



HOME OF PELICAN ISLAND

CITY COUNCIL WORKSHOP

Council Meeting Date: January 25, 2023

Agenda Item Title: Graves Brothers Company Draft Annexation Agreement

Background: In accordance with Florida Statute 171.044, Voluntary Annexation and the City of Sebastian Comprehensive Plan; the property owners, Grave Brothers Company, have requested a voluntary annexation into the City of Sebastian. The subject property consist of 2044.3 acres, more or less, located south of the north boundary of County Road 510 ROW, west of lands adjacent to the 74th Ave ROW, north of 69th Street ROW, and east of 90th Ave ROW. The subject property is currently vacant agricultural land in unincorporated Indian River County, contiguous to the existing corporate limits and boundaries of the City of Sebastian. The proposed development lies adjacent to and contiguous with the service boundary for municipal services and applicant has provided a Public Facilities Statement.

A Draft Annexation Agreement (Agreement) attached, has been negotiated between the City of Sebastian and Graves Brothers Company, the property owner. The Agreement will be presented for adoption under Resolution R-23-03. Adoption of O-22-07 shall be subject to approval of R-23-03 and execution by all parties of the Annexation Agreement.

The applicant has requested a Mixed Use (MU) land use designation consistent with the City's adopted Comprehensive Plan 2040. A Mixed Use land use was recommended by the Treasure Coast Regional Planning Council (TCRPC), the Florida Department of Economic Opportunity (FDEO), the City's Land Planning Agency and local stakeholders. This land use was adopted by the City Council in order to achieve a balance within the growing community by providing the opportunity for future development that would lessen impacts on the City Center and existing infrastructure. A mix of land uses within a designated development provides area for economic centers for job growth and commerce, and generally includes a mix of higher density to increase affordability and improve accessibility.

The applicant does not have a proposed development plan for the subject property at this time. Additional information regarding the future use of the property will be presented during the zoning amendment and land development process. However, language has been included within the Agreement, and subsequent Comprehensive Plan text amendment, which ensures that a coordinated, compatible mix of uses is part of the master planned design.



Specifically, Paragraph 3.1(b)(1) and (2) of the Agreement sets the limiting factors that will control density on the property without limiting the ability to achieve a Mixed Use development. A range of residential and non-residential land uses is encouraged in order to achieve this goal. Additionally, a range of residential housing is encouraged in order to achieve the mix of housing required for affordability and accessibility within a mixed use development. The housing mix targets 40% Medium Density up to 10 units/acre; 40% Low Density up to 5 units/acre; and 20% Very Low Density up to 3 units/acre. This variety of housing choices shall include "at least 5 percent (5%) and up to 10 percent (10%) of the Dwelling Units on the Real Property as being Affordable Housing."

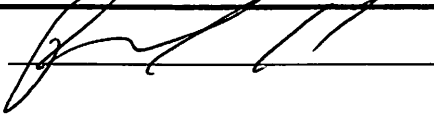
"Mixed Use (MU) Development. The Real Property shall be Developed Consistent with the Comprehensive Plan Future Land Use Classification in effect and according to Florida Statutes at the time of Development as determined by the City, and in no event will the Real Property Development exceed the maximum Density and Intensity of Use in this Agreement, and will satisfy all other requirements of this Agreement. The purpose of the

Mixed Use designation is to provide a mixture of Residential, Commercial, recreational, Industrial, Heavy Industrial, and Institutional uses and encourage town centers along major arterial corridors.

The Development of the Real Property shall be Master Planned as a PUD on a minimum of 400 acre parcels. A range of Mixed Uses consisting of 60%-80% Residential Land Use categories shall be balanced with a mixture of non-residential Land Use categories with a range of 20% -40%. During the PUD process, the acreage within the PUD shall be a mix of uses including Residential, Institutional, Commercial and Industrial. The Residential Land Use on the Real Property shall include a target mix of 40% Medium Density, 40% Low Density and 20% Very Low Density for the purposes of calculating permissible density. Densities may be transferred within each PUD parcel or outside to other PUDs within the Real Property provided the Residential Land Use range is not exceeded on the Real Property. There shall be a minimum 50% Open Space requirement for the Residential property. Non-residential Land Uses may include up to 25% Multifamily Residential Uses. Notwithstanding any other provision in this Agreement, the Density permitted on the Real Property shall be the allowable destiny per the limiting factors as further defined in this Agreement and in the City's Land Development Code and Comprehensive Plan Site Specific Policy 1-1.7.1."

Attachment: Annexation Agreement

Administrative Services Department Review:	
City Attorney Review:	 (w/ exception)
Procurement Division Review, if applicable:	N/A

City Manager Authorization:	
Date:	1/19/23

THIS INSTRUMENT RETURNS TO:

Jeanette Williams, MMC, City Clerk
City of Sebastian
1225 Main Street
Sebastian, Florida 32958

THIS INSTRUMENT PREPARED BY:

Paul R. Gougelman, III, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
200 East Broward Blvd. - 19th Floor
Ft. Lauderdale, FL 33301

Manny Anon, Jr., City Attorney
City of Sebastian
1225 Main Street
Sebastian, FL 32958

Property Appraiser's Identification #

31-38-36-000001-0000000-7.0	31-38-35-000003-0000000-2.0
31-38-36-000001-000000-10.0	31-38-35-000001-0000000-1.0
31-38-36-000007-0000000-1.0	31-38-35-000001-0000000-2.0
31-38-36-000007-0000000-2.0	31-38-36-000005-0000000-2.0
31-38-36-000003-0000000-1.0	32-38-02-000003-0000000-1.0
31-38-36-000003-0000000-2.0	32-38-02-000005-0000000-5.0
31-38-36-000003-0000000-3.0	31-38-35-000005-0000000-3.0
31-38-36-000003-0000000-4.0	31-38-35-000007-0000000-3.0
31-38-36-000005-0000000-1.0	31-38-35-000007-0000000-3.1
31-38-36-000005-0000000-2.0	32-38-02-000001-0000000-1.0
31-38-36-000005-0000000-3.0	32-38-02-000001-0000000-2.0
31-38-36-000007-0000000-3.0	32-38-02-000007-0000000-2.0
31-38-36-000007-0000000-4.0	32-38-02-000007-0000000-3.0
32-38-01-000001-0000000-1.0	31-38-35-000003-0000000-1.0
32-38-01-000001-0000000-3.0	31-38-35-000005-0000000-1.0
32-38-01-000003-0000000-4.0	31-38-35-000007-0000000-1.0
32-38-01-000005-0000000-3.0	31-38-35-000007-0000000-4.0
32-38-01-000005-0000000-4.0	31-38-35-000007-0000000-2.0
32-38-01-000007-0000000-1.0	32-38-01-000003-0000000-1.0
32-38-01-000007-0000000-3.0	32-38-01-000007-0000000-1.0
32-38-01-000001-0000000-2.0	32-38-01-000005-0000000-1.0
32-38-01-000005-0000000-2.0	32-38-01-000007-0000000-2.0
31-38-36-000001-0000000-7.0	32-38-01-000003-0000000-2.0
31-38-36-000001-000000-10.0	32-38-01-000003-0000000-3.0
31-38-36-000003-0000000-2.0	31-38-36-000007-0000000-3.0
31-38-36-000003-0000000-3.0	31-38-36-000007-0000000-2.0
31-38-36-000003-0000000-4.0	31-38-36-000005-0000000-1.0

ANNEXATION AGREEMENT
FOR
GRAVES BROTHERS COMPANY

THIS AGREEMENT is made and entered into this day ____ of _____, 2022, by Graves Brothers Company, a Florida Corporation, whose address is 2770 Indian River Blvd., Suite 201, Vero Beach, FL 32960-4230; and the City of Sebastian, a Florida Municipal Corporation (hereinafter: the "City"), whose address is 1225 Main Street, Sebastian, Florida 32958.

RECITALS:

WHEREAS, the City of Sebastian, a Florida Municipal Corporation, is specifically authorized pursuant to Section 171.044, Florida Statutes (2022), to annex land upon the petition of the property owner; and

WHEREAS, Graves Brothers Company, a Florida Corporation, has petitioned the City for voluntary annexation of the Real Property; and

WHEREAS, Graves Brothers Company, a Florida Corporation, hereby affirms that the Real Property meets all requirements for annexation pursuant to the aforesaid Section 171.044, Florida Statutes (2022) and as otherwise set forth in Florida law and the City's Codes and Ordinances, for the voluntary annexation of real property; and

WHEREAS, Graves Brothers Company, a Florida Corporation, and the City desire to set forth certain understandings with regard to the proposed use of the Real Property upon annexation, and based thereon, the parties hereto desire to enter into this Annexation Agreement; and

WHEREAS, the City further enters into this Agreement pursuant to its Charter and home rule powers pursuant to Article VIII, Section 2, Florida Constitution of 1968 and Section 166.021, Florida Statutes; and

WHEREAS, Graves Brothers Company, a Florida Corporation, legally incorporated by the Secretary of State, State of Florida, which corporate charter and standing with the State of Florida is current, active, and in good standing, as a Florida for-profit corporation; and

WHEREAS, Graves Brothers Company, a Florida Corporation, is authorized by Chapter 607, Florida Statutes, and its charter, articles of incorporation, and by-laws to execute this Agreement; and

WHEREAS, Graves Brothers Company, a Florida Corporation, by execution of this Agreement hereby affirms, warrants to, and affirms the City that it has taken all requisite corporate action to approve the execution of this Agreement; and

WHEREAS, at the time of execution of this un-amended, base document Agreement, Graves Brothers Company, a Florida Corporation, was and is the legal Owner of certain Real Property (the "Real Property") located in Indian River County, Florida, which Real Property is the subject matter of this Agreement; and

WHEREAS, Graves Brothers Company, a Florida Corporation, hereby affirms, warrants to, and assures the City that it has legal marketable title in fee simple to the Real Property has lawful authority to petition for the voluntary annexation of the property set forth herein and desires to annex the Real Property into the municipal boundaries of the City; and

WHEREAS, said Real Property constitutes 2,044.3 +/- annexed acres of property within the Southwest area of the City of Sebastian which is reasonably compact and contiguous to the municipal boundary of the City, and will not result in the creation of enclaves; and

WHEREAS, the parties desire to enter into this Agreement relating to the annexation of the Real Property in order to achieve the Development of the Real Property permitted under Article III of this Agreement and all in the promotion of the public health, safety, welfare, economic order, and aesthetics of the City; and

WHEREAS, this Agreement has been found to be consistent with the City's Comprehensive Plan and amendments pending adoption thereto; and

WHEREAS, on December 14, 2022, the City Council of the City of Sebastian adopted Ordinance No. O-22-07 approving this Agreement and directing the City Manager to execute this Agreement as provided in Section 3.04(g) of the Charter of the City of Sebastian; and

WHEREAS, it is the intent of the parties hereto to Develop the Real Property based on the terms of this Agreement; and

WHEREAS, all parties hereto have, without duress, voluntarily entered into this Agreement.

NOW, THEREFORE, in consideration of TEN and 00/100 Dollars (\$10.00) and certain other valuable considerations, each to the other paid in hand, the sufficiency and receipt all of which be and the same is hereby acknowledged, the parties desiring to be legally bound hereby agree as follows:

ARTICLE I
RECITALS; DEFINITIONS

Section 1.1. Recitals; Properties Subject to Agreement. The Real Property shall be held, transferred, sold, conveyed, occupied, annexed, and Developed subject to this Agreement. Each and all of the foregoing recitals (the "WHEREAS" clauses above) are hereby declared to be true and correct and are incorporated herein.

Section 1.2. Definitions. In this Agreement, unless the context otherwise indicates, the terms set forth below are defined as follows:

(a) "Affordable Housing" as defined by the Federal Department of Housing and Urban Development (HUD) and Chapter 420, Florida Statutes, means that monthly rents or monthly mortgage payments including taxes, insurance, and Utilities do not exceed 30 percent of the amount which represents the percentage of the median adjusted gross annual income for the households.

(b) "Agreement" means and refers to this Annexation Agreement and as the same may be amended from time to time.

(c) "City" means and refers to the City of Sebastian, a Florida Municipal Corporation.

(d) "Commercial Use" means the portions of the Real Property intended to be Developed with professional Office or retail Commercial Development. There may be one or more Commercial Parcels which are predominantly connected with the sale, rental and distribution of products, or performance of services.

(e) "Compatibility" or "Compatible" is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other. Some elements affecting compatibility include the following: height; scale; mass and bulk of structures; pedestrian or vehicular traffic, circulation, access and parking impacts; landscaping; lighting; noise; odor; and architectural style.

Compatibility does not mean “the same as.” Rather, it refers to the sensitivity of Development proposals in maintaining the character of existing Development.

(f) “Concurrency” is the legal requirement that specified Public Facilities (recreation and Open Space, potable water, reuse water, sanitary sewer or Wastewater, solid waste, Stormwater Management System, and transportation) be provided for, by an entity to an adopted Level of Service.

(g) “Conservation” refers to environmentally sensitive areas that reserves and restricts Development on those lands in order to protect the environmentally sensitive lands.

(h) “Consistent with the Comprehensive Plan” means a condition in which Land Uses or conditions can co-exist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. A Development shall be consistent with the comprehensive plan if the Land Uses, densities or intensities, and other aspects of Development permitted by such order or regulation are Compatible with and substantially further the , policies, Land Uses, densities or intensities, capacity or size, timing, and other aspects of the Development in the comprehensive plan, and if it meets all other criteria enumerated by the City, including the Land Development Codes in effect at the time of issuance of a Final Development Order. See §§163.3164 and 163.3194, Fla. Stat.

(i) “County” means and refers to Indian River County, a political subdivision of the State of Florida.

(j) “Density” is used as a measurement of the number of Dwelling Units per gross acre of land.

(k) “Developer” is one who actually Develops, or has the right to Develop, any portion of the Real Property regardless of size. A Developer may also be an Owner of all or a portion of the Real Property.

(l) “Development” or to “Develop” means and is defined as set forth in Sections 163.3164 and 380.04, Florida Statutes, as amended or superseded from time to time, which is set forth below. The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels; any mining, excavation, landfill or land disturbance; and any nonagricultural use or extension of the use of land, are all activities included within the terms “Development” or to “Develop.” The term “Development or to “Develop” includes redevelopment. The term “Development” or to “Develop” shall include construction within any public Right of Way that is dedicated, conveyed, or proposed to be conveyed or dedicated to the public or to a governmental entity. “Development” shall be the planned or actual act of placing Development on the land, consistent with City Code and Florida Statutes.

(m) “Development Order” means any order granting, denying, or granting with conditions an application for a Development Permit. See §163.3164, Fla. Stat.

(n) “Development Permit” includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the Development of land. See §163.3164, Fla. Stat.

(o) “Dwelling Unit” is a room or group of rooms forming a single independent habitable unit used for or intended to be used for living, sleeping, sanitation, cooking and eating purposes by one (1) family only; for owner occupancy or for rental, lease or other occupancy and containing independent kitchen, sanitary and sleeping facilities. A Dwelling Unit per gross acre is also a measure of Density.

(p) “Final Development Order” means the issuance of a Development Order for a Site Plan or in the case of a Residential Use for Single-Family Dwellings, a Development Order for a final Plat. In certain cases as specifically noted throughout this Agreement, a Final Development Order may mean a building permit to commence construction of a structure or building.

(q) “Floor Area Ratio” or “FAR” is a measurement of non-residential Development which represents the gross floor area of all buildings, structures, or similar as compared to the total area of the property on which it is located. The Floor Area Ratio is a fraction, the numerator of which is the gross floor area of all floors in structures and the denominator of which is the square footage of the property. The ratio is measured in square feet to the area of a Tract land, excluding any bonus or transferred floor area.

(r) “Green Infrastructure” refers to ecological systems, both natural and engineered, that act as living infrastructure. Green Infrastructure elements are planned and managed primarily for Stormwater control, but also exhibit social, economic and environmental benefits.

(s) “Impact Fee” means a fee levied by the City, or other governmental entity, on new Development so that the new Development pays its proportionate share of the cost of new or expanded Public Facilities required to service that Development.

(t) “Industrial Land Use” or Industrial Use” means the portions of the Real Property intended to be Developed with activities predominantly connected with manufacturing, assembly, processing, or storage of products, which are defined herein as an Industrial Use. There may be one or more Industrial parcels.

(u) “Heavy Industrial Land Use” or “Heavy Industrial Use” refers to an Industrial property subtype in which the property is occupied by one or more tenants and the property is utilized for heavy industrial purposes, i.e. heavy manufacturing, petroleum products, cement, recycling center, and other uses, all of which Heavy Industrial uses must be consistent with and as provided by Section 54-2-5.6A of the Land Development Code of the City of Sebastian.

(v) “Infrastructure” means and refers to those man-made structures which serve the common needs of the population, such as: Wastewater or sewage, Stormwater, or Wastewater treatment or disposal systems; potable or reuse water systems; potable water wells serving a system; solid waste disposal sites or retention areas; Stormwater systems and outfall; Utilities; bridges; and, roadways.

(w) “Institutional Land Use” means the portions of the Real Property intended to be Developed with facilities providing a government or public service, recreation, certain Infrastructure Developments, or Conservation, which are defined herein as an Institutional Use. There may be one or more Institutional Parcels.

(x) “Land Development Codes” means ordinances or resolutions enacted by the City Council for the regulation of any aspect of Development and includes any local government zoning, rezoning, subdivision, building construction, landscaping, or sign regulations or any other regulations controlling the Development of land. See *Land Development Regulation*, §163.3164, Florida Statutes.

(y) “Land Use” means the Development that has occurred on the Real Property, the Development that is proposed by a Developer on the land, or the use that is permitted or permissible on the land under the then currently effective comprehensive plan or element or portion thereof, or the Land Development Code, as the context may indicate.

(z) “Level of Service” means and refers to an indicator of the extent or degree of service provided by or proposed to be provided by a facility based on and related to the operational characteristics of the facility. Level of Service shall indicate the capacity per unit of demand for each Public Facility.

(aa) "Lot" means and refers to a parcel of land of at least sufficient size to meet minimum zoning and Land Development Code requirements, in existence at the time of Platting or Development, for use, coverage and area, and to provide such yards and other Open Spaces.

(bb) "Low Impact Design" means systems and practices that use or mimic natural processes through incremental treatment of Stormwater runoff that result in the infiltration, evapotranspiration or storage of Stormwater in order to protect water quality and associated aquatic habitat.

(cc) "Master Planning" or "Master Planned" means creation of illustrative plan depicting the Real Property and locating development area, spine roads, and assigning intensity and/or density to the development area.

(dd) "Manufactured Housing" means a Mobile Home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

(ee) "Mixed-Use Development" means and refers to a type of Development that combines a mix of uses that shall include a mixture of residential, office, commercial, recreational, limited industrial and/or institutional uses within one building or multiple buildings with direct pedestrian access between uses. Also, a Mixed-Use Development may encourage town centers along major arterial transportation corridors.

(ff) "Mobile Home" means a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to required Utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(gg) "Multi-Family Dwelling Units" means three or more attached dwelling units either stacked vertically above one another and/or attached by side or rear walls.

(hh) "Open Space(s)" means and refers to lands suitable for passive recreation, Conservation, Stormwater uses (inclusive of lakes and canals) as further defined in this Agreement and in the City's Land Development Code and Comprehensive Plan Site Specific Policy 1-1.7.1.

(ii) "Owner" means and refers to Graves Brothers Company, a Florida Corporation, organized under the laws of the State of Florida, the record owner of the fee simple title to the Real Property, less and excepting all ROW, and to its or their successors, heirs and assigns or the Developer.

(jj) "Planned Unit Development" or "(PUD)" is a form of Development recognized from time to time within the City's Land Development Code as a specific implementing zoning district and which creates a Planned Development. Development that is designed as a unit, and which shall include only one or a mixture of Land Uses, and which generally avoids a gridiron pattern of streets, and usually provides common Open Space, recreation areas or other amenities. Requirements include submission and review of Site Plans as part of the zoning or rezoning to a PUD zoning district.

(kk) "Planned Development" is land that is under unified control and planned and Developed as a whole in a single development operation or a definitely programmed series of Development operations. A Planned Development includes principal and accessory structures and uses substantially related to the character and purposes of the Planned Development. A Planned Development is constructed according to comprehensive and detailed plans which include not only streets, Utilities, Lots or building sites and the like, but also Site Plans and floor plans for all buildings as intended to be located, constructed, used and related to each other, and detailed plans for other uses and improvements on the land as related to the buildings.

(ll) "Parcels" means any contiguous quantity of land capable of being described such that its location and boundaries may be established, that is designated by its owner(s) or developer(s) as land to be used or developed as a unit, or that has been used or developed as a unit.

(mm) "Plat" shall be defined as a map or delineated representation of the subdivision of land or lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of Chapter 177, Florida Statutes, as amended from time to time, and City subdivision regulations, in effect at the time of platting or replatting of a particular Development. The term "plat" shall include a replat. See §177.031, Fla. Stat.

(nn) "Public Facilities" or "Public Facility" means publicly owned Infrastructure including, rights-of-way, roadway or transportation systems or facilities, sewer or Wastewater systems or facilities, solid waste systems or facilities, Stormwater facilities, drainage systems or facilities, potable or reuse water systems or facilities, educational systems or facilities, parks and recreation systems or facilities and public health systems.

(oo) "Real Property" means and refers to all such existing real property as described in Exhibits 1A & 1B, attached hereto and by this reference incorporated herein. To the extent that the written metes and bounds legal description and the pictorial sketch conflict, the sketch shall supersede the written metes and bounds legal description in interpreting the description of the Real Property.

(pp) "Residential Land Use" or "Residential" means the portions of the Real Property intended to be Developed with a residential use, for use as Single Family Dwelling Units or Multi-family Dwelling Units, which are defined herein as a residential use. There may be one or more Residential parcels.

(qq) "Recreation Facility" means a component of a recreation site used by the public such as a trail, court, park, athletic field, swimming pool, or for the pursuit of leisure time activities occurring in an indoor or outdoor setting.

(rr) "Right of Way" means and refers to land in which the state, a county, a municipality or a special or improvement district, holds the fee simple title or has an easement, or dedicated rights of use, required for a public use.

(ss) "Single Family Dwelling Units" means a structure containing a residential single family Dwelling Unit occupying the building from ground to roof.

(tt) "Site Plan" means an illustrated proposal for the Development or use of a particular piece of the Real Property. The illustration consists of a map or sketch of how the Real Property will appear if the Development proposal is accepted by the City. The requirements for the contents of a Site Plan are as set forth in City's Land Development Codes, as amended from time to time. The Site Plan regulations applicable to Development of a specific parcel of the Real Property shall be those in effect at the time of approval of the Site Plan by the City.

(uu) "Stormwater" means and refers to the flow of water which results from and which occurs immediately after a rainfall event.

(vv) "Stormwater Management System" means and refers to a feature or facility which collects, conveys, channels, holds, inhibits or diverts the movement of Stormwater shall be inclusive of Best Management Practices (BMP).

(ww) "Utility" includes but is not limited to gas, water, re-use water, sewer, telephone, power, Stormwater drainage, and cable television.

(xx) "Wastewater" means the spent water of the community comprising the liquid and water-carried wastes from residential uses, commercial uses, industrial uses, and institutional uses, together with minor quantities of ground and surface waters that are not admitted intentionally.

ARTICLE II
ANNEXATION

Section 2.1. Petition to Annex.

(a) The Owner has voluntarily submitted to the City a formal and revised Petition or request for Annexation of the Real Property. This Agreement memorializes the existing Petition to Annex by the Owner and constitutes a Petition to Annex the Real Property. The Owner warrants that the Petition has been executed by all of the existing fee simple title owners of record of the portion(s) of the Real Property to be annexed and has been filed with the City in compliance with any and all applicable requirements of law, including, but not limited to, Chapter 171, Florida Statutes.

(b) This sub-section of the Agreement represents and includes findings by the Owner and the City that:

(1) A substantial portion of the boundary of the Real Property is substantially contiguous to the City's corporate boundary. "Contiguous" is defined as set forth in Section 171.031, Florida Statutes;

(2) The Owner, for itself and the Developer of each subdivision or Parcel of the Real Property, at its sole expense, intends to provide adequate Public Facilities for the Real Property; and

(3) The Real Property is ideally suited for annexation into the City due to its proximity to the City and adjacent transportation corridors and Public Facilities; and

(4) The annexation will yield substantial benefits to the Owner, the City, and to the Real Property in the form of planned Mixed-Use Development, an increased tax base to the City, Conservation of natural habitats, Open Space, and increased employment opportunities.

(c) The Annexation petition to annex a portion of the Real Property may be withdrawn by the Owner of that portion of the Real Property at any time prior to final approval of the annexation ordinance pertaining to that portion of the Real Property. If the petition is withdrawn, this Agreement is hereby terminated as to that portion of the Real Property, and the parties hereto shall not be bound by this Agreement with regard to its application to that portion of the Real Property. However, no application fees or other type of fee or charge paid to the City or any other governmental entity, or obligated to be paid to the City or other governmental entity shall be refunded, and the City shall be released from any liability for the release of the obligation or refund of the fee or charge by the Owner. This provision shall survive the termination of this Agreement.

Section 2.2. Consideration of Petition. The City shall have the full and complete right to deny annexation, defer annexation, or approve annexation of the Property or any portion thereof. By execution hereof, the Owner understands and agrees that the City makes no representation as to the suitability or legal appropriateness of the Real Property for annexation or that the City will annex the Property at any time or based upon any specific conditions, except as otherwise set forth herein.

Section 2.3. Cooperation. The Owner agrees to cooperate in the process of annexing the Real Property, based on any time schedule, all as may be required by the City in its sole and absolute discretion,

subject always to the provisions of this Agreement. Annexation of any part or portion of the Property shall not relieve the Owner of its obligation to cooperate with the City in, and to keep alive the Petition for, Annexation of all the Real or a portion of the Property.

Section 2.4. Litigation. Should any “party affected,” or as defined in Chapter 171, Florida Statutes (or any successor statute), file a legal action with a court of competent jurisdiction contesting the annexation of the Real Property or this Agreement, the Owner, at the request of the City, agrees to participate in defense of the annexation and this Agreement. Further, with regard to any attorneys’ or paralegals’ fees or court costs, or adverse judgment, incurred by the City directly relating to its defense of any lawsuit with the City, if any, relating to contest of the annexation hereunder or this Agreement, the Owner agrees to indemnify and save harmless the City for the payment of any claims or damages, as well as any court costs, adverse judgment and attorney’s and paralegal’s fees, incurred in defending said action or as a direct or indirect result of said action. As used herein, the term “defense” shall include any counter-claims, appeals, or cross-appeals. As used herein, reference to attorney’s fees or paralegal’s fee shall apply to both trial and any appeal and to any negotiation of settlement of claims relating to this Agreement or any annexation. The Owner will have to make any payment to the City within ten (10) days of receiving any invoices from the City pertaining to any claims or damages, as well as any court costs, adverse judgment and attorneys or paralegal’s fees, or court costs, as stated above. The City, at its sole cost and expense, will have the authority pursuant to this Agreement to retain the legal counsel of its choice.

ARTICLE III
DEVELOPMENT OF THE PROPERTY

Section 3.1. Development Plan.

(a) **Future Development Planning.**

(1) As of the Effective Date of the original, un-amended Annexation Agreement, there is no graphic or written version of a Development Plan for the Real Property. The Owner/Developer agrees that this Agreement does not authorize approval of any specific Development Order, subdivision or Site Plan proposal. However, the Owner and any Developer of any portion of the Real Property, agrees that minimum standards in this Agreement shall guide and bind the Development of the Real Property.

(2) The Owner and the City agree that due to the size of the Real Property and its location, that Development of the Real Property shall be Master Planned through a Mixed Use PUD zoning on a minimum of 400 acre Parcels as part of the Planned Unit Development (PUD). Development of the Real Property shall consist of a well-planned, sustainable and integrated system of Land Use; consistent with Future Land Use Map (FLUM) and City Ordinance O-22-13, [see Section (b)(2) a. through m., *supra*] containing a mix of Residential and non-residential uses.

(b) **Comprehensive Plan Land Use Designation.**

The City has taken action to designate the Real Property on the Future Land Use Map (FLUM) of the City’s Comprehensive Plan as Mixed Use as provided in Policy 1-1.3.6 of the Future Land Use Element.

(1) **Mixed Use (MU) Development.** The Real Property shall be Developed Consistent with the Comprehensive Plan Future Land Use Classification in effect and according to Florida Statutes at the time of Development as determined by the City, and in no event will the Real Property Development exceed the maximum Density and Intensity of Use in this Agreement, and will satisfy all other requirements of this Agreement. The purpose of the Mixed Use designation is to provide a mixture of Residential, Commercial, recreational, Industrial, Heavy Industrial, and Institutional uses and encourage town centers along major arterial corridors.

The Development of the Real Property shall be Master Planned as a PUD on a minimum of 400 acre parcels. A range of Mixed Uses consisting of 60%-80% Residential Land Use categories shall be balanced with a mixture of non-residential Land Use categories with a range of 20% - 40%. During the PUD process, the acreage within the PUD shall be a mix of uses including Residential, Institutional, Commercial and Industrial. The Residential Land Use on the Real Property shall include a target mix of 40% Medium Density, 40% Low Density and 20% Very Low Density for the purposes of calculating permissible density. Densities may be transferred within each PUD parcel or outside to other PUDs within the Real Property provided the Residential Land Use range is not exceeded on the Real Property. There shall be a minimum 50% Open Space requirement for the Residential property. Non-residential Land Uses may include up to 25% Multifamily Residential Uses. Notwithstanding any other provision in this Agreement, the Density permitted on the Real Property shall be the allowable destiny per the limiting factors as further defined in this Agreement and in the City's Land Development Code and Comprehensive Plan Site Specific Policy 1-1.7.1.

Notwithstanding any other provision in this Agreement, the maximum Intensity on Commercial Use shall be 0.6 FAR, and the maximum Intensity on Industrial Use shall be 0.5 FAR. There shall be a minimum 30% Open Space requirement for the Industrial and Commercial Uses.

(2) Comprehensive Plan Requirements. The City has approved Ordinance O-22-13 as part of the Comprehensive Plan which includes the following principals of Mixed-Use Development for the Real Property. These principles shall further guide and bind Development of the Real Property under the Comprehensive Plan Site Specific Policy 1-1.7.1, as amended from time to time. The Owner agrees to and consents to the site specific policy as set forth below which is the policy in effect at the time of consummation of this Agreement in its original, un-amended form, which is set forth below.

a. Rezoning of the property shall be done through a Planned Unit Development process as described in Article XX of the City's Land Development Code, as amended, or superseded, from time to time.

b. Housing types shall be mixed to meet various income levels and lifestyle choices; a mix of Single Family Dwelling Units and Multi-Family Dwelling Units (the "Dwelling Units") consisting of a variety of housing choices including at least 5 percent (5%) and up to 10 percent (10%) of the Dwelling Units on the Real Property as being Affordable Housing.

c. Provision for future dedication of Right of Way, at the time of Development, to the extent required for the Development and upon mutual consent of the Owner, shall be transferred to the appropriate entity to promote an interconnected, extended and improved grid road system, along with a well-planned transportation system of roads and streets throughout the Real Property (Development), in coordination with the County, to specifically include 84th Avenue, 81st Street, 77th Street, and 73rd Street, as well as 74th Avenue.

d. Provision shall be made on the Real Property for a mixed-use "Town Center" area including an active street frontage or context sensitive street design, compatibility of central theme or design character, and a comprehensive transportation network that promotes walkability thru compact Development and proximity of structures, reduces auto dependence, and connects to state and local transportation corridors.

e. To the extent required for and at the time of the Development, future dedication and donation of Institutional parcels may be required as necessary for governmental services such as post offices, public safety, schools, etc. and Public Facilities that may be needed for increases in necessary services, as identified by concurrency analysis in accordance with the City of Sebastian Land Development Codes and Ordinances at the time of development.

f. Strategic assembly of commerce and industrial development consistent with the City's Comprehensive Plan Mixed Use Land Use.

g. To the extent required for and at the time of the Development, future dedication or conveyance of Conservation lands to the appropriate entity to include any natural areas of significant

importance, and the provision of greenway trails to promote a system of connectivity and access consistent with the City's Comprehensive Plan and Land Development Codes.

h. To the extent required for and at the time of the Development, dedication of City Park and recreational lands above what will be required in the individual residential subdivision developments. Allocation of parks and recreational lands consistent with the City's Comprehensive Plan and Land Development Codes specifically: a minimum of 2 acres per 1000 residents of publicly accessible recreation lands, and a minimum of 2 acres per 1000 residents of other recreational lands. Publicly accessible lands shall be designated at the time of PUD zoning and may be conveyed to the City. The dedicated lands, shall count towards the required aggregate open space required for the Real Property;

i. Increased buffers adjacent to low density areas outside of the PUD area shall be in accordance with existing City Land Development Codes.

j. As a condition of future Development of the Real Property, the Owner shall provide sufficient land area for Public Facility Infrastructure required to support the Development and mandate hook-up to central potable water and wastewater systems for all new Developments on the Real Property prior to receiving final Development Orders. Therefore, the proposed development of any portion of the Real Property must provide municipal water, municipal sewer/wastewater systems reclaim water systems and Stormwater Management Systems, as a condition of Development. These services may be provided by the County however no septic systems or wells for individual potable water are allowed in accordance with City policy and land development codes.

k. The property shall be Master Planned on a minimum of no less than increments or units of 400 acre Parcels as part of an overall Planned Development project using the PUD zoning district and process, and promote Green infrastructure through a comprehensive plan of connected Stormwater, greenways, and Open Space that provides for wildlife habitat, Stormwater Management System and recreational opportunities including Low Impact Design and Best Management Practices.

l. The Real Property shall consist of a mix of uses consisting of 20-40 percent non-residential gross acreage and 60-80 percent residential gross acreage, and must provide for the required Open Space requirements and be in compliance with the Land Development code.

m. The Real Property Development shall have a minimum aggregate total of 50% Open Space for Residential Land Uses and 30% Open Space for non-residential land uses in accordance with Sec. 54-2-5.10(c) City Land Development Code, including but not limited to each of the following uses which shall qualify to meet the Open Space requirement: conservation and preservation land; greenways and trails; all parks whether passive or recreational; all common Open Space; Stormwater uses (inclusive of lakes and canals), wetland preservation, preservation of habitat for Protected Species which is left undeveloped, and any pervious portions of the Real Property conveyed to the County or City for a Wastewater treatment plant, Right of Way, schools, fire station or police station.

(c) Any residuary amount of the Real Property remaining after the PUD Development Permitting of all phases of the Real Property, the Owner/Developer agrees that those residuary properties shall be submitted for Development and specific Land Development consistent with the adjoining property.

(d) Consistency with Comprehensive Plan. The parties agree that as required by Florida law all Development constructed on the Real Property must be Consistent with the Comprehensive Plan, as it exists at the time of issuance of a Final Development Order for the particular Development that is the subject of the Final Development Order. See §163.3194, Fla. Stat.

(e) Mobile Homes and Manufactured Housing.

(1) Notwithstanding other provisions in this Agreement, Mobile Homes with or without essentially flat roofs may be located on any parcel of the Real Property for not more than 780 consecutive days in any four non-calendar year period solely for purposes of use as a building construction office facility. Otherwise, Mobile Homes and Manufactured Housing shall not be Developed on the Real Property.

(2) In the event that the foregoing sub-section (e)(1) is deemed unenforceable or otherwise stricken by a court of competent jurisdiction or other governmental authority, Mobile Homes and Manufactured Housing may only be permitted by such that Mobile Home or Manufactured Housing roofs that are visible from any public or private Right-of-Way shall be of hip, gambrel, mansard, or gable styles. Roof height, bulk, and mass must appear structural even when the design is nonstructural. The following requirements shall apply: (1) All Single-Family Dwelling Units and Duplex buildings shall have a pitched roof covering a minimum of 65 percent of the overall floor area under the roof; (2) Pitched roofs shall have a minimum slope of 5:12 (five inches vertical rise for every 12 inches horizontal run) and shall have an overhang beyond the building wall; however, the overhang shall not encroach into an easement; (3) Flat roofed areas including, but not limited to, porches or screen rooms are permissible in the remaining 35 percent of floor area under roof; and (4) Flat roofs shall be located at the rear of the building out of view from the public right-of-way.

(3) In the event of a hurricane or other major weather disaster in which the City determines that single-family or multi-family Residential housing on the Real Property or in the City is destroyed or substantially not habitable, the City may unilateral authorize the temporary placement of Mobile Home or Manufactured Housing on the Real Property for a period not to exceed 1,095 consecutive days. Thereafter, the Mobile Home or Manufactured Housing on the Real Property must be immediately and promptly removed at other than City expense.

Section 3.2. Commercial Development.

(a) Uses. A variety of non-Residential Land Use designations shall be maintained to assure availability of sites that accommodate the varied site and spatial requirements for such activities as: professional and business Offices, Commercial activities, employment generating businesses and general retail sales and services. In doing so, the City shall promote the image and function of the urban core which is the City's center for commerce as well as civic and cultural enrichment. Office Development may serve as a transitional use separating more intensive Commercial uses from Residential Development in order to create a tiered Development strategy. Office Development and limited Commercial activities (neighborhood serving) may also be suitable and locate along the outer fringe of the urban core where such Development may encourage reinvestment in declining Residential areas surrounding the urban core. Residential Development as permitted by Section 166.04151(6), Florida Statutes, as amended or superseded from time to time shall also be permitted.

(b) Height; Intensity. The Owner/Developer agrees that a maximum height for all structures shall be thirty-five (35) feet, as calculated pursuant to the Land Development Codes in effect at the time of the issuance of a Final Development Order; subject always to the provisions of the Land Development Codes in effect at the time of the issuance of a Final Development Order.

The Commercial Land Use category consists of Neighborhood, Limited and General uses in progressive degrees of higher intensity:

(1) Neighborhood level Commercial activities are defined in the City's Land Development Codes from time to time as including retail and office activities that service Residential neighborhoods.

(2) Limited Commercial Land Use designation is to consist of sites intended to accommodate neighborhood level commercial activities. The maximum intensity is 0.6 FAR. Limited Commercial activities and personal services shall include establishments catering to the following markets:

- a. Neighborhood Residential markets within the immediate vicinity as opposed to county-wide or regional markets; or
- b. Specialized markets with customized market demands.

(3) General Commercial Land Use designation is to accommodate general retail sales and services; highway oriented sales and services; and other general Commercial activities defined in the Land Development Codes. General Commercial designations are located in highly accessible areas, adjacent to major arterials.

(c) Platting; Subdivision. Prior to commencement of construction, the Owner/Developer agrees that Lots within any Commercial Parcel shall be Platted or Subdivided by and at the sole cost and expense of the Developer subject to the Land Development Codes in effect at the time of the issuance of a Final Development Order.

Section 3.3 Residential Development.

(a) Uses. The residential Land Use category consists of “Very Low Density Residential,” “Low Density Residential,” “Medium Density Residential,” or “Mixed Use” residential uses in progressive degrees with higher Density in areas adjacent to the urban core and less Density in the perimeter of the City. Residential Development shall be planned and designed to create and perpetuate stable Residential neighborhoods and implement the policies stipulated in the City Comprehensive Land Use Plan. Accessory uses include customary accessory uses of a residential nature, clearly incidental and subordinate to the principal use, including guest houses or ADU’s, garages, in keeping with the residential character of the area, all as permitted or prohibited pursuant to and consistent with the City’s Land Development Codes in effect at the time of issuance of a Final Development Order for a building permit.

(b) Density; Residential Development Standards. The Owner/Developer agrees that Development on the Residential property shall meet the following standards:

(1) Areas designated as “Very Low Density” shall accommodate up to three (3) dwelling units per gross acre and shall be comprised of primarily single-family detached homes on individual lots;

(2) Areas designated as “Low Density” shall accommodate a maximum Density of up to five (5) dwelling units per gross acre and shall be comprised primarily of single family detached homes on individual lots and attached residential homes;

(3) Areas designated as “Medium Density” shall accommodate a mixture of single-family (detached and attached) residential housing, multi-family residential housing, and Compatible civic uses and Open Space(s) at a maximum density of ten (10) Dwelling Units per gross acre. The Density of uses within this designation should be sensitive to adjacent neighborhoods to ensure appropriate transitions, buffers, and Compatibility.

(4) Density on Residential property may be clustered or transferred from Residential property to Residential property or Commercial property; provided, that the requirements of this Agreement are not otherwise exceeded, all in an effort to provide Open Space or higher Density Development in certain areas of the Real Property.

(c) Affordable Housing. The Owner/Developer is encouraged to coordinate with non-profit legal entities to further expand opportunities for Affordable Housing.

(d) Platting; Subdivision. Prior to commencement of construction, any Subdivision of the Residential property shall be platted by and at the sole cost of the Owner/Developer pursuant to the City's Land Development Codes in effect at the time of Subdivision.

Section 3.4. Industrial Land use Development.

(a) Uses. The purpose of the Industrial Land Use designation is to provide strategically located sites for Industrial needs and requisite support services. The City's Industrial Land Use may be further designated as Industrial (IND), or Heavy Industrial (HI), in order to support future economic Development and job growth. The locations for IND and HI should be located with convenient access to major transportation routes. New industrial locations shall ensure protection of environmentally sensitive lands, protected natural resources, and Protected Species.

(1) Industrial (IND) - Land Use designation provides for limited manufacturing and industrial uses which minimize the potential for any adverse impacts upon nearby properties which include: Utilities; light manufacturing, assembling and distribution activities; warehousing, storage and wholesaling activities; general commercial activities; aviation related industry, services and facilities; support services such as night watchmen or custodian residential accessory uses; and other similar land uses which shall be regulated through appropriate zoning procedures.

(2) Heavy Industrial (HI) - Land Uses are subject to additional protective measures through appropriate zoning procedures. The City will establish separate HI district location criteria and performance criteria that provide a greater separation from impacts to surrounding Land Uses. Uses permitted in the HI district allow a broader range of uses that may have a greater impact on adjacent properties including: sites which require large surface area, bulk storage facilities, logistic centers/ terminals; distribution centers; warehousing, manufacturing and processing; green technologies and wholesale recycling operations; and support services such as night watchmen or custodian residential accessory uses.

(b) Height; Intensity. The maximum height for all structures shall be thirty-five (35) feet, as calculated pursuant to the Land Development Codes in effect at the time of the issuance of a Final Development Order. Subject always to the provisions of the Land Development Codes in effect at the time of the issuance of a Final Development Order and notwithstanding any other provision in this Agreement, the maximum Intensity of Industrial Use shall not exceed a 0.5 Floor Area Ratio within its Zoning District.

(c) Locational Standards.

(1) Industrial sites shall generally be allocated in areas accessible to arterial roads, rail corridors, or near airport facilities and should be located in more sparsely Developed areas. New Industrial Land Use areas shall also be located near existing Compatible Land Use, separated from Residential Tracts and Institutional Tracts. Where new industrial Tracts are adjacent to environmentally sensitive lands, protected natural resources, or Protect Species, appropriate buffers and other techniques shall be used to ensure protection of such lands and resources from industrial Development. The City shall encourage industries that contribute to the City's and local economies of the Treasure Coast and Space Coast. The City shall also encourage green industries (such as recycling facilities) that minimize potentially negative regional impact to the environment.

(2) The allocation of land resources for industrial Development shall be responsive to the location and space requirements of industrial activities and potential fiscal and environmental impacts on the City. The location and distribution of Industrial Land Use shall be determined based on the following considerations:

- i. Trip generation characteristics and impact on existing and planned transportation systems, including dependency on rail, air, or trucking for distribution of material and goods;
- ii. Anticipated employment generation, floor area requirements, and market area;
- iii. Ability to meet established performance standards for preventing or minimizing nuisance impacts, such as emission of air pollutants, glare, noise or odor, or generation of hazardous by-products;
- iv. Impact on established as well as anticipated future Development and natural systems; and
- v. Impact on existing and planned public services, Utilities, water resources, and energy resources.

(3) The City shall prevent nuisance impacts frequently associated with Industrial activities by maintaining performance standards in the Land Development Codes for managing emission of noise, air pollutants, odor, vibration, fire or explosive hazard, and glare.

(4) In addition to the performance standards identified above, the City shall establish performance standards in the LDC as it pertains to both Industrial and Heavy Industrial districts which at a minimum address, but are not limited to, the following:

- i. Allowable uses;
- ii. Land Use Compatibility, buffering and landscaping;
- iii. Access points, traffic controls, and parking;
- iv. Signage;
- v. Gross floor area, impervious surface ratios;
- vi. Open space;
- vii. Character of an area;
- viii. Locational factors;
- ix. Environmental impacts; and
- x. Secondary containment and open air storage facilities.

(d) Platting; Subdivision. Prior to commencement of construction, Lots within any Industrial Tract shall be Platted or Subdivided by and at the sole cost and expense of the Owner/Developer subject to the Land Development Code, in effect at the time of the issuance of a Final Development Order.

Section 3.5. Institutional Land Use Development.

(a) Uses. The Institutional Land Use designation is intended to accommodate existing public and semi-public services including: governmental administration buildings; public schools, not-for-profit educational institutions and charter schools; hospital facilities and supportive health care units; arts and cultural or civic facilities; essential public services and facilities; cemeteries; fire and emergency operation facilities; public and private parks and recreation areas; and Utilities.

(b) Height; Intensity. The maximum height for all structures shall be thirty-five (35) feet, as calculated pursuant to the Land Development Code, in effect at the time of the issuance of a Final Development Order. Subject always to the provisions of the Land Development Code, in effect at the time of the issuance of a Final Development Order and notwithstanding any other provision in this Agreement, the maximum Intensity of this designation is floor area ratio of 0.6. The location, scale, timing, and design of necessary public and semi- public services and Utilities shall be closely coordinated with Development activities in order to promote more effective and efficient delivery of requisite services and Utilities. The City shall maintain and enforce appropriate standards and specifications for the design and construction of public

and semi-public services in order to promote cost effectiveness and quality control consistent with all applicable federal, state, regional, and local standards.

(c) Transmission, Distribution System. To the extent required by the Development and at the time of Development, the Owner/Developer of each portion of the Real Property will at the time of Development be responsible at its sole cost and expense for the installation of, connection to, or disconnection from, pressurized Wastewater treatment, gravity Wastewater, pressurized potable water, and pressurized County reuse pipes, tees, bends, valves, joints, laterals, pumps, and other appurtenances (hereinafter: "Facilities") and for the transmission of sewage, potable water, reuse water, or Stormwater. Said Facilities shall be capable of operation and maintenance for a term of years as required at the time of installation by the County. Said Facilities shall be conveyed to the County or the City, as directed by the City, on a schedule to be Developed by the City in consultation with the County.

(d) Over-sizing of Utility Public Facilities. The City or the County shall have the right to require, and the Owner/Developer accepts the responsibility of providing and maintaining, all at its expense, oversized Utility Public Facilities, including but not limited to potable water, Wastewater Treatment, Stormwater Management System, and water reuse, all to serve additional properties on-site or off-site of the Real Property; provided that a mutually agreeable cost recovery system can be put in place to reimburse the Owner/Developer for the over-sizing of the Utility Public Facilities.

(e) Platting; Subdivision. Prior to commencement of construction, Lots, Tracts, or Parcels of the Real Property within any Institutional Tract shall be Platted or Subdivided by and at the sole cost and expense of the Owner/Developer subject to the Land Development Codes in effect at the time of the issuance of a Final Development Order.

Section 3.6. Reservations or Dedications of Land for Public Purposes.

(a) Reservation or Dedications. Except as otherwise set forth below, reservations or dedications of portions of the Real Property shall comply with the Subdivision regulations set forth in the City's or County's Land Development Codes, as applicable, effective at the time of Site Plan approval for a given portion of the Real Property Development. All dedications or conveyances of road Right of Way, Stormwater Management Systems, water and sewer lines and lift stations and other Infrastructure, to the City, County, or other governmental entity, shall, at the time of dedication or conveyance, be free and clear of all mortgages, liens, and encumbrances and shall only be required by and at the time of Development.

(b) Roadways; Public Rights of Way.

(1) To the extent required for the Development and at the time of Development, the Real Property Development area will include connections to County Road 510, 82nd Avenue, and 69th Street right of way and roadways shall be Developed as permitted and consistent with Chapter 14-97, Florida Administrative Code.

(2) To the extent required for the Development, the aforementioned connections to County Road 510, 82nd Avenue, 69th Street, the existing City and area road network, will all be made at time of Development and at the sole cost and expense of the Owner/Developer, and at no cost to the County, the City, or any other governmental entity. The City may require that traffic islands for signage, safety, or aesthetics within these public access Rights of Way which shall be dedicated or conveyed to the City, or other appropriate governmental entity.

(3) The City acknowledges its intention, in good faith, to:

i. Coordinate the *pro-rata* funding of interchange, bridge crossings, or roadways with the Developers or owners of adjacent land, when such land is benefited by those improvements; and

ii. Implement, when possible and agreeable with other land Developers or owners a “cost recovery” program for Utilities under the County’s or the City’s operation and control.

(c) Nothing in this Agreement shall prevent the Owner, its heirs, successors, and assigns from receiving impact fee credits or other compensation for any conveyance of land or for any provision of public infrastructure to the City, County, or other local government entity to the extent such conveyance of land or provision of public infrastructure exceeds the impacts created by the Development of the Real Property, and provided the City, County, or other governmental entity assesses impact fees for such infrastructure now or in the future.

ARTICLE IV
ENFORCED DELAY, DEFAULT, REMEDIES AND TERMINATION

Section 4.1. Enforcement as Permitted by Statute. This Agreement is enforceable by any party to this Agreement. Parties to this Agreement, and their successors, heirs, assigns and any Developer shall enforce this Agreement as provided in Section 5.3.

Section 4.2. Institution of Legal Action. In addition to any other rights or remedies, any party hereto, or their successors and assigns, may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any remedies consistent with the purpose of this Agreement. This Agreement and each provision hereof section shall not be interpreted as a pledge of *ad valorem* tax or other revenues. Parties to this Agreement, and their successors, heirs, and assigns, shall enforce this Agreement as provided in Section 5.3.

Section 4.3. Enforcement by any Party to this Agreement.

(a) **Notice of Default; Right to Cure.** In the event of default by any party to this Agreement, or said party’s heirs, successors and assigns, with regard to this Agreement or of any of its terms or conditions, the party alleging such default or breach shall give the breaching party not less than sixty (60) days’ Notice of Default in writing in the manner provided for giving notice as set forth in Section 7.5. The time of notice shall be measured from the date of certified mailing. The Notice-of Default shall specify the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. During any period for curing the default, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist, and the noticing party shall take no further action.

(b) **Option to Institute Legal Proceedings.** After proper notice and the expiration of said period to cure default, the noticing party to this Agreement, at its option, may institute a legal proceeding, if the default has not been cured.

(c) **Waiver.** Failure or delay in giving Notice of Default or seeking enforcement of this Agreement shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by another party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(d) **Violation.** In the event of violation of this Agreement by the Owner, the Developer, or any of their heirs, successors or assigns, the City shall have the right to refuse to issue further building permits, Final Development Orders, or certificates of occupancy or certificates of completion, all as the case may be, limited as to that phase of Development, or Plat of that phase of the Development where the violation is applicable, all until such time and event as all such violation(s) are corrected and that phase of Development of the Real Property is brought into compliance with this Agreement, applicable law, ordinances, resolutions, and the Land Development Code. The City shall be required to notice the violator with a notice of the nature of the violation and afford a reasonable period to cure the violation(s) before withholding building permits, Final Development Orders, or certificates of occupancy or certificates of completion relating to the phase of Development and not to the violation itself. The City is authorized by this Agreement to use any form of code enforcement to assure conformance with this Agreement.

ARTICLE V

ENCUMBRANCES AND RELEASES ON REAL PROPERTY

Section 5.1. Discretion to Encumber. The parties hereto agree that this Agreement shall not prevent or limit the Owner or a Developer in any manner at said individual's sole discretion, from encumbering the Real Property or any portion of any improvement thereon by any mortgage or other security device securing financing with respect to the same; provided, that said mortgage or other security device shall be released or satisfied as to said property prior to or simultaneous with its conveyance or dedication to the City or an incorporated property owner's, homeowner's or condominium association. The City acknowledges that the lenders' providing such financing may require certain modifications and the City agrees, upon request, from time to time, to meet with the Owner or a Developer and/or representatives of such lenders to negotiate in good faith any such request for modification; provided, that this Agreement shall not require the City's acquiescence to any action or resolution of a dispute or claim. Any mortgages or beneficiaries of a security instrument shall be entitled to the rights and privileges set forth in this article.

Section 5.2. Entitlement to Written Notice of Default. The holder of a mortgage or other security interest, and their successors and assigns, encumbering the Real Property, or any part thereof, which individual, successor or assign, has requested in writing to the City, shall be entitled to receive written notification from the City of any default by Owner or a Developer in the performance of said individual's obligations under this Agreement which obligations are not cured within thirty (30) days; provided, that the failure to give said notice shall not waive any default of, or action to enforce, this Agreement by the City.

Section 5.3. Property Subject to Pro Rata Claims. Any mortgagee or holder of a security interest who comes into possession of the Real Property, or any part thereof, pursuant to foreclosure of mortgages or other security interest or deed in lieu of such foreclosure, shall take or foreclose upon the Real Property, or any part thereof, subject to this Agreement and to any *pro rata* claims for payments or charges by the City against the Real Property, or any part thereof, secured by such mortgage or other security device which accrued prior to the time such mortgage or holder of a security interest comes into possession of the Real Property or part thereof.

Section 5.4. Release. The City hereby covenants and agrees that upon payment of all fees required under this Agreement with respect to the Real Property, or any portion thereof, and performance of obligations relating thereto (including completion of performance of continuing obligations), by the Owner upon request by the Owner, the City shall consider execution and delivery to Clerk of the Court of any appropriate release(s) of further obligations as to a particular and affected portion of the Real Property in form and substance acceptable to the Clerk of the Court, or as may otherwise be necessary to effect such release; provided, that the foregoing provision shall not require the City to release any provision of this Agreement from use, density, Intensity, type of Development, or other requirements of this Agreement. This section shall not be terminated upon the termination or release of this Agreement with regard to any portion of the Real Property.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.1. Drafters of Agreement. The Owner, for itself, or their heirs, successors, and any Developers, and the City, each were represented by or afforded the opportunity for representation by legal counsel and participated in the drafting of this Agreement and in the choice of wording hereof. Consequently, no provision hereof should be more strongly construed against any party as drafter of this Agreement. Should any action be brought in any court of competent jurisdiction by any of the parties to this Agreement, including the Owner or a Developer, or its of their respective successors, assigns, or heirs, each party shall bear its own attorney's and paralegal's fees and costs in connection with such litigation or an appeal any such litigation decision.

