

## **ORDINANCE No. 2006-2639**

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**AN ORDINANCE DECLARING THAT CERTAIN PROPERTY IN THE 2200 BLOCK OF E. THIRD STREET, YAMHILL COUNTY TAX LOT 3220-1300, BE ANNEXED INTO THE CITY OF NEWBERG, WITHDRAWN FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT, AND ZONED R-2 AND R-2/SC**

**SUBJECT TO A PUBLIC VOTE**

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### **RECITALS:**

1. On September 30, 2005, an application was submitted by Coyote Homes requesting annexation for Yamhill County Tax Lot 3220-1300.
2. On January 12, 2006, the Newberg Planning Commission heard the request and recommended that it would be in the best interest of the citizens of Newberg.
3. After proper notice, on February 21, 2006 at the hour of 7:00 PM in the Newberg Public Safety Building, 401 E. Third, the City Council held a public hearing on the item: accurately stated objections to jurisdiction, bias, and ex-parte contact; considered public testimony; examined the record; heard the presentation from staff and the applicant; examined and discussed the appropriate criteria to judge the project (as listed in the staff report); considered all relevant information regarding the item; and deliberated.
4. The Council finds that the requirements of the City of Newberg Comprehensive Plan and Newberg Development Code regarding annexations have been met.

### **THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. The City Council adopts the findings, which are attached hereto as Exhibit A and incorporated herein by reference.
2. Owners understand that annexation in to the city must be approved by the voters of the City. The City may place the matter before the voters of the City at a biennial General Election (held in May and November of each even numbered year), unless otherwise approved by resolution of the City Council.
3. At this time, the City does not have to pay any election costs to place a matter on the ballot before the voters at the biennial General Election. The State of Oregon, which conducts the election, has the authority and may change the rules to require the City to pay some costs. In which case, the applicant/owners will be required to pay their proportionate share of such costs. The City Council directs that all costs associated with placing the item on the ballot be

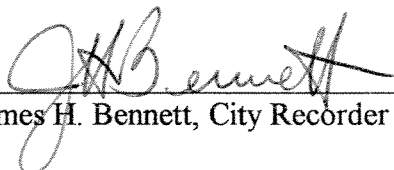
paid for by the applicant/owners. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot. Owners may be required to place monies in escrow to cover such costs of election(s).

4. Should this annexation request be approved by a majority of the electorate of the City of Newberg at the election date as identified by resolution of the City Council, the property shall be annexed and the following events shall occur:
  - A. It is hereby ordered and declared that the property shown in Exhibit B and described in Exhibit C is annexed and withdrawn from the Newberg Rural Fire Protection District.
  - B. The territory shown in Exhibit B and described in Exhibit C shall be zoned R-2 (Medium Density Residential). The "Newberg, Oregon Zoning Map" shall be amended to indicate this change.
  - C. A stream corridor overlay and airport overlay be placed on the property as shown in the Newberg Comprehensive Plan.
  - D. The Recorder of the City of Newberg is hereby authorized and directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County Elections Officer, and the Assessor of Yamhill County, a certified copy of the following documents:
    1. A copy of this ordinance.
    2. A map identifying the location of said territory.
5. The City Manager shall sign a development agreement with the developer, generally as shown in Exhibit D.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: March 23, 2006.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 21st day of February, 2006, by the following votes:

**AYE: 6                      NAY: 0                      ABSENT: 0                      ABSTAIN: 0**

  
\_\_\_\_\_  
James H. Bennett, City Recorder

**ATTEST** by the Mayor this 23<sup>rd</sup> day of February, 2006.


  
\_\_\_\_\_  
Bob Stewart, Mayor

Exhibit A: Findings

Exhibit B: Tax lot Map  
Exhibit C: Legal Description  
Exhibit D: Draft Development Agreement

### LEGISLATIVE HISTORY

By and through Newberg Planning Commission at 1/12/2006 meeting. Or,  None.  
*(committee name)* *(date)* *(check if applicable)*

**EXHIBIT "A" TO ORDINANCE NO. 2006-2639  
ANNEXATION/ZONE CHANGE FINDINGS  
ANX-05-042- Annexation of 16.3 acres – 2200 Block of E. Third Street**

**A. The following conditions must be met prior to or concurrent with City processing of any annexation request:**

1. *The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.*

**Finding:** The subject site is within Newberg's urban growth boundary.

2. *The subject site must be contiguous to the existing City limits.*

**Finding:** The property abuts and is bordered on the north side and west side by the City limits boundary.

**B. An application for an annexation may be granted through a Type III procedure only if the proposal conforms to the annexation criteria found in NDC § 151.262, as follows:**

1. *The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.*

**Finding:** The property currently has an MDR (Medium Density Residential) comprehensive plan designation. It also has an Airport Overlay designation, and a stream corridor designation. The applicant has requested an R-2 zoning designation.

