



TO: LINDA COX, CITY CLERK

FROM: SARA HEDGES, CITY ATTORNEY *SH*

RE: ASHLEY CAPITAL ANNEXATION AGREEMENT RE-REVIEW OF RLS 25-223

CAO RLS FILE: RLS 25-311

DATE: OCTOBER 17, 2025

I have reviewed the above resubmitted Request for Legal Services (RLS) related to an Annexation Agreement ("Agreement") between Ashley Entities ("Ashley") and the City regarding property to be developed by Ashley Entities under a contract with St. Lucie County related to the Treasure Coast Education, Research and Development Authority ("TCERDA") and corresponding Resolution for its approval. After review of this draft of the Agreement, **the Annexation Agreement and Resolution are approved as to legal form and correctness.**

Please be aware of the below points related to the terms of the Agreement:

1. By entering into this Agreement, the City is voluntarily agreeing not to annex properties for longer than required under the TCERDA agreement with the County. This Agreement has the City give up its established legal ability to annex property in the timeframe permitted under the TCERDA agreement (within approximately thirteen months) and creates a significantly later date dependent on private development that is not within the control of the City.
2. Section 4, titled "Roads and Internal Drive-Aisles", of the Agreement discusses the roads Ashley will be constructing. The Agreement previously reviewed under RLS 25-49 required the roads Ashley would be constructing be built to the City's Code of Ordinance standards, which was previously indicated are more robust than the County's requirements. This term in the Agreement has been changed to allow the roads to be built to the County's standards instead of the City's. It should be noted that the County's standards are not detailed in the Agreement, instead there is a reference to the "standards set forth in the County approvals." To my understanding, those approvals are not currently in place, and the expected standards are not detailed in the Agreement. If there are expected to be questions as to what those approvals and standards are, including them specifically in the Agreement or as an Exhibit would be prudent and is still recommended.

3. Section 5, titled “Timing of Annexation”, of the Agreement discusses the time by which the City may annex the Ashley properties within the TCERDA boundaries. This section indicates that the City will annex by phase of the project, and only upon every certificate of occupancy being issued for that phase. This could prove to be extremely problematic for the City. If Ashley does not complete their project due to any reason within or outside of their control (inability to finance, material shortages, voluntary abandonment of the project, inability to obtain County approvals and permits, inability to obtain State approvals and permits, the newly included force majeure language, etc.), the City will not be able to annex any property in a phase that does not have every single certificate of occupancy issued. Further, if Ashley Capital fails to obtain even one single certificate of occupancy for a phase, the City will never be permitted to annex the property in that phase into the City. I previously recommend and still recommend protective language for the City be included in the Agreement that if Ashley does not complete all construction and obtain all certificates of occupancy for the entire project within X years of the effective date of the Agreement (this could be broken down to each phase), the Agreement may be terminated unilaterally by the City. Such was not agreed to by Ashley. Ashley did agree to language in Section 3, “Count to Provide all Approvals” that if they do not obtain the master plan approval within 2 years of the Effective Date of this Agreement or a (singular) building permit for vertical construction within the property within five (5) years of closing with the County, the City may terminate the Agreement unilaterally and annex the property pursuant to the Interlocal Agreement with the County. This does provide additional protection for the City that did not exist before.
4. I previously recommended and proposed Section 6, “Reversion or Termination of the Option Agreement”. It has been agreed to by Ashley (with only minor modification that provides clarity and does affect the intent). This term provides that if the property reverts to the County’s ownership or if the agreement between Ashley and the County is terminated, the City may terminate the agreement and annex the property pursuant to its Interlocal Agreement with the County. While this term provides the most protection for the City in what is now included in the Agreement, the language as recommended elsewhere, and specifically in Paragraph 3 above, is still recommended since this term is still dependent on entities outside of the City’s control.
5. Section 7, titled “Destruction”, of the Agreement discusses what happens if all or a portion of the project is damaged or destroyed. The Agreement states that Ashley can rebuild to the current approvals and standards approved by the County. This is not limited to whether the property has been annexed into the City. Therefore, Ashley will forever be permitted to rebuild to the standards they are building to now under the County’s current standards, not the applicable City standards if annexed into the City and rebuilding under the City’s Code of Ordinances. I previously recommend and still recommend this Section be amended to require any rebuild to a nonconforming structure and/or a structure with a nonconforming use and/or a structure on a nonconforming lot be required to follow the City’s Code of Ordinances and be rebuilt to the applicable City standards at the time of the rebuild, consistent with Chapter 125, Article II, Division 2 of the City’s Code of Ordinances.
6. Section 10, titled “Successor and Assigns / Rights of Assignment Lender”, discusses the Agreement running with the land and being applicable to the successors and assigns of

the Parties. Within this Section, it includes that Ashley may collaterally assign this Agreement to a lender as security to obtain financing for this project. The Agreement states that if the lender forecloses on the property, the City is still bound by this Agreement. While this is standard for a covenant running with the land, it is problematic for the City with respect to this Agreement for the reasons pointed out above. If Ashley is unable to complete this project and the property is foreclosed on, there is nothing within this Agreement specifically that allows the City to annex the property upon such an occurrence, nor is there anything in this Agreement that requires the new owners complete the project. Again, this means the City may never be able to annex the Ashley properties. Therefore, I previously recommend and still recommend, the modification as explained in Paragraph 3 above, to protect the City's ability to annex this property in a reasonable period of time.

If you have any questions, please do not hesitate to contact this Office via phone or e-mail.

Thank you.
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