



A94550

24R-112

Introduce: 4-1-24

RESOLUTION NO. A- **94550**

BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

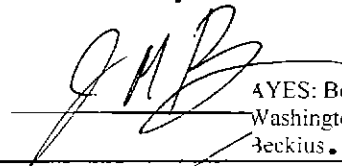
That the Conditional Zoning and Annexation Agreement for Saltillo Express Business Park which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln, Ross Holdings, LLC., Perry Family Real Estate, LLC., Yharnam Ventures, LLC., Merfin Albert Vannice and Eugene Duane Vannice, Co-Trustees of the Vannice Land and Investment Trust, and Eugene D. Vannice, Trustee of the Eugene D. Vannice Trust and the Sally K. Vannice Trust ("Owners") for annexing the property generally located at the 10955, 11105, 11111, 11125, 11205 S. 14th Street and re-zoning the property from AG Agricultural District to H-4 General Commercial District as set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the Conditional Zoning and Annexation Agreement on behalf of the City.

BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this Agreement to Abigail Littrell, Assistant City Attorney, for distribution to the Developer.

BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional Zoning and Annexation Agreement for Saltillo Express Business Park with the Lancaster County Register of Deeds with the recording fees to be paid in advance by the Developer.

BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this Agreement to Michaela Sweeney Impact Fee Administrator.

Introduced by:



4 YES: Bowers, Carlson, Duden, Shobe, Washington, Weber; NAYS: None; ABSENT: Beckius.

Approved as to Form & Legality:


City Attorney

ADOPTED

APR 15 2024

BY CITY COUNCIL

Approved this 18th day of April, 2024:


Mayor

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
SALTILLO EXPRESS BUSINESS PARK**

This Conditional Zoning and Annexation Agreement for Saltillo Express Business Park (“Agreement”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“City”), **ROSS HOLDINGS, LLC**, a Nebraska limited liability company, fka Saltillo Storage, LLC, **PERRY FAMILY REAL ESTATE, L.L.C.**, a Nebraska limited liability company, **YHARNAM VENTURES, LLC**, a Nebraska limited liability company, **MERLIN ALBERT VANNICE AND EUGENE DUANE VANNICE, CO-TRUSTEES OF THE VANNICE LAND AND INVESTMENT TRUST**, and **EUGENE D. VANNICE, TRUSTEE OF THE EUGENE D. VANNICE TRUST AND THE SALLY K. VANNICE TRUST** (collectively “**Property Owners**”).

RECITALS

A. The Property Owners are the owners of the real estate described as:

Lots 23, 24, 37, 43, & 53 of the Southeast Quarter of Section 35, Township 9 North,
Range 6 East, Lancaster County, Nebraska (collectively the “**Property**”)

The Property, and adjacent right away to be annexed, is shown on Exhibit A, is approximately 17.74 acres, and is generally located at 10955, 11105, 11111, 11125 and 11205 South 14th Street, Lincoln, Nebraska. The City and Property Owners desire to cause the urban development of the Property.

B. The Property Owners request the Property be annexed into the City of Lincoln Corporate Boundaries (AN23003). The Annexation Area is shown on Exhibit A.

- C. The Property Owners request the Property be rezoned from AG Agricultural to H-4 General Commercial (CZ23015).
- D. The Property Owners request the City amend the Future Land Use Plan (Figure GF.b), as shown on Exhibit B, of the City's comprehensive plan to show the Property as Commercial rather than Agricultural (CPA23004).
- E. AN23003, CZ23015, and CPA23004 are collectively the "**Governmental Actions.**"
- F. The Property is located in an area designated as Tier II on Figure GF.c of the 2050 Comprehensive Plan and is outside the City's future service limit in the City of Lincoln/Lancaster County Comprehensive Plan and is not expected to be developed before 2050. The Property is not served by City water or sewer and the costs to design and construct such infrastructure are not shown in the City's current Capital Improvement Plan and the City is not willing to fund those costs. Therefore, as an inducement for the City to enter into this Agreement, the Property Owners are willing to agree to not request City water and City sewer service.
- G. Yharnam Ventures, LLC ("**Yharnam**") represents to the City that it has formed an agreement with neighboring property owner, FOG LIMITED PARTNERSHIP, a Nebraska limited partnership ("**FOG**"), to conduct a grade study and design and construct Arterial Road Improvements to South 14th Street. FOG is developing its property in a project called Jamaica North Business Park.
- H. The Jamaica North Business Park property is described as:

Lot 49 of Irregular Tracts in the Southwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 36, Township 9 North, Range 6 East of the 6th PM, Lancaster County, Nebraska ("**Jamaica North Business Park Property**").

- I. City, as a condition of approving the Governmental Actions, desires an agreement with the Property Owners to be assured that the Property will be annexed and developed in conformance with certain conditions. Property Owners represent to the City that, in consideration of the City approving the Governmental Actions, the Property Owners will enter into an agreement with the City to develop the Property subject to the terms and conditions listed below.

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

**I.
CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;
CONDITIONAL APPROVAL**

1. **Concurrent Approval**. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:
 1. Annexing the Property legally described and shown on Exhibit A (AN23003);
 2. Changing the zone of the property described on Exhibit A from AG Agricultural to H-4 General Commercial (CZ23015); and
 3. Amending the Comprehensive Plan (CPA23004) as shown on Exhibit B.
2. **Conditional Approval**. Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats,

dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

3. **Further Land Use Approvals**. Property Owners agree that the Preliminary Plat and/or Planned Service Commercial Special Permit must be approved prior to further development of the Property.

II. ARTERIAL STREET IMPROVEMENTS

1. **South 14th Street**.
 - a. **South 14th Street Grade Study**. FOG and Yharnam will fund, subject to reimbursement from the City, and FOG will cause Olsson to prepare a grade study (“**Grade Study**”) pursuant to the Conditional Zoning and Annexation Agreement for Jamaica North Business Park (“**Jamaica North Annexation Agreement**”). At the completion and approval of the Grade Study by the City, it shall become the property of the City and shall be used to guide the design and construction of the South 14th Street Turn Lane Improvements. Upon completion of the Grade Study, FOG will invoice the final costs of the Grade Study to the City (“**Grade Study Costs**”). City shall only be obligated to reimburse FOG and Yharnam for the costs of the Grade Study to the extent impact fee collections are adequate to reimburse said cost. City shall have no obligation to reimburse FOG and Yharnam for costs of the Grade Study if insufficient impact fees have been collected.
 - b. **South 14th Street Turn Lane Improvements**. Through the City’s executive order process, Yharnam will design, grade and construct left and right turn lanes on South 14th Street (“**South 14th Street Turn Lane Improvements**”) pursuant to this

Agreement and the Saltillo Express Annexation Agreement. Yharnam and FOG will fund, subject to reimbursement from the City, and Yharnam will cause Civil Design Group, Inc. ("**Civil Design**") or Civil Design's subconsultant, to design, stake, observe, inspect and test the construction of the South 14th Street Turn Lane Improvements. If the existing grade is materially different than the future grade of South 14th Street or if other necessary or desirable South 14th Street grade changes are necessary to properly transition the turn lane improvements (at the future grade) back to the remaining portion of South 14th Street (at the current grade) as determined by LTU, then such grade elevation modifications to the South 14th Street Turn Lane Improvements will be designed and constructed by Yharnam on behalf of FOG and the Property Owners. On behalf of the Property Owners and FOG, Yharnam shall apply for and be permitted to construct the South 14th Street Turn Lane Improvements. Adequate surety shall be posted by Yharnam for the benefit of FOG and the Property Owners through the Executive Order process to guarantee completion of the South 14th Street Turn Lane Improvements. Regardless of whether Yharnam performs its obligations under its agreement with FOG, City shall not issue building permits for the Property until a contract has been awarded for a bid on the Executive Order work for the South 14th Street Turn Lane Improvements. Upon completion of the South 14th Street Turn Lane Improvements, Yharnam will invoice the final costs of the South 14th Street Turn Lane Improvements to the City ("**South 14th Street Turn Lane Improvements Costs**").