The Newberg City Council has initiated an amendment to the Newberg Comprehensive Plan to consider an airport plan in the area. This planning is underway, and is expected to be completed by spring or summer 2005. The attached development agreement would allow development of the property in accordance with the provisions of this plan should it be adopted.

2. *An adequate level of urban services must be available, or made available, within three years time of annexation. An adequate level of urban services shall be defined as:
  - (a) *Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
  - (b) *Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.**

**Finding:**

Water: The property has access to the water main in E. Third Street.

Sanitary sewer: The property only has partial access to gravity sewer currently. Gravity sanitary sewer is likely only to become available through the properties to the south. However, with the pending airport master plan, it is likely that these will be available within three years.

Stormwater: The City's storm drainage master plan envisions that this area will flow largely to the east fork of Hess Creek. No volume problems are identified.

Roads: The site has access from E. Third Street. E. Third Street will need to be improved abutting the property upon development. Property to the south of this property is essentially landlocked. The property to the south is bound on the east side by the east fork of Hess Creek, and on the west by the main stem of Hess Creek. Development of the subject property should include street access through to the south. In addition, additional access may be needed to serve the area, such as a second access to the south or a creek crossing. These improvements could occur with the next three years.

**3. *Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.***

**Finding:** Police services are currently provided to the area by Yamhill County Sheriff's Office. Newberg Rural Fire District currently provides fire service. The proposed annexation will shift police and fire services to the City.

Development of the property will generate additional revenue to provide public safety services. This additional revenue is in the form of property taxes, franchise fees, state shared revenues, state liquor and cigarette taxes, emergency service fees, and others. Currently, the City has approximately 2.8 FTE public safety personnel per 1,000 population. Annexation and development of the property will generate adequate revenue to provide for approximately 3.2 FTE per additional person. Thus, the annexation will be a net positive for police and fire services.

The Chehalem Park and Recreation District owns property to the south of the subject site. However, this park site lacks adequate access, and has not been developed. Annexation and development of this property will assist in creating access to this park property.

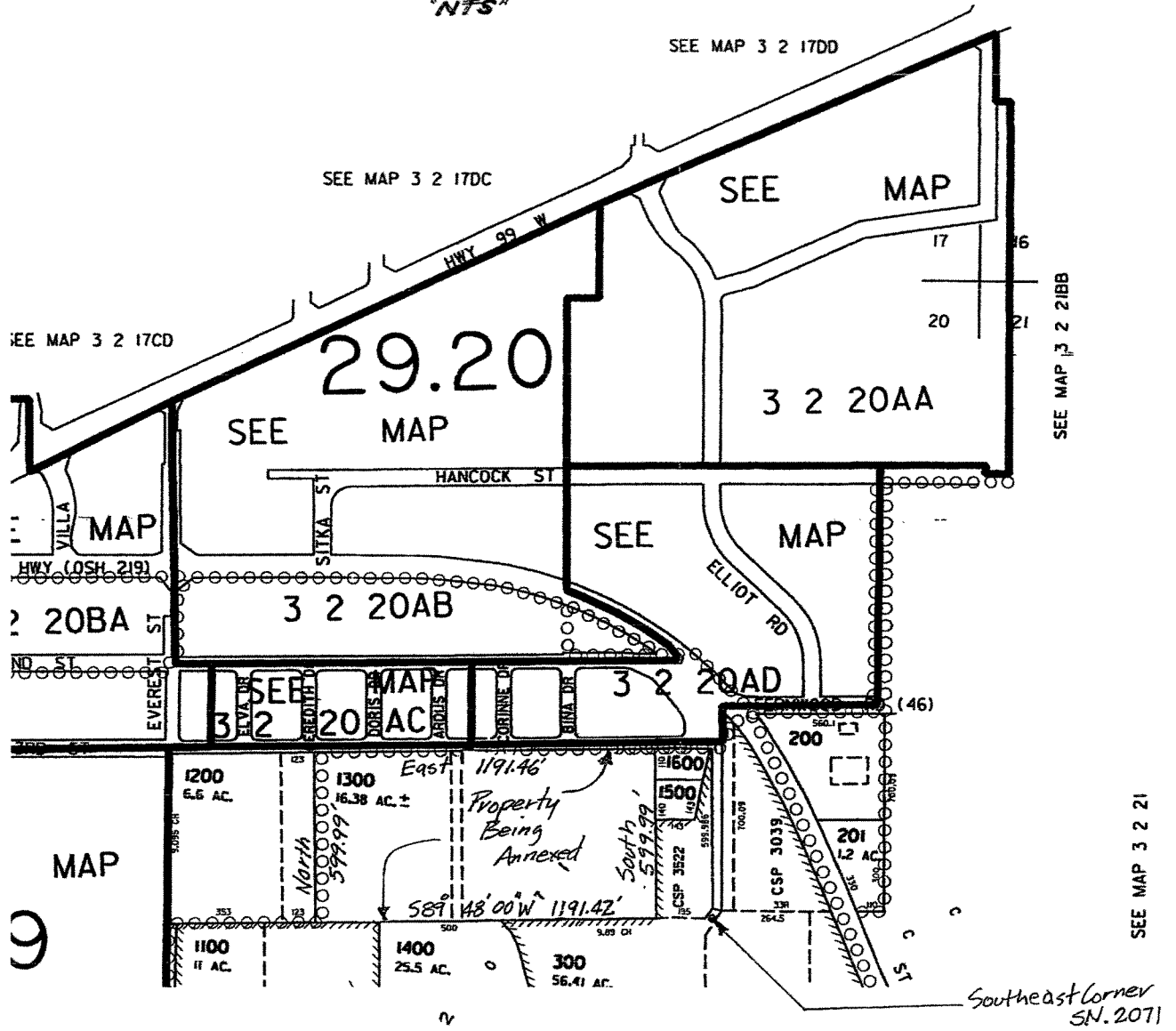
The property will generate additional needs for school facilities. The Newberg School District receives state funding on a per student basis. Thus, with the additional population, the school district will receive additional funding for school services. Development of the property will also generate additional property tax revenue that will go to fund school services.

**4. *The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.***

**Finding:** The applicant has provided written findings for this section.

EXHIBIT "B" TO ORDINANCE NO. 2006-2639: MAP

SECTION 20 T3S R2W W.M.  
YAMHILL COUNTY  
"NTS"



**EXHIBIT "C" TO ORDINANCE NO. 2006-2639: LEGAL DESCRIPTION**



LEGAL DESCRIPTION  
FOR ANNEXATION  
R3220-1300

JOB NO. 999-257

A PARCEL OF LAND LOCATED IN THE RICHARD EVEREST D.L.C. NO. 52 IN SECTION 20, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 2 SHOWN ON YAMHILL COUNTY SURVEY NO. 2071 FROM WHICH THE SOUTHEAST CORNER OF SAID LOT BEARS NORTH 89° 48' 00" EAST 195.00 FEET; THENCE ALONG THE SOUTH LINE OF SAID LOT SOUTH 89° 48' 00" WEST, 1191.42 FEET; THENCE LEAVING SAID LINE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 599.99 FEET MORE OR LESS, TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 3<sup>RD</sup> STREET; THENCE ALONG SAID LINE EAST 1191.46 FEET, MORE OR LESS TO A POINT 195.00 FEET WESTERLY OF THE NORTHERLY PROJECTION OF THE EAST LINE OF SAID LOT 2; THENCE SOUTH 599.99 FEET PARALLEL WITH SAID EAST LINE AND IT'S NORTHERLY PROJECTION TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 16.38 ACRES

n i t y . c o m



*Valid until 6/30/07*

**EXHIBIT "D" TO ORDINANCE NO. 2006-2639  
DRAFT ANNEXATION AGREEMENT**

**AGREEMENT REGARDING ANNEXATION OF PROPERTY**

THIS AGREEMENT REGARDING ANNEXATION OF PROPERTY (this "Agreement") is entered into as of the Effective Date (as hereafter defined in Section 11.f.) by and between [*insert entity name*] ("Developer") and THE CITY OF NEWBERG, a municipality of the State of Oregon (the "City").

**RECITALS**

- A. Developer plans to purchase certain property situated in unincorporated Yamhill County within the Newberg Urban Growth Boundary (the "UGB") which property is adjacent to a private airport known as the Sportsman Airpark (the "Sportsman Airpark") and is more particularly described on Exhibit A attached hereto (the "Property").
- B. The City is in the process of developing a master plan (the "Airport Master Plan") for the land near Sportsman Airpark including the Property, the goal of which is to develop a plan that takes advantage of the proximity of these properties to the airpark by allowing uses such as residences with hangars, and to provide integrated planning of transportation and utilities. The City anticipates holding hearings to consider adopting this plan beginning in the Spring of 2006.
- C. Developer desires to have the Property annexed into the municipal corporate limits of the City for purposes of residential development, including, as to the portion of the Property lying east of the creek and more particularly shown on the site plan attached as Exhibit B airpark residential development (such portion, the "Airpark Residential Development"; such attached plan, the "Airpark Residential Development Plan").
- D. The City Council of the City has held hearings considering annexation of the Property and has passed Ordinance No. 2006-xxxx annexing the Property into the City subject to a public vote, and subject to execution of this Agreement.
- E. The Developer wishes to have the annexation of the Property placed on the May 2006 primary election ballot provided Developer and the City reach certain agreements with respect to the zoning and development of the Property upon and following annexation and prior to and after adoption of the Airport Master Plan should it be adopted.
- F. The City and the Developer wish to enter into the following agreements subject to and in accordance with the terms, covenants, and conditions expressed therein.
- G. This Agreement is made and entered into by the City pursuant to its home rule authority.

**AGREEMENT**

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Developer and the City agree as follows:

- 1. **Zoning.** Except as otherwise provided in this Agreement, the Property shall be annexed having the zoning designation R-2 (Medium Density Residential District) and shall be

subject to the current Airport Overlay and Stream Corridor sub-districts to the extent the Property is situated within either or both of such sub-districts, as applicable. If the Airport Master Plan is adopted in accordance with and consistent with this Agreement, the Airpark Residential Development will be subject to the Airport Master Plan.

2. **Permitted Uses.** Notwithstanding anything to the contrary in this Agreement, as a condition to Developer's agreement to subject all or any portion of the Airpark Residential Development to the Airport Master Plan and its implementing regulations, Developer must be permitted generally to implement and develop such development in accordance with the Airpark Residential Development Plan and specifically, but without limitation of the foregoing, the following uses must be permitted outright within the Airpark Residential Development, and the City agrees that any Airport Master Plan and implementing regulations will include provisions so allowing the following uses ("Permitted Uses"):
  - a. One (1) single-family residence per residential lot within the subdivision with residential lots having setback requirements not greater than those required under the current R-2 zoning district regulations;
  - b. Access, ingress and egress by private street with gated access compliant with the City Fire Code which street may also service airport traffic;
  - c. Zero lot line yard setbacks within hangar lots between hangar lots and along the boundary lines adjacent to the Sportsman Airpark;
  - d. A private taxiway servicing the hangar lots providing access, ingress and egress for aircraft and other aviation-related vehicular and pedestrian traffic to and from the Sportsman Airpark via private easement or similar agreement through Sportsman Airpark; and
  - e. Hangars on lots bounded on the east by the Sportsman Airpark may be serviced and accessed via private easement or similar agreement through Sportsman Airpark.
3. **Transfer of Density.** The City acknowledges and agrees that the proposed Airpark Residential Development of the portion of the Property lying east of the creek, as shown on the Airpark Residential Development Plan, and the situation of the creek itself, will result in an overall net loss of density which would otherwise be available on conventionally developed R-2 zoned property. Therefore, notwithstanding anything to the contrary in this Agreement, the City agrees to permit the transfer of R-2 density allocations on the Property from the Airpark Residential Development to the portion of the Property lying west of the creek so as to offset such net loss of density.
4. **Condition; Adoption of Airport Master Plan.** The City agrees that it will use its best efforts to have an Airport Master Plan and implementing regulations consistent with the terms of this Agreement in effect and acknowledged before or on December 31, 2006. In the event an Airport Master Plan and implementing regulations consistent with the terms of this Agreement are not in effect and acknowledged before or on December 31, 2006, no portion of the Property will be subject to the Airport Master Plan or any other similar plan and/or the implementing regulations of such plan.
5. **Amendments to Allow for Permitted Uses.** Notwithstanding anything to the contrary in this Agreement, the City agrees to promptly initiate and prosecute or cooperate in the prosecution as necessary to propose and make any amendments, or to take any other

prosecution as necessary to propose and make any amendments, or to take any other lawful actions necessary, in order to allow the Permitted Uses outright within the Airport Residential Development and to permit the transfer of density in accordance with Section 3 of this Agreement irrespective of the status of and prior to the adoption of the proposed Airport Master Plan.

6. **Additional Conditions.** Notwithstanding anything in this Agreement to the contrary, Developer's agreement to subject the Airpark Residential Development to the Airport Master Plan is further conditioned upon Developer obtaining (a) the necessary easements or similar agreements from the owner or owners of the Sportsman Airpark required in order to develop the Airpark Residential Development in accordance with the Airpark Residential Development Plan and (b) any additional right of way or allowances for additional right of way from property owners to the east of the Property along Third Street as may be required, if any, in order to develop the Airpark Residential Development in accordance with the Airpark Residential Development Plan. If Developer is unable to obtain such easements, additional right of way or allowances for additional right of way, or for any other reason is unable to develop the Airpark Residential Development in accordance with the Airpark Residential Development Plan, then the Airpark Residential Development will not be subject to the Airport Master Plan, but Developer shall reserve any and all rights he, as owner of the Property, may have to subsequently elect to subject the Airpark Residential Development to the Airport Master Plan.
7. **Property Without the Airpark Residential Development.** The portion of the Property situated to the west of the creek, which is not included within the proposed Airpark Residential Development, shall not be subject to any Airport Master Plan or its implementing regulations unless and until the owner or applicant, as applicable, of or with respect to such portion of the Property so elects. Any Airport Master Plan and implementing regulations adopted by the City shall provide that such owner or applicant, as applicable, may unilaterally elect to subject such portion of the Property to the Airport Master Plan and its implementing regulations.
8. **Waiver of Right to Object and/or File a Complaint.** The Developer agrees, regardless of whether an Airport Master Plan is adopted in accordance with this Agreement, to waive any right to object and/or file a complaint against the City with respect to airport noise generated from the Sportsman Airpark and its operation or any successor airport or airpark operation, and further agrees to record such waiver of right to object or file a complaint as a restrictive covenant against the Airport Residential Development and to include such waiver as a restrictive covenant in any deed to any lot conveyed within the Airpark Residential Development. Moreover, Developer agrees generally not to oppose or object to any proposed Airport Master Plan except insofar as it may be inconsistent with the terms of this Agreement.
9. **Sanitary Sewer Service.** The City and Developer acknowledge and agree that public gravity flow sanitary sewer service is not currently available to service the Property. The City and Developer agree to make reasonable and feasible good faith efforts to secure necessary easements to be able to extend gravity flow sanitary sewer service to the Property. Notwithstanding the foregoing, the City and Developer may consider, and the City will cooperate with Developer in considering other methods to provide sewer service

gravity flow sanitary sewer to service the Property via an easement across the Sportsman Airpark, subject to obtaining such easement from the owner of the Sportsman Airpark. In the event Developer obtains such easement and sewer service is so provided, Sportsman Airpark shall be allowed to connect to such sewer line in accordance with the foregoing without payment of any reimbursement fee. Notwithstanding anything in this Agreement to the contrary, Developer shall have the right, in its discretion, to construct a private sanitary sewer system for service of the Property until such time as a reasonable connection to public gravity sanitary sewer service becomes available, but only after having exhausted all other reasonable, good faith discretion, opportunities for obtaining public gravity sanitary sewer service to the Property.

