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
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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

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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 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 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 +/- 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 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.

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

(d) “Commercial Tract” 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. Commercial Parcels are areas which are predominantly connected with the sale, rental and distribution of products, or performance of services, which are defined herein as a Commercial Use.

(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 further the objectives, 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 or parcel 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 of 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) "Harm" means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(t) "Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. This definition, when applied to captive wildlife, does not include generally accepted:

(1) Animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act;

(2) Breeding procedures; or

(3) Provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife.

(u) "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.

(v) "Industrial Tract" 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 Tracts, all of which industrial uses must be consistent with and as provided by Section 54-2-5.6 of the Code of Ordinances of the City of Sebastian.

(w) "Heavy Industrial Tract" 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.

(x) "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; piers; docks; wharves breakwaters; bulkheads; seawalls; bulwarks; revetments; causeways; marinas; navigation channels; bridges; and, roadways.

(y) "Institutional Tract" 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.

(z) "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.

(aa) "Land Use" means the Development that has occurred on the land, 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.

(bb) "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

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characteristics of the facility. Level of Service shall indicate the capacity per unit of demand for each Public Facility.

(cc) "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.

(dd) "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.

(ee) "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.

(ff) "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.

(gg) "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.

(hh) "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.

(ii) "Office" means a structure for conducting business, professional, or governmental activities in which the showing or delivery from the premises of retail or wholesale goods to a customer is not the typical or principal activity. The display of representative samples and the placing of orders for wholesale purposes shall be permitted; however, no merchandise shall be shown, distributed nor delivered on, or from, the premises. No retail sales shall be permitted.

(jj) "Open Space(s)" means and refers to undeveloped lands suitable for passive recreation, Conservation, Stormwater uses, and lands Developed for Institutional Uses. Golf courses and roads shall not be considered to be Open Space.

(kk) "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, and to its or their successors, heirs and assigns or the Developer.

(ll) “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.

(mm) “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.

(nn) “Parcels” means no less than units of 500 acres.

(oo) “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.

(pp) “Protected Species” means any wildlife species or vegetation designated, from time to time, by the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, the Florida Game and Freshwater Fish Commission, or other U.S. or other governmental agency having jurisdiction over the Real Property, as a rare or protected species, a species of special concern, an endangered species, or a threatened species.

(qq) “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.

(rr) “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.

(ss) “Residential Tract” 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 Tracts.

(tt) “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.

(uu) “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.

(vv) “Single Family Dwelling” means a structure containing a residential single family Dwelling Unit occupying the building from ground to roof.

(ww) “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 Tract of 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 for the specific Tract of the Real Property, or are pending adoption at the time of approval of adoption.

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

(yy) “Stormwater Management System” means and refers to a feature or facility which collects, conveys, channels, holds, inhibits or diverts the movement of Stormwater. A Stormwater Management Facility also is a structural Best Management Practice (BMP) designed facility to reduce pollutant loading to a receiving water by either reducing the volume of flow, providing or the biological uptake of pollutants, the limiting the loading of pollutants or allowing pollutants to settle out of Stormwater flow.

(zz) “Subdivision” means the division of land into three or more Lots, Parcels, Tracts, tiers, blocks, sites, units, or any other division of land for the purpose of a transfer of ownership and building or structure Development; and may include the establishment of new rights-of-way, streets and alleys, additions, and re-subdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided. The term includes re-subdivision, replat, revised plat, or amended plat and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided. A group Development which is Developed so that it might be broken into smaller parcels at some future time shall also be considered a Subdivision and shall meet the requirements of this code. Creation of a single condominium, other than a land condominium, shall not be construed to be a subdivision. Condominiums including three or more separate parcels of land, owned by an incorporated association, a person or persons, other legal entity, excluding condominium units and the condominium itself shall not be construed to be a single condominium, consistent with City Code and Florida Statues.

(aaa) “Take” means to Harm, Harass, hunt, capture, or kill, or attempt to Harass, hunt, capture, or kill any animal or plant Protected Species.

(bbb) "Tract" means a Subparcel within a PUD or a Parcel.

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

(ddd) "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 Parcel or Tract 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 transportation planned corridors and systems; 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

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released form 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," including the County or as defined in Chapter 171, Florida Statues (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 by 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 attorney's or paralegal's fees, or court costs, as stated above. The City will have the authority pursuant to this Agreement to retain the legal counsel of its choice.

Section 2.5. Petition to Annex is Exclusive. By execution hereof, the Owner, for itself and its successors heirs, assigns and any Developer, hereby agrees with and warrants unto the City, that this Agreement as a Petition to Annex shall constitute an exclusive Petition to Annex, and that the Owner, for itself and its successors, heirs, assigns and any Developer, shall not file, join in, or execute a request or Petition to Annex or support or fail to object to and oppose an annexation proposal (initiated by another governmental entity) into any other municipality without the consent and joinder of the City. In consideration of the provisions of this Agreement and the City's Agreement to consider from time to time annexation of the Real Property, or portions thereof, into the City, the Owner, for itself and its successors, heirs, assigns and any Developer, agrees that the City may for any reason refuse to consent to or join in the annexation of the Real Property into a municipality other than the City, and that the City shall not be liable to the Owner, its successors, heirs, assigns and any Developer, for any reason as a result thereof. The Owner, for itself and its successors, heirs, assigns and any Developer, covenants not to sue or file a claim against the City therefore. This Article II shall survive the termination of this Agreement or the termination of this Agreement as to any portion of the Real Property.

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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 PUD zoning on a minimum of 500 acre units as part of the planned unit "overlay" Development, including plans for phasing of Development on parcels of the Real Property for 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)(3) a. through m., *supra*] containing a mix of uses, including but not limited to Public Facilities, Utility Services, Transportation networks, Open Space, recreation, parks, Conservation, Stormwater Management, Residential, Commercial and other Infrastructure including Institutional facilities.

(b) Comprehensive Plan Land Use Designation.

(1) 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.

(2) 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 Statues 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, Office, commercial, recreational, limited industrial, heavy industrial, and institutional uses and encourage town centers along major arterial corridors. Additional design and Development standards including form based code principals as maybe incorporated into the City's Land Development Codes in the future shall be applied to Development of the Real Property.

Notwithstanding any other provision in this Agreement, the maximum Intensity is 0.6 FAR permitted on nonresidential, and non-industrial, Parcels and the Real Property as a whole. Notwithstanding any other provision in this Agreement, the allowable residential uses include single family, duplexes, and multi-family in accordance with Section 3.3.

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Notwithstanding any other provision in this Agreement, the maximum Density permitted on the Real Property as a whole is 3.2 Dwelling Units per gross acre. The foregoing Density is calculated as follows: 2,044.3 acres of Real Property times 70% (Property that may be Developed as Residential) = 1431 acres. Of these Residential acres, 40% shall be Developed at Medium Density as defined in this Agreement, and 60% shall be Developed at Very Low to Low Density as defined in this Agreement for a total of not more than 9157 Dwelling Units divided by 1431 acres = 6.4 units/ acre. It is agreed that fifty percent (50%) of the Real Property must be Open Space = 9157 Dwelling Units multiplied by 50% divided by 1431 acres = 3.2 Dwelling Units per gross acres for the Real Property as a whole.

Notwithstanding any other provision in this Agreement, the maximum Intensity on Commercial Tracts shall be .6 FAR, and the maximum Intensity on Industrial Tracts shall be .5 FAR. There shall be a minimum 30% requirement for Industrial Tracts and Commercial Tracts.

The Real Property shall be master planned through a PUD on a minimum of no less than units of 500 acre + Parcels as part of the planned unit “overlay” Development.

The Real Property Development shall be guided by the following Principles of a Mixed Use Development:

a. Balanced mix of uses: The property shall consist of a balanced mix of Compatible uses of a minimum of 30 percent non-residential, to 70 percent residential, gross acreage of parcels.

b. Active street frontage or context sensitive street design as defined by FDOT.

c. Compatibility of central theme or design character throughout the Development on the Real Property.

d. Connectivity of uses: 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. Green infrastructure: 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.

f. Mix of Housing: A variety of housing choices shall be achieved by including at least ten percent (10%) of actual construction and sale of Dwelling Units on the Real Property as being “affordable” as defined by and consistent with Florida law, including Chapter 420, Florida Statutes, as amended or superseded from time to time. Additionally, Single Family housing Developed on the Real Property shall be at a rate of roughly sixty percent (60%) of actual construction and sale of Dwelling Units, and Multi-Family housing Developed on the Real Property shall be at a rate of roughly forty percent (40%) of actual construction and sale of Dwelling Units.

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(3) 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:

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;

c. Future dedication of Right of Way, upon mutual consent of land owner, which shall not be unreasonably denied, to the appropriate entity that promotes 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 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;

e. Future dedication and donation of Institutional Tracts 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 Ordinance at the time of Development;

f. Strategic assembly of commercial and industrial Development consistent with the City's Comprehensive Plan Mixed Use Land Use;

g. Future dedication or conveyance of Conservation lands to appropriate entity at the time of Development 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. Dedication of City Park and recreation 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 Code specifically: a minimum of 2 acres/1000 residents of publicly accessible recreation lands, and a minimum of 2 acres/1000 residents of other recreational lands. Said publicly accessible lands shall be designated at the time of PUD zoning and shall be conveyed to the City prior to the time that one-third of Dwelling Units in a 500 acre + Parcel of Development receive building permits;

i. Increased buffers adjacent to low Density areas outside of the PUD area. The buffer location shall be designated at the time of PUD zoning and shall be conveyed to the

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City or, as directed by the City, to a property owners' association with the power of lien and assessment of adjacent Dwelling Units or Commercial or Industrial Development maintenance fees, and the conveyance shall occur prior to the time that one-third of Dwelling Units in a 500 acre + parcel of Development receive building permits;

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 convey to the appropriate governmental entity, 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 sewer/wastewater, Stormwater Management Systems, and water service as a condition of Development. These services may be provided by the County however no septic systems would be 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 500 acre + Parcels as part of an overall Planned Development project using the PUD zoning district and process;

l. The property shall consist of a mix of uses of a minimum of 30 percent non-residential gross acreage to 70 percent residential gross acreage, with fact that Open Space requirements must be satisfied; and

m. The property shall require a minimum aggregate total of 50% Open Space. Each of the following uses shall qualify to meet the Open Space requirement: Conservation area; greenways and trails; all public parks greater than one acre, whether passive or recreational; pervious portions of agricultural land; all common Open Space; upland preserves; undeveloped lands suitable for passive recreation, Conservation, Stormwater uses, wetlands preservation, preservation of habitat for Protected Species which is left undeveloped, and any portions of the Real Property conveyed to the County or City for a Wastewater treatment plant, fire station or police station. Golf courses shall not be considered to be Open Space.

(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

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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 Tract Development.

(a) Uses. The Owner/Developer agrees that a Commercial Tract shall be used and Developed only for commercial use purposes. The City's zoning regulations shall bind the Real Property. Prohibited uses include all uses not specifically or provisionally permitted herein, and any use not in keeping with the commercial character of the Commercial Parcel. 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.

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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 Tract Development.

(a) Uses. The Owner hereby covenants and declares, and the Owner agrees for itself and its successors, heirs, assigns and any Developer, that, except as otherwise mandated by law or this Agreement, all Residential Tracts shall be used and Developed only for multi-family residential Dwelling Units, duplex residential Dwelling Units, or single family residential Dwelling Units. 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 below. