



A94552

24R-114

Introduce: 4-1-24

RESOLUTION NO. A- **94552**

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

That the Conditional Zoning and Annexation Agreement for Jamaica North Business Park which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln, FOG Limited Partnership ("Owner") for annexing the property generally located at to the east side of S. 14th Street approximately one-half mile north of Saltillo Road and re-zoning the property from AG Agricultural District to I-3 Employment Center District and I-1 Industrial District to I-3 Employment Center 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.

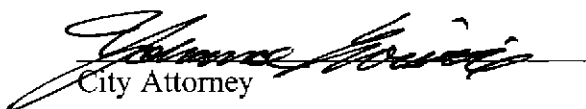
BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this Agreement to Abigail Littrell, Assistant City Attorney, for distribution to the Developer.

BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional Zoning and Annexation Agreement for Jamaica North 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:

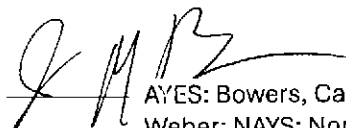

Approved as to Form & Legality:


City Attorney

ADOPTED

APR 15 2024

BY CITY COUNCIL


AYES: Bowers, Carlson, Duden, Shobe, Washington, Weber; NAYS: None; ABSENT: Beckius.
Approved this 18th day of April, 2024:

Mayor

After Recording, Return To:
City of Lincoln City Attorney Office
Attention: Abigail Littrell
555 S. 10th Street
Lincoln, NE 68508

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
JAMAICA NORTH BUSINESS PARK**

This Conditional Zoning and Annexation Agreement for Jamaica North 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**”), **FOG LIMITED PARTNERSHIP**, a Nebraska limited partnership (“**Property Owner**”).

RECITALS

A. The Property Owner is the owner of the real estate described as:

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

The Property is shown on Exhibit A, is generally located to the east side of South 14th Street approximately one-half mile north of Saltillo Road, Lincoln, Nebraska and is 73.5 acres, more or less. The City and Property Owner desires to cause the urban development of the Property.

- B. The Property Owner requests that the Property be annexed into the City of Lincoln Corporate Boundaries in multiple phases as shown on Exhibit B. The portion of the Property to be annexed with the first phase is described on Exhibit C (“**Phase 1 Property**”) and only approved pursuant to this Agreement (AN23002).
- C. The south 300 feet (approximately) of the Property is presently zoned I-1 Industrial District. The remaining north portion of the Property is zoned AG, Agricultural District. Property Owner requests that the City rezone the entire Property to I-3 Employment Center. That portion of the Property to be rezoned from AG and I-1 to I-3 is described on Exhibit D (CZ23014).
- D. Rezoning to I-3 will require the adoption of an I-3 Use Permit which will incorporate a Preliminary Plat (UP23002) and generally shown on Exhibit E.
- E. Property Owner requests that City amend the Future Land Use Plan (Figure GF.b) in the City’s comprehensive plan, to show the Property as “Green Space” and “Industrial” as shown on Exhibit F (CPA 23003).
- F. AN23002, CZ23014, UP23002, and CPA23003 are defined below as Government Actions.
- G. 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 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 Owner is willing to agree to not request City water and City sewer service.

- H. Property Owner represents to City that it has formed an agreement with neighboring property owner Yharnam Ventures, LLC on the west side of 14th Street (“**Yharnam**”) to conduct a grade study and design and construct arterial street improvements to South 14th Street. Yharnam, in conjunction with other property owners, is developing its property in a project called Saltillo Express Business Park.
- I. The Saltillo Express Business Park property is described as:
- Lots 23, 24, 37, 43, & 53 of the Southeast Quarter of Section 35, Township 9 North, Range 6 East, Lancaster County, Nebraska (“**Saltillo Express Business Park Property**”).
- J. The City, as a condition of approving the Government Actions, desires an agreement with the Property Owner to be assured that the Property will be annexed and developed in conformance with certain conditions. Property Owner represents to City that, in consideration of the City approving the Government Actions, the Property Owner would enter into this 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 GOVERNMENT ACTIONS;
CONDITIONAL APPROVAL**

1. **Concurrent Approval**. The City, concurrently with the approval of this Agreement, is approving the following “**Government Actions**”:
1. Annexing the Phase 1 Property legally described and shown on Exhibit C (AN23002);
 2. Changing the zone of the Property described on Exhibit D from AG Agricultural to I-3 Employment Center (CZ23014);

3. Approving the Use Permit and concurrent Preliminary Plat (UP23002) generally described on Exhibit E; and
 4. Amending the Comprehensive Plan (CPA23003) generally described on Exhibit F.
2. **Conditional Approval**. Approvals of the Government 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.

II.

PHASED DEVELOPMENT OF THE PROPERTY

1. **Subsequent Phases of Annexation**. The City and Property Owner agree that the Phase 1 Property and the remaining portion of the Property (“**Phase 2 Property**”) will be annexed in multiple phases. Phase 1 Property and Phase 2 Property are shown on Exhibit B. The Property Owner and the City agree that the Phase 1 Property will be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future along with change of zone and final plat of the Phase 2 Property.

III.

ARTERIAL STREET IMPROVEMENTS

1. South 14th Street.

- a. South 14th Street Grade Study. Property Owner and Yharnam will fund, subject to reimbursement from the City, and Property Owner will cause Olsson to prepare a grade study (“**Grade Study**”). The Grade Study will include survey, engineering, and any necessary City coordination as required and approved by Lincoln Transportation and Utilities Department (“LTU”) for the section of South 14th Street that includes the South 14th Street Turn Lane Improvements (defined below) and those portions of South 14th Street shown on Exhibit G, which is attached hereto and incorporated herein by this reference. Within ninety (90) days of the date of this Agreement, the Property Owner will produce and send the Grade Study to the City for approval. 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, the Property Owner will invoice the final costs of the Grade Study to the City (“**Grade Study Costs**”). City shall only be obligated to reimburse Property Owner 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 Property Owner 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 the Conditional Zoning and Annexation Agreement for Saltillo Express Business Park (**“Saltillo Express Annexation Agreement”**) and in conformance with Use Permit 23002, as may be amended (**“I-3 Use Permit”**) and this Agreement. Yharnam and Property Owner 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 the Property Owner and the Saltillo Express Business Park Owners. On behalf of the Property Owner, 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 the Property Owner through the Executive Order process to guarantee completion of the South 14th Street Turn Lane Improvements. Regardless of whether Yharnam performs its obligations under Property Owner’s agreement with Yharnam, 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 the Property Owner’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 Property Owner have entered into a written South 14th Street Improvement Agreement, dated _____, 2024, whereby Property Owner will implement the Grade Study and Yharnam will implement the South 14th Street Turn Lane Improvements, and Property Owner 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 Saltillo Express Business Park Property as shown on Exhibit H 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 Saltillo Express Business Park Property shall be paid quarterly to the Property Owner 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 Saltillo Express Business Park Property and to be reimbursed to the Property Owner 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, Property Owner agrees 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. The Property Owner 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. The City's out of pocket expenses shall be reimbursed by the Property Owner. In turn, the Property Owner's reimbursement to the City shall be reimbursable by the City to the Property Owner from directed impact fees.
5. **Emergency Services Access Easement to Saltillo Road.** The Property Owner is also the owner of real estate located south of the Property and legally described as Lot 76 of Irregular Tracts in the Southwest Quarter of Section 36, Township 9 North, Range 6 East of the 6th P.M., Lancaster County Nebraska ("**South Property**"). In order to provide a secondary emergency service access for police, fire, ambulances, rescue and emergency services (collectively "**Emergency Services Access**") to the Phase 2 Property, the Property Owner hereby grants to the City an Emergency Service Access Easement to provide Emergency Services Access between the Property and Saltillo Road, which is attached hereto as Exhibit I and incorporated herein by this reference. At a minimum, the Emergency Service Access will be a maintained surface of rock or aggregate and shall be completed and placed in service on or before the City's annexation approval of any portion of the Phase 2 Property shown on Exhibit B. Emergency Service Access shall remain passable at all times.

IV.

SANITARY SEWER, WATER, & OFFSITE DRAINAGE

1. **Public Sanitary Sewer.** Property Owner understands and acknowledges that the Property is not presently sewerable by the City's public sanitary sewer system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Property Owner further understands 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, the Property Owner and the City agree that the Phase 1 Property be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future when final plat(s) are approved for the Phase 2 Property. Therefore, as an inducement for the City to enter into this Agreement, Property Owner agrees that Property Owner shall not request the City to provide the Property 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 all applicable laws and 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 Owner understands and acknowledges that the Property is not presently served by the City's public water system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Property Owner further understands 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 Owner desires that the Property be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future when final plat(s) are approved.

