

ORDINANCE 2021-38

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND VILLAGE ADMINISTRATOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH SB LANE CRABTREE LLC AND WILLIAM LANE, TRUSTEE OF THE W.M. LANE TRUST DATED JUNE 14, 1994 FOR THE ANNEXATION OF 152.469 +/- ACRES INTO THE VILLAGE OF COMMERCIAL POINT.

WHEREAS, SB Crabtree LLC and William Lane, Trustee of the W.M. Lane Trust dated June 14, 1994 ("Landowners") own approximately 152.469 +/- acres in Scioto Township, Pickaway County, Ohio, and Jackson Township, Franklin County, Ohio, which is contiguous with the boundaries of the Village of Commercial Point; and

WHEREAS, the Landowners desire to develop or contract to develop the entire 152.469 +/- acres for commercial and/or industrial use; and

WHEREAS, the Village has negotiated a proposed, written Pre-Annexation Agreement with the Landowners setting forth each party's respective rights and duties with regard to the 152.469 +/- acreage proposed for annexation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO THAT:

**SECTION 1. Authorizing and Directing Mayor and Village Administrator to Enter into Pre-Annexation Agreement.** The Council of the Village of Commercial Point hereby authorizes and directs the Mayor and Village Administrator to enter into a Pre-Annexation Agreement in a form substantially similar to, and on substantially the same terms as, the Pre-Annexation Agreement attached hereto as Exhibit A and incorporated herein by reference, to provide for the annexation of approximately 152.469 acres owned by Landowners.

**SECTION 2. Open Meetings Certification.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 3. Effective Date.** This Ordinance shall take effect and be in force from the earliest date allowed by law.

Vote on Passage of the Ordinance:

Motion by: Jason Thompson 2nd: Aaron Grassel

Roll Call:

Yes Jason Thompson

Yes Aaron Grassel

Yes Ryan Mitchem

Yes Nancy Geiger

Yes Tracy Joiner

Yes Laura Wolfe

Adopted this 15<sup>th</sup> day of November, 2021.

Allan D. Goldhardt  
Allan D. Goldhardt, Mayor

Wendy Hastings  
Wendy Hastings, Fiscal Officer

Approved as to Form:

Joshua Cartee  
Joshua Cartee, Village Solicitor

**Exhibit A**  
**to**  
**Ordinance 2021-38**

**PRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between SB Lane Crabtree LLC and William Lane, Trustee of the W.M. Lane Trust dated June 14, 1994 (hereinafter the "Landowner") and the Village of Commercial Point, Ohio, an Ohio municipal corporation organized and existing under the Constitution and laws of the State of Ohio (hereinafter the "Village"), under the circumstances summarized in the following recitals. The Landowner and Village may collectively be referred to as "Parties" throughout this Agreement.

**RECITALS:**

**WHEREAS**, Landowner owns or controls approximately 152.469 +/- acres of land located on the east side of SR 104 (which land is depicted on **Exhibit A** and referred to herein as the "Property") which is adjacent to the boundaries of the Village; and

**WHEREAS**, Landowner seeks the development of the Property; and

**WHEREAS**, the Property would benefit from certain Village services, including centralized utilities, police protection and comprehensive planning and zoning services; and

**WHEREAS**, the Village is capable of providing and hereby agrees to offer its municipal services to the Property if the Property is annexed to the Village; and

**WHEREAS**, the Parties agree that it is in their mutual interest during the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of Landowner and the Village; and

**NOW THEREFORE**, in consideration of the covenants and agreements contained herein, Landowner and the Village covenant and agree as follows:

**Section 1. Annexation Petitions and Related Approvals.**

**A. Petition(s) for Annexation; Annexation.** Landowner agrees to prepare or has already prepared, at its expense, an annexation petition, map, legal description and other related information, as may be required by the Ohio Revised Code ("ORC"), to annex the Property, together with other property which may be adjacent, to the Village. Any additional property necessary to obtain contiguity may be included in the annexation with the

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Village's consent. The annexation process shall be an "Expedited Type II" annexation as provided in ORC Section 709.023. Landowner agrees that they will execute (or have already executed) any necessary annexation petitions, as appropriate, and will not remove names from the petitions within the statutory period, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law. The petition will be filed with the Pickaway County Commissioners. Landowner agrees the costs for its attorney to represent its interests with regard to the annexation petition, will be borne by Landowner. Landowner further agree that they will continue to support the annexation to the Village throughout the process, including any appeal or court action; provided, however, Landowner's continued cooperation in the annexation of the Property shall be subject to and conditioned upon the Village's performance of its duties and obligations as memorialized in this Agreement and the economic viability to Landowner to continue to so cooperate.

**B. Village Service Resolution.** Pursuant to and in accordance with the ORC, the Village agrees to enact, prior to twenty (20) days after the date of filing the annexation petition(s) with the Board of County Commissioners of Pickaway County, Ohio (the "Commissioners"), the appropriate Service Resolution stating that the services that will be provided to the Property upon annexation, subject to and conditioned upon the capacity and availability of such Village services, on a first come first served basis, as and when such service capacity is available. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners.

**C. Development Considerations.** Landowner's intended use of the Property (the "Intended Use") is warehouse-industrial with potential of retail along the road frontage. Landowner anticipates a development with these Intended Uses which is identified in the attached Concept Plan for the Property, attached hereto as **Exhibit B.**

The Property is currently subject to the Scioto Township zoning ordinance. The parties agree that, upon filing of the annexation petition for the Property, Landowner will file an application to rezone the Property with a preliminary development plan and development standards text, if so requested by the Village, pursuant to the Codified Ordinances of the Village of Commercial Point. Upon filing, the Village shall refer such application to the Village Council for its review and consideration in accordance with the applicable provisions of the Codified

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Ordinances and Zoning Code of the Village of Commercial Point. Such review and consideration shall occur during the pendency of the annexation process. The Village's staff and administration agree that, if the rezoning application is generally consistent with the Intended Use and **Exhibit B** attached hereto, the application will be supported by staff as responsive to the planning and zoning plans, principles and objectives of the Village of Commercial Point. The Village understands it has one hundred twenty (120) days to accept the annexation after the annexation petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of the Village and laid before Council (ORC Section 709.04). In the event such a request is made by Landowner, the Village agrees to delay acceptance of the annexation until legislative approval of the zoning can be accomplished contemporaneously with the acceptance of the annexation. If, for some reason, the zoning ordinance cannot be approved in a form or substance acceptable to Landowner, the Village agrees, upon request, to permit Landowner to withdraw its request to annex the property to the Village and/or to forbear from acceptance of the annexation by allowing the 120-day period to expire, thus effectively rejecting the annexation of the Property. If the annexation approval occurs prior to or other than concurrently with the legislative approval of the zoning, and the zoning is subsequently not approved substantially in accordance with **Exhibit B** (or as it may be modified acceptably to Landowner and Village staff) or is referred or a moratorium is enacted which would limit Landowner's use of the Property, Village agrees, at Landowner's request: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval of the rezoning or referral to a vote of the electorate or the enactment of the building moratorium, at the requests of Landowner; or (ii) to detach/de-annex the Property from the Village or not oppose any owner's petition to detach/de-annex its part of the Property from the Village at no cost to Landowner.

**D. Approval and Permit Regulation.**

(i) **Compliance Statement.** Nothing in this Agreement shall absolve the Parties hereto from the responsibility to comply with the zoning and development plan process before the Village Council in accordance with the codified ordinances and Zoning Code of the Village.

(ii) **Council Action.** The obligations of and agreements by the Village contained herein shall be effective and enforceable upon the approval of all necessary legislation and/or motions by Council. It

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is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent Council actions implementing this Agreement shall be considered to be in furtherance of this Council Action.

(iii) **Permits.** Landowner will obtain all necessary permits from all levels of government to allow the construction and development of the Property consistent with its Intended Use and Exhibit B.

