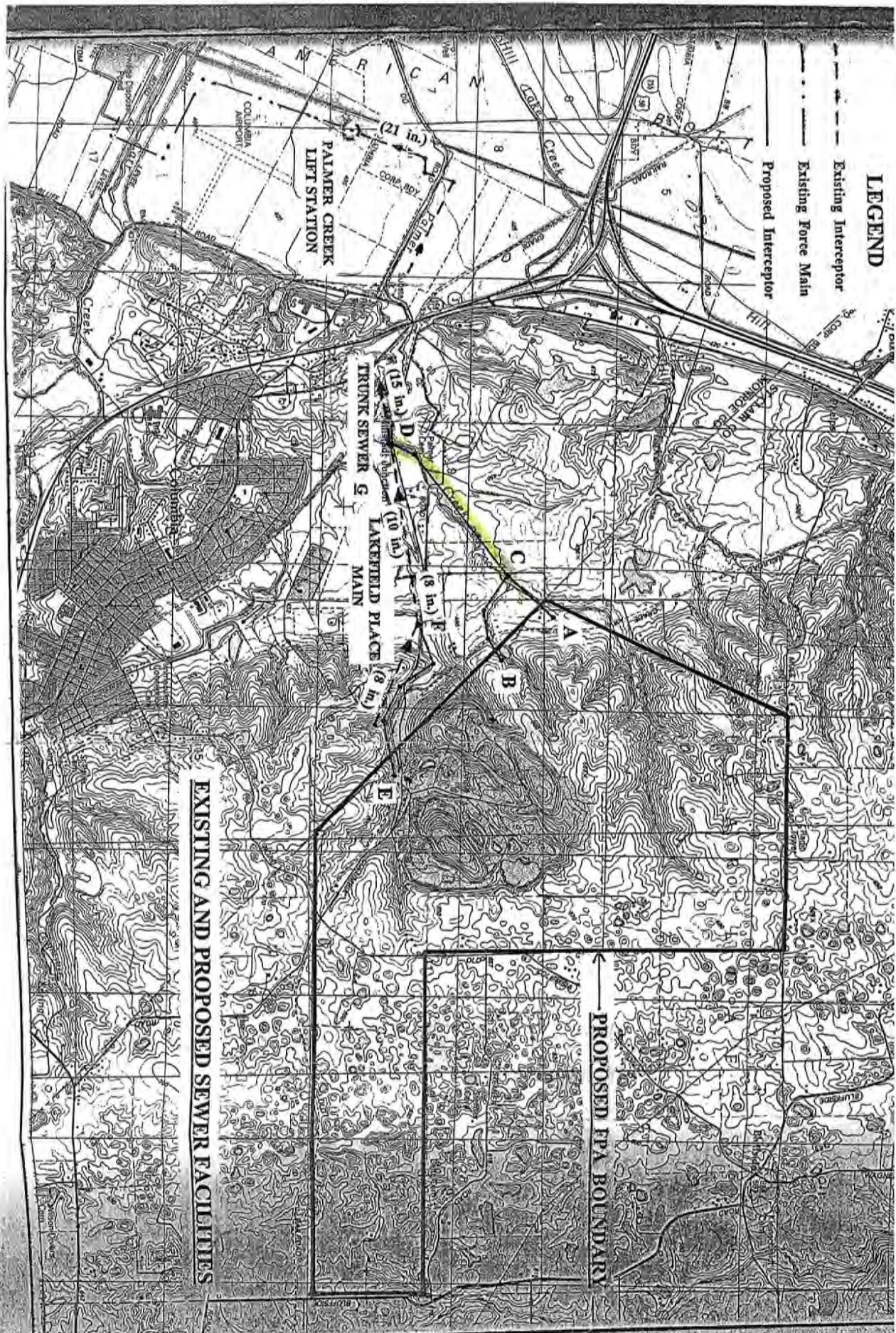


EXHIBIT "C"

Fig. 9

May, 2000

KdG

**Kuhlmann  
Design  
Group, Inc.**

15 East Washington Street  
Belleville, IL 62220-2139  
Tel: (618) 234-8898

Belleville, Illinois  
St. Louis, Missouri  
St. Charles, Missouri

## **Columbia, Illinois Facility Planning Area Expansion**

ORDINANCE NO. 1868

AN ORDINANCE TO AMEND THE CITY OF COLUMBIA,  
ILLINOIS SUBDIVISION CODE TO ADD THERETO SECTION  
34-5-19 TO REQUIRE A SUBDIVISION DEVELOPER TO  
PROVIDE THE CITY WITH A MAINTENANCE GUARANTEE  
FOR SUBDIVISION INFRASTRUCTURE CAPITAL  
IMPROVEMENTS INSTALLED IN A SUBDIVISION IN THE  
CITY

WHEREAS, the City Council of the City of Columbia, Illinois (the "City") has found and determined and does hereby declare that it is necessary and appropriate that the City require that for a minimum period of one (1) year after the City accepts dedication and ownership of subdivision infrastructure capital improvements (such as but not limited to streets, curbs, gutters, storm sewers, sanitary sewers and water distribution lines and facilities), the subdivider should be required to maintain the same in good working order and repair for a reasonable period of time after they are accepted by the City so that the City can be assured they have been constructed in a good and workman like manner and reasonably free of need for maintenance, repair or replacement; and,

WHEREAS, for the use and purpose aforesaid, it is necessary and appropriate that City's Subdivision Code be changed and amended to add thereto a requirement for the City to be provided with a good and sufficient maintenance guarantee from subdivider of land in the City to secure that infrastructure capital improvements constructed by the subdivider and dedicated to the City will be constructed in good and workman like order and repair and will not be in need of maintenance, repair or replacement for a minimum period of one (1) year after acceptance of improvements by the City.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The City of Columbia, Illinois Subdivision Code is hereby changed and amended to add thereto Section 34-5-19 (Maintenance Guarantee - Letter of Credit, Bond or Escrow Agreement), to read as follows:

"34-5-19      MAINTENANCE GUARANTEE - LETTER OF CREDIT, BOND  
OR ESCROW AGREEMENT.

"(A) Conditional Acceptance. Prior to the City accepting dedication and ownership of subdivision capital improvements or facilities intended to be dedicated to and owned by the City, (including but not limited to street pavement, curbing, guttering, storm sewers, sanitary sewers, and potable water distribution lines and facilities) the subdivider shall:

(i) Provide the City Council with a written certification signed and sealed by a professional engineer licensed to practice engineering in the State of Illinois, attesting that subdivision capital improvements sought to be dedicated to the City have been constructed and installed in compliance with the City's Subdivision Code, Building Code and the other Codes and Ordinances of the City applicable thereto; and,

(ii) Provide to the City Clerk a maintenance guarantee in compliance with the requirements of this Section of the City's Subdivision Code, as hereinafter made and provided for.

Notwithstanding anything contained in this Subdivision Code to the contrary, acts of maintenance by the City on subdivision capital improvements to be dedicated to and owned by the City shall not be construed or deemed to be or constitute acceptance of ownership of and the future maintenance responsibility for the capital improvements. "Acts of maintenance" with regard to streets may include, but are not limited to: snow removal, street sweeping, payment of energy charges on street lights, and installation and repair of street signs. Acceptance of City ownership of and the maintenance responsibility for subdivision infrastructure capital improvements shall be by enactment of an appropriate ordinance by the City Council and delivery to the City of a good and sufficient Bill of Sale for the capital improvements by the subdivider.

**"(B) MAINTENANCE GUARANTEE.** The maintenance guarantee to be provided to the City by the subdivider shall be in the form of an irrevocable letter of credit, an insurance bond or escrow agreement. With regard thereto the following shall apply:

(1) To be an acceptable maintenance guarantee, a letter of credit must be issued by a financial institution acceptable to the City which is in good standing and authorized to do business in the State of Illinois; an insurance bond must be issued by an insurance company acceptable to the City which is in good standing and authorized to do business in the State of Illinois; and, an escrow agreement must be for a cash escrow established at a financial institution approved by the City making funds readily available for use by the City in the event of the default of performance by the subdivider.

(2) The maintenance guarantee shall be in an original principal sum equal to one-half (50%) of the cost to construct the capital improvements to be dedicated to the City, as determined by the City Engineer.

(3) The maintenance guarantee shall be in a form acceptable to the City Attorney and shall be in force for the period of one (1)

year from the date of the City's acceptance of the capital improvements secured by the maintenance guarantee. Not less than sixty (60) days prior to the expiration of the maintenance guarantee, the surety on the maintenance guarantee (financial institution issuing the letter of credit, insurance company issuing the bond or the escrow agent on the escrow agreement) shall notify the City Clerk, by registered mail, return receipt requested, of the impending expiration date. The maintenance guarantee shall so state. Failure to give the required notice shall extend the expiration date of the maintenance guarantee so that under no circumstances shall the maintenance guarantee expire until sixty (60) days after the City's receipt of said written notice of expiration.

(4) If at anytime during the guarantee period, the capital improvements accepted by the City are found by the City to be in need of repair or replacement, due to any cause whatsoever, the subdivider shall repair or replace the same, within such reasonable time as the City shall require, in compliance with the applicable City Codes and Ordinances.

(5) In the event it is necessary for repairs or replacements of capital improvements to be made during the effective term of the maintenance guarantee, the maintenance guarantee shall only be released by the City Council upon final inspection and approval of the repairs or replacements by the City Engineer or his designee. Release of the maintenance guarantee shall be by enactment of an appropriate ordinance or resolution by the City Council. It shall be the responsibility of the subdivider to request final inspection of repairs or replacements made to capital improvements secured by a maintenance guarantee within sixty (60) days of their completion, but in all cases not less than thirty (30) days before the end of the term of the maintenance guarantee. Failure to give that notice shall extend the term of the maintenance guarantee to not less than sixty (60) days after the date of delivery of the notice to the City."

**Section 2.** All resolutions or ordinance or parts of resolutions or ordinances in conflict herewith, to the extent of such conflict, are hereby changed and amended to be read to be consistent and in compliance with the provisions of this Ordinance. To extent that conflicting resolutions or ordinances of the City cannot be changed and amended to be read to be in compliance and consistent with the terms of this Ordinance, the inconsistent provisions thereof are hereby repealed.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage, as provided by law.

PASSED by the City Council and APPROVED by the Mayor this 21st day of  
August, 2000.

George W. Eckert  
GEORGE W. ECKERT, Mayor Pro Tem

ATTEST:

Wesley J. Hoeffken  
WESLEY J. HOEFFKEN, City Clerk

(SEAL)

6

ORDINANCE NO. 1886

AN ORDINANCE TO AMEND SECTION 34-5-19  
(MAINTENANCE GUARANTEE - LETTER OF CREDIT,  
BOND OR ESCROW AGREEMENT) TO CHANGE THE  
TERM AND AMOUNT OF THE MAINTENANCE GUARANTEE

WHEREAS, on August 21, 2000, the City Council of the City of Columbia, Illinois (the "City") enacted Ordinance No. 1868, entitled:

"AN ORDINANCE TO AMEND THE CITY OF COLUMBIA, ILLINOIS SUBDIVISION CODE TO ADD THERETO SECTION 34-5-19 TO REQUIRE A SUBDIVISION DEVELOPER TO PROVIDE THE CITY WITH A MAINTENANCE GUARANTEE FOR SUBDIVISION INFRASTRUCTURE CAPITAL IMPROVEMENTS INSTALLED IN A SUBDIVISION IN THE CITY"

(the "Maintenance Guarantee Ordinance");

WHEREAS, the Maintenance Guarantee Ordinance provides and requires that the original principal amount of the maintenance guarantee is to be equal to one-half (½) of the cost to construct the capital improvements to be dedicated to the City, as determined by the City Engineer and the maintenance guarantee shall be in force for a period of one (1) year from date of the City's acceptance of the capital improvements secured by the maintenance guarantee;

WHEREAS, the City Council of the City has now found and determined that it is necessary and appropriate to amend the Ordinance to require and provide that the maintenance guarantee shall be in the original principal sum equal to twenty-five percent (25%) of the cost to construct the capital improvements to be dedicated to the City, as determined by the City Engineer and shall be in force for a period of two (2) years from the date of the City's acceptance of the capital improvements secured by the maintenance guarantee.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** Subparagraph (1) of Subsection (B) (Maintenance Guarantee) of Section 34-5-19 (Maintenance Guarantee - Letter of Credit, Bond or Escrow Agreement) of the City of Columbia, Illinois Subdivision Code is hereby changed and amended to read as follows:

**"(B) MAINTENANCE GUARANTEE . . .**

"(1) To be an acceptable maintenance guarantee, a letter of credit must be issued by a financial institution acceptable to the City which is in good standing and authorized to do business in the State of Illinois; an insurance bond must be issued by an insurance company acceptable to the City which is in good standing and authorized to do business in the State of Illinois; and, an escrow agreement must be for a cash escrow established at a financial institution approved by the City making funds readily available for use by the City in the event of the default of performance by the subdivider and shall be subject to the provisions of Section 11-39-3 (Builder or Developer Cash Bond) of the Illinois Municipal Code (65 ILCS 5/11-39-3), as amended."