- c. Professional Consulting Services. For purposes of this Agreement, the City hereby recognizes and agrees that FOG's engineer, Olsson, and Yharnam's engineer, Civil Design, have coordinated and completed a significant amount of preliminary design

work with respect to the Grade Study and South 14th Street Turn Lane Improvements. City has confirmed that Olsson and Civil Design have been deemed to be qualified to perform the design services for the Grade Study and South 14th Street Turn Lane Improvements by the City's Purchasing Division. Finally, the City acknowledges that to select a different design consultant to reproduce such work product related to the Grade Study and South 14th Street Turn Lane Improvements would be inefficient and likely to result in unnecessary delay in the design, grading and construction of the South 14th Street Turn Lane Improvements. Therefore, based upon the recommendation of the Director of Lincoln Transportation and Utilities, the City agrees and acknowledges that the design work contemplated herein qualifies as an exemption to Purchasing Division requirements as described in Section V.2 of Executive Order No. 95880 dated September 14, 2021 and selects Olsson and Civil Design to perform the design services for the Grade Study and South 14th Street Turn Lane Improvements.

- d. South 14th Street Improvement Agreement. Yharnam and FOG have entered into a written South 14th Street Improvement Agreement, dated March 20, 2024, whereby FOG will implement the Grade Study and Yharnam will implement the South 14th Street Turn Lane Improvements, and FOG and Yharnam will each pay one-half the Grade Study Costs and the South 14th Street Turn Lane Improvements Costs.

2. **Impact Fee Reimbursement**. The City agrees that the Grade Study and South 14th Street Turn Lane Improvements described in this Article are Impact Fee Facility Improvements as that term is defined in LMC §27.82.040; provided, the South 14th Street Turn Lane Improvements will not be eligible for arterial street impact fee reimbursement unless they conform to the Grade Study as approved by LTU. In order to reimburse the Grade Study Costs

and South 14th Street Turn Lane Improvements Costs, if eligible, the City agrees to segregate arterial street impact fees collected by the City from the development of the Property and the Jamaica North Business Park Property as shown on Exhibit C and utilize said fees collected to fund such improvements.

Said reimbursements for the Grade Study Costs and the South 14th Street Turn Lane Improvements Costs from arterial street impact fees generated by development of the Property and the Jamaica North Business Park Property shall be paid quarterly to FOG and Yharnam, each receiving one-half of each quarterly payment, as arterial street impact fees are received by the City. The foregoing notwithstanding, any reimbursement of arterial street impact fees from the Property and the Jamaica North Business Park Property and to be reimbursed to Yharnam and FOG shall not constitute a general obligation of the City.

3. **Dedication of Right of Way.** At the time of the executive order to construct the South 14th Street Turn Lane Improvements, final platting or at City's request, the Property Owners agree to dedicate, at no cost to the City, the additional right-of-way for South 14th Street and internal streets in conformance with City Standards.
4. **Condemnation.** If additional right-of-way is required to grade and construct the South 14th Street Turn Lane Improvements, then the City shall acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the South 14th Street Turn Lane Improvements and related improvements described in this Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements. Yharnam will reimburse the City's out of pocket expenses that the City might incur under this Paragraph,

including appraisals, court costs, and expert witness fees. In turn, Yharnam's reimbursement to the City shall be reimbursable by the City to Yharnam from directed impact fees.

III. SANITARY SEWER & WATER

1. **Public Sanitary Sewer.** Property Owners understand and acknowledge that the Property is not presently sewerable by the City's public sanitary sewer system and that the costs to design and construct such infrastructure is not shown in the City's current Capital Improvement Plan. Property Owners further understand that the City does not intend to extend its public sanitary sewer system to serve the Property within the next one to twenty-five years. Notwithstanding the lack of sewerability, Property Owners desire that the Property be immediately annexed into the City of Lincoln. Therefore, as an inducement for the City to enter into this Agreement, Property Owners agree that Property Owners shall not request the City to provide Owners with sanitary sewer earlier than contemplated in the City of Lincoln/Lancaster County Comprehensive Plan, as may be amended. The Property shall be served by a community sanitary sewer system conforming to the rules and regulations of the Lincoln Lancaster County Health Department and shall be designed to allow future City-sanitary sewer connections.
2. **Public Water System.** Property Owners understand and acknowledge that the Property is not presently served by the City's public water system and that the costs to design and construct such infrastructure is not shown in in the City's current Capital Improvement Plan. Property Owners further understand that the City does not intend to extend its public water system to serve the Property within the next one to twenty-five years. Notwithstanding the lack of public water, Property Owners desire that the Property be immediately annexed into the City of Lincoln. Therefore, as an inducement for the City to enter into this Agreement, Property Owners agree that Property Owners shall not request the City to provide the Property with

public water earlier than contemplated in the City of Lincoln/Lancaster County Comprehensive Plan, as may be amended. The Property shall be served by a community water system or private wells conforming to the rules and regulations of the Lincoln Lancaster County Health Department. Any community water system shall be designed and constructed to allow for future City-water connections.

3. **Contribution to Rural Water District.** The Property Owner understands and acknowledges that the City may not furnish water to serve that portion of the Property lying within the boundaries of Rural Water District No. 1 without the consent and approval of District No. 1. In the future, the Property will be connected to the City's public water system and therefore Property Owner agrees to pay all the cost needed to obtain District No. 1's approval to release the Property lying within the boundaries of District No. 1. Property Owner agrees to pay all costs prior to annexation of the Property.

IV. FIRE PROTECTION

1. **Contribution to Rural Fire District.** Property Owners understand and acknowledge that the City's annexation of the Property or any portion thereof lying within the boundaries of the Southwest Rural Fire Protection District ("District") shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Property or portion thereof being annexed. As of the date of execution of this Agreement, no contribution to the District is expected.
2. **Fire Code Enforcement.** The Property shall be served by individual lot wells conforming to the rules and regulations of the Lincoln Lancaster County Health Department or by a community water system conforming to the rules and regulations of the Lincoln Lancaster

County Health Department. The community water system shall provide water to each lot. Fire hydrants shall not be required to be installed as part of the community water system.

The 2018 International Fire Code (IFC), adopted as amended by Title 19 of the Lincoln Municipal Code, imposes certain fire safety requirements on the Property. With regard to fire hydrants, City agrees and acknowledges that Section 507.5 of the IFC imposes fire hydrant requirements on property within Lincoln City Limits but that where development is in rural areas where fire hydrants are not available, the Fire Code Official may approve an alternative water supply. City agrees that due to lack of City water supply, fire hydrants will not be available on the Property for some time and that fire department water tankers are available by means of Mutual Aid Agreement. Fire hydrants, therefore, will not be required on the Property until such time as City water supply is made available to the Property. City agrees to this provision in consideration of Property Owner's agreement to restrict use of the Property in accordance with the use restrictions described in subsection 4 below.

3. **LFR Response Time:** Property Owners acknowledge that LFR response time to the Property will likely be longer than response times to other property in the City and outside LFR response time goals.
4. **Structure and Use Restrictions.** In the event a lot within the Property is not served by a fire hydrant, then the Property Owners agree to design and construct structures and restrict uses on the Property as follows in order to preserve the health and safety of users and occupants of the Property:
 - a. There shall be a minimum of 20 feet between all buildings and structures;
 - b. Minimum setbacks of 20 feet from all buildings to the property line shall be observed;

- c. The following uses shall not be permitted on the Property: any residential use, domestic shelters, residential healthcare facilities, nonresidential healthcare facilities, hotels or motels, early childhood care facilities, private schools, social halls, restaurants with an occupant load for more than 50 persons and other public assembly uses as defined by International Building Code with an occupant load for more than 50 persons.

If one of the above uses is proposed, the Planning Director may add the use on a specific lot by administrative amendment, only if adequate fire hydrants are provided.

V. MISCELLANEOUS PROVISIONS

1. **Binding Effect.** This Agreement shall run with the land and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.
2. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties hereto.
3. **Further Assurances.** Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this agreement.
4. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

5. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.
6. **Construction.** Whenever used herein, including recitals and acknowledgements, the singular shall be construed to include the plural, the plural singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.
7. **Relationship of the Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement, or any acts of any party shall be deemed or construed by the City, Property Owners, or by any third person to create the relationship of partnership, joint venture, or of any association between the parties other than the contractual relationship stated in this Agreement.
8. **Default.** Property Owners and City agree that the Government Actions promote the public health, safety, and welfare so long as Property Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event a Property Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property Owner's Property to its previous designations or such other designations as the City may deem appropriate under the ten-existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then any Property Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach. City does not herein waive any legal defenses to any suit or claim or its sovereign immunity. No delay or omission of any party in exercising any remedies or power accruing

upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

9. **Authority**. This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.
10. **Definitions**. For the purposes of this Agreement, the words and phrases “cost” or “entire cost” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvement”, and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.
11. **Recording**. This Agreement shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Developers.
12. **Notices and Demands**. A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

With a copy to:

City Attorney
555 South 10th Street, Suite 300
Lincoln, Nebraska 68508

If to Ross Holdings, LLC:
2215 Lothrop Lake Circle
Crete, NE 68333

If to Perry Family Real Estate, L.L.C.:
9200 Andermatt Drive, Suite A
Lincoln, NE 68526

If to Yharnam Ventures, LLC:
8501 S. 78th Street, Suite A
Lincoln, NE 68516

If to Trustee of Eugene D. Vannice Trust and Sally Kay Vannice Trust:
11205 S. 14th Street
Roca, NE 68430

If to Co-Trustees of Vannice Land and Investment Trust:
11125 S. 14th Street
Roca, NE 68430

14. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein
by this reference:

<u>Exhibit A</u>	The Property
<u>Exhibit B</u>	Future Land Use Plan
<u>Exhibit C</u>	Impact Fee Area

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the dates
and year written below.

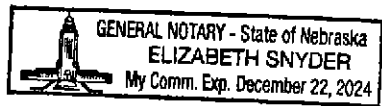
Dated as of 2-23-23, 2024

ROSS HOLDINGS, LLC, a Nebraska limited liability company, fka Saltillo Storage, LLC

By: [Signature]
Title: Manager - 2-

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23 day of February 2024, by Tracy Ross, manager of Ross Holdings, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



[Signature]
Notary Public

Dated as of 3/18, 2024.

YHARNAM VENTURES, LLC,
a Nebraska limited liability Company

By: Richard C. Krueger
Richard C. Krueger, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18th day of March, 2024, by Richard C. Krueger, Member of Yharnam Ventures, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Christina Melgoza
Notary Public



SIGNATURE PAGE REMOVED

Dated as of March 5th, 2024.

Merlin Albert Vannice
**MERLIN ALBERT VANNICE,
VANNICE, CO-TRUSTEE OF THE
VANNICE LAND AND INVESTMENT
TRUST**

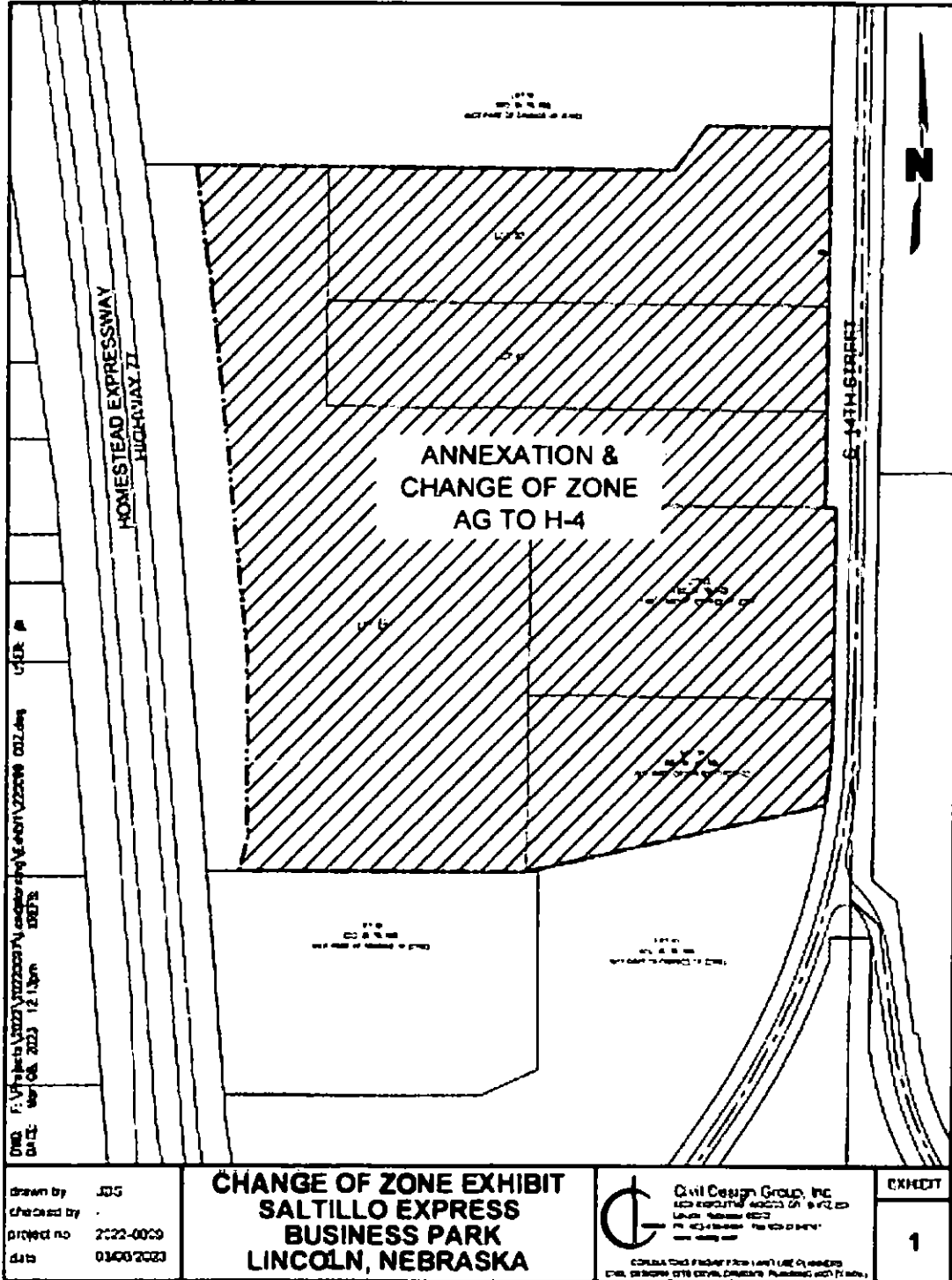
STATE OF Pennsylvania)
) ss.
COUNTY OF Centre)

The foregoing instrument was acknowledged before me this 5th day of March, 2024, by **MERLIN ALBERT VANNICE, CO-TRUSTEE OF THE VANNICE LAND AND INVESTMENT TRUST.**

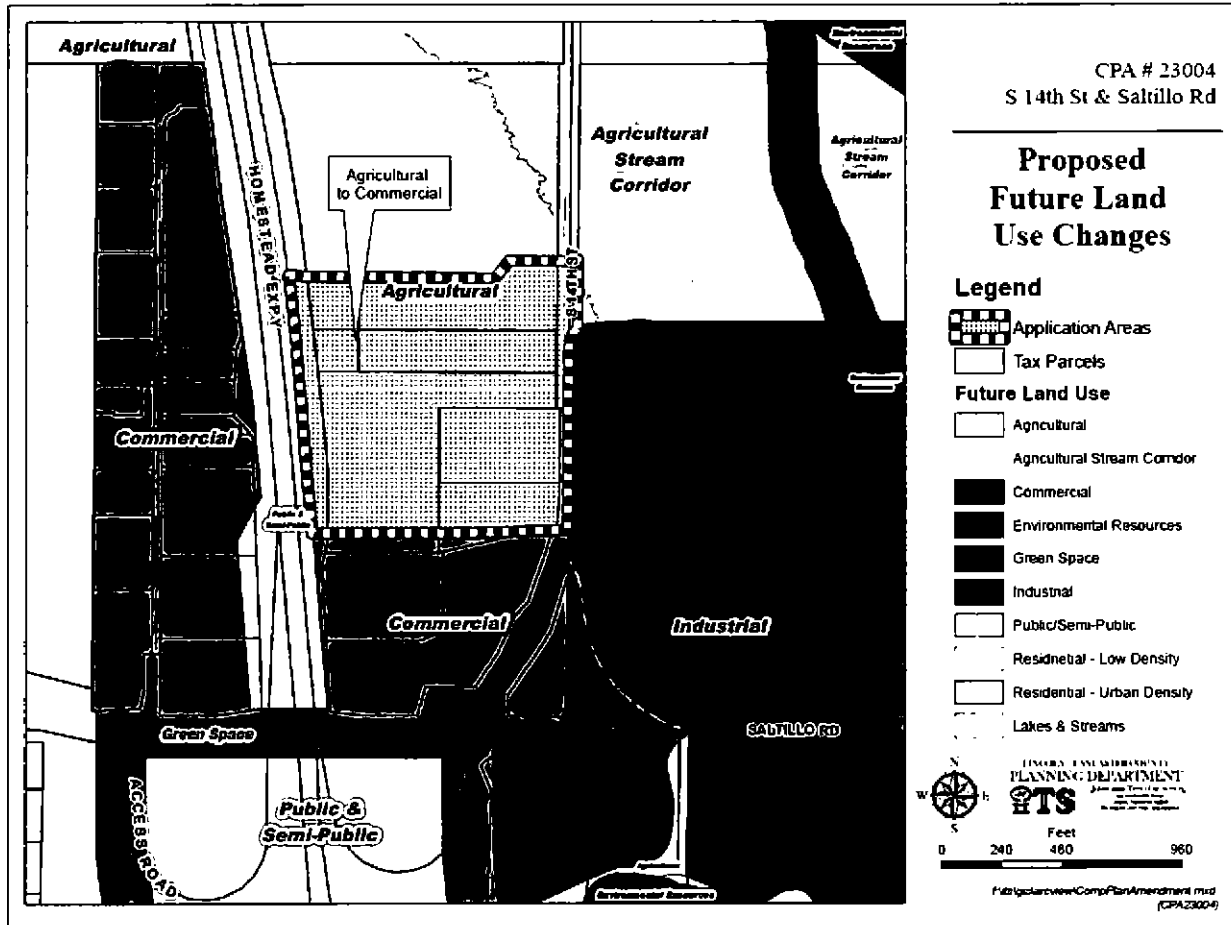
Ashton S. Immel
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Ashton S. Immel, Notary Public
Centre County
My commission expires January 15, 2027
Commission number 1288007

**EXHIBIT A
THE PROPERTY**



**EXHIBIT B
FUTURE LAND USE MAP**



CPA # 23004
S 14th St & Saltillo Rd

**Proposed
Future Land
Use Changes**

Legend

- Application Areas
- Tax Parcels

Future Land Use

- Agricultural
- Agricultural Stream Corridor
- Commercial
- Environmental Resources
- Green Space
- Industrial
- Public/Semi-Public
- Residential - Low Density
- Residential - Urban Density
- Lakes & Streams

TULSA ENVIRONMENTAL
 PLANNING DEPARTMENT
ETS
 Feet
 0 240 480 960
FutureReviewCompPlanAmendment.mxd
(CPA23004)

EXHIBIT C
IMPACT FEE AREA

