

RESOLUTION NO. 05-2023

**A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH WILCOX INVESTMENT GROUP, LLC**

**WHEREAS**, the owner of certain real properties, parcel ID 02-00357.000, 02-00357.001, 02-00357.003, and 02-00167.000, desires to annex said properties into the Village of Plain City; and

**WHEREAS**, the owner of the subject properties to be annexed also desires to seek a rezoning of the properties in order to facilitate its future development; and

**WHEREAS**, the owner desires to seek said rezoning concurrently with the processing of the annexation petition related to the properties; and

**WHEREAS**, the owner and the Village have agreed it is in the best interest of both parties to enter into a pre-annexation agreement pertaining to the pending submittal of an annexation petition for the properties.

**NOW THEREFORE BE IT RESOLVED** by the Council of the Village of Plain City, Ohio, a majority of the members elected or appointed thereto concurring, as follows:

**Section 1.** The Village Council hereby authorizes and directs the Village Administrator to enter into a pre-annexation agreement with the property owner in general accordance with the draft agreements identified as Exhibit A, attached hereto and made a part hereto.

**Section 2.** The Village Administrator is further authorized and directed to take subsequent action, upon execution of said agreement, to fulfill the Village's requirements under said agreement.

**Section 3.** This Resolution shall be effective from and after the earliest period provided by law.

Passed: March 1, 2023.

Attest: Austin Precourt  
Clerk of Council

Jody Carney  
Mayor

First reading: February 13, 2023. Vote: \_\_\_ yea \_\_\_ nay \_\_\_ abstain

Second reading: March 1, 2023. Vote: 6 yea \_\_\_ nay \_\_\_ abstain

**Certificate of Publication**

The undersigned, being Clerk of Council of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 4.15 of the Codified Ordinances. The posting was done from March 2, 2023 to March 17, 2023 at the Office of the Clerk of Council located at 800 Village Boulevard; being in the Village of Plain City, Ohio, and the Village of Plain City Website at [www.plain-city.com](http://www.plain-city.com).

Date: March 2, 2023

Austin Phoenix  
Clerk of Council

## PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2023 by and between Wilcox Investment Group, LLC, an Ohio Limited Liability Company ("Company"), whose mailing address is 250 W. Old Wilson Bridge Road, Suite 140, Worthington, Ohio 43085 and the Village of Plain City ("Plain City"), an Ohio municipal corporation, whose mailing address is Village Boulevard, P.O. Box 167, Plain City, Ohio 43064 (referred to collectively as "Parties").

### RECITALS

WHEREAS, the Company is in contract to purchase certain real property located in Darby Township, Madison County, Ohio with addresses of 0, 10910, and 10930 Lafayette Plain City Road, Plain City, Ohio 43064 (the "Property"), being more fully described in the Madison County Auditor's information attached as Exhibit "A" and incorporated herein; and

WHEREAS, the Property is located adjacent to and beyond the present corporate boundaries of the Village of Plain City; and

WHEREAS, the Company desires to annex the Property to Plain City in order to obtain municipal services to support the Property and its future development; and

WHEREAS, Plain City desires to annex the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Annexation:

- a. Company will, at its own expense, prepare the necessary annexation petition with accompanying map or plat. The petition shall appoint one or more attorneys with the law firm of Underhill and Hodge LLC, whose mailing address is 8000 Walton Parkway, Suite 260, New Albany, Ohio, as agent for the current owners of the Property ("Agent"). The annexation petition shall be filed by Agent as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. Agent shall file the signed and completed petition with the board of county commissioners and shall provide notice and service to all required parties under the Ohio Revised Code. Company agrees to pay any filing fee(s) charged by the board of county commissioners for the filing and processing of the petition. Company agrees that it will take all reasonable actions which are necessary to cause the current owners of the property not to withdraw their names from, or request withdrawal of, the petition during the annexation process and/or any subsequent administrative or legal action involving the annexation.

- b. The Parties agree to cooperate and provide information necessary for the county commissioners to review the annexation as required by Section 709.023 of the Ohio Revised Code.
- c. Should the annexation be approved, the Parties agree to process the annexation as provided by law subject to the terms of this Agreement.
- d. Company, at its own expense, agrees to file or arrange to be filed an annexation petition, map, and plat that complies with Section 709.023 of the Ohio Revised Code within thirty (30) days after the execution of this Agreement.

2. Municipal Services:

- a. Plain City agrees to enact, within twenty (20) days after the date of the filing of the annexation petition with the board of county commissioners, the appropriate service and zoning buffer resolutions as required by Chapter 709 of the Ohio Revised Code. The resolutions, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners by Plain City.

3. Zoning:

- a. The Property sought to be annexed is currently zoned Agricultural in Darby Township. The Parties acknowledge that Company desires to rezone the Property to Planned Residential District under the Village of Plain City Zoning Code. Notwithstanding the foregoing, the Company and Plain City recognize that updates to Plain City's zoning code are being considered by Plain City which, if adopted, would provide other zoning classifications which may accommodate the Company's intended use and development of the Property. Company intends to file a request to rezone the Property concurrently with the filing of the annexation petition. Should the updates to the zoning code become legally effective prior to the acceptance of the annexation of the Property to Plain City, Company shall have the right (but not the obligation) to withdraw its application to rezone the Property into a Planned Residential District and to instead file a new rezoning application to request that one of the new zoning classifications created in the updated zoning code shall be applied to the Property. Once filed, any rezoning request will be reviewed and decided upon by Plain City utilizing the regular procedure for processing an application to rezone in the village and there is no guarantee that any particular zoning will be granted.

- b. Plain City recognizes that once the annexation is placed before the Plain City Council (i.e., after the expiration of 60 days from the date when the transcript of the proceedings of the Madison County Board of commissioners has been delivered to Plain City) Plain City has one hundred twenty (120) days to accept or reject the annexation. Plain City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property into a zoning classification as detailed in the immediately preceding subsection (a). At any time during the one hundred twenty (120) day acceptance period for the annexation, Plain City may, on its own initiative, or shall, at the request of Company, delay its acceptance of the annexation until the rezoning is settled to the satisfaction of the Parties. In the event that the Property is annexed but the Property is then not rezoned in a manner that is satisfactory to Company, or if Company exhausts its appeals of Plain City's zoning determination, or the proposed rezoning is rejected by the voters, Plain City agrees to execute a petition to detach the Property from its jurisdiction upon the request of Company.

4. Representations and Warranties of Plain City:

- a. Plain City hereby represents and warrants to Company:
  - i. The Village is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to law, and to perform its obligations hereunder;
  - ii. The Village, acting by and through its agents, has taken all such actions which are necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and
  - iii. This Agreement is the valid and binding act of the Village, enforceable against the Village in accordance with its terms.

5. Representations and Warranties of Company:

- a. Company hereby represents and warrants to Plain City that:
  - i. Company is in contract to purchase the Property to be included in the annexation petition; and
  - ii. Company, acting by and through their agent, has taken all such actions which are necessary to appropriate to authorize the

execution of this Agreement by the person executing the same.

6. Waiver:

- a. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

7. Execution:

- a. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement.
- b. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other party, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

8. Severability:

- a. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein.

9. Governing Law:

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

10. Relationship of the Parties:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

11. No Third Party Beneficiary:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

12. Time is of the Essence:

- a. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

13. Force Majeure:

- a. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

14. Approvals:

- a. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

15. Binding Effect:

- a. This Agreement and all of the provisions herein shall be binding upon

and inure to the benefit of the parties and their respective successors and permitted assigns.

16. Entire Agreement/Merger:

- a. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all agreements, oral or written.