Section 6.2. Covenants Running With the Land. It is the intention of the Owner of the Real Property and the City, that this Agreement shall constitute covenants running with the land and with title to the Real Property, or as equitable servitudes upon the land, as the case may be. The burdens of this Agreement shall bind and the benefits of this Agreement shall inure to, the parties hereto and all successors in interest to the parties to this Agreement. Such covenants shall expire upon termination of this Agreement.

Section 6.3. Conveyance. The Owner shall give to the City written notice at least sixty (60) days prior to the sale, assignment or transfer of the Real Property or any portion of the Real Property consisting of at least two (2) acres or more. Dedication, assignment, sale, or conveying of a portion of the Real Property to the City shall constitute the sale, assignment or transfer of a portion of the Real Property.

Section 6.4. Indemnification. The Owner and its successors in interest in ownership of any portion of the Real Property ("Subsequent Owners"), shall jointly indemnify, defend and hold harmless the City, and its officers and employees, from all claims, demands, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Owner or Subsequent Owners in the performance of this Agreement; regardless of the negligence of its indemnitee, officers, directors, agents, or employees. However, such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City indemnitee or its officers, directors, agents or employees. Upon request of the City, the Owner or Subsequent Owners, indemnitees, jointly and severally, shall, at no cost or expense to the City, indemnify and hold the City harmless of any suit asserting a claim for any loss, damage or liability specified above, and the Owner or Subsequent Owners jointly and severally, indemnitees, shall pay any cost and reasonable attorneys' fees that may be incurred by the City in connection with any such claim or suit or in enforcing the indemnity granted above. The Owner or Subsequent Owners shall jointly and severally hold harmless and indemnify the City for all costs, attorneys' fees and paralegal fees incurred by the City in defending itself in any action by a third party challenging the validity of this Agreement or the City's liability for actions or omissions to act of the Owner or Subsequent Owners relating to Development of the Real Property; provided, said actions or omissions did not occur because of orders made specifically to the Owner or Subsequent Owners. As used herein, reference to attorney's fees or paralegal's fee shall apply to both trial and any appeal and to any negotiation of settlement of claims relating to this Agreement or any annexation. As part of the indemnification, the City shall have its choice of its legal counsel for representation. Nothing in this agreement shall be construed as the City waiving its sovereign immunity pursuant to 768.28, *et seq.*, Florida Statutes, or any other sovereign or governmental immunity. This section shall survive the termination of this agreement.

Section 6.5. Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified U.S. mail, postage prepaid, return receipt requested or by a nationally recognized overnight courier (*e.g.* – Federal Express, United States Postal Service, United Parcel Service, *etc.*). Notice required to be given shall be addressed as follows:

CITY: City Manager
City of Sebastian
1225 Main Street
Sebastian, Florida 32958

With a copy to:

City Manager
City of Sebastian
1225 Main Street
Sebastian, Florida 32958

OWNER: Jeff Bass, President
Graves Brothers Company
2770 Indian River Blvd. – Suite 201
Vero Beach, FL 32960-4230

Notice is presumed to have been given on the date hand delivered, 24 hours after deposit with a recognized overnight courier, or five (5) days after deposited in the U.S. mail. A party may unilaterally change its address or addressee by giving notice in writing to the other party as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address and/or addressee.

Section 6.6. Applicability of Ordinances and Resolutions of City to Agreement.

(a) The ordinances, resolutions, and Land Development Code of the City, as amended from time to time, governing the Development of the Real Property shall continue to govern the Development of the Real Property, except as otherwise provided herein. At the termination of this Agreement or termination of this Agreement as to a portion of the Real Property, all then existing codes shall become applicable to the Development of the Real Property. Except as otherwise specifically set forth herein, no fee (including the existence or lack thereof), fee structure, amount computation method or fee amount, including any Impact Fees, then in existence or hereafter imposed, shall be vested by virtue of this Agreement.

(b) In the event that state or federal laws are enacted after the approval, effectiveness, or execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, such Agreement may be modified or revoked as is necessary to comply with the relevant state or federal laws. The City shall cooperate with the Owner in the securing of any permits which may be required as a result of such modifications.

Section 6.7. Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, and "may" is permissive. If there is more than one signer of this Agreement their obligations are joint and several. The time limits set forth in this Agreement may be extended by mutual consent of the parties in accordance with the procedures for adoption of an agreement. If for any reason a specific provision herein conflicts with a City Land Development Code, in effect at the time of issuance of a Final Development Order applicable to a portion of the Real Property, the specific provision herein shall prevail. Use of the term "Owner" or "Developer" means and refers to the Owner and/or the Developer, their successors, heirs, assigns, of any portion of or all of the Real Property.

Section 6.8. Severability. The parties hereto agree that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unconstitutional for any reason, the remainder of this Agreement shall be effective and shall remain in full force and effect, unless amended or modified by mutual consent of the parties.

Section 6.9. Entire Agreement, Waivers, and Amendments.

(a) This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers or releases of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party waiving or releasing the provisions hereof or performance hereunder.

(b) All amendments hereto must be in writing signed by the appropriate authorities in a form suitable for recording in the Public Records of Indian River County.

(c) The Owner hereby agrees to pay for any costs of recordation or filing of this Agreement, or any amendment hereto, in the Public Records of Indian River County, Florida, or with the State of Florida, Department of Economic Opportunity. The recorded original of this Agreement or any amendment hereto, shall be returned to the City for filing in its records to be kept with the City Clerk.

Section 6.10. Interpretation; Venue.

(a) With regard to any lawsuit against the City, the County, the Owner, or the Developer of any portion of the Real Property, this Agreement is subject to the home venue provision. The exclusive jurisdiction and venue for litigation surrounding this Agreement or its validity shall be properly located in the 19th judicial circuit of the State of Florida in and for Indian River County or the U.S. District Court, Southern District of Florida, in and for Indian River County, all as said jurisdiction boundaries may be amended from time to time.

(b) This section shall survive the termination of all or part of this Agreement.

Section 6.11. Termination of Previous Annexation Agreement; Previous Understandings.

(a) The Annexation Agreement between the Owner and the City recorded on August 29, 2019, in Official Records Book 3234, Page 1731, Public Records of Indian River County, Florida, be and the same is hereby terminated.

(b) All previous understandings, whether oral or in writing prior to the Effective Date of this Agreement, be and the same are hereby declared to be of no effect.

Section 6.12. Effective Date; Duration of Agreement.

(a) The Effective Date shall be the date upon which this Agreement has approved and executed by the Owner of the Real Property and the City and recorded in the Public Records of Indian River County, Florida. The Effective Date of any amendment to this Agreement shall be the date upon which said amendment to this Agreement has approved and executed by the Owner of the portion of the Real Property subject to the amendment and by the City and recorded in the Public Records of Indian River County, Florida.

*****NOTHING FURTHER*****

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written.

Signed, sealed and delivered
In the presence of:

OWNER:

Sign: _____
Print Name: _____
Address: _____

GRAVES BROTHERS COMPANY,
a Florida Corporation

Sign: _____
Print Name: _____
Address: _____

By: _____
Jeff E. Bass, its President
Address: 2770 Indian River Blvd. –
Suite 201, Vero Beach, FL 32960-4230

(CORPORATE SEAL)

STATE OF FLORIDA)
)
COUNTY OF INDIAN RIVER)

SS:

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 2022, by Jeff E. Bass, as President of Graves Brothers Company, a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:
Print Name:

CITY:

Sign _____

CITY OF SEBASTIAN, a Florida
Municipal Corporation

Print Name: _____

Address: _____

Sign _____

By: _____

Print Name: _____

Paul E. Carlisle, its City Manager
Address: 1225 Main Street
Sebastian, FL 32958

Address: _____

(CITY SEAL)

ATTEST:

Jeanette Williams, MMC
City Clerk

STATE OF FLORIDA)
) SS:
COUNTY OF INDIAN RIVER)

The foregoing instrument was acknowledged before me by means of ___ physical presence, or ___ online notarization, this ___ day of _____, 2022, by Paul E. Carlisle, as City Manager of the City of Sebastian, Florida, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Notary Public
State of Florida at Large
My Commission Expires:
Print Name: