

*DORAL RIDGE*

# ANNEXATION AGREEMENT

This Agreement, made and entered into this 12th day of February, 1996, by and between the City of Marengo, a municipal corporation, in the State of Illinois (the "City") and Dzemal Mulasmajic and Doris Mulasmajic (hereinafter sometimes referred to as "Mulasmajic" or "Owner").

## **RECITALS**

WHEREAS, Mulasmajic is the owner of record of certain real estate, which real estate is hereinafter sometimes referred to as "the Premises", legally described as follows:

PARCEL 1: The North 7.57 chains of Lot 8 of the Assessor's Plat of Section 1, Township 43 North, Range 5 East of the Third Principal Meridian, according to the Plat thereof recorded August 10, 1883 as Document No. 14495, in Book 1 of Plats, page 13 (Excepting therefrom that part described as follows: Beginning at the Northwest corner of said Section; thence Southerly along the West line of said Section 496.2 feet to the North line of lands conveyed by Jacob Talbott II and wife, to Philip and Lou Elzea by Deed dated April 4, 1884 and recorded in Book 76 of Deeds, page 40; thence Easterly along said North line 390.9 feet; thence Northerly 503.5 feet to a point in the North line of said Section that is 395.1 feet East of the place of beginning; thence Westerly along said North line 395.1 feet to the place of beginning; also, excepting therefrom that part described as follows: That part of the Northwest Quarter of Section 1, Township 43 North, Range 5 East of the Third Principal Meridian described as follows: Commencing at the intersection of the North line of said Northwest Quarter with the centerline of Maple Street; thence Southerly along the centerline of Maple Street 310.0 feet; thence Westerly parallel to the North line of said Northwest Quarter, 600.0 feet; thence Northerly parallel to the centerline of said Maple Street, 310.0 feet to the North line of said Northwest Quarter; thence Easterly along said North line 600.0 feet to the place of beginning) in McHenry County, Illinois.

PARCEL 2: Lot 10 of the Assessor's Plat of Section 1, Township 43 North, Range 5 East of the Third Principal Meridian, according to the Plat thereof recorded August 10, 1883 as Document No. 14495, in Book 1 of Plats, page 13; (excepting therefrom that part described as follows:

Beginning at the Southeast corner of Hilltop Townhomes, Incorporated according to the Plat thereof recorded as Document No. 88R 040832; thence Westerly along the South line of said Hilltop Townhomes, Incorporated extended, 670.15 feet; thence Southerly parallel to the centerline of Maple Street, 555.01 feet; thence Easterly parallel to the South line of said Hilltop Townhomes, Incorporated extended, 670.15 feet to the centerline of said Maple Street; thence Northerly along the centerline of said Maple Street, 555.01 feet to the place of beginning) in McHenry County, Illinois.

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WHEREAS, the Premises constitutes territory which lies outside of but is contiguous to the City and may be annexed to the City as provided in 65 ILCS 5/7-1-1 et seq; and

WHEREAS, Mulasmajic desires to have the Premises annexed to the City of Marengo upon certain terms and conditions set forth below; and

WHEREAS, the Corporate Authorities of the City, after due and careful consideration, have concluded that the annexation of the Premises to the City under the terms and conditions set forth below, would further the growth of the City, enable the City to control the development of the area, and serve the best interests of the City; and

WHEREAS, pursuant to the provisions of 65 ILCS 5/11-15.1-1 through 11-15.1-5, a proposed Annexation Agreement was submitted to the Corporate Authorities and a public hearing was held on that proposal before the City Council of the City of Marengo pursuant to notice, as provided by the Statutes of the State of Illinois; and

WHEREAS, pursuant to Notices required by the Statutes of the State of Illinois and the comprehensive Zoning Ordinance of the City, a public hearing was held before the Plan Commission of the City on the requested zoning reclassification of the Premises and a recommendation of said Plan Commission in favor of said reclassification was submitted to the Corporate Authorities.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. This Agreement is made pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1 through 11-15.1-5; that said statutory provisions provide for annexation agreements to be entered into between owners of record and municipalities; that all the requirements of 65 ILCS 5/11-15.1-3 in regard to publication and notice have been met prior to the date fixed for the hearing on the proposed Agreement.