10. **Additional Access to Airport.** Regardless of whether or not an Airport Master Plan is adopted in accordance with this Agreement, but otherwise subject to the fulfillment and satisfaction of all of the other terms, covenants and conditions of this Agreement, the private street shown on the Airpark Residential Development Plan, if developed, shall provide additional access and ingress and egress to and from the Sportsman Airpark.
11. **Effectiveness.** The effectiveness of this Agreement is conditioned upon, and this Agreement shall become binding and effective upon, Developer's acquisition [of fee title to] the Property.
12. **Miscellaneous.**
  - a. **Binding Effect.** This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns, and any and all owners or future owners of the Property.
  - b. **Entire Agreement.** This Agreement supersedes and replaces all written and/or oral agreements and/or discussions, if any, previously made or existing between the parties and states the entire agreement of the parties with respect to the subject matter hereof.
  - c. **Attorneys Fees.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted, or the services of an attorney are retained, in connection with this Agreement, or to interpret or enforce any rights or remedies hereunder, or with respect to any dispute hereunder, the prevailing party shall be entitled to recover from the losing party the prevailing party's attorneys' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of a suit, action, or other proceeding, such amount shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.
  - d. **Modification or Amendment.** This Agreement may not be amended or modified except by express written agreement duly executed by both parties hereto.
  - e. **Headings.** Section headings or titles provided in this agreement are provided for ease of reference only and have no effect upon and shall not be considered in interpreting the intent or meaning of any provision of this Agreement.
  - f. **Effective Date.** The "Effective Date" of this Agreement shall be the earliest date on which both the City and the Developer have signed this Agreement.
  - g. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same

Agreement.

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

**DEVELOPER:**

*[insert entity name]*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

**THE CITY OF NEWBERG**

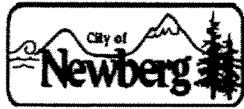
By: \_\_\_\_\_

**James H. Bennett, City Manager**

Date: \_\_\_\_\_

Approved as to form by:

\_\_\_\_\_  
**Terrence D. Mahr, City Attorney**



## **RESOLUTION No. 2006-2625**

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**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ELECTIONS OFFICER TO CERTIFY TO THE YAMHILL COUNTY CLERK A BALLOT TITLE FOR A MEASURE TO BE SUBMITTED TO THE ELECTORATE OF THE CITY OF NEWBERG FOR THEIR APPROVAL OF AN ANNEXATION FOR PROPERTY IN THE 2200 BLOCK OF E. THIRD STREET, YAMHILL COUNTY TAX LOT 3220-1300**

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### **RECITALS:**

1. On February 21, 2006 the City Council adopted Ordinance No. 2006-2639, annexing property in the 2200 Block of E. Third Street, Yamhill County Tax Lot 3220-1300, subject to a public vote.
2. The City of Newberg Charter requires that territory may be annexed into the City of Newberg only upon approval by a majority vote among the electorate of the City.
3. The City Council has requested that this matter be placed before the voters at the general election in May, 2006.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

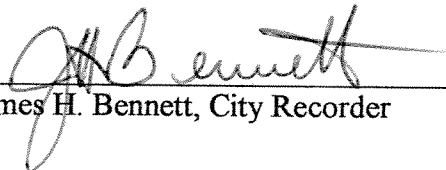
1. The City Attorney of the City of Newberg is hereby authorized and directed to prepare in proper form a ballot title placing before the voters the question of the annexation of the property in the 2200 Block of E. Third Street, Yamhill County Tax Lot 3220-1300, as described in Ordinance No. 2006-2639, and file such ballot title with the City Elections Officer.
2. The City Elections Officer of the City of Newberg is hereby authorized and directed to certify to the Yamhill County Clerk the ballot title for the annexation measure to be placed before the voters at the next primary election in May, 2006. Further, the City Elections Officer is directed to give all necessary notices of the ballot title and do all other necessary acts and deeds which may be required to place the matter before the voters of the City of Newberg at said election.
3. The City Council directs that all costs associated with placing the item on the ballot be paid for by the applicant/owner. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot.

4. The City Attorney is directed to have prepared and review the explanatory statement, which shall be submitted to the Yamhill County Clerk with the ballot title. Such explanatory statement shall be filed with the City Elections Officer and the City Elections Officer is further directed to certify this explanatory statement to the Yamhill County Clerk.


The City Elections Officer is authorized to do all other necessary acts and deeds, which may be required to conduct the election concerning this measure.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 22, 2006.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 21st day of February, 2006.

  
James H. Bennett, City Recorder

**ATTEST** by the Mayor this 23<sup>rd</sup> day of February, 2006.

  
Bob Stewart, Mayor

### LEGISLATIVE HISTORY

By and Newberg Planning Commission at 1 /12 /2006 meeting. Or, None.  
(committee name) (date) (check if applicable)