**Section 2.** Subparagraph (2) of Subsection (B) (Maintenance Guarantee) of Section 34-5-19 (Maintenance Guarantee - Letter of Credit, Bond or Escrow Agreement) of the City of Columbia, Illinois Subdivision Code is hereby changed and amended to read as follows:

"(2) The maintenance guarantee shall be in an original principal sum equal to one-fourth (25%) of the cost to construct the capital improvements to be dedicated to the City, as determined by the City Engineer."

**Section 3.** Subparagraph (3) of Subsection (B) (Maintenance Guarantee) of Section 34-5-19 (Maintenance Guarantee - Letter of Credit, Bond or Escrow Agreement) of the City of Columbia, Illinois Subdivision Code is hereby changed and amended to read as follows:

"(3) The maintenance guarantee shall be in a form acceptable to the City Attorney and shall be in force for the period of two (2) years from the date of the City's acceptance of the capital improvements secured by the maintenance guarantee. Not less than sixty (60) days prior to the expiration of the maintenance guarantee, the surety on the maintenance guarantee (financial institution issuing the letter of credit, insurance company issuing the bond or the escrow agent on the escrow agreement) shall notify the City Clerk, by registered mail, return receipt requested, of the impending expiration date. The maintenance guarantee shall so state. Failure to give the required notice shall extend the expiration date of the maintenance guarantee so that under no circumstances shall the maintenance guarantee expire until sixty (60) days after the City's receipt of said written notice of expiration."

**Section 2.** All resolutions or ordinances or parts of resolutions or ordinances in conflict herewith, to the extent of such conflict, are hereby changed and amended to be

read to be consistent and in compliance with the provisions of this Ordinance. To extent that conflicting resolutions or ordinances of the City cannot be changed and amended to be read to be in compliance and consistent with the terms of this Ordinance, the inconsistent provisions thereof are hereby repealed (including Sub-paragraphs (1), (2) and (3) of Subsection (B) (Maintenance Guarantee) of Section 34-5-19 (Maintenance Guarantee - Letter of Credit, Bond or Escrow Agreement) of the City of Columbia, Illinois Subdivision Code.

**Section 5.** This Ordinance shall be in full force and effect from and after its passage, as provided by law.

PASSED by the City Council and APPROVED by the Mayor this 16<sup>th</sup> day of October, 2000.



LESTER SCHNEIDER, Mayor

ATTEST:



WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS      )  
                            ) SS  
COUNTY OF MONROE    )

**CERTIFICATE OF TRUE COPY**

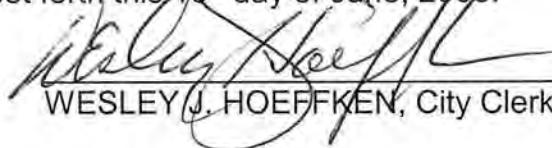
I, Wesley J. Hoeffken, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, file and seal of said City.

I further certify that Ordinance No. 2182, entitled:

**"AN ORDINANCE AUTHORIZING THE EXECUTION OF AN  
FIRST AMENDED ANNEXATION AGREEMENT FOR 129.777  
ACRES, MORE OR LESS, OF PROPERTY BELONGING TO  
THE AMERICAN HERITAGE LAND DEVELOPMENT, L. L.  
C., A MISSOURI LIMITED LIABILITY COMPANY  
AUTHORIZED TO DO BUSINESS IN ILLINOIS, TO THE CITY  
OF COLUMBIA, ILLINOIS "**

to which this Certificate is attached, is a true, perfect, complete and correct copy of said Ordinance as enacted at a regular meeting of the City Council held on the 16<sup>th</sup> day of June, 2003, and as appears of record in the files and records of the City.

IN WITNESS WHEREOF, I have signed, sealed and delivered this Certificate for the uses and purposes hereinabove set forth this 16<sup>th</sup> day of June, 2003.

  
WESLEY J. HOEFFKEN, City Clerk

(SEAL)