

ORDINANCE NO.: 5-2019

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO,
PORTER COUNTY, INDIANA, ANNEXING CERTAIN REAL ESTATE INTO THE
CITY OF VALPARAISO, INDIANA, KNOWN AS THE "HAWTHORNE HILLS
ANNEXATION"**

WHEREAS, the City of Valparaiso, Porter County, Indiana ("City"), in accordance with Ind. Code § 36-4-3-5.1, wishes to annex an area consisting of approximately 28.985 acres located outside of but contiguous to the City, those areas being depicted in Exhibit A, attached hereto and incorporated herein and particularly described in Exhibit B, attached hereto and incorporated herein ("Annexed Territory"); and

WHEREAS, in accordance with Ind. Code § 36-4-3-5.1(e), on or around February 25th, 2019 the Common Council held a duly noticed public hearing regarding the Annexed Territory; and

WHEREAS, the Common Council has determined, in accordance with Ind. Code § 36-4-3-5.1, the petition requesting a super voluntary annexation is signed by 100% of the owners of land within the Annexed Territory; and

WHEREAS, in accordance with Ind. Code § 36-4-3-1.5, the Common Council has determined that the Annexed Territory is contiguous as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the boundaries of the City; and

WHEREAS, on or around February 25th, 2019, and prior to holding the above-referenced public hearing, in accordance with Ind. Code §§ 36-4-3-3.1 and 36-4-3-12, the Common Council adopted by resolution a written fiscal plan for the Annexed Territory; and

WHEREAS, on or around January 12th, 2019, the City's Plan Commission held a duly noticed public hearing regarding the initial zoning of the Annexed Territory; and

WHEREAS, on or around February 12th, 2019, the City's Plan Commission voted by a vote of 7-0 to favorably recommend initially zoning the Annexed Territory as Suburban Residential (SR) and General Residential (GR); and

WHEREAS, the Common Council finds that the annexation and initial zoning of the Annexed Territory pursuant to the terms and conditions of this Ordinance is in the best interest of all owners of land in the Annexed Territory, is fair and equitable, and should be accomplished.

WHEREAS, the Common Council now desires to annex the Annexed Territory generally known as the "Hawthorne Hills Annexation."

NOW, THEREFORE BE IT ORDAINED by the Common Council of the City of Valparaiso, Porter County, Indiana, as follows:

Section 1. *Incorporation of Recitals.* The foregoing recitals (or "whereas clauses") are findings of fact by the Common Council and are incorporated into this Ordinance by reference.

Section 2. *Contiguity.* The petition requesting super voluntary annexation for the Annexed Territory, depicted in Exhibit A, attached hereto and incorporated herein, and particularly described in Exhibit B, attached hereto and incorporated herein, is signed by 100% of the owners of land within the Annexed Territory and is contiguous to the City boundaries as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the boundaries of the City.

Section 3. *Annexed Territory.* The real estate containing approximately 28.985 acres more or less depicted in Exhibit A attached hereto and incorporated herein, and particularly described in Exhibit B, attached hereto and incorporated herein, generally to be known as the Hawthorne Hills Annexation, is hereby annexed to and declared part of the City of Valparaiso, Porter County, Indiana.

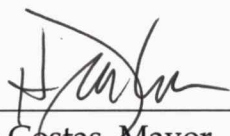
Section 4. *Council District.* The Annexed Territory is hereby assigned City Council District No. 5 and shall become a part thereof immediately upon the effective date of this Ordinance.

Section 5. *Zoning.* Upon the effective date of this Ordinance, the Annexed Territory shall be classified for zoning purposes as Suburban Residential (SR), and General Residential (GR).

Section 6. *Effective Date.* This Ordinance shall be in full force and effect upon its passage by the Common Council and as provided by Indiana law.

Section 7. *Severability.* The sections, subsections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining sections, subsections, paragraphs, sentence, clauses and phrases of this Ordinance.

DULY PASSED AND ADOPTED this 11th day of March, 2019, by the Common Council of the City of Valparaiso, Porter County, Indiana, having been passed by a vote of 7 in favor and 0 opposed.