Therefore, as an inducement for the City to enter into this Agreement, Property Owner agrees that Property Owner 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. City's public water system is not available to provide fire protection services. 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 and 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 phased Property.
4. **Off Site Drainage Improvements:** Abutting the Property on the south side is another parcel legally described as Lot 76 Irregular Tract in the SW ¼ of Section 36, Township 9 North, Range 6 East of 6th Principal Meridian, Lincoln, Lancaster County, Nebraska ("**Lot 76 I.T.**"). The Property Owner shall either (i) final plat an outlot or (ii) record a conservation easement acceptable to the Director of the Planning Department for open space and drainage, dedicate the Minimum Flood Corridor easement and complete all drainage improvements on Lot 76 I.T. per the approved Use Permit, to the satisfaction of Lincoln Transportation and Utilities Watershed Management Division, in order to preserve the Minimum Flood Corridor and to

provide the necessary conveyance in the drainage channel so as to not cause a rise in the 100-year floodplain on adjacent properties.

V.

FIRE PROTECTION

1. **Contribution to Rural Fire District.** Property Owner understands and acknowledges 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 Owner acknowledges that LFR response time to the Property may 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.

VI.

OUTLOT A AND OUTLOT B

1. **Outlot A.** In consideration of the City approving the Government Actions, the use of Outlot A shall be graded to provide additional flood storage and drainage with vegetation restoration

by the Property Owner, at its expense, as shown on the approved I-3 Use Permit, and be restricted for (i) an onsite community wastewater treatment lagoon system that receives wastewater piping system and lift from future commercial lots located upon the Property and (ii) regenerated as prairie and/or wetland open space. The Nebraska Department of Transportation (“NDOT”) owns the real estate (“NDOT Parcel”) described in the Warranty Deed, recorded as Instrument 2019034986 on September 10, 2019 that abuts the north boundary of Outlot A. NDOT has developed wetlands on portions of the NDOT Parcel. NDOT and the Property Owner have initiated conversations to (i) coordinate between them, the City/County, Friends of Wilderness Park and other interested parties on the possible maximization and future development of prairie wetlands and/or forested wetlands, including potential wetland bank(s), on Outlot A and/or the NDOT Parcel and (ii) NDOT potentially supporting the Property Owner’s request to the Army Corps of Engineering to not require a fifty (50) foot buffer between the future wetlands to be created on Outlot A and the shared north boundary line between Outlot A and the NDOT Parcel; provided the design of the wetlands on Outlot A does not materially harm the hydraulics of the existing and future wetlands located upon the NDOT Parcel. Property Owner shall grant a conservation easement over that portion of Outlot A used for flood storage at the same time Outlot A is created.

2. **Outlot B.** Outlot B receives the drainage from portions of the Property and contains a former oxbow of Salt Creek, wooded vegetation, and riparian corridor that has many of the characteristics of Wilderness Park. The Property Owner has expressed its intent to the City to make a charitable gift pursuant to the Internal Revenue Code of 1986, as amended of Outlot B to the City as an open space and buffer to Wilderness Park. The City agrees to work with the Property Owner to complete the acceptance of such a gift to the City. The Property Owner

wishes to make the gift of Outlot B within thirty (30) days after the Property Owner completes the grading, drainage improvements and vegetation restoration of Outlot A and Outlot B as shown on the approved I-3 Use Permit.

VII.

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 Owner, 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 Owner and City agree that the Government Actions promote the public health, safety, and welfare so long as Property Owner fulfill all of the conditions and responsibilities set forth in this Agreement. In the event 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 then-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 the 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 Property Owner.
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 10 th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10 th Street, Suite 300 Lincoln, Nebraska 68508
If to Property Owner:	FOG Limited Partnership Attention: CJ Guenzel 11101 North 78th Street Omaha, NE 68122
With a copy to:	Seacrest & Kalkowski, PC, LLO 3 Landmark Centre 1128 Lincoln Mall, Suite 105 Lincoln, Nebraska 68508

Dated as of April 8th, 2024

FOG LIMITED PARTNERSHIP, a Nebraska
limited partnership

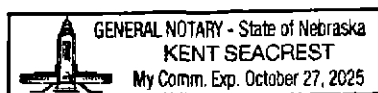
By: CJG, LLC, a Nebraska limited
liability company, as General Partner

By: CJ Guenzel
CJ Guenzel, IV, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

Subscribed and sworn to before me on April 8, 2024 by CJ Guenzel, IV who is personally known to me or who produced satisfactory identification and is the identified Manager of CJG, LLC, a Nebraska limited liability company, who is the General Partner of **FOG LIMITED PARTNERSHIP**, a Nebraska limited partnership, on behalf of the limited partnership.

(Seal)



Kent Seacrest

Notary Public

Exhibit A

THE PROPERTY



EXHIBIT B

ANNEXATION PHASES

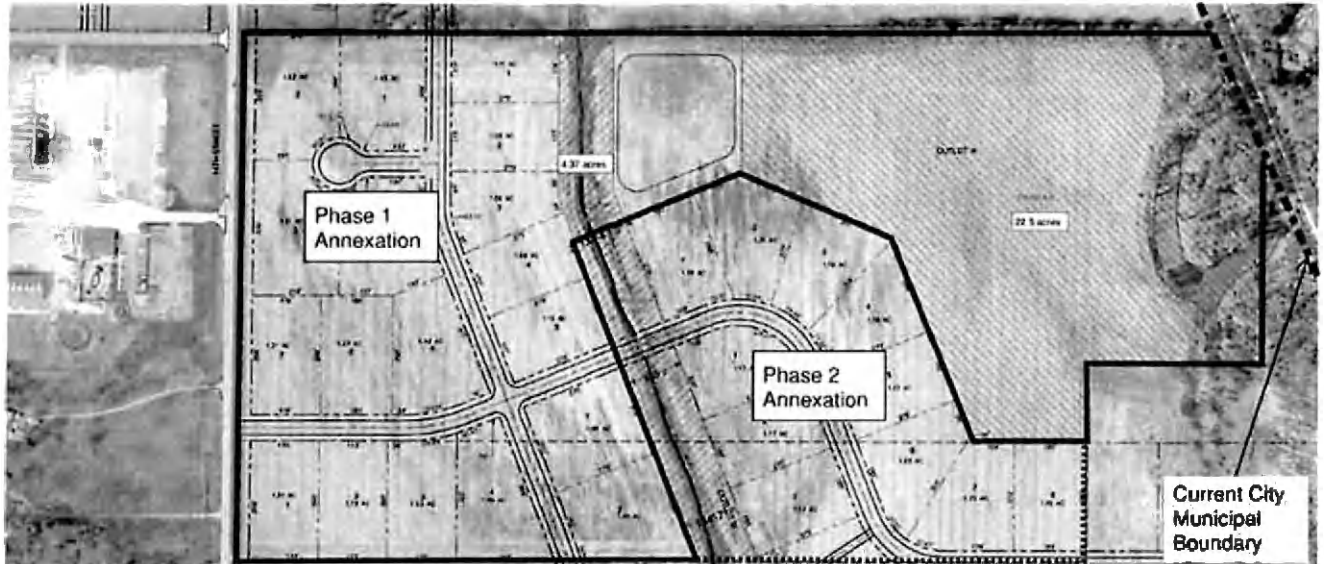


EXHIBIT C

PHASE 1 ANNEXATION PROPERTY (AN23002)

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTHLINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°07'54"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 196.65' TO A POINT; THENCE N89°51'41"W, A DISTANCE OF 288.37' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 650.64' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.85' TO A POINT; THENCE N89°51'22"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1158.75' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,326.31' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 2,407,255.64 SQUARE FEET OR 55.26 ACRES, MORE OR LESS.



EXHIBIT D

Change of Zone #23014



LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTHLINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°07'54"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 196.65' TO A POINT; THENCE N89°51'41"W, A DISTANCE OF 288.37' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 650.64' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.85' TO A POINT; THENCE N89°51'22"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1158.75' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,326.31' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 2,407,255.64 SQUARE FEET OR 55.26 ACRES, MORE OR LESS.

FEBRUARY 24, 2023

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LEGAL DESCRIPTION

AG TO I-3

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER ALL IN SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°09'48"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 196.65' TO A POINT; THENCE N89°51'41"W, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT A DISTANCE OF 288.26' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 543.95' TO A POINT; THENCE N89°51'41"W, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT, A DISTANCE OF 1,050.17' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,026.30'; TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 2,075,369.11 SQUARE FEET OR 47.64 ACRES, MORE OR LESS.

TOGETHER WITH

I-1 TO I-3

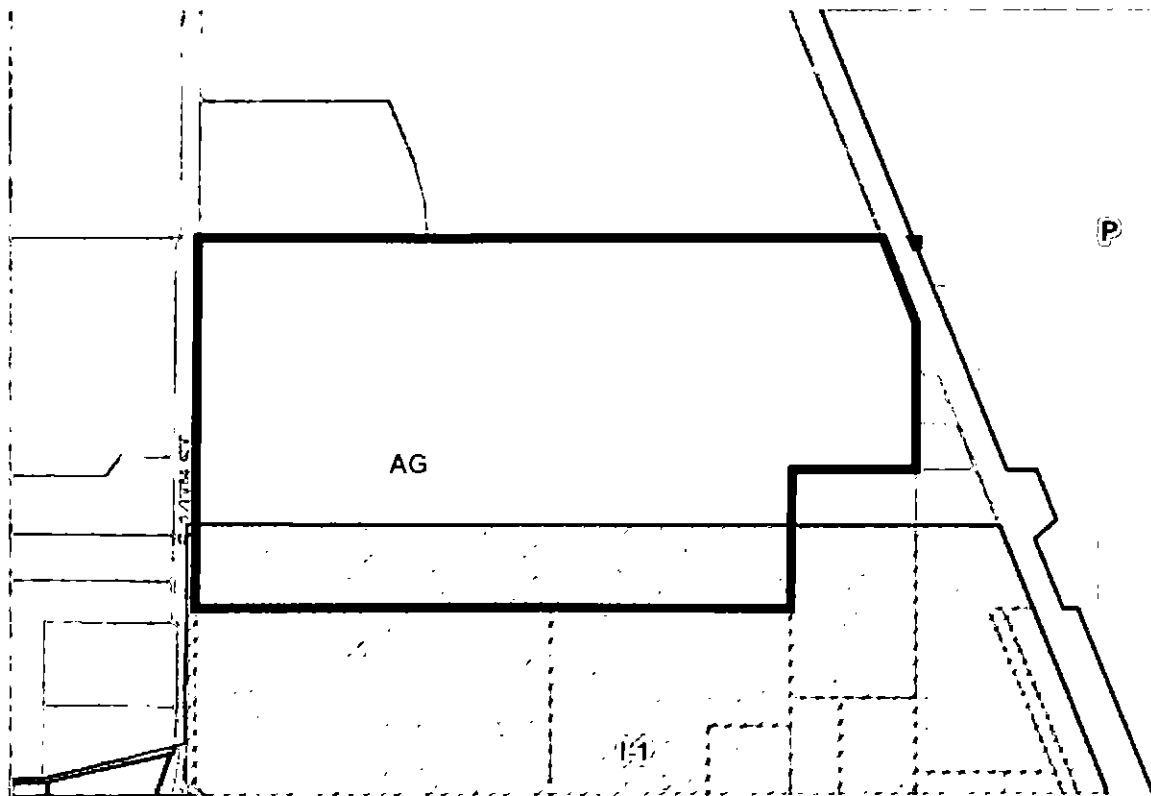
A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, LOCATED IN SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO A POINT; THENCE S00°31'01"W, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,026.30 TO

THE TRUE POINT OF BEGINNING; THENCE S89°51'41"E, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT, A DISTANCE OF 1,050.17' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 106.69' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.55' TO A POINT; THENCE N89°52'32"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,158.75' TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE N00°30'58"E, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 300.00'; TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 331,877.92 SQUARE FEET OR 7.62 ACRES, MORE OR LESS.

FOR A COMBINED TOTAL CALCULATED AREA OF 2,407,247.03 SQUARE FEET OR 55.26 ACRES, MORE OR LESS

CURRENT ZONING MAP



NEW ZONING MAP

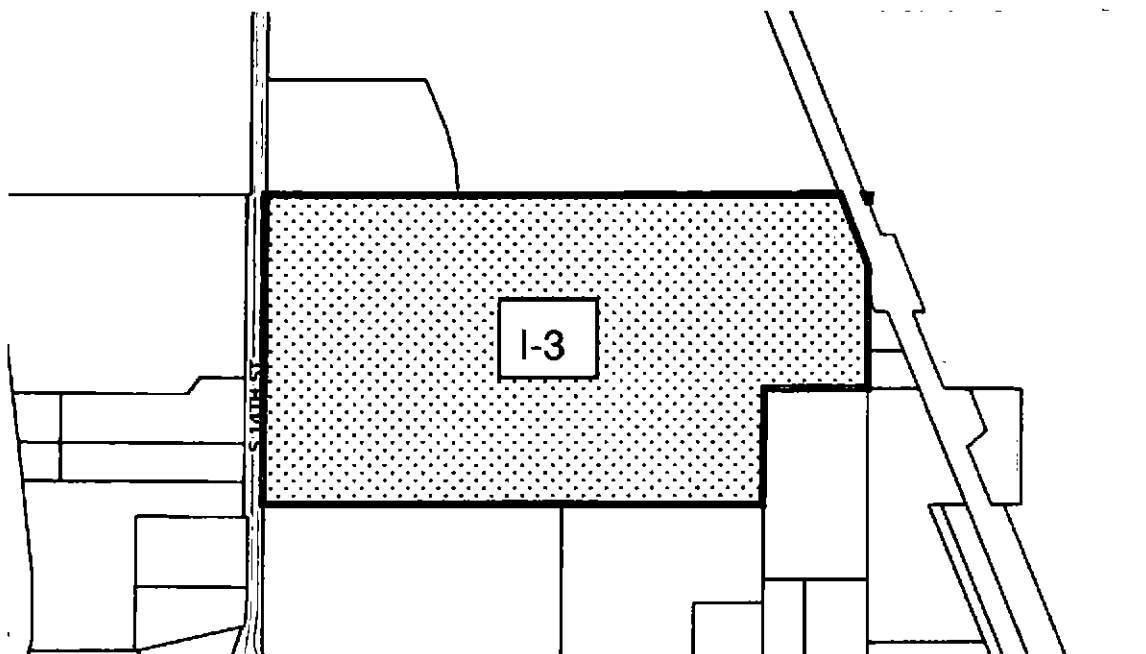


EXHIBIT E

USE PERMIT MAP OF THE PROPERTY

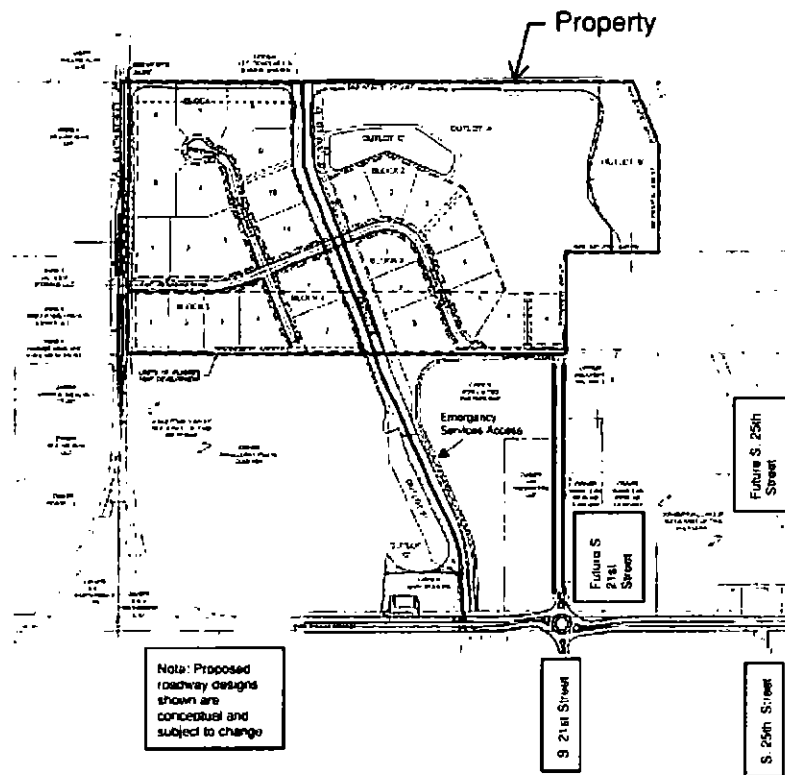


EXHIBIT F

FUTURE LAND USE PLAN

Current Future Land Use Plan



- Future Land Use**
- Category
- Public & Semi-Public
 - Urban & Streams
 - Environmental Resources
 - Green Space
 - Residential - Low Density
 - Residential - Urban Density
 - Commercial
 - Industrial
 - Light Industrial
 - Agriculture
 - Ag Stream Corridor

Proposed Future Land Use Plan Amendment



- Future Land Use**
- Category
- Public & Semi-Public
 - Urban & Streams
 - Environmental Resources
 - Green Space
 - Residential - Low Density
 - Residential - Urban Density
 - Commercial
 - Industrial
 - Light Industrial
 - Agriculture
 - Ag Stream Corridor

[illegible]

EXHIBIT H
IMPACT FEE AREA MAP

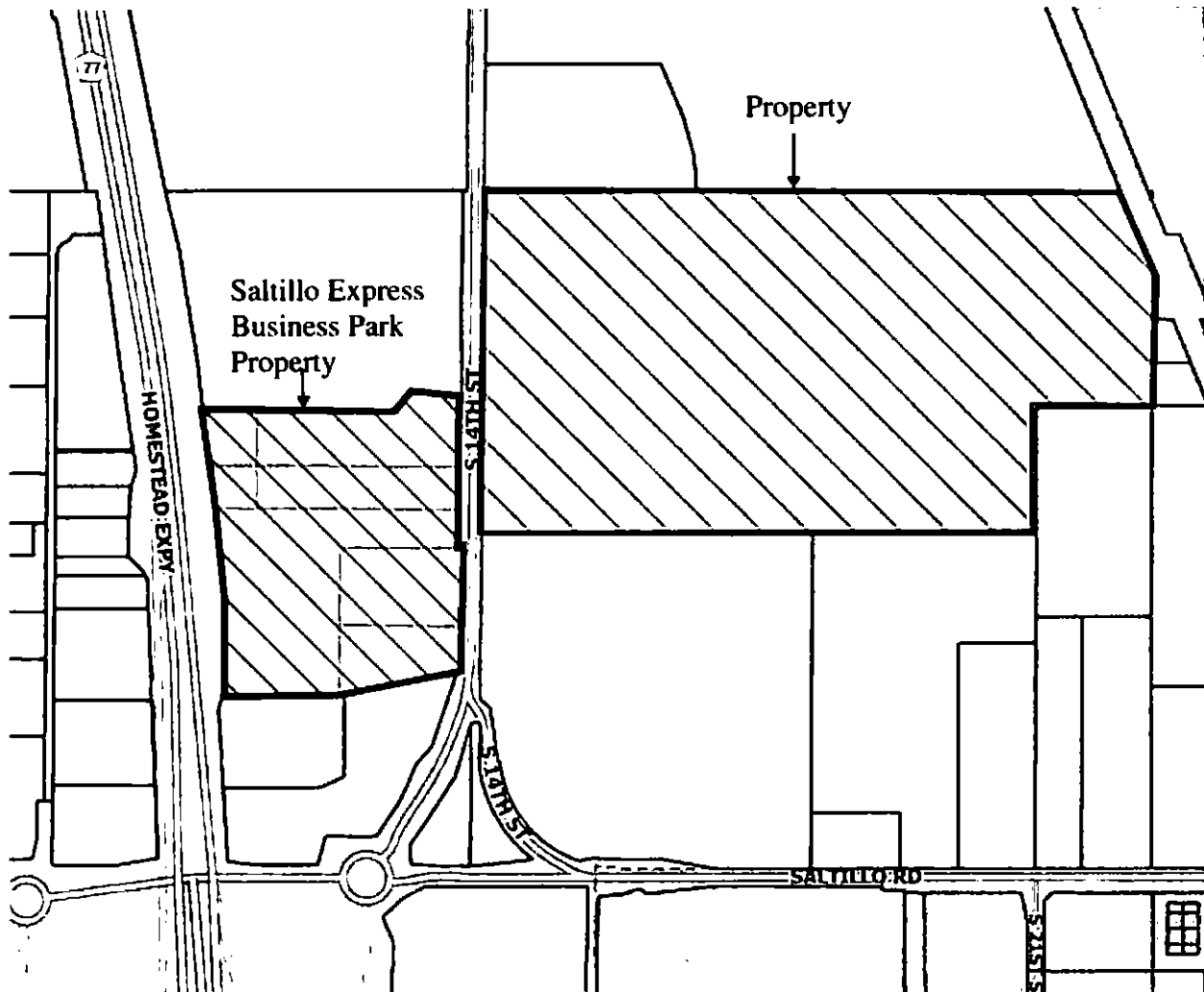


EXHIBIT I

EMERGENCY SERVICES ACCESS EASEMENT TO SALTILLO ROAD

After Recording, Return To:

City of Lincoln City Attorney Office
Attention: Abigail Littrell
555 S. 10th Street
Lincoln, NE 68508

EMERGENCY SERVICES ACCESS EASEMENT

FOG Limited Partnership, a Nebraska limited partnership ("**Property Owner**"), is the record owner of the following two real properties:

Lot 76 of Irregular Tracts in the Southwest Quarter of Section 36, Township 9 North, Range 6 East of the 6th P.M., Lancaster County Nebraska ("**South Property**"); and

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

IN CONSIDERATION of One Dollar (\$1.00) and other valuable consideration, the Property Owner hereby grants a nonexclusive easement and right to the **City of Lincoln, Nebraska**, a municipal corporation ("**City**") for a secondary emergency service access that will be at a minimum rock or aggregate and twelve (12) feet wide for police, fire, ambulances, rescue and emergency services between the future roadway and Saltillo Road right of way (collectively "**Emergency Services Access**") over and across that portion of the South Property shown on Exhibit 1, which is attached hereto and incorporated herein by this reference ("**Easement Premises**"). Said Easement Premises is for Emergency Services Access and is not for general public ingress and egress over the South Property. Subject to the final development plans for the South Property, the Property Owner may request to adjust and relocate the Emergency Service Access route through the South Property. Any request to adjust and relocate the Emergency Service Access route through the South Property shall be subject to the City's written prior approval, which City approval shall not be unreasonably withheld.

Property Owner shall have the duty and responsibility to design and construct the Emergency Services Access to the satisfaction of the Director of Lincoln Transportation and Utilities Department. The Property Owner shall also have the duty and responsibility to maintain, repair and replace the Easement Premises at its own cost and expense and no responsibility thereof shall accrue to the City of Lincoln, Nebraska by reason of its benefits from this Emergency Services Access Easement.

This Emergency Services Access shall be permanent, until and unless either the future South 21st Street or future South 25th Street as generally shown on Exhibit 1 is designed and constructed to provide replacement Emergency Services Access between the future roadway labelled Sweet Spice Lane that is located on the North Property/South Property line as shown on Exhibit 1 and Saltillo Road right of way, in which event, this Emergency Services Access Easement shall terminate and be null and void.

This conveyance is made with the free consent and in accordance with the desire of the Property Owner, and the Easement Premises are hereby conveyed to allow for use by the City for Emergency Services Access.

IN WITNESS WHEREOF, this Emergency Services Access Easement has been executed on this ____ day of _____, 2023.

"PROPERTY OWNER"

FOG Limited Partnership, a Nebraska limited partnership

By: **CJG, LLC**, a Nebraska limited liability company, as General Partner

By: _____
CJ Guenzel, IV, Manager

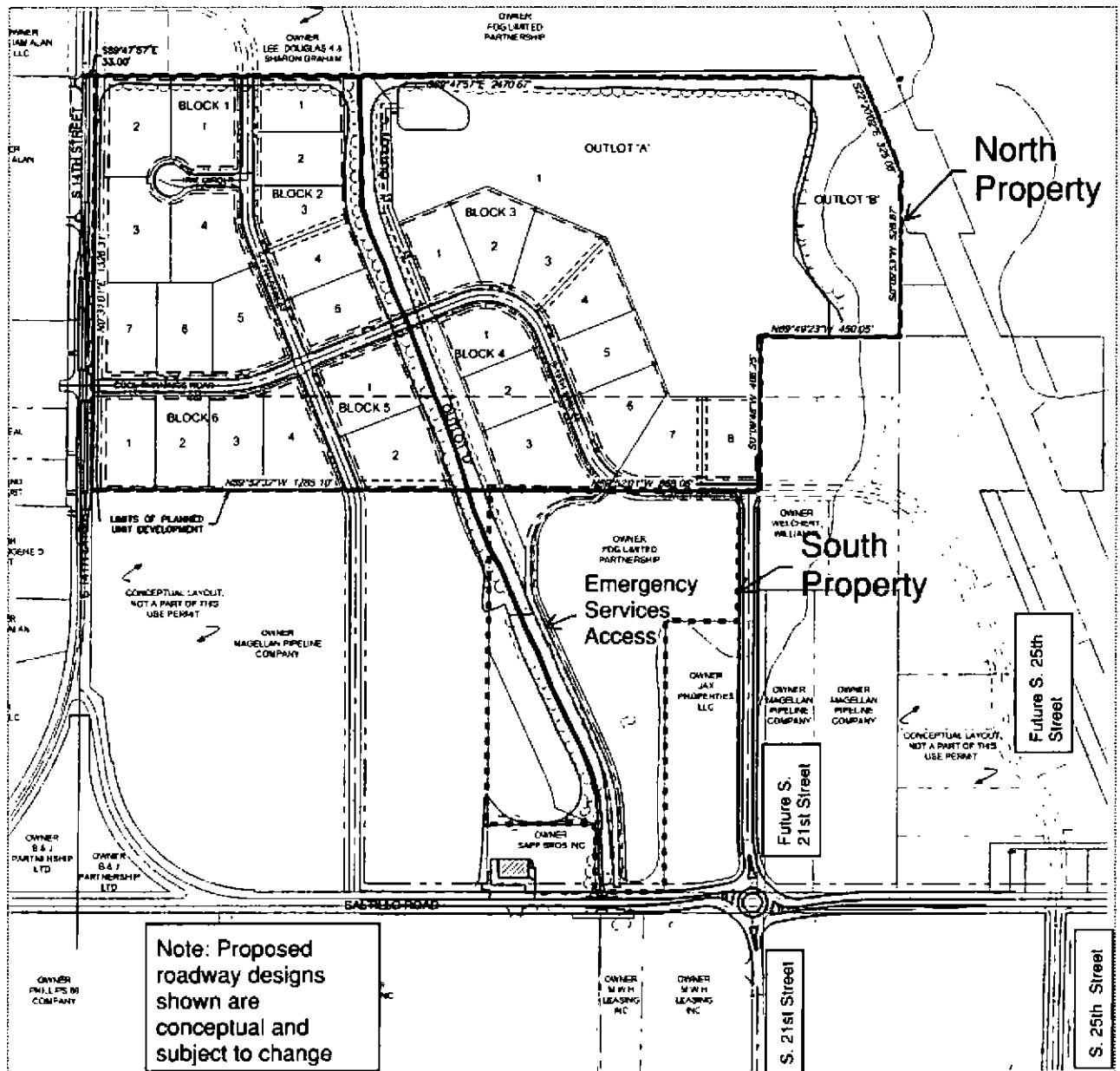
STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me on October __, 2023 by CJ Guenzel, IV who is personally known to me or who produced satisfactory identification and is the identified Manager of CJG, LLC, a Nebraska limited liability company, who is the General Partner of **FOG Limited Partnership**, a Nebraska limited partnership, on behalf of the limited partnership.

