

AN ORDINANCE 2008-06-19-0615

**AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE
“AGREEMENT TO EXTEND LIMITED PURPOSE ANNEXATION AND TO FIX
THE DATE FOR FULL-PURPOSE ANNEXATION” FOR THE CROSSWINDS
AT SOUTHLAKE SPECIAL IMPROVEMENT DISTRICT LOCATED IN CITY
COUNCIL DISTRICT 4.**

* * * * *

WHEREAS, in August 2006, the City and Presto Tierra, Ltd., Presto Commercial #2, LLC, and Crosswinds at South Lake, L.P.(the “Property Owners”) entered into an agreement to extend the limited purpose annexation status of the property known as Crosswinds at South Lake, located in City Council District 4, in Limited Purpose Area #1, and in City South, comprised of approximately 532.59 acres at the southwest intersection of Highway 16 and Watson Road, in Bexar County (the “Property”), and fixed the full-purpose annexation date to on or about December 30, 2035; and

WHEREAS, as consideration for the City’s consent to postpone the full purpose annexation of the Property and to extend the limited purpose status of the Property, the Property Owners agreed to donate approximately 2.5 contiguous acres of real property to the City, located either within the Property or within City South, suitable for the location of a municipal facility, before September 12, 2008; and

WHEREAS, because the City and Property Owners have not yet agreed to a suitable site for the 2.5 contiguous acres, City staff and Property Owners have proposed to amend the agreement to extend the deadline for dedication from September 12, 2008, to September 12, 2011, and further propose that upon presentation of an acceptable tract of land, the Property Owners shall hold that tract of land in trust for the City, until such time as the City is ready to take title to the dedicated land, not to exceed fifteen (15) years from the effective date of the original agreement; and

WHEREAS, in the event the Property Owners are unable to locate a tract of land suitable for the location of a municipal facility by September 12, 2011, City staff is seeking authority to negotiate a monetary donation from the Property Owners to the City that would be used by the City to purchase a tract of land suitable for the location of a municipal facility, and such donation would satisfy the requirement that Property Owners donate real property to the City by September 12, 2011; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Subject to the terms and conditions of Section 2 below, Section 3 of Ordinance No. 2006-08-19-0920, effective August 29, 2006, which approved the execution of an “Agreement to Extend Limited Purpose Annexation and to Fix the Date for Full-Purpose Annexation”, is amended to extend the deadline for the performance required in the Agreement of the Property Owners and Developers, Fermin Rajunov of Presto Tierra Ltd., Crosswinds at Southlake, L.P. and Presto Commercial #2, LLC, to a date five (5) years after the effective date of the Agreement, September 12, 2011.

SECTION 2. The City Manager or her designee is authorized, subject to the conditions set forth in this Ordinance, to execute the final, detailed First Amendment to the “Agreement to Extend Limited Purpose Annexation and to Fix the Date for Full Purpose Annexation” between the City of San Antonio (“City”), Fermin Rajunov of Presto Tierra Ltd., Crosswinds at Southlake, L.P. and Presto Commercial #2, LLC, for the continuation of limited purpose annexation of the area and postponing the date for full purpose annexation under the terms and conditions of this Ordinance, in substantially the form attached as **Exhibit**

A for a period not to exceed forty-five days. If for any reason the final documents are not executed pursuant to this authority within forty-five days from the effective date of this ordinance, this authorization shall terminate. The First Amended Agreement must be executed by the owners of the real property in question, must be in recordable form, and must comply with Section 43.127, Texas Local Government Code. The owners must submit evidence of ownership of the real property to the City Attorney for review prior to the execution of the First Amended Agreement.

SECTION 3. No other provision of Ordinance No. 2006-08-17-0920 is amended by this Ordinance.

SECTION 4. The statements set forth in the recitals of this Ordinance are true and correct, and are incorporated as a part of this Ordinance.

SECTION 5. This Ordinance shall take effect ten (10) days after passage.

PASSED AND APPROVED this 19th day of June 2008.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

EXHIBIT A

**FIRST AMENDMENT TO AGREEMENT TO EXTEND LIMITED PURPOSE
ANNEXATION AND FIX THE DATE FOR FULL PURPOSE ANNEXATION**

This First Amendment is entered into effective as of the ___ day of _____, 2008 by and between Presto Tierra, Ltd., Presto Commercial #2, LLC, both in their own name and as successor in interest to Crosswinds at South Lake, L.P. (collectively, "Presto"), and the City of San Antonio (the "City"), a home rule municipality (collectively, the "Parties").