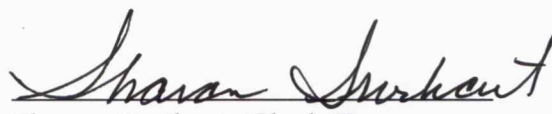
Jon Costas, Mayor

ATTEST:



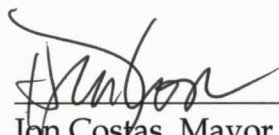
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 11th day of March, 2019 at the hour of 8:20 o'clock p.m.



Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 11th day of March, 2019, at the hour of 8:20 o'clock p.m.



Jon Costas, Mayor

Exhibit A

Hawthorne Hills Annexation Territory

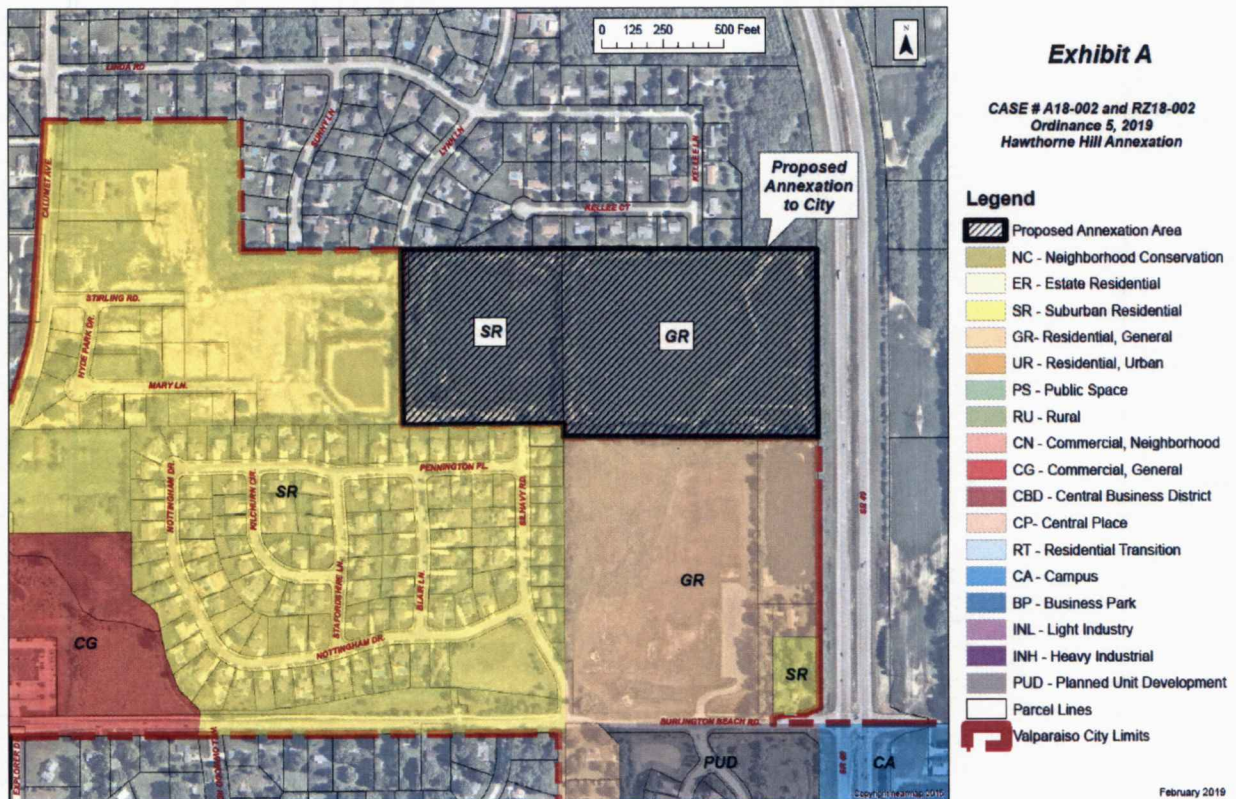


Exhibit B

Legal Description of land to be Annexed

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 35 NORTH, RANGE 5 WEST AND THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 35 NORTH, RANGE 5 WEST OF THE SECOND PRINCIPAL MERIDIAN IN CENTER TOWNSHIP, PORTER COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON PIPE ON THE EAST LINE OF SAID SECTION 6 WHICH IS 1204.5 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES. 57 MINUTES, 30 SECONDS WEST PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 660.00 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST A DISTANCE OF 712.03 FEET; THENCE NORTH 89 DEGREES, 54 MINUTES, 30 SECONDS EAST, A DISTANCE OF 660.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE EASTERLY ALONG THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN DEED RECORD 204, PAGE 462 IN THE RECORDER'S OFFICE OF PORTER COUNTY, INDIANA A DISTANCE OF 1040.31 FEET TO THE WEST RIGHT-OF-WAY LINE OF THE STATE ROAD NO. 49 BYPASS; THENCE SOUTH ALONG SAID WESTERLY RIGHT-OF-WAY, A DISTANCE OF 763.60 FEET; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID 204, PAGE 462, A DISTANCE OF 1040.31 FEET TO A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER BEING 1151.37 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH ALONG SAID WEST LINE OF THE SOUTHWEST QUARTER (ALSO BEING THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 6), A DISTANCE OF 53.13 FEET TO THE POINT OF BEGINNING.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made by and between Olthof Homes ("Petitioner"), and the City of Valparaiso, Indiana, a municipality created and existing pursuant to the laws of the State of Indiana ("City"), and jointly referred to herein as "Parties."

WITNESSETH:

WHEREAS, Petitioner has an interest in the following described real estate located in Porter County, Indiana (the "Property"):

Note: The following description is written along rights-of-way line(s) of existing roads on the side opposite the lands to be annexed. In these instances, it is the intent to include the interest in the road in the annexation without impacting or affecting the underlying interests of property owners on that opposite side of the road.

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 35 NORTH, RANGE 5 WEST AND THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 35 NORTH, RANGE 5 WEST OF THE SECOND PRINCIPAL MERIDIAN IN CENTER TOWNSHIP, PORTER COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON PIPE ON THE EAST LINE OF SAID SECTION 6 WHICH IS 1204.5 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES. 57 MINUTES, 30 SECONDS WEST PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 660.00 FEET; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS WEST A DISTANCE OF 712.03 FEET; THENCE NORTH 89 DEGREES, 54 MINUTES, 30 SECONDS EAST, A DISTANCE OF 660.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE EASTERLY ALONG THE NORTH LINE OF A PARCEL OF LAND DESCRIBED IN DEED RECORD 204, PAGE 462 IN THE RECORDER'S OFFICE OF PORTER COUNTY, INDIANA A DISTANCE OF 1040.31 FEET TO THE WEST RIGHT-OF WAY LINE OF THE STATE ROAD NO. 49 BYPASS; THENCE SOUTH ALONG SAID WESTERLY RIGHT-OF-WAY, A DISTANCE OF 763.60 FEET; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID 204, PAGE 462, A DISTANCE OF 1040.31 FEET TO A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER BEING 1151.37 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH ALONG SAID WEST LINE OF THE SOUTHWEST QUARTER (ALSO BEING THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 6), A DISTANCE OF 53.13 FEET TO THE POINT OF BEGINNING; and

WHEREAS, the Property is approximately 28.84 acres located on the north side of Burlington Beach Road in unincorporated Porter County but contiguous to the corporate boundaries of the City of Valparaiso located within unincorporated Porter County, Indiana; and

WHEREAS, the Property is the subject of a proposed residential development consisting of approximately Ninety-Two (92) lots; and

WHEREAS, on or about September 26, 2018, Petitioner filed Petition No. A18-001 and RZ18-001 (the "Petition") with the City seeking to have the Property annexed into the City and zoned as Suburban Residential (SR) District and General Residential (GR) District pursuant to the City's Unified Development Ordinance, and the Petition is hereby incorporated by reference into this Agreement as if fully set forth herein;

WHEREAS, on January 8, 2019, the City Plan Commission conducted a legally advertised public hearing on the Petition; and

WHEREAS, on February 12, 2019, the City Plan Commission made a favorable recommendation to the Common Council of the City by a vote of seven to zero; and

WHEREAS, on February 25, 2019, the Common Council of the City adopted Resolution No. 5-2019 and in doing so approved the Fiscal Plan for the Property. Resolution No. 5-2019 is hereby incorporated by reference into this Agreement as if fully set forth herein.

WHEREAS, also on February 25, 2019, the Common Council of the City convened a public hearing on the Petition; and

WHEREAS, on March 11, 2019, the Common Council of the City adopted Ordinance No. 5-2019 by a vote of ___ to ___ contingent upon the City and Petitioner executing an Annexation Agreement imposing certain requirements on the development of a residential subdivision on the Property. Ordinance No. 5-2019 is hereby incorporated by reference into this Agreement as if full set forth herein; and

WHEREAS, the Parties wish to enter into this Agreement to memorialize and ratify the terms and conditions placed upon the Property as part of its annexation into the corporate limits of the City.

NOW, THEREFORE, in consideration of being permitted to be annexed into the City based upon the terms and conditions set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are hereby incorporated by reference and made a part of this Agreement.

2. Conditions Related to Subdivision for Residential Purposes. The Parties hereby acknowledge and agree that the current zoning of the Property is Low Density Single Family Residential (R1) District and Rural Residential (RR) District in unincorporated Porter County, Indiana pursuant to the Official Zone Map. The Parties further acknowledge and agree that the City's Unified Development Ordinance permits a residential subdivision to be developed on the

Property under the Suburban Residential (SR) District and the General Residential (GR) District. In the event that Petitioner, or its successors and assigns, seek to develop a residential subdivision on the Property, the subdivision shall comply with all of the following requirements:

- (a) All lots that border the Highway 49 right-of-way shall be provide for a modified Class D Bufferyard along the highway right-of-way to require the following:

Width	Large trees	Small trees	Shrubs
40 ft.	6 / 100 linear ft.	9 / 100 linear ft.	25 / 100 linear ft.

The location of the existing treeline along Hwy 49 shall be determined and to the extent that the treeline shall be located on the Property it shall be incorporated into the Bufferyard and preserved. An earthen berm shall be provided in the Bufferyad to provide for screening. The location of the berm will undulate through the Bufferyard to allow for surface water drainage and tree preservation with high points reaching five feet (5'). The Primary Plat for any subdivision on the Property shall include a Bufferyard Preservation Easement.

No irrigation systems or fences shall be allowed in the Bufferyard.

- (b) All homes on lots that border the Highway 49 right-of-way and the western row of lots in the General Residential District shall have architectural features such rooms, breakfast nook, sunrooms, off-set walls, bump-outs or pilasters prohibiting the appearance of a flat building wall facing the highway right-of-way and the Suburban Residential District to the west.
- (c) All Lot yards facing the Highway 49 right-of-way shall prohibit outside storage, outdoor swimming pools, playsets, accessory structures and parking or storage of automobiles, recreational vehicles, camper, or boats.
- (d) Subject to the direction of the City Engineering Department, Petitioner shall install no more than two (2) "speed humps" on Silhavy Road.
- (e) The City shall conduct or participate in all governmental site review meetings prior to the issuance of any permits for utility connection, infrastructure design approval or zoning permits. It is anticipated that Porter County shall transfer zoning authority to the City pursuant to IC 36-7-4-200 *et seq.*
- (f) All homes with the Property shall be single family detached homes.

- (g) Petitioner has prepared a conceptual plan dated March 7, 2019 of the proposed subdivision. Any subdivision application for the Property shall be consistent with the conceptual plan in the following material respects:

1. No more than 5 lots may be contiguous to Hwy 49.
2. One-third (1/3) of the contiguous boundary with Hwy 49 shall be open space. Park amenities such as benches and/or other features shall be installed within the open space.
3. The walking trail system shall be incorporated into the subdivision Primary Plat.
4. Silhavy Road extending north from the Hawthorne Subdivision shall include two (2) forty-five degree (45°) turns before intersecting with the Stirling Drive extension from Hawthorne North Subdivision.

If any of the foregoing commitment(s) deviate from required development standards of the Unified Development Ordinance, Petitioner shall seek a variance from the Board of Zoning Appeals consistent with this commitment and this commitment shall only be required or enforced if the Board of Zoning Appeals grants the necessary development standards variance(s).

3. Compliance with City Standards. Until such time as the Property is sold or otherwise transferred to a third party, Petitioner shall at all times be responsible for maintaining the Property in compliance with all applicable sections of the City's Code of Ordinances, Unified Development Ordinance and all other ordinances, rules or regulations. All future development, construction or alternation of the Property shall be done in full conformance with all requirements of the City. Existing structures shall be non-conforming structures under the Unified Development Ordinance.

4. Further Assurances. Promptly upon request from time to time of any party, the other party(ies) shall execute, acknowledge and deliver, or cause to be done, executed, acknowledged or deliver, to or at the direction of such party, all further acts, powers and other documents and instruments as may be so requested to give effect to the terms and conditions of this Agreement.

5. Deferred Annexation - Effective Date. This Agreement and the effective date of the annexation shall be determined to be (i) the date of execution by the parties; and (ii) January 1, 2020; whichever is the last to occur. Petitioner reserves the right and opportunity to withdraw the Petition prior to the effective date of the annexation. No lots may be conveyed by prior to the effective date, however, Petitioner may take deposits or enter into construction or purchase agreements prior to the effective date.



TYPICAL LOTS

90' X 133.5' MIN
100' X 120' MIN
12,000 S.F.

60' x 116.5' MIN
6,990 S.F.

90'
SETBACKS:
15' FRONT
15' REAR
5' SIDE

60'
SETBACKS:
15' FRONT
15' REAR
5' SIDE

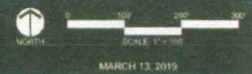
50' ROAD R.O.W.
30' WIDE ROAD

50' ROAD R.O.W.
30' WIDE ROAD



SILHAVY HILLS

Illustrative Plan
Valparaiso, Indiana



IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates and year set forth below.

PETITIONER:

OLTHOF HOMES

By: OD Enterprises, Inc.

By: 
Todd M. Olthof
President

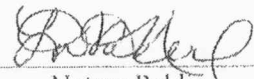
STATE OF INDIANA)
) SS:
COUNTY OF)

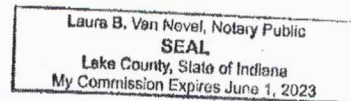
Before me, a Notary Public in and for said county and state, do hereby certify that Todd M. Olthof and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me as the President of Olthof Homes, this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this 18th day of March, 2019.

My Commission Expires:

June 1, 2023


Notary Public
Printed: Laura B. Van Nevel



COPY

CITY:

CITY OF VALPARAISO, INDIANA

By:

Printed Name: H. JON COSTAS

Its:

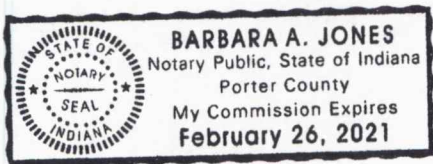


STATE OF INDIANA)

SS:

COUNTY OF PORTER)

Before me, a Notary Public, in and for said County and State, this 15th day of January, 2020, personally appeared H. Jon Costas, as the Mayor of the City of Valparaiso, Indiana, who has stated that they are authorized to execute said document and have acknowledged the execution of the foregoing instrument to be their free and voluntary act for and on behalf of the City of Valparaiso, Indiana.



Barbara Jones
Notary Public

Printed: Barbara Jones

County of Residence: Porter

My Commission Expires: February 26, 2021

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Todd A. Leeth*

This Instrument Prepared By:

Todd A. Leeth
Hoeppner Wagner & Evans LLP
103 E. Lincolnway
Valparaiso, Indiana 46383

**HOEPPNER
WAGNER &
EVANS LLP**
ATTORNEYS AT LAW