(Seal)

Notary Public

Exhibit 1 Emergency Services Access Map



After Recording, Return To:
City of Lincoln City Attorney Office
Attention: Abigail Littrell
555 S. 10th Street
Lincoln, NE 68508

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
JAMAICA NORTH BUSINESS PARK**

This Conditional Zoning and Annexation Agreement for Jamaica North 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**”), **FOG LIMITED PARTNERSHIP**, a Nebraska limited partnership (“**Property Owner**”).

RECITALS

A. The Property Owner is the owner of the real estate described as:

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

The Property is shown on Exhibit A, is generally located to the east side of South 14th Street approximately one-half mile north of Saltillo Road, Lincoln, Nebraska and is 73.5 acres, more or less. The City and Property Owner desires to cause the urban development of the Property.

- B. The Property Owner requests that the Property be annexed into the City of Lincoln Corporate Boundaries in multiple phases as shown on Exhibit B. The portion of the Property to be annexed with the first phase is described on Exhibit C (“**Phase 1 Property**”) and only approved pursuant to this Agreement (AN23002).
- C. The south 300 feet (approximately) of the Property is presently zoned I-1 Industrial District. The remaining north portion of the Property is zoned AG, Agricultural District. Property Owner requests that the City rezone the entire Property to I-3 Employment Center. That portion of the Property to be rezoned from AG and I-1 to I-3 is described on Exhibit D (CZ23014).
- D. Rezoning to I-3 will require the adoption of an I-3 Use Permit which will incorporate a Preliminary Plat (UP23002) and generally shown on Exhibit E.
- E. Property Owner requests that City amend the Future Land Use Plan (Figure GF.b) in the City’s comprehensive plan, to show the Property as “Green Space” and “Industrial” as shown on Exhibit F (CPA 23003).
- F. AN23002, CZ23014, UP23002, and CPA23003 are defined below as Government Actions.
- G. 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 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 Owner is willing to agree to not request City water and City sewer service.

- H. Property Owner represents to City that it has formed an agreement with neighboring property owner Yharnam Ventures, LLC on the west side of 14th Street (“Yharnam”) to conduct a grade study and design and construct arterial street improvements to South 14th Street. Yharnam, in conjunction with other property owners, is developing its property in a project called Saltillo Express Business Park.
- I. The Saltillo Express Business Park property is described as:
- Lots 23, 24, 37, 43, & 53 of the Southeast Quarter of Section 35, Township 9 North, Range 6 East, Lancaster County, Nebraska (“Saltillo Express Business Park Property”).
- J. The City, as a condition of approving the Government Actions, desires an agreement with the Property Owner to be assured that the Property will be annexed and developed in conformance with certain conditions. Property Owner represents to City that, in consideration of the City approving the Government Actions, the Property Owner would enter into this 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 GOVERNMENT ACTIONS;
CONDITIONAL APPROVAL**

1. **Concurrent Approval.** The City, concurrently with the approval of this Agreement, is approving the following “Government Actions”:
 1. Annexing the Phase 1 Property legally described and shown on Exhibit C (AN23002);
 2. Changing the zone of the Property described on Exhibit D from AG Agricultural to I-3 Employment Center (CZ23014);

3. Approving the Use Permit and concurrent Preliminary Plat (UP23002) generally described on Exhibit E; and
 4. Amending the Comprehensive Plan (CPA23003) generally described on Exhibit F.
2. **Conditional Approval.** Approvals of the Government 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.

II.

PHASED DEVELOPMENT OF THE PROPERTY

1. **Subsequent Phases of Annexation.** The City and Property Owner agree that the Phase 1 Property and the remaining portion of the Property (“**Phase 2 Property**”) will be annexed in multiple phases. Phase 1 Property and Phase 2 Property are shown on Exhibit B. The Property Owner and the City agree that the Phase 1 Property will be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future along with change of zone and final plat of the Phase 2 Property.

III.

ARTERIAL STREET IMPROVEMENTS

1. South 14th Street.

- a. South 14th Street Grade Study. Property Owner and Yharnam will fund, subject to reimbursement from the City, and Property Owner will cause Olsson to prepare a grade study (“**Grade Study**”). The Grade Study will include survey, engineering, and any necessary City coordination as required and approved by Lincoln Transportation and Utilities Department (“LTU”) for the section of South 14th Street that includes the South 14th Street Turn Lane Improvements (defined below) and those portions of South 14th Street shown on Exhibit G, which is attached hereto and incorporated herein by this reference. Within ninety (90) days of the date of this Agreement, the Property Owner will produce and send the Grade Study to the City for approval. 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, the Property Owner will invoice the final costs of the Grade Study to the City (“**Grade Study Costs**”). City shall only be obligated to reimburse Property Owner 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 Property Owner 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 the Conditional Zoning and Annexation Agreement for Saltillo Express Business Park (**“Saltillo Express Annexation Agreement”**) and in conformance with Use Permit 23002, as may be amended (**“I-3 Use Permit”**) and this Agreement. Yharnam and Property Owner 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 the Property Owner and the Saltillo Express Business Park Owners. On behalf of the Property Owner, 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 the Property Owner through the Executive Order process to guarantee completion of the South 14th Street Turn Lane Improvements. Regardless of whether Yharnam performs its obligations under Property Owner’s agreement with Yharnam, 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 the Property Owner’s engineer, Olsson, and Yhamam’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. Yhamam and Property Owner have entered into a written South 14th Street Improvement Agreement, dated _____, 2024, whereby Property Owner will implement the Grade Study and Yhamam will implement the South 14th Street Turn Lane Improvements, and Property Owner 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 Saltillo Express Business Park Property as shown on Exhibit H 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 Saltillo Express Business Park Property shall be paid quarterly to the Property Owner 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 Saltillo Express Business Park Property and to be reimbursed to the Property Owner 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, Property Owner agrees 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. The Property Owner 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. The City's out of pocket expenses shall be reimbursed by the Property Owner. In turn, the Property Owner's reimbursement to the City shall be reimbursable by the City to the Property Owner from directed impact fees.
5. **Emergency Services Access Easement to Saltillo Road.** The Property Owner is also the owner of real estate located south of the Property and legally described as Lot 76 of Irregular Tracts in the Southwest Quarter of Section 36, Township 9 North, Range 6 East of the 6th P.M., Lancaster County Nebraska ("**South Property**"). In order to provide a secondary emergency service access for police, fire, ambulances, rescue and emergency services (collectively "**Emergency Services Access**") to the Phase 2 Property, the Property Owner hereby grants to the City an Emergency Service Access Easement to provide Emergency Services Access between the Property and Saltillo Road, which is attached hereto as Exhibit I and incorporated herein by this reference. At a minimum, the Emergency Service Access will be a maintained surface of rock or aggregate and shall be completed and placed in service on or before the City's annexation approval of any portion of the Phase 2 Property shown on Exhibit B. Emergency Service Access shall remain passable at all times.

IV.

SANITARY SEWER, WATER, & OFFSITE DRAINAGE

1. **Public Sanitary Sewer.** Property Owner understands and acknowledges that the Property is not presently sewerable by the City's public sanitary sewer system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Property Owner further understands 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, the Property Owner and the City agree that the Phase 1 Property be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future when final plat(s) are approved for the Phase 2 Property. Therefore, as an inducement for the City to enter into this Agreement, Property Owner agrees that Property Owner shall not request the City to provide the Property 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 all applicable laws and 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 Owner understands and acknowledges that the Property is not presently served by the City's public water system and that the costs to design and construct such infrastructures are not shown in the City's current Capital Improvement Plan. Property Owner further understands 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 Owner desires that the Property be immediately annexed into the City of Lincoln and the Phase 2 Property annexed in the future when final plat(s) are approved.

Therefore, as an inducement for the City to enter into this Agreement, Property Owner agrees that Property Owner 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. City's public water system is not available to provide fire protection services. 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 and 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 phased Property.
4. **Off Site Drainage Improvements:** Abutting the Property on the south side is another parcel legally described as Lot 76 Irregular Tract in the SW ¼ of Section 36, Township 9 North, Range 6 East of 6th Principal Meridian, Lincoln, Lancaster County, Nebraska ("**Lot 76 I.T.**"). The Property Owner shall either (i) final plat an outlot or (ii) record a conservation easement acceptable to the Director of the Planning Department for open space and drainage, dedicate the Minimum Flood Corridor easement and complete all drainage improvements on Lot 76 I.T. per the approved Use Permit, to the satisfaction of Lincoln Transportation and Utilities Watershed Management Division, in order to preserve the Minimum Flood Corridor and to

provide the necessary conveyance in the drainage channel so as to not cause a rise in the 100-year floodplain on adjacent properties.

V.

FIRE PROTECTION

1. **Contribution to Rural Fire District.** Property Owner understands and acknowledges 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 Owner acknowledges that LFR response time to the Property may 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.

VI.

OUTLOT A AND OUTLOT B

1. **Outlot A**. In consideration of the City approving the Government Actions, the use of Outlot A shall be graded to provide additional flood storage and drainage with vegetation restoration

by the Property Owner, at its expense, as shown on the approved I-3 Use Permit, and be restricted for (i) an onsite community wastewater treatment lagoon system that receives wastewater piping system and lift from future commercial lots located upon the Property and (ii) regenerated as prairie and/or wetland open space. The Nebraska Department of Transportation (“NDOT”) owns the real estate (“NDOT Parcel”) described in the Warranty Deed, recorded as Instrument 2019034986 on September 10, 2019 that abuts the north boundary of Outlot A. NDOT has developed wetlands on portions of the NDOT Parcel. NDOT and the Property Owner have initiated conversations to (i) coordinate between them, the City/County, Friends of Wilderness Park and other interested parties on the possible maximization and future development of prairie wetlands and/or forested wetlands, including potential wetland bank(s), on Outlot A and/or the NDOT Parcel and (ii) NDOT potentially supporting the Property Owner’s request to the Army Corps of Engineering to not require a fifty (50) foot buffer between the future wetlands to be created on Outlot A and the shared north boundary line between Outlot A and the NDOT Parcel; provided the design of the wetlands on Outlot A does not materially harm the hydraulics of the existing and future wetlands located upon the NDOT Parcel. Property Owner shall grant a conservation easement over that portion of Outlot A used for flood storage at the same time Outlot A is created.

2. **Outlot B.** Outlot B receives the drainage from portions of the Property and contains a former oxbow of Salt Creek, wooded vegetation, and riparian corridor that has many of the characteristics of Wilderness Park. The Property Owner has expressed its intent to the City to make a charitable gift pursuant to the Internal Revenue Code of 1986, as amended of Outlot B to the City as an open space and buffer to Wilderness Park. The City agrees to work with the Property Owner to complete the acceptance of such a gift to the City. The Property Owner

wishes to make the gift of Outlot B within thirty (30) days after the Property Owner completes the grading, drainage improvements and vegetation restoration of Outlot A and Outlot B as shown on the approved I-3 Use Permit.

VII.

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 Owner, 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 Owner and City agree that the Government Actions promote the public health, safety, and welfare so long as Property Owner fulfill all of the conditions and responsibilities set forth in this Agreement. In the event 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 then-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 the 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 Property Owner.
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 10 th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10 th Street, Suite 300 Lincoln, Nebraska 68508
If to Property Owner:	FOG Limited Partnership Attention: CJ Guenzel 11101 North 78th Street Omaha, NE 68122
With a copy to:	Scacrest & Kalkowski, PC, LLO 3 Landmark Centre 1128 Lincoln Mall, Suite 105 Lincoln, Nebraska 68508

Dated as of April 8th, 2024

FOG LIMITED PARTNERSHIP, a Nebraska
limited partnership

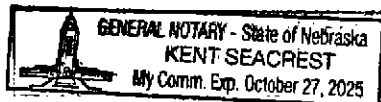
By: CJG, LLC, a Nebraska limited
liability company, as General Partner

By: CJ Guenzel, IV
CJ Guenzel, IV, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Concasto)

Subscribed and sworn to before me on April 8, 2024 by CJ Guenzel, IV who is personally known to me or who produced satisfactory identification and is the identified Manager of CJG, LLC, a Nebraska limited liability company, who is the General Partner of **FOG LIMITED PARTNERSHIP**, a Nebraska limited partnership, on behalf of the limited partnership.

(Seal)



Kent Seacrest

Notary Public

Exhibit A

THE PROPERTY



EXHIBIT B
ANNEXATION PHASES

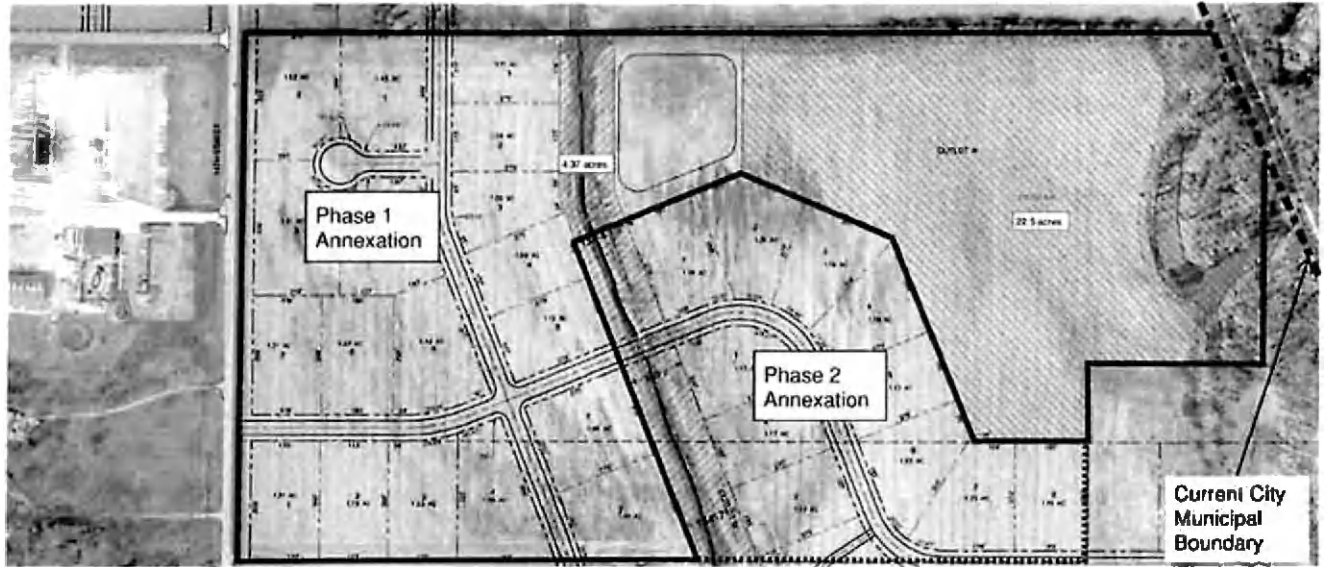


EXHIBIT C

PHASE 1 ANNEXATION PROPERTY (AN23002)

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTHLINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°07'54"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 196.65' TO A POINT; THENCE N89°51'41"W, A DISTANCE OF 288.37' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 650.64' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.85' TO A POINT; THENCE N89°51'22"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1158.75' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,326.31' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 2,407,255.64 SQUARE FEET OR 55.26 ACRES, MORE OR LESS.

EXHIBIT D

Change of Zone #23014



LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTHLINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°07'54"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 196.65' TO A POINT; THENCE N89°51'41"W, A DISTANCE OF 288.37' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 650.64' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.85' TO A POINT; THENCE N89°51'22"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1158.75' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,326.31' TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 2,407,255.64 SQUARE FEET OR 55.26 ACRES, MORE OR LESS.

FEBRUARY 24, 2023

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LEGAL DESCRIPTION

AG TO I-3

A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER AND A PORTION OF LOT 49 I.T., LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER ALL IN SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING, S89°47'57"E ON SAID LINE, AND ON THE NORTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 2,470.67' TO A POINT; THENCE S22°20'02"E, ON AN EAST LINE OF SAID LOT 49 I.T., SAID LINE BEING A WEST RIGHT-OF-WAY LINE OF THE FORMER UNION PACIFIC RAILROAD, A DISTANCE OF 325.06' TO A POINT; THENCE S00°09'53"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 526.87' TO A POINT; THENCE N89°49'23"W, ON A SOUTH LINE OF SAID LOT 49 I.T., A DISTANCE OF 450.05' TO A POINT; THENCE S00°09'48"W, ON AN EAST LINE OF SAID LOT 49 I.T., A DISTANCE OF 198.65' TO A POINT; THENCE N89°51'41"W, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT A DISTANCE OF 288.26' TO A POINT; THENCE N21°46'50"W, A DISTANCE OF 549.82' TO A POINT; THENCE N66°46'50"W, A DISTANCE OF 420.84' TO A POINT; THENCE S68°13'10"W, A DISTANCE OF 456.55' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 543.95' TO A POINT; THENCE N89°51'41"W, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT, A DISTANCE OF 1,050.17' TO A POINT; THENCE N00°31'01"E, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,026.30'; TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 2,075,369.11 SQUARE FEET OR 47.64 ACRES, MORE OR LESS.

TOGETHER WITH

I-1 TO I-3

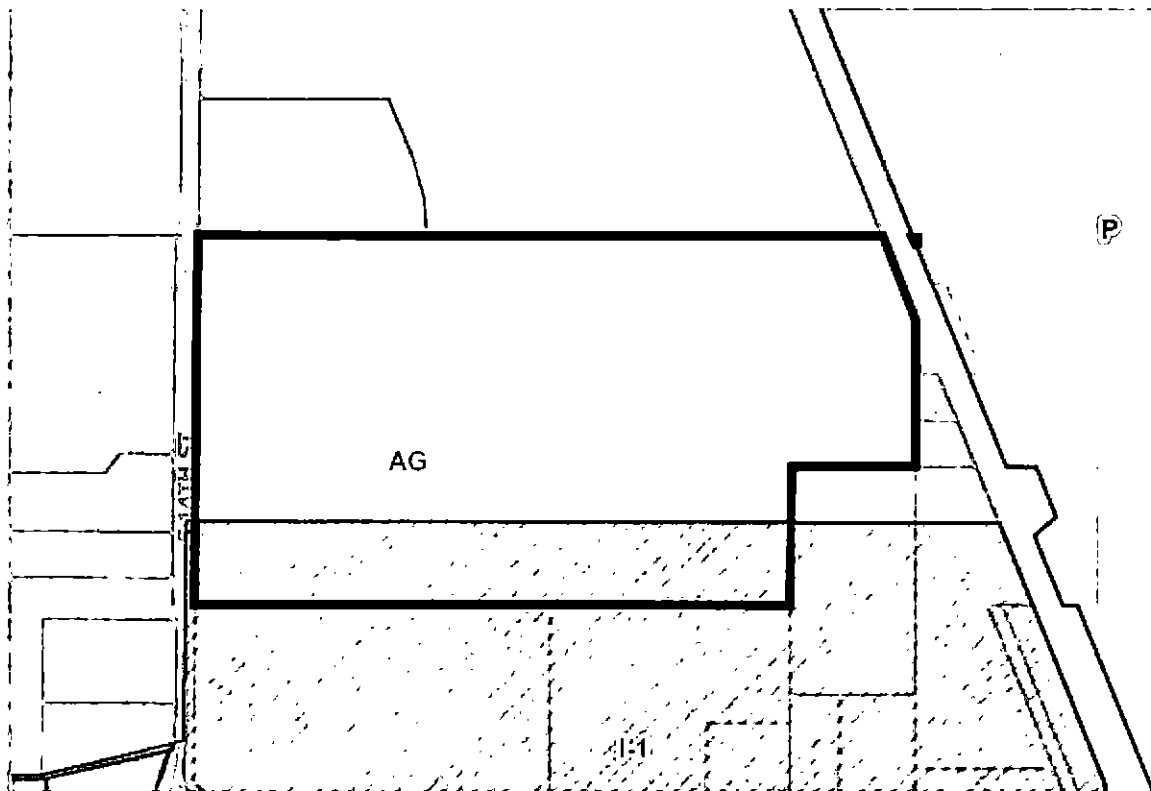
A TRACT OF LAND COMPOSED OF A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, LOCATED IN SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA; THENCE S89°47'57"E, ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 33.00' TO A POINT; THENCE S00°31'01"W, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,026.30 TO

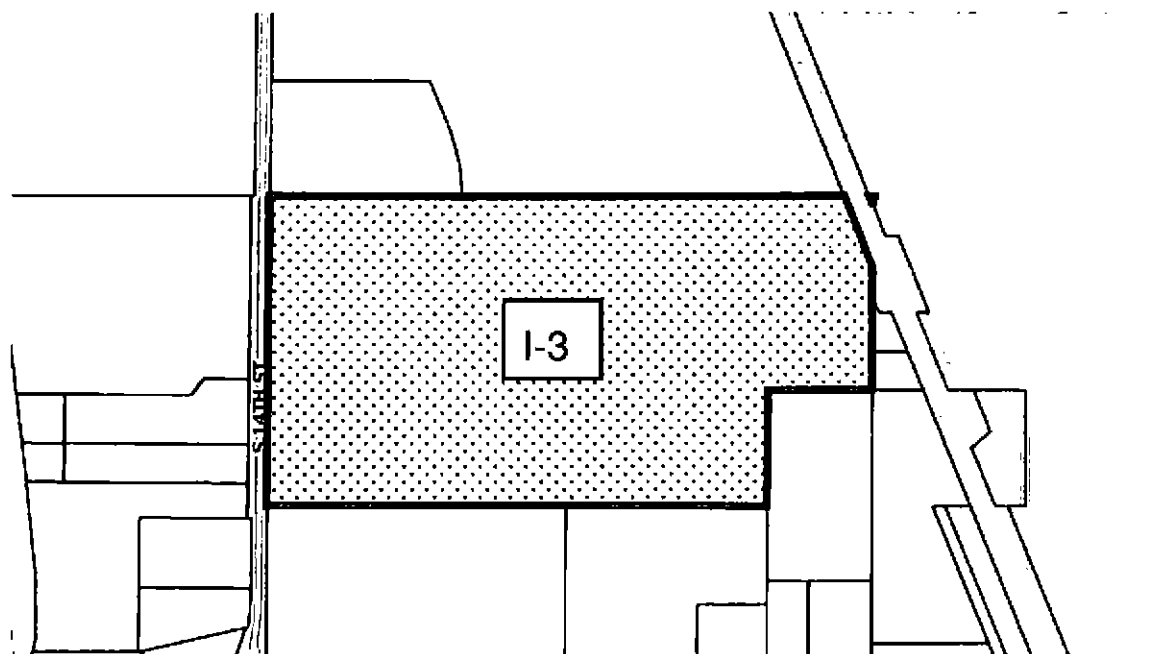
THE TRUE POINT OF BEGINNING; THENCE S89°51'41"E, ON THE APPROXIMATE COMMON LINE BETWEEN THE AG AND I-3 ZONING DISTRICT, A DISTANCE OF 1,050.17' TO A POINT; THENCE S21°46'50"E, A DISTANCE OF 106.69' TO A POINT; THENCE S18°15'42"E, A DISTANCE OF 211.55' TO A POINT; THENCE N89°52'32"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,158.75' TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE N00°30'58"E, ON A LINE 33' EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 300.00'; TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 331,877.92 SQUARE FEET OR 7.62 ACRES, MORE OR LESS.

FOR A COMBINED TOTAL CALCULATED AREA OF 2,407,247.03 SQUARE FEET OR 55.26 ACRES, MORE OR LESS

CURRENT ZONING MAP



NEW ZONING MAP

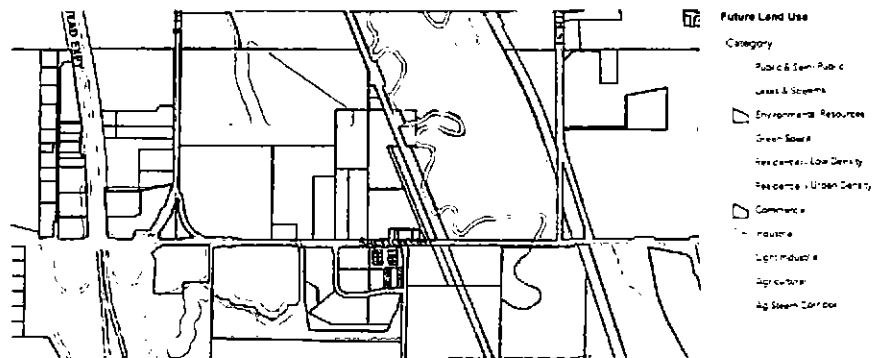


USE PERMIT MAP OF THE PROPERTY

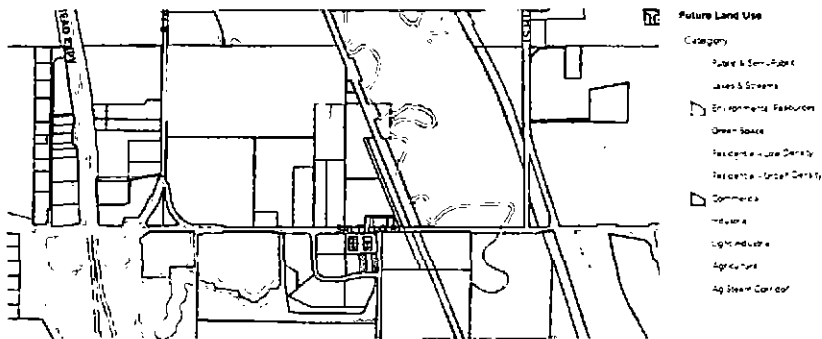
EXHIBIT F

FUTURE LAND USE PLAN

Current Future Land Use Plan



Proposed Future Land Use Plan Amendment



[illegible]

EXHIBIT H
IMPACT FEE AREA MAP

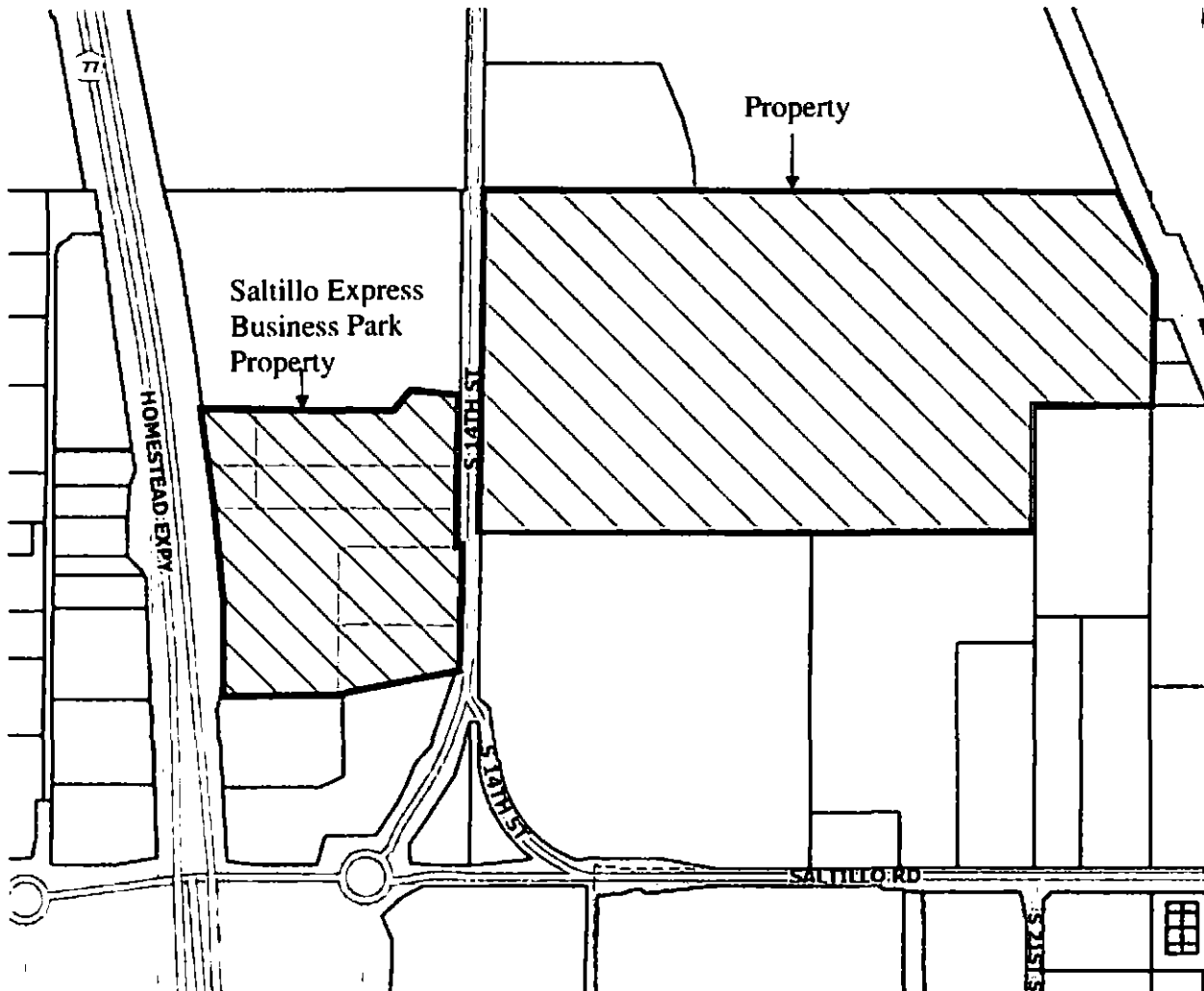


EXHIBIT I

EMERGENCY SERVICES ACCESS EASEMENT TO SALTILLO ROAD

After Recording, Return To:

City of Lincoln City Attorney Office
Attention: Abigail Littrell
555 S. 10th Street
Lincoln, NE 68508

EMERGENCY SERVICES ACCESS EASEMENT

FOG Limited Partnership, a Nebraska limited partnership ("**Property Owner**"), is the record owner of the following two real properties:

Lot 76 of Irregular Tracts in the Southwest Quarter of Section 36, Township 9 North, Range 6 East of the 6th P.M., Lancaster County Nebraska ("**South Property**"); and

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

IN CONSIDERATION of One Dollar (\$1.00) and other valuable consideration, the Property Owner hereby grants a nonexclusive easement and right to the **City of Lincoln, Nebraska**, a municipal corporation ("**City**") for a secondary emergency service access that will be at a minimum rock or aggregate and twelve (12) feet wide for police, fire, ambulances, rescue and emergency services between the future roadway and Saltillo Road right of way (collectively "**Emergency Services Access**") over and across that portion of the South Property shown on Exhibit I, which is attached hereto and incorporated herein by this reference ("**Easement Premises**"). Said Easement Premises is for Emergency Services Access and is not for general public ingress and egress over the South Property. Subject to the final development plans for the South Property, the Property Owner may request to adjust and relocate the Emergency Service Access route through the South Property. Any request to adjust and relocate the Emergency Service Access route through the South Property shall be subject to the City's written prior approval, which City approval shall not be unreasonably withheld.

Property Owner shall have the duty and responsibility to design and construct the Emergency Services Access to the satisfaction of the Director of Lincoln Transportation and Utilities Department. The Property Owner shall also have the duty and responsibility to maintain, repair and replace the Easement Premises at its own cost and expense and no responsibility thereof shall accrue to the City of Lincoln, Nebraska by reason of its benefits from this Emergency Services Access Easement.

This Emergency Services Access shall be permanent, until and unless either the future South 21st Street or future South 25th Street as generally shown on Exhibit 1 is designed and constructed to provide replacement Emergency Services Access between the future roadway labelled Sweet Spice Lane that is located on the North Property/South Property line as shown on Exhibit 1 and Saltillo Road right of way, in which event, this Emergency Services Access Easement shall terminate and be null and void.

This conveyance is made with the free consent and in accordance with the desire of the Property Owner, and the Easement Premises are hereby conveyed to allow for use by the City for Emergency Services Access.

IN WITNESS WHEREOF, this Emergency Services Access Easement has been executed on this ____ day of _____, 2023.

“PROPERTY OWNER”

FOG Limited Partnership, a Nebraska limited partnership

By: CJG, LLC, a Nebraska limited liability company, as General Partner

By: _____
CJ Guenzel, IV, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me on October __, 2023 by CJ Guenzel, IV who is personally known to me or who produced satisfactory identification and is the identified Manager of CJG, LLC, a Nebraska limited liability company, who is the General Partner of **FOG Limited Partnership**, a Nebraska limited partnership, on behalf of the limited partnership.

(Seal)

Notary Public

Exhibit 1 Emergency Services Access Map