WHEREAS, Presto owns approximately 532.59 acres of land, generally located at the southwest intersection of State Highway 16 and Watson Road in San Antonio, Bexar County, Texas, such property more specifically described by field notes attached as Exhibit "A," and incorporated by reference (the "Property"); and

WHEREAS, Presto and the City entered into an Agreement to Extend Limited Purpose Annexation and to Fix the Date for Full Purpose Annexation on or about September 12, 2006, whereby the Parties agreed to postpone the full purpose annexation of the Property, until, on or after December 30, 2035 (the "Agreement"); and

WHEREAS, as consideration for the City's consent to postpone the full purpose annexation of the Property and to extend limited purpose annexation of the Property, Presto agreed to donate approximately 2.5 contiguous acres of real property within an area generally referred to and known as "City South" within two (2) years after the effective date of that Agreement; and

WHEREAS, Presto and the City now wish to amend the terms and conditions of the Agreement;

NOW THEREFORE, in consideration of the terms and conditions granted herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Presto and the City hereby agree as follows:

1. **Amendment to Agreement:** The last full paragraph of the Agreement, which reads as follows:

"In consideration of the City's consent to extend the limited-purpose annexation of the Property as petitioned, the Property Owners and Developer shall donate approximately 2.5 contiguous acres of real property which meets the criteria of the City for the location of a municipal facility, not located within the 100-year floodplain, located within the Property or within an area generally referred to and known as "City South," Bexar County, Texas, (the "Donated Property") at no cost to the City within two (2) years after the effective date of this Agreement."

...is hereby deleted in its entirety and revised to read as follows:

"In consideration of the City's consent to extend the limited-purpose annexation of the Property as petitioned, the Property Owners and Developer shall, within five (5) years after the effective date of this Agreement, request the City's approval of no less than 2.5 contiguous acres of real property which meets the criteria of the City for the location of a municipal facility, not located within the 100-year floodplain, but is located within the Property, or within the area generally referred to and known as "City South", or within the full-purpose limits of the City, which Property Owners and Developer will dedicate

and hold in trust on behalf of the City, at no cost to the City. Upon the City's good faith review of the suitability of property to be conveyed and receipt of written notification from the City that the real property meets the criteria of the City for the location of a municipal facility, the Property Owners and Developer shall record a deed of trust (or similar document of conveyance approved by City) within thirty (30) days following approval by the City, in the Real Property Records of Bexar County, Texas, evidencing as a covenant to title the transfer of the entrusted property, (more specifically described by the metes and bounds) , for the benefit of the City. Consequently, the Owners and the City agree that these provisions shall run with the property, so described by the metes and bounds, as long as this Agreement remains in effect, and shall be binding on all parties having any right, title, or interest in the property described by the metes and bounds, in whole or in part. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. No party may, without the prior written consent of the other party hereto, assign any rights, powers, duties, or obligations hereunder. This Agreement shall not inure to the benefit of any party other than the parties to this Agreement and their successors and permitted assignees. Upon written notification by City to the Property Owners and Developer of the City's election to take title to the entrusted property, the Property Owners and Developer shall deliver the deed to the entrusted property to the City within thirty (30) days, free and clear of any title defects, except those otherwise accepted or approved by the City in writing. If, after the expiration of fifteen (15) years after the effective date of this Agreement, City has not notified Property Owners and Developer of its intent to take ownership of the entrusted property, the Property Owners and Developer shall send written notice of the entrusted property to the City within thirty (30) days after the expiration of such fifteen (15) year period. The City shall have thirty (30) days after the receipt of such notice to provide the Property Owners and Developer with its written election to accept fee title to the entrusted property. On the thirty-first (31st) day after the City's receipt of such notice, if the City has not notified the Property Owners and Developer of such election, the Property Owners and Developers shall be authorized to terminate the trust. Upon such termination, Property Owners and Developer shall be deemed to have satisfied all of their duties under this Agreement in respect to the dedication of property to the City. This Agreement shall be effective upon full execution of this Agreement by the parties hereto; however, City may terminate this Agreement and proceed with the full-purpose annexation of the Property if the Property Owners and Developer fail to deliver a general warranty deed conveying fee simple title to the entrusted property within the timeframe set forth herein, which conveyance shall be evidenced by the acceptance and approval by the City Manager of the City, or a designee. Notwithstanding the foregoing however, before the City may terminate this Agreement for the Property Owners' and Developer's failure to convey the entrusted property, the City must provide the Property Owners and Developer with a thirty (30) day written notice and cure period within which to make such donation.

Notwithstanding the above, in the event the Property Owners, Developer and City are unable to agree upon the location or the suitability of a proposed tract of land to be conveyed to the City as contemplated above, the Property Owners, Developer and City shall negotiate in good faith an agreement whereby the Property Owners and Developer agree to pay and the City agrees to accept an agreed-upon sum of money that will be used by the City towards acquiring a tract of land suitable for the location of a municipal facility, that is not located within the 100-year floodplain, but is located within the Property, or within the area generally referred to and known as "City South", or within the full-purpose limits of the City. Such an agreement shall not be valid until approved

by the City Council and executed by the City Manager or her designee. Upon execution of such an agreement, the Property Owners and Developers shall be deemed to have satisfied all of their duties under this Agreement in respect to the dedication of property to the City.”

2. **Remainder of Agreement in Effect.** No other provision of the Agreement is changed by this Amendment to Agreement.
3. **Attorney’s Fees.** Each Party to this Amendment to Agreement shall pay its own attorneys’ fees with respect to the drafting, review, and negotiation of this Amendment to Agreement and all subsequent instruments and agreements related to the subject matter of this Amendment to Agreement. In the event it should ever become necessary for any Party to retain the services of an attorney to enforce its rights under this Amendment to Agreement against any other party to this Amendment to Agreement, then, should such Party prevail, that Party shall be entitled to recover, in addition to any other damages and awards to which it may be entitled, its reasonable attorneys’ fees from the defaulting party.
4. **Texas Law to Apply.** This Amendment is performable in Bexar County, Texas, and the laws of the State of Texas will govern the validity of the provisions of the Agreement and this Amendment, as well as the rights and duties of the Parties.
5. **Subsequent Amendment.** No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof, and executed by the Parties.
6. **Binding Effect.** The terms of this Amendment to Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. **Conflicts.** In the event of any conflict under the Agreement, as amended herein, this Amendment to Agreement shall control.
8. **Counterparts.** This Amendment to Agreement may be executed in counterpart, and any executed counterparts shall be deemed an executed original for all purposes.
9. **Ratification.** Except as expressly amended in this Amendment, the Agreement is hereby ratified and approved.

IN WITNESS WHEREOF, the Parties each duly executed this Amendment to Agreement as of the dates shown adjacent to their signatures below.

THE CITY:

THE CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____
Date: _____

PRESTO:

PRESTO TIERRA, LTD., by and through its
General Partner, _____

By: _____
Name: _____
Title: _____
Date: _____

PRESTO COMMERCIAL #2, LLC

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS

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COUNTY OF BEXAR

Before me, the undersigned, a Notary Public, on this day personally appeared _____, _____ of _____, a Texas _____ and General Partner of Presto Tierra, Ltd, a Texas limited partnership, whose name is subscribed to the foregoing instrument and acknowledged to me that the same was executed as the act of such _____ for the purpose and consideration therein expressed, and in the capacity herein stated.

Given under my hand and seal of office this _____ day of _____, 2008.

Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF BEXAR

Before me, the undersigned, a Notary Public, on this day personally appeared _____, _____ of Presto Commercial #2, LLC, a Texas limited liability company, whose name is subscribed to the foregoing instrument and acknowledged to me that the same was executed as the act of such limited liability company, for the purpose and consideration therein expressed, and in the capacity herein stated.

Given under my hand and seal of office this _____ day of _____, 2008.

Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF BEXAR

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Before me, the undersigned, a Notary Public, on this day personally appeared _____, _____ of the City of San Antonio, a Texas home rule municipality, whose name is subscribed to the foregoing instrument and acknowledged to me that the same was executed as the act of such corporation for the purpose and consideration therein expressed, and in the capacity herein stated.

Given under my hand and seal of office this _____ day of _____, 2008.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Camila W. Kunau