



RESOLUTION NO. A- 93303

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

2 That the Annexation and Change of Zone Agreement for Wilderness Crossing which is
3 attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City
4 of Lincoln, and Wilderness Crossing, LLC, ("Developer") for the annexation of the property
5 generally located west of South 1st and south of Pioneers Boulevard and re-zoning the property
6 from AG Agricultural District to R-3 Residential with a Planned Unit Development, as set forth in
7 the Agreement, is hereby approved and the Mayor is authorized to execute the Annexation and
8 Change of Zone Agreement on behalf of the City.

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

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Annexation and
12 Change of Zone Agreement for Wilderness Crossing with the Lancaster County Register of Deeds
13 with the recording fees to be paid in advance by the Developer.

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

See further Council
Proceedings on next page.

Introduced by:

Bruce Shobe

AYES: Beckius, Bowers, Meginnis, Shobe, Ward,
Washington; NAYS: Raybould.

Approved as to Form & Legality:

Johanna...
City Attorney

ADOPTED
APR 25 2022
BY CITY COUNCIL

Approved this 5th day of MAY, 2022:
Georion Gaylor Baird
Mayor

22R-132

04/25/22 Council Proceedings:

RAYBOULD Verbal Motion to Delay Bill No. 22R-132 for 3 weeks.

Seconded by Washington & carried by the following votes: AYES: Raybould, Washington;
NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

**ANNEXATION AND CHANGE OF ZONE AGREEMENT
FOR WILDERNESS CROSSING**

This Annexation Agreement ("Agreement") is made and entered into as of this ___ day of _____, 2022 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Wilderness Crossing, LLC**, a Nebraska limited liability company ("Wilderness Crossing"), hereinafter also referred to as the "Developer".

RECITALS

1. Wilderness Crossing controls and intends to acquire fee simple title to and to develop a tract of the real property generally located west of South 1st Street and south of Pioneers Boulevard, Lancaster County, Nebraska. The Property is shown on Exhibit A and is legally described as:

S10, T9, R6, 6th Principal Meridian, Lot 59 NE, Lancaster County, Nebraska

(the "Developer Property").

Wilderness Crossing desires to cause the urban development of the Developer Property.

2. Wilderness Crossing has requested that the City annex the Developer Property into the corporate limits of the City as part of AN21013. AN21013 includes additional property not owned by Developer. The entire annexation area for AN21013 is shown on Exhibit B.

3. Wilderness Crossing has requested that the City rezone that portion of the Developer Property from AG to R-3 Residential with a Planned Unit Development zoning overlay which is shown also on Exhibit "A" (CZ21057).

4. The Lincoln-Lancaster County Planning Department has made application for a Comprehensive Plan Amendment to the Lincoln-Lancaster County 2050 Comprehensive Plan to designate a small portion in the northwest corner of the Developer Property as Commercial (CPA22001).

5. The City's approval of the Annexation, Change of Zone, and Comprehensive Plan Amendment are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the use permits, special permits, preliminary plats, and final plats for the balance of the Developer Property pursuant to the Comprehensive Plan (collectively "Subsequent Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area. All preliminary plats, final plats, and other land use applications concerning the Developer Property shall be considered pursuant to the City's Comprehensive Plan, land development ordinances, applicable design standards, and the terms and conditions of this Agreement.

7. This Agreement identifies the Developer's and City's responsibilities regarding the construction of infrastructure improvements necessitated by the development of the Developer Property.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

I.

DEFINITIONS

1. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Paragraph 1; all other defined terms are as shown in other provisions of this Agreement.

- a. "Construct" or "construction" means installation of the infrastructure components according to the City's standard specifications and shall also include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- b. "Cost", "cost and expense", "expense" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing and inspection expenses, acquisition of right-of-way or easements from a party other than the Developer, construction costs, publication costs, financing costs, and related miscellaneous costs.

II.

CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;

CONDITIONAL APPROVAL

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the Property shown on Exhibit “B”; and
2. Amending the Lincoln zoning district maps to adopt the Change of Zone of the Property on Exhibit “A”.
3. Approving CPA22001.

B. 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 Developer 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.

III.

STREET IMPROVEMENTS

A. South 1st & Pioneers Boulevard.

1. Developer will, at a minimum, design and construct temporary left and right turn lanes at the intersection of South 1st Street & Pioneers Boulevard as a requirement of the first final plat within the Phase I development as described in the PUD. Developer acknowledges that construction of temporary turn lanes at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent left and right turn lanes at this intersection. Turn lane improvements will only be eligible for impact fee

reimbursement if they conform to the future grade elevation as determined by Lincoln Transportation and Utilities (LTU).

B. Southwest 2nd & Pioneers Boulevard.

1. Prior to application for building permits for any commercial uses (not including exclusive multifamily use) on the Developer Property, Developer shall, at a minimum, design and construct temporary left and right turn lanes at the intersection of Southwest 2nd & Pioneers Boulevard. Developer acknowledges that construction of temporary improvements at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent improvements in the form of round-about at this intersection.

C. Arterial Street Impact Fees:

1. City agrees that the Arterial Street Intersection Improvements described in subsections A.2 and B.2 of this Article are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. Therefore, if Developer elects to construct permanent intersection improvements, City agrees that it shall reimburse Developer for the South 1st & Pioneers Boulevard and Southwest 2nd & Pioneers Boulevard Street Intersection Improvements from the arterial street impact fees generated by development of the Developer Property, and by development of:

- Lot 29 NW, S11, T9, R6, 6th P.M. Lancaster County, Nebraska; and
- Lot 60 SE, S10, T9, R6, 6th P.M., Lancaster County, Nebraska (“Other Impact Fee Properties”),

which are all benefited by the Arterial Street Intersection Improvements. Said reimbursement from arterial street impact fees generated by development of the

Developer Property and Other Impact Fee Properties shall be paid quarterly as arterial street impact fees are received. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City.

2. Should Developer elect to construct impact fee ineligible temporary improvements, City shall use the arterial street impact fees generated from development of the Developer Property and Other Impact Fee Properties as permitted by Lincoln Municipal Code. City shall reserve arterial street impact fees generated from the Developer Property and Other Impact Fee Properties, and not expend on other arterial street projects in the area, until the intersections at both South 1st & Pioneers Boulevard and Southwest 2nd & Pioneers Boulevard are improved with either temporary or permanent improvements.

D. Local Streets/ Driveways

1. The Wilderness Crossing Development, as described in the PUD, requires relocation of South 1st Street. Said relocation will necessitate the extension or relocation of the driveways for the properties located at 4700 & 4800 South 1st Street. Developer agrees to pay any and all costs to relocate or extend both driveways.
2. If Developer elects to extend the driveway at 4800 South 1st Street and the extended driveway is less than 250 feet (measured as the distance from the property line to the new South 1st Street right of way), the extended driveway may remain surfaced with gravel. If the driveway distance between the property line and the new South 1st Street right of way is more than 250 feet, the newly constructed driveway shall be surfaced in asphalt.

- E. Dedication of Street Right-of-Way.** At the time of final platting or prior to construction of the intersection improvements described in subsections A and B above, Developer agrees to dedicate, at no cost to City, additional right-of-way to the satisfaction of the Lincoln Transportation and Utilities Department (LTU). Wilderness Crossing shall dedicate and convey to City the necessary right of way for the construction and operation of turn lanes at South 1st & Pioneers Boulevard and for the construction and operation of a roundabout at Southwest 2nd & Pioneers Boulevard. Developer shall dedicate and convey, at no cost to the City, the necessary right of way for Internal Streets located within the Developer Property.
- F. Vacation.** At such time as relocated S. 1st Street is completed, City agrees to vacate South 1st Street from Pioneers Blvd to the southern end of the development as shown in the PUD and deed the west approximate 67 feet of vacated South 1st Street to Developer in exchange for Developer's dedication of a new South 1st Street right of way within the PUD at final plat.

III.

PUBLIC WATER INFRASTRUCTURE

- A. Public Water Mains:** Developer shall design and construct twelve (12) inch water mains (i) from Old Cheney Road to Pioneers Blvd; and (ii) from relocated S. 1st Street to the western property line in the mid-section of the Developer Property. City agrees that if a future adjacent property owner taps the water main from Old Cheney Road constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its water main construction costs associated with constructing a typical 6-inch water line as permitted by Lincoln Municipal Code 17.10.110.

B. Oversizing: City shall be responsible for all costs attributable to oversizing the water mains with pipe, valves, fitting and all other accessories that are larger than 6-inches. If required, the Water Lines shall be publicly bid and awarded as provided by law.

IV.

SANITARY SEWER

Developer shall design and construct an eight (8) inch sanitary sewer main from Old Cheney Road to the Developer Property at its own cost. City agrees that if a future adjacent property owner taps the sanitary sewer main constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its sanitary sewer construction costs as permitted by Lincoln Municipal Code 24.52.010.

NOTICE

A. Notice. Any notices required to be forwarded to a Party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
575 South 10th Street
Lincoln, NE 68508

(2) If to Wilderness Crossing, LLC:

Wilderness Crossing, LLC
Sam Manzitto, Jr.
4400 Lucile Drive, Suite 201
Lincoln, NE 68516

with a copy to:

DaNay Kalkowski
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

Any Party hereto may change its address for notification purposes by written notice to all Parties hereto in the manner and method set forth within this paragraph.

VI.

MISCELLANEOUS

A. Release of Platted Lot. Notwithstanding any contrary provisions herein, any Platted Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. A “Platted Lot” shall mean a lot as defined by the City subdivision ordinances that has been lawfully included within a final plat of the Developer Property, or portion thereof.

C. Contribution to Rural Fire Protection District. Wilderness Crossing understands and acknowledges that the City’s annexation of the Developer Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection 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 the Developer Property or any portion thereof being annexed.

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

Exhibit “A” Developer Property Map

Exhibit “B” AN21013 Annexation Area Map

D. Amendments. This Agreement may only be amended or modified in writing signed

by the Parties to this Agreement.

E. 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.

F. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

G. 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.

H. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

I. Relationship of 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, Developer, or by any third person to create the relationship of partnership or of joint venture or of any association between the Parties other than the contractual relationship stated in this Agreement.

J. Assignment. In the case of the assignment of this Agreement by any of the Parties, prompt written notice shall be given to the other Parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release

in writing is given and signed by the other Parties to this Agreement or unless otherwise stated herein.

K. Default. In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may 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 Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

L. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Developer Property.

M. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. Cooperation. Whenever a Party's approval or consent shall be required under this Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. A Party whose approval or consent is requested under the terms of this Agreement shall either provide the approval requested to the requesting party within fourteen (14) days of receiving the request for such approval or consent or notify the requesting Party that the receiving Party is denying such approval or consent within fourteen (14) days of receiving the request. Any refusal must state the reasonable ground for the refusal to grant such approval or consent. Each undersigned Party will whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

O. Authority. The City has the authority to engage in the reimbursements to

Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: *Leirion Gaylor Baird*
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 4th day of May, 2022, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

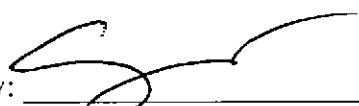
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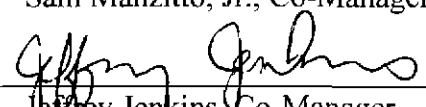


Brandi Lehl
Notary Public

“WILDERNESS CROSSING”

WILDERNESS CROSSING, LLC,
a Nebraska limited liability company

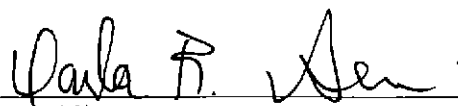
By: 
Sam Manzitto, Jr., Co-Manager

By: 
Jeffrey Jenkins, Co-Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 5 day of April, 2022, by Sam Manzitto, Jr., Co-Manager of Wilderness Crossing, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal) 


Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 5 day of April, 2022, by Jeffrey Jenkins, Co-Manager of Wilderness Crossing, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal) 

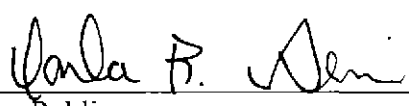
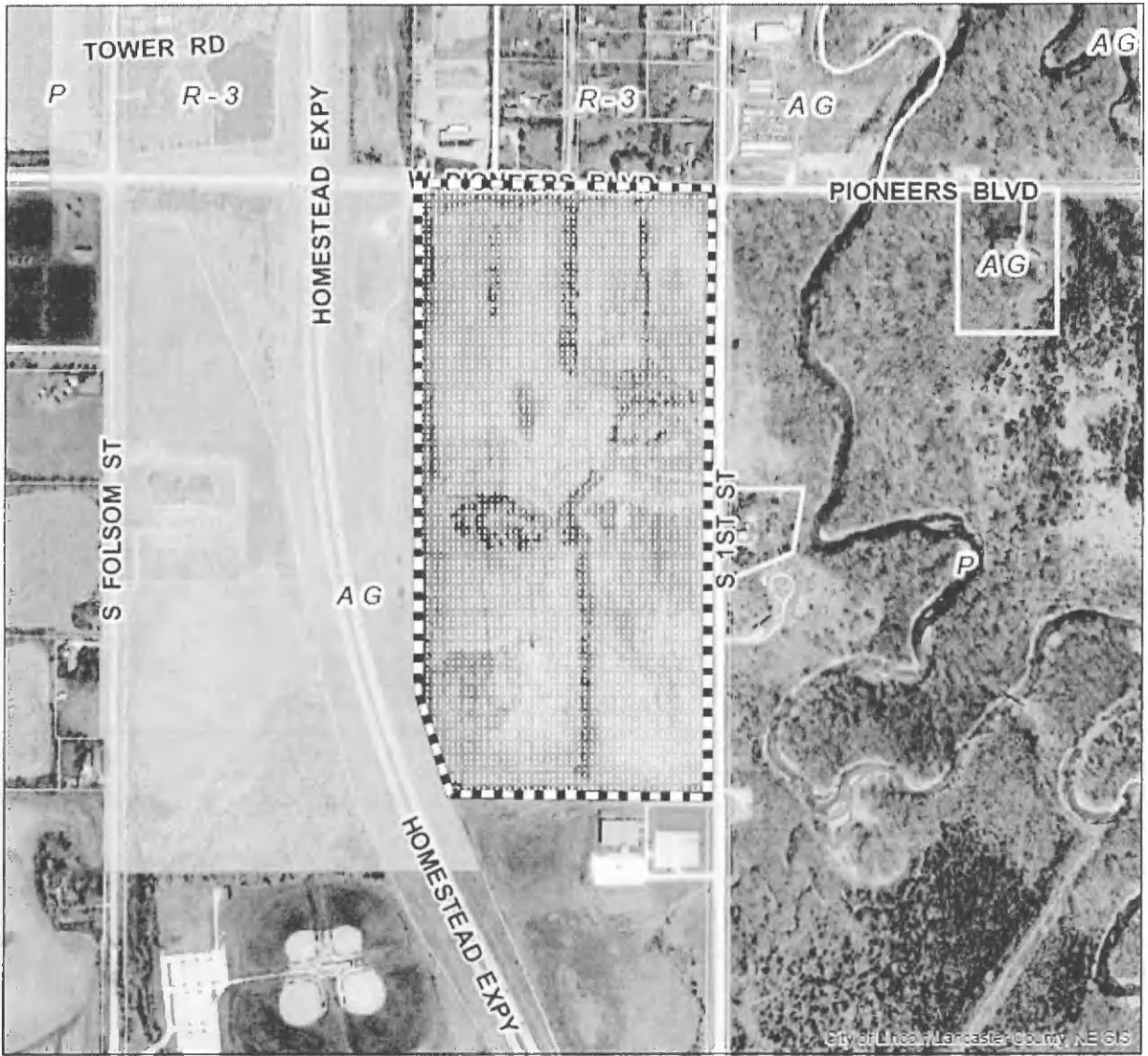

Notary Public

EXHIBIT A
DEVELOPER PROPERTY



S10, T9, R6, 6th Principal Meridian, Lot 59 NE, Lancaster County, Nebraska

EXHIBIT B
AN21013 Entire Annexation Area