2. This Agreement is entered into after a public hearing before the Corporate Authorities of the City of Marengo which hearing was held on February 12, 1996, in accordance with the provisions of the aforesaid Statutes of the State of Illinois.

3. The purpose of this Agreement is to provide for the annexation of the Premises to the City of Marengo, McHenry County, State of Illinois, upon the terms and conditions described in this Agreement.

4. Mulasmajic has filed with the City Clerk of the City of Marengo a proper petition to annex the Premises to the City of Marengo, McHenry County, State of Illinois.

5. The Corporate Authorities, contemporaneously with the execution of this Agreement will, pursuant to the Petition for Annexation herein filed, enact an ordinance annexing the Premises and also any adjacent highways as required by law.

6. The Premises constitutes territory which lies outside of but is contiguous to the corporate limits of the City of Marengo in the County of McHenry, State of Illinois.

7. Contemporaneously with the annexation of the Premises to the City of Marengo, the Corporate Authorities shall adopt an ordinance or ordinances amending the provisions of the Zoning Ordinance of the City so as to provide that the Premises be reclassified as "R1", Single-Family Residential District. The reclassification of the Premises is to be done in accordance with this Annexation Agreement and the provisions of the Zoning Ordinance of the City. The City shall also grant the following variations:

- a. That a variation in the block length of Doris Drive in the approximate amount of 457.00 feet be granted under the Marengo Subdivision Ordinance to allow for a block length of approximately 1457.00 feet instead of the required 1000.00 feet.
- b. That a variation in the width of the right of way of Doral Drive between Maple Street and Spring Drive in the amount of 1.50 feet be granted under the Marengo Subdivision Ordinance to allow for a street width of 64.50 feet instead of the required 66.00 feet.

During the term of this Agreement, the City shall not rezone or

reclassify the Premises or any portion thereof without the approval of Mulasmajic or his successors in interest.

8. Prior to or contemporaneously with the annexation of the Premises to the City of Marengo, the Corporate Authorities shall approve the Preliminary Plat of the Premises known as Doral Ridge Estates. Said Preliminary Plat was prepared by Spies & Associates, Inc. and is identified as Job No. 2850 dated January 8, 1995, as amended on May 10, 1995, June 14, 1995 and June 15, 1995. In addition, the Corporate Authorities shall also approve the final engineering plans prepared by Spiess & Associates, Inc. and identified as job number 2850 dated July 1, 1995, as amended on November 22, 1995, and as may be further amended prior to February 12, 1996. In addition, the Corporate Authorities shall also approve the final plat of Doral Ridge Estates, Unit No. 1, prepared by Spiess & Associates, Inc. and identified as job number 2850 dated October 11, 1995, as amended on December 18, 1995, and as may be further amended prior to February 12, 1996. The City and Mulasmajic agree that the Premises shall be developed substantially in accordance with the aforesaid documents and in compliance with the applicable provisions of the Subdivision Ordinance of the City of Marengo except as modified by this Agreement.

9. The parties agree that this Agreement shall not bind the Owner until the "R1" Rezoning, the Annexation Ordinance, and the Preliminary Plat approval contemplated in this Agreement have been duly approved, enacted and adopted by the City.

10. In the event the City requires the installation of water mains, sanitary sewers, drains or other facilities for sewers and drains, or the construction of any roadways as a condition of either the acceptance of a preliminary or final subdivision plat where the said facilities, roadways or improvements may be used for the benefit of property not in this subdivision, the City shall pass all necessary ordinances and execute all necessary agreements to provide recapture payments for the benefit of the Owner to provide repayment of costs. These recapture agreements shall be executed in accordance with and in compliance with 65 ILCS 5/9-5-1 through 9-5-3.

11. The City requires that the Owner install a water main from Illinois Route 23 to the Premises in the area west and north of the Premises. The Owner agrees to pay for the costs (including reasonable attorney's fees) of acquiring the necessary easements and installing the aforesaid water main subject to an appropriate recapture agreement executed in accordance with and in compliance with 65 ILCS 5/9-5-1 through 9-5-3. The Owner will attempt to negotiate with adjoining property owner(s) in an effort to obtain an agreement regarding the necessary easements. If the negotiations are unsuccessful, then the City agrees to take all necessary steps associated with the procurement of the appropriate easements from any interested third parties, including the

prosecution of eminent domain proceedings if required. If eminent domain proceedings are necessary, the City shall commence the proceedings within 60 days of notice from the Owner, and the City shall prosecute the case with due diligence. It is agreed that Owner shall bear all the costs (including reasonable attorney's fees and court costs) incurred by the City in the eminent domain proceedings. It is further agreed that all the costs of the eminent domain proceedings (including reasonable attorney's fees and court costs) shall be included in any recapture agreement described above.

12. Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by the United States certified mail, postage prepaid and return receipt requested, as follows:

FOR THE CITY:           City of Marengo  
                          Attn: Mayor  
                          132 E. Prairie Street  
                          Marengo, IL 60152

FOR THE OWNER:         Dzemal and Doris Mulasmajic  
                          1611 Deerpass Road  
                          Marengo, IL 60152

cc:

Law Offices of Thomas W. Schmitt  
                  and Jay K. Filler, Jr.  
3901 N. Route 23, P. O. Box 115  
Marengo, IL 60152

13. Owner shall have the right to sell, transfer, mortgage and assign all or any part of the Premises and its improvements to other persons, firms or corporations for investment, building or development and sale purposes, and that these persons, firms, or corporations shall be entitled to all and the same rights, benefits and privileges and shall have the same obligations as the Owner has under this Agreement.

14. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions contained in this Agreement imposed upon any other party shall not constitute a waiver or relinquishment of any party's right to subsequently enforce the term, covenant, agreement or condition, but the term, covenant, agreement or condition shall continue in full force and effect.

15. A copy of this Agreement and any amendment to this Agreement shall be recorded by the City at the expense of the Owner.

16. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Owner and the City relative to the subject matter of this Agreement, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those that are set out in this Agreement. Except as otherwise provided here, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless authorized in accordance with law and reduced in writing and signed by them.

17. The parties to this Agreement reserve the right to cure any default under this Agreement within 30 days from written notice of the default.

18. If any provision of this Agreement is held invalid by a court of a competent jurisdiction or in the event a court shall determine that the City does not have the power to perform a disputed provision, the provision shall be deemed to be excised from this Agreement and invalidity shall not affect any of the other provisions contained herein, and the judgment or decree shall relieve the City from performance under the invalid provision of this Agreement.

19. This Agreement shall be binding upon the parties to it, their respective grantees, successors, assigns or leasees for a full term of 5 years commencing, as of the date of this Agreement, and for such further term as may subsequently be authorized by law.

20. When the final plat of Phase 3 of Doral Ridge Estates has been approved, the Owner shall convey to the City title to a parcel of land in the far southwest corner of the Premises south of Lura Lane and west of Doris Drive. The parcel shall have an area of at least 9,250.00 square feet with access to Lura Lane and/or Doris Drive. The City agrees to use the land for the site of a new water tower.

21. The Preliminary Plat of the Premises described in Paragraph 8 above provides that Lura Lane shall extend east of Spring Drive to the easterly boundary of the Premises. It is agreed that the Owner is permitted to delete that portion of Lura Lane that extends east of Spring Drive.

22. The Owner shall provide pedestrian and vehicular access to the detention area located in the northern area of the Premises. The easements of access shall be located on the west 7.5 feet of Lot 65 and the east 7.5 feet of Lot 66.

23. The City requires that the Owner provide vehicular access to Illinois Route 23 to relieve traffic congestion on Maple Street. The exact location of the access route is not clear at the present time as there are several possible alternatives including, but not limited to, the westerly extension of Lura Lane, the westerly

extension of Majic Way, the southerly extension of Doris Drive , and the southerly extension of Doral Drive. Within twenty-four (24) months of the final plat approval of Phase 2 of Doral Ridge Estates , the Owner shall install at Owner's expense a roadway extending from the Premises to Illinois Route 23, subject to an appropriate recapture agreement executed in accordance with and in compliance with 65 ILCS 5/9-5-1 through 9-5-3. The location of the access route shall be designated by the Owner. The Owner will attempt to negotiate with adjoining property owner(s) in an effort to obtain an agreement regarding the necessary conveyance of title to land and the sharing of costs of the roadway. If the negotiations are unsuccessful, then the City agrees to undertake the appropriate eminent domain proceedings to acquire title to the land designated by the Owner. Such proceedings shall be commenced within 60 days of notice from the Owner and the City shall prosecute the case with due diligence. It is agreed that Owner shall bear all the costs (including reasonable attorney's fees and court costs) incurred by the City in the eminent domain proceedings. It is further agreed that all the costs of the eminent domain proceedings (including reasonable attorney's fees and court costs) shall be included in any recapture agreement described above.

At the time of the final plat approval of Phase 2 of Doral Ridge Estates, the Owner shall provide the City with a bond, letter of credit or other collateral reasonably satisfactory to the City for the purpose of assuring the completion of the aforementioned roadway. The Owner shall provide the City with an estimate of costs to complete the aforementioned roadway, which shall be verified by the City engineer. The amount of the bond, letter of credit or other collateral reasonably satisfactory to the City shall be one and one-half (1 1/2) times the estimated costs of completion. The cost of the bond, letter of credit or other collateral (including attorney's fees and costs) shall be included in any recapture agreement described in this Paragraph 23.

The property south of and adjacent to the subject premises may be developed sometime in the future. The City shall require the owner and/or developer of the aforementioned property to install a roadway extending from the aforementioned property to Illinois Route 23 and also to the premises owned by Mulasmajic, so that Mulasmajic can tie into said roadway. If the roadway described in the immediately preceding sentence is installed by the owner and/or developer of the property south of and adjacent to the subject premises within 24 months of the final plat approval of Phase 2 of Doral Ridge Estates, then Mulasmajic's obligation to install a roadway under this paragraph 23 shall be waived.

The parties understand that there may be some re-configuration of lots as a result of the implementation of the provisions of this Paragraph 23, and such re-configuration shall not be construed as an amendment to this Annexation Agreement.

24. The City requires that the Owner provide a park site on the Premises. It is agreed that the Owner shall donate for park and recreational purposes the land designated as Lots 141, 142, 143, 160, 161 and 162 on the Preliminary Plat of the Premises described in Paragraph 8 above (or other land of equivalent size at a location to be agreed upon by the parties). It is agreed that the donated land shall have a value of \$27,500.00 per acre. The balance of the Owner's obligations under Ordinance No. 91-8-1 passed and approved by the City of Marengo on August 12, 1991 shall be satisfied by cash contributions in accordance with the formula set forth in Section 2 of the said Ordinance, after giving the Owner credit for the value of the aforementioned donated land (\$27,500.00 per acre), and said cash contributions shall be paid in accordance with Section 3a of the said Ordinance. Owner's satisfaction of the requirements of this Paragraph 24 shall constitute full compliance with the developer donation requirements contained in Ordinance No. 91-8-1 passed and approved by the City of Marengo on August 12, 1991 or as hereafter amended, and the City shall not require any further land and/or cash donations from Owner for park and/or recreational purposes other than as provided herein.

The cash contributions shall be used by the Marengo Park District for the sole purpose of installing playground and recreational equipment on the aforementioned park site and for no other purpose. Title to the park site shall be conveyed to the City or the Marengo Park District when and as directed to do so by the City. The cash contributions required under this Paragraph 24 shall be paid to the City and not distributed to the Marengo Park District until the City receives reasonable assurances that the Marengo Park District will comply with this Paragraph 24 in a timely manner.

25. It is further agreed that Owner or the City, either in law or in equity, by suit, action, mandamus or other proceeding, may enforce or compel the performance of this Agreement.

26. The parties agree that this Agreement may be amended only by the mutual consent of the parties by the adoption of an ordinance by the City amending the terms of this Agreement and the acceptance of same by the Owner subject to the provisions of 65 ILCS 5/11-15.1-1 through 11-15.1-5.



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

City of Marengo, a municipal corporation

By: Thomas Siehoff  
Thomas Siehoff, Mayor

ATTEST:

Betty Struckmeier  
Betty Struckmeier, City Clerk

Doris Mulasmajic  
DZEMAL MULASMAJIC  
Doris Mulasmajic  
DORIS MULASMAJIC