

**ORDINANCE NO. 1517
CITY OF LEAVENWORTH, WASHINGTON**

**AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN
REAL PROPERTY OWNED BY PRUSIK INVESTMENTS, LLC TO THE
CITY OF LEAVENWORTH, WASHINGTON, INCORPORATING THE
SAME WITHIN THE CORPORATE LIMITS THEREOF, AND
ADOPTING ZONING REGULATIONS FOR THE ANNEXED
PROPERTY**

Recitals

Whereas the property owner inquired about annexation to the City in the fall of 2015; and

Whereas the City Council of the City of Leavenworth set a date for a meeting with the initiating property owner to determine if the City would accept, reject or modify the proposed annexation;

Whereas the required meeting occurred at the Council's meeting of October 13, 2015;

Whereas the City has required assurances concerning the alignment and the timely construction of street improvements by the property owner for the City to accept annexation of the real property into the City;

Whereas a Petition for Annexation has been circulated and signed as required by law by a majority of the required parties and delivered to the City on November 10, 2015;

Whereas on November 10, 2015, the City Council conducted a public hearing to receive and consider public testimony and accept annexation subject to passage of an ordinance;

Whereas the property owner has signed and delivered a Development Annexation Agreement to the City dated January 14, 2016 and attached hereto as Exhibit "A";

Whereas performance by the property owner has been secured by an Assignment of Bank Account for Security Purposes as attached to the Development Annexation Agreement;

Now, therefore, The City Council of the City of Leavenworth, Washington do ordain as follows:

Section 1. The real property in Chelan County, Washington, described on Exhibit "B"

attached hereto, owned by PRUSIK INVESTMENTS, LLC for property located at 12132 Pine Street, Leavenworth, WA, 98826 and, identified as Chelan County Assessor's Parcel No. 241701310150, contiguous to the City of Leavenworth, and within the City of Leavenworth urban growth boundary, is hereby annexed to and incorporated in the city limits of the City of Leavenworth, Washington.

Section 2. A certified copy of this ordinance shall be filed with the Board of County Commissioners of Chelan County, Washington in the manner provided by law.

Section 3. The annexed real property shall be subject to the City of Leavenworth Comprehensive Plan and City of Leavenworth zoning regulations and shall retain the existing zoning of Low Density Residential 6,000 (RL 6). To the extent applicable development of the property shall be in accordance with the Development Annexation Agreement.

Section 4. This ordinance shall be recorded with the Chelan County Auditor and shall be binding upon the annexed real property and the future owners thereof. This ordinance shall take effect five days after its passage and publication as provided by law.

Section 5. The annexed real property herein shall be assessed and taxed at the same rate and on the same basis as other property in the City of Leavenworth, Washington to pay for all or any portion of the outstanding indebtedness to the City of Leavenworth approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation.

Section 6. This annexation requires, prior to its effectiveness, transfer to the City of Leavenworth of any domestic water rights as a condition of annexation.

Section 7. This annexation requires infrastructure improvements to include, but are not limited to, all street, frontage, utilities, and service line improvements necessary to support any proposed lot; and the completion of the full uninterrupted length of 1/2 street improvements required for Pine Street in accordance with the Development Annexation Agreement. The northern Pine Street Right of Way (ROW) line is agreed to be 30 feet from a 16th Section Line.

Passed by the City Council of City of Leavenworth, Washington and approved by the Mayor at an open public meeting on the 15th day of January, 2016.

CITY OF LEAVENWORTH

By: 
Cheryl Kelley Farivar, Mayor

Attest:

Approved as to form:


Thom H. Graafstra, City Attorney


Chantell Steiner
City Clerk/Finance Director

CERTIFICATION

I, the undersigned, City Clerk of the City of Leavenworth, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 1517 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a special meeting of the City Council of the City held at the special meeting place thereof on January 15, 2016, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of January 2016.

CITY OF LEAVENWORTH, WASHINGTON


Chantell Steiner, City Clerk

DEVELOPMENT ANNEXATION AGREEMENT

This Development Annexation Agreement regarding conditions of Annexation is made this 15th day of January 2016 by and between the City of Leavenworth, Washington, hereinafter "City" and Prusik Investments, LLC, a Washington Limited Liability Company, hereinafter "Prusik."

Whereas Prusik has requested that the City annex that real property legally described on Exhibit "B", shown for illustrative purposes;

Whereas Prusik plans to develop the property annexed for residential development;

Whereas said property is contiguous to the City and abuts Pine Street;

Whereas City has developed a plan for the improvement of Pine Street;

Whereas the City has determined that Pine Street must be completed in a timely fashion, and should not be completed piecemeal;

Whereas the City Council of the City, functioning in its legislative capacity has determined it will annex the real property at issue, but only if Prusik makes adequate provision for the timely completion of Pine Street improvements as set forth herein, regardless whether future development of the property occurs;

Whereas Prusik has agreed to make such improvements as a condition of annexation and to provide financial security that such improvements will occur to induce the City Council to approve the annexation; and

Whereas Prusik voluntarily agrees to enter into this agreement to provide timely construction of certain improvements as specified herein;

Now, therefore, the parties agree as follows:

1. Completion of Annexation Process. Prusik on November 10, 2015 submitted a duly signed Petition for annexation to the City for the property compliant with the requirements of Chapter 35A.14 RCW.
2. Development Standards. Prusik agrees to develop the property in accordance with the City's development standards in effect as of the time of complete application. In addition, Prusik agrees that all proposed lots shall provide a minimum square footage for single family residential development of 6000 square feet.
3. Road Alignment. Prusik agrees that the north boundary of the Pine Street right of way lies 30 feet north of the 16th line. Prusik agrees, as necessary, to execute a deed or deeds and to deliver the same to City to confirm said right of way in City. Prusik shall receive no compensation or consideration for said deeds. City shall bear all costs of recording.
4. Infrastructure improvements. Prusik agrees to construct half street Pine Street improvements in accordance with City Standards in the timeframe set out in Exhibit C. Said improvements shall include but not be limited to street, curb and sidewalk improvements, and utility improvements including sewer and water improvements.

5. Security for performance. To insure that Prusik constructs the half street Pine Street improvements to City standards in accordance Exhibit "D" Prusik agrees to fund, sign and deliver to City an Assignment of Bank Account for Security Purposes in the form of Exhibit D. Said funding and delivery to the City shall occur no later than ninety (90) days after the date of this Agreement.

6. Successors bound. This agreement shall be a covenant running with the property and bind the heirs, executors, assigns and successors in interest of Prusik to the real property described herein. The obligations in this agreement may be specifically enforced against the owner of the property. Nothing in this agreement shall relieve or excuse Prusik or its successors from performing any obligation or condition of subdivision and development approval. Prusik shall comply with all statutes, ordinances, regulations imposed by law on the development of the property.

7. Enforcement. Any action to enforce this agreement may be maintained in the Chelan County Superior Court. In any enforcement action, the prevailing party shall be entitled to recover legal costs and reasonable attorneys fees.

8. In contemplation of annexation. Upon the effective date of an ordinance annexing the property into the City, this agreement shall become fully binding and enforceable on the parties.

Dated: 1/15/2016

City of Leavenworth

By:  _____

Prusik Investments, LLC

By:  _____

EXHIBIT B

That portion of Lots 1 and 2, as delineated on Scamahorn Short Plat No. 1960, Chelan County, Washington, recorded March 20, 1990, in Book SP-7 of short plats, pages 7 and 8, lying West of the following described line:

BEGINNING at the Southwest corner of Lot 4 of the Jack Brender Short Plat No. 2144, Chelan County, Washington, recorded November 8, 1990 in Book SP-8 of short plats, page 15; thence extending the West line thereof South $0^{\circ}10'35''$ West 243.84 feet to the North line of Pine Street as measured 15.00 feet North of the East-West center line of the Southwest quarter of Section 1, Township 24 North, Range 17 East of the Willamette Meridian,

TOGETHER WITH that portion of a county road known as Pine Street lying North of East-West center line of the Southwest quarter, bounded on the East by the Southerly extension of the above described line and bounded on the West by the Southerly extension of the West line of Lot 1 of the above mentioned Scamahorn Short Plat,

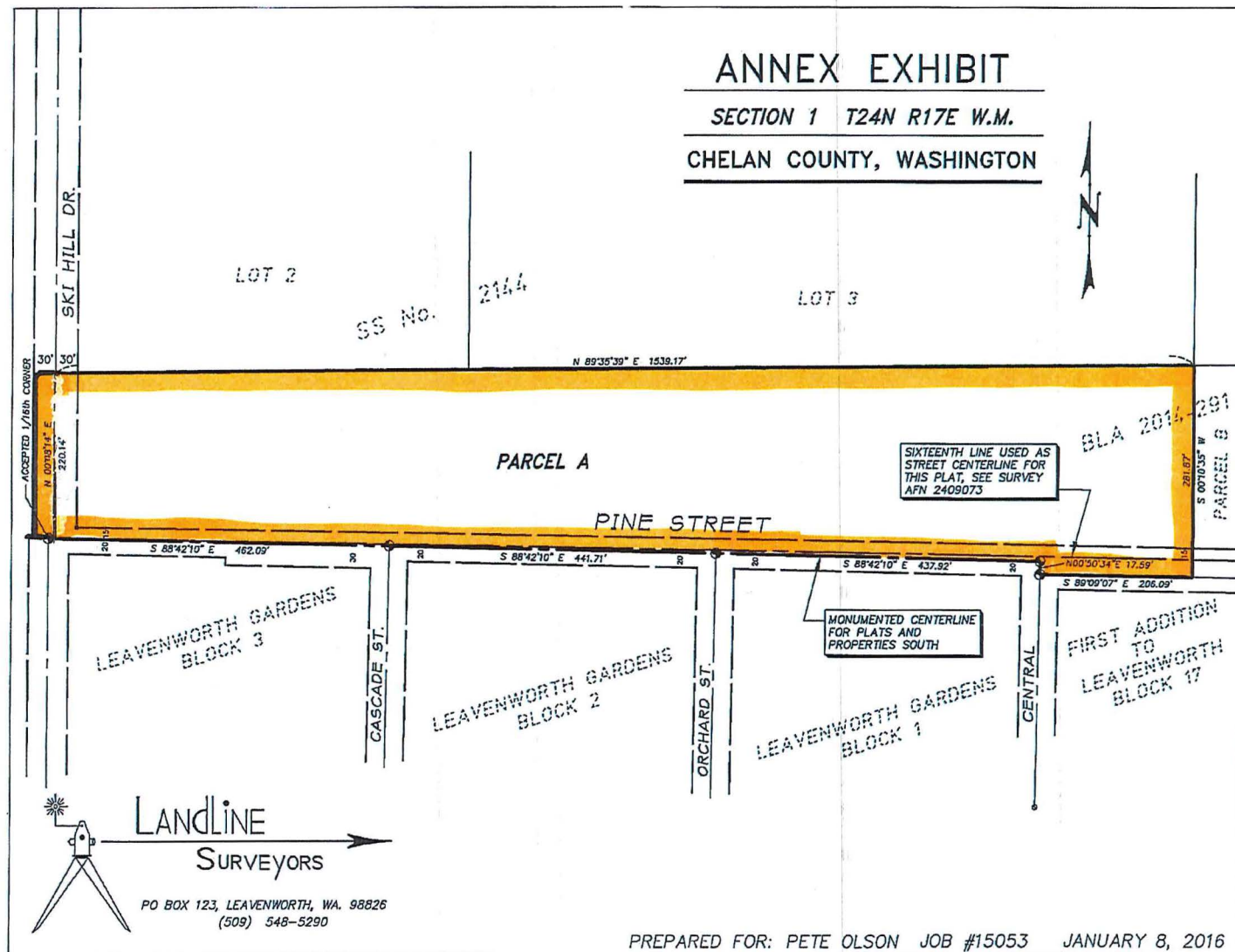
ALSO TOGETHER WITH that portion of Pine Street lying North of those monuments established for the plats of Leavenworth Gardens and the First Addition to Leavenworth as set by Arvid Grant and Associates for the City of Leavenworth and bounded by the aforementioned extended lines,

AND TOGETHER with that portion of a county road known as Ski Hill Drive lying West of the westerly right-of-way of Ski Hill Drive, bounded on the North by the Westerly extension of the North line of Lot 1 of said Scarnhorn Short Plat No. 1960 and bounded on the South by the monumented center line of Pine Street extended West.

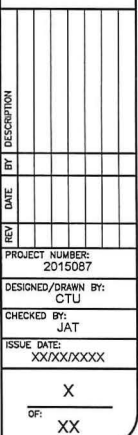
ANNEX EXHIBIT

SECTION 1 T24N R17E W.M.

CHELAN COUNTY, WASHINGTON



CITY OF LEAVENWORTH, WA



ASSIGNMENT OF BANK ACCOUNT FOR SECURITY PURPOSES

Whereas Prusik Investments LLC a Washington Limited Liability Company (“Developer”) is developing property and obligated to construct certain infrastructure improvements as a condition of development on its own account;

Whereas certain of those improvements related to the half street completion of Pine Street need to be completed in a timeframe acceptable to the City, and cannot be completed with the phasing of development;

Whereas Developer owns the real property described in Exhibit "B":

Whereas Developer may nonetheless seek to phase his development, while agreeing as a condition of annexation to complete Pine Street in an agreed timeframe; and

Whereas the City requires assurances that Pine Street will be completed in the agreed time;

Whereas the City agrees that the amount of assurances it requires may be decreased as certain mile stones are achieved;

NOW, THEREFORE: Developer hereby assigns to the CITY OF LEAVENWORTH, WASHINGTON for security purposes only, the sum of sixty thousand six hundred and ten dollars (\$ 60,610.00) (US Funds) which is deposited with, or held by _____ Bank (“Bank”) at _____ Branch under Account Number # _____ (the “Account”). This assignment shall be on the following terms and conditions:

1. This assignment shall not relate to any interest which accrues on the Account, and said interest may be withdrawn by the Developer at any time.

2. This assignment is security for performance by the Developer related to the following:

Pine Street Improvements at 12132 Pine Street, Leavenworth, WA for the development currently known as Pinegrass

The specific improvements are set out in Exhibit "C". All work must be completed within five (5) years of the date of this assignment (the “deadline”).

The improvements are hereinafter referred to as the Work. (work must be in accordance with the 90% engineered construction plan sets that are reviewed and approved by the City with engineered cost estimates).

3. The Work will be completed in all events by the Deadline for Completion in accordance with plans and specifications prepared in accordance with City Code and the conditions of annexation and as approved by the City.

4. In the event that the Developer does not substantially comply with the approved construction plan sets and/or complete the Work by the Deadline, and such failure continues for a period of thirty (30) days after receipt of a Notice from City to comply or complete the Work (the "thirty (30) day notice date"), at the option of City, the City may elect to have the funds in the account forfeited to City, or City may perform the Work, and the funds in the Account shall be paid to the City as costs are incurred in performing the Work. This assignment also secures and shall extend to and secure all of the City's administrative overhead costs and all legal costs and reasonable attorneys fees incurred by City in seeking and securing performance by the Developer or incurred by City in seeking and recovering funds from the Account to the maximum value of the Account assigned.

5. Notwithstanding recovery from or forfeiture of the Account by City, the Developer shall be responsible for completion of the Work. In the event the City exercises its right to perform the Work and the funds in the Account are insufficient to pay for the satisfactory completion of the Work, then Developer shall pay any deficiency to City in full within fifteen (15) days after receipt of an invoice from City. Any delinquency in the Developer's obligation shall accrue interest at the rate of 12% per annum from the date of invoice.

6. This Assignment is irrevocable without the written consent of the City; provided that the City shall be obligated to release the assignment under the terms hereinafter set out. The assigned funds shall be held exclusively for the benefit of the City and shall not be subject to further assignment or encumbrance by or of the Developer, or attachment by any creditors of the Developer. All amounts deposited in the Account which are assigned to the City, unless applied in accordance with paragraph 4, shall remain in the Account until released by City.

7. Notwithstanding the foregoing, the City agrees to three (3) partial releases of funds from the Account, and to the final release of the remainder of the funds in the Account on the following terms and conditions:

- a. First partial release and reduction. After commencement of work in the Pine Street right of way, when the water and sewer main lines are completed and City inspection documents satisfactory completion, Developer may apply for a twenty-five percent (25%) partial release and reduction of the Account. The application shall detail the work completed and request city acceptance of the inspection. Upon City inspection determining that Work has been completed to City standards and specifications, the City shall permit a first partial release of funds held in the Account.

b. Second partial release and reduction. After commencement of work in the Pine Street right of way, when all street, stormwater conveyance and control, multi-use path, street lights, hydrants, curb and gutter improvements constructed on Pine Street are installed and City inspection documents satisfactory completion, Developer may apply for a second fifty percent (50%) partial release and reduction of the Account. The application shall detail the work completed and request city acceptance of the inspection. Upon City inspection determining that Work has been completed to City standards and specifications, the City shall permit a second partial release of funds held in the Account.

c. Third and final release and reduction. Upon final completion of all of the Work, including final striping (paint), plantings, and crosswalk completion, inspection of the work, and acceptance of the work and improvements by the city, and upon Developer conveying all interest in the Work to City and providing City adequate evidence that there are no liens or claims against the work, and upon Developer providing such security for maintenance and warranty as required by City Code, and providing professionally developed as-builts based on the surveyed and built environment, and stamped by the Engineer of Record, the City will release its security herein and permit the withdrawal of the remainder of the Account.

d. Amount released. An amount will be released only when the item of work has been entirely completed. Amounts will not be prorated. Developer's application will also include evidence demonstrating that the associated Work has been paid for (or will be paid for with the funds to be released) and be accompanied by lien waivers or releases from contractors performing the Work. With respect to the final release of funds, Developer shall submit to City an instrument in form acceptable to City conveying the infrastructure improvements to the City.

City shall promptly review the application for release of funds and supporting documents and approve or reject the application within ten (10) days of completion of inspection. Any rejection shall specify, in reasonable detail, the reason for rejection. Upon approval of the application, the City shall direct the Bank to release the funds.

8. Should any disputes arise between the City and Developer regarding the terms of this Assignment, the Bank shall have the option to hold all matters in a pending status until the dispute is resolved or to join in or commence a court action, and deposit the assigned funds into the registry of the court in the Superior Court for Chelan County, Washington. In the event of any litigation regarding the terms of the Assignment or performance under the Assignment, the prevailing party shall be entitled to recover legal costs and reasonable attorneys fees.

9. Time is of the essence of each and every provision of this Assignment.

10. This Assignment is not intended to create, nor shall it in any way be interpreted or construed to create any third party beneficiary rights in any person not a party hereto.

11. This Assignment and the documents attached or referenced herein constitute the entire understanding between the parties and supersedes all prior agreements or understandings, oral or written. There are no implied duties under this Assignment.

IN WITNESS WHEREOF, the signature of the Developer and the Bank are hereto affixed binding them to this obligation this _____ day of _____, 2016.

DEVELOPER

_____ a _____

By _____
Its _____

BANK

_____ BANK,
a _____ banking corporation

By _____
Its _____

ACCEPTED BY THE CITY OF LEAVENWORTH

BY: _____
Title