(iv) **Utilities.** Provided such services can be obtained via public easements, Landowner will obtain all necessary public services (sanitary sewer and water) from the Village, and shall pay all necessary and customary tap fees and capacity charges to the Village to connect the Property to Village utilities in accordance with current Village requirements. The Parties to this Agreement acknowledge that, at this time sufficient sanitary sewer treatment capacity necessary to support and service the entire Property as it is contemplated under this Agreement may not be available from the Village. For this reason, the Village's Services Resolution shall specifically state that with regard to sanitary sewer treatment, the provision of such services to the Property are subject to and conditioned upon the then available plant capacity at the time of development which shall be provided on a first come first served basis when such service capacity is available. At the discretion of and at the request of the Village Administration, the Landowner will agree to place appropriate limits on the issuance of building permits as a condition of any approved rezoning of the Property and to make any approved Development Plan subject to such capacity limits and to limit the constructability of the Property, in a manner consistent with any ongoing sanitary sewer treatment capacity limitations, and until such capacity and supply limitations are resolved and such services are made available. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to limit the Landowner's ability to continuously develop the Property and/or the Landowner's right to access the Village's sanitary sewer service once those services are made available by the Village at sufficient capacities.

(v) **Real Property Tax Abatement.** Subject to additional legislation acts, and as an inducement by the Village to Landowner to annex the Property to the Village, the Village intends to adopt a Community Reinvestment Area (a Post-1994 "CRA") which includes the Property and which

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such legislation contemplates and specifies that Property within the CRA area shall be provided a 100% abatement from real property taxes for the maximum period permitted by Ohio law (15 years) to support the economic development project to be constructed on the Property in support of the Intended Use as shown on Exhibit B attached hereto. Landowner acknowledges that separate legislation will be necessary to implement the CRA, and may require the execution of a Developer's Agreement between Landowner and the Village, and agrees to the inclusion of the Property within any CRA district provided such acts, legislation and agreements are necessary or required to implement the requirements of this paragraph.

**Section 2.    Miscellaneous**

- A.    Intent of Parties.** This Agreement shall be binding upon the Parties hereto and their respective successors and/or assigns, and by execution hereof, all Parties represent that they are duly authorized to sign it. By passage of Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, the Village authorized the execution of this Agreement.
- B.    Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality and/or acts of God.
- C.    Remedies.** Except as otherwise limited by Chapter 2744 of the Ohio Revised Code as to action for or against the Village, the Parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges and rights of this Agreement and the enforcement thereof.
- D.    Enforcement.** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.
- F.    Assignment of Agreement.** Landowner shall not assign this Agreement, or any part thereof or any duty, obligation, privilege or right granted under this Agreement, without the express written consent of the Village, which shall not unreasonably be withheld, unless such assignment is to a single purpose limited liability company which the managers of Landowner (as shall be the case) control which has assumed the obligation and

responsibility to develop the Intended Use on the Property in accordance with Exhibit B, in which case no such consent shall be required .

G. **Relative Rights**. The rights and obligations of the Parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

H. **Entire Agreement Merger Clause; Statement of Incorporation**. It is agreed that this Agreement merges all oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents or representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

I. **Severability**. If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

J. **Cooperation**. The Village will cooperate with Landowner to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement other than any obligation which requires the expenditure of funds.

K. **Modifications or Amendment of Agreement**. No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

L. **Recitals**. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

M. **Executed Counterparts**. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

N. **Captions**. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.



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**O. Survival of Representations and Warranties.** All representations and warranties of Landowner and the Village in this Agreement shall survive the execution and delivery of this Agreement.

**P. Effective Date.** This Agreement shall be effective when signed by all the Parties hereto.

**Q. Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 2021.

VILLAGE OF COMMERCIAL POINT, OHIO

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

VILLAGE OF COMMERCIAL POINT, OHIO

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: Village Administrator

Date: \_\_\_\_\_

WILLIAM LANE, TRUSTEE OF THE W. M. LANE TRUST DATED JUNE 14, 1994:

By: \_\_\_\_\_

Printed: William Lane

Title: Trustee

Date: \_\_\_\_\_

SB LANE CRABTREE LLC,

By: \_\_\_\_\_

Printed: William Lane,

Title: Agent

Date: \_\_\_\_\_

APPROVED AS TO FORM:

FISCAL OFFICER CERTIFICATION:

\_\_\_\_\_  
Joshua Cartee, Village Solicitor

\_\_\_\_\_  
Wendy Hastings, Village Fiscal Officer

**EXHIBIT A**  
**TO LANE PREANNEXATION AGREEMENT**

**DESCRIPTION OF A 152.469 ACRE PARCEL**

For

**ANNEXATION INTO THE CITY OF COMMERCIAL POINT, OHIO**

Situated in the Township of Scioto, County of Pickaway and also the Township of Jackson, County of Franklin in the State of Ohio and being a part of the Robert Rose's VMS No. 1108 and also being part of Lot Number 2 of the land partitioned among the heirs of Lewis Berror as recorded in Survey Plat Book 2, Page 74 of the Franklin County Record of Plats and being a 1/2 interest in a parcel of land as conveyed to SB Lane Crabtree, LLC (PPN 127-0-00100-511-00 Pickaway County) and recorded in Volume 0625, Page 2648 of the Pickaway County Deed Records and also a 1/2 interest in a parcel of land as conveyed to William M. Lane, Trustee of the W.M. Lane Trust dated June 14, 1994 and recorded in Volume 0351, Page 0167 of the Pickaway County Record of deeds and more fully bounded and described as follows:

**Beginning** at a stone monument found on the Franklin County-Pickaway County Line and labeled FCGS No. 54 in the Franklin County Survey record, thence N 87°02'01" W, along said county line, 39.09 feet to a "Central" 5/8" capped iron pin found and the **True Place of Beginning of the parcel herein described;**

Course No. 1: Thence S 04°12'42" W, continuing along the westerly line of a parcel of land as conveyed to the Scioto River Development LLC as recorded in Instrument No. 201607220095000 of the Pickaway County Record of Deeds, 971.88 feet to a "Central" 5/8" capped iron pin found;

Course No. 2: Thence S 05°12'09" W, continuing along the westerly line of said Scioto River Development LLC parcel, 332.20 feet to a concrete post found;

Course No. 3: Thence S 83°17'06" W, along the northerly line of a parcel of land as conveyed to K Nova LLC and recorded in Instrument Number 202100002126 of said Pickaway County Record, 4,207.50 feet to a point and the centerline of State Route 104 (60 feet wide) and passing over an iron pin set at 4,177.46 feet;

Course No. 4: Thence N 08°34'21" W, along said State Route 104 centerline, 1,519.65 feet to a point;

Course No. 5: Thence N 83°13'30" E, along the southerly line of a parcel of land as conveyed to Kerschner Properties LTD and recorded in Instrument No. 200503070041338 of said Pickaway County Record of Deeds, 4,446.98 feet to a capped 5/8" iron pin found (cap is damaged) and passing over an iron pin set at 30.09 feet and also at 3,087.38 feet at the right of way line and the intersection of the Franklin and Pickaway County lines respectively;

Course No. 6: Thence S 18°39'45" E, along said Scioto River Development LLC parcel, 247.38 feet to the **Place of Beginning and containing 152.469 acres of land, more or less, (3.778Acres in Franklin County), (148.691 acres in Pickaway County, 2.793 acres of Roadway)** as surveyed by Terence R. Allison, P.S., Ohio Registration No. S7176, for CTL Engineering Inc., in May, 2021, but subject to all legal roads, highways, right of ways, easements and leases of record.

This Annexation does not create an unincorporated area of the township completely surrounded by the territory proposed for annexation. Total Perimeter of the Annexation Area is 11,725.51'-- of which 4,207.60'-- is contiguous with the City of Commercial Point, resulting in 35.88% contiguity.

The Basis of Bearing is Ohio State Plane Coordinates, South Zone, and NAD 1983(2011).

All iron pins set are 30 inch x 3/8 inch sizes with plastic caps stamped "CTL Engineering-7176".

10/5/21



*Terence R. Allison*

**EXHIBIT B**  
**TO LANE PREANNEXATION AGREEMENT**