17. Survival:

- a. The representations, warranties, and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

18. Notice:

- a. All required notices, requests, consents, approvals, demands, and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by e-mail or facsimile telephone transmission, if given below, or later provided, addresses as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Company:

Wilcox Investment Group, LLC  
250 W. Old Wilson Bridge Rd., Suite 140  
Worthington, OH 43085  
Attn: Jonathan Wilcox

Underhill & Hodge LLC  
8000 Walton Parkway, Suite 260  
New Albany, OH 43054  
Attn: Aaron L. Underhill

Village of Plain City  
800 Village Boulevard  
P.O. Box 167  
Plain City, OH 43064  
Attn: Haley Lupton, Village Administrator



COMPANY:

WILCOX INVESTMENT  
GROUP, LLC

By: \_\_\_\_\_  
Jonathan Wilcox  
Authorized Member

PLAIN CITY:

By: \_\_\_\_\_  
Haley Lupton  
Village Administrator

Approved as to form:

\_\_\_\_\_  
Law Director  
Village of Plain City

**Exhibit A**  
**Annexation Legal Description  
and Survey**

## LEGAL DESCRIPTION

### Description of 122.468 ACRES +/- TO BE ANNEXED FROM DARBY TOWNSHIP TO CITY OF PLAIN CITY

Situated in the State of Ohio, County of Madison, Township of Darby, Virginia Military Survey Number 7751, 7753, 8636, and 12014 and being all of that original 66.3798 acre tract of land as conveyed to Perry E. Troyer, of record in Deed Book 149, Page 2336, also being out of an original 9.593 acre tract of land as conveyed to Joseph E. Troyer, of record in Deed Book 184, Page 839, and also being out of a 52.144 acre tract of land as conveyed to Thomas Paul Blosser and Mary Jane Blosser of record in Official Record 28, Page 693, all deed references are on record at the Recorder's Office of Madison County, Ohio and being more particularly described as follows:

**BEGINNING** at a point in the centerline of Lafayette Plain City Road, being a point in the existing City of Plain City Corporation Line, Resolution Number 16-19, Ordinance Number 17-19, Instrument Number 20200001264, being a point in a westerly line of a 25.337 acre tract of land as conveyed to D.R. Horton-Indiana, LLC, of record in Deed Book 382, Page 2555, and being a southeasterly corner of a 18.8120 acre tract as conveyed to Methodist Church Inc., of record in Deed Book 385, Page 1641;

Thence South 35°32'14" West, with the centerline of said Lafayette Plain City Road, with said existing City of Plain City Corporation Line, the westerly line of said 25.337 acre tract, with the westerly line of a 15.592 acre tract of land as conveyed to Highland Realty Development LLC, of record in Deed Book 382, Page 2479, a distance of 1566.14 feet to a southeasterly corner of a 1.551 acre tract of land, as conveyed to Perry E. Troyer, of record in Deed Book 149, Page 2336;

Thence South 50°40'14" West, continuing with said existing City of Plain City Corporation Line, and the westerly line of said 51.250 acre tract of land, a distance of 247.29 feet to the northeasterly corner of 5.9202 acre tract of land as conveyed to Randall Lynn Miller and Melissa Dawn Miller, of record in Official Record 211, Page 200;

Thence with the perimeter of said 5.9202 acre tract the following courses:

North 44°49'50" West, a distance of 521.70 feet to a corner thereof;

South 45°56'54" West, a distance of 515.98 feet to a point in an easterly line of a 92.68 acre tract of land as conveyed to Linda S. Miller, of record in Official Record 228, Page 1779;

Thence with the perimeter of said 92.68 acre tract the following courses:

North 44°49'46" West, a distance of 632.68 feet to a corner thereof;

North 74°45'46" West, a distance of 1791.90 feet to a common corner of a 59.532 acre tract of land as conveyed to Ernest A. Beachy and Bertha M. Beachy, Co-Trustees, of record in Deed Book 351, Page 2386;

Thence North 4°59'46" West, with the easterly line of said 59.532 acre tract, a distance of 660.00 feet to a point in the southerly line of an 80.721 acre tract as conveyed to E & D Gingerich Farms LLC, of record in Deed Book 281, Page 1278;

Thence South 88°15'46" East, with the perimeter of said 80.721 acre tract of land, a distance of 2005.84 feet to a corner thereof;

Thence North 11°31'14" East, continuing with the perimeter of said 80.721 acre tract of land, a distance of 896.39 feet to the southwesterly corner of an 4.450 acre tract as conveyed to Randy Miller and Melissa Miller of record in Official Record 241, Page 1784 and the southeasterly corner of a 21.102 acre tract as conveyed to Dan J. Gingerich of record in Deed Book 277, Page 1682

Thence with the southerly line of said 4.450 the following courses:

North 81°21'51" East, a distance of 302.17 feet to a point;

South 78°53'41" East, a distance of 189.71 feet to a point;

North 83°06'07" East, a distance of 220.57 feet to a point;

North 89°24'19" East, a distance of 115.50 feet to a point;

North 74°01'19" East, a distance of 94.41 feet to a point;

North 48°27'56" East, a distance of 138.69 feet to a point in the southerly line of a 11.324 acre tract as conveyed to D & E Land Holdings Co LLC, of record in Deed Book 224, Page 1394;

Thence South 80°43'46" East, with the southerly line of said 11.324 acre tract, and with the southerly line of an 8.470 acre tract as conveyed to United Bethel Mennonite Church Inc of record in Deed Book 266, Page 1923, a distance of 351.59 feet to the northwesterly corner of said 18.8120 acre tract;

Thence with the perimeter of said 18.8120 acre tract the following courses:

South 11°38'03" West, a distance of 766.65 feet to a point;

South 64°36'47" East, a distance of 754.84 feet to the **Point of Beginning** and containing 122.468 acres of land, more or less.

This annexation description of the location of the property to be annexed and is not a boundary survey as defined in O.A.C. Chapter 4733.37. The above annexation contains a perimeter distance of 1,813.42 feet contiguous with the existing City of Plain City Corporation line by Resolution Number 16-19, Ordinance Number 17-19, Instrument Number 202000001264 and a total perimeter of 11,774.03 feet to be annexed, and 15.4% of the perimeter length is contiguous to the City of Plain City Corporation line.

CESO, Inc.

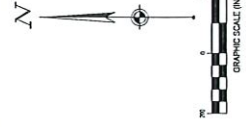
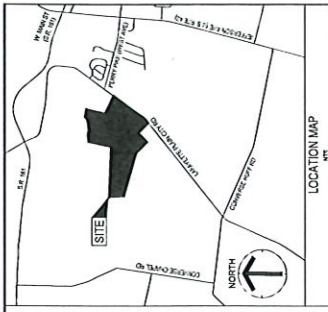
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Jeffrey A Miller, PS  
Registered Surveyor No. 7211

Date:

**PROPOSED ANNEXATION OF 122.468± ACRES  
FROM: DARBY TOWNSHIP  
TO: CITY OF PLAIN CITY**

SITUATED IN THE STATE OF OHIO, COUNTY OF MADISON, TOWNSHIP OF DARBY,  
VIRGINIA MILITARY SURVEY 7751, 7752, 8038 & 12014



- LEGEND**
- ELEC. CITY OF PLAIN CITY (COP) LINE
  - ELEC. FENCE LINE
  - ELEC. TRANSDUCER LINE
  - ELEC. TRENCH-WAY
  - PROP. ANNEXATION COMP. LINE
  - PROP. AREA TO BE ANNEXED (DARBY TOWNSHIP)

THIS EXHIBIT WAS PREPARED FROM RECORDS INFORMATION FROM THE MADISON COUNTY PUBLIC RECORDS OFFICE AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES. THE INFORMATION IS PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTACT: JEFFREY A. MILLER, P.E. 408

JEFFREY A. MILLER  
OHIO P.E. #7211

**PROPOSED ANNEXATION**  
122.468± ACRES

LAVETTE PLAIN CITY ROAD		MADISON COUNTY, OHIO	
DATE: 11/03/22	SCALE: 1"=200'	JOB NO. 70650	SHEET NO. 1 OF 1
DRAWN: JAW	CHECKED: JAW	DESIGN: N/A	WWW.CESDINC.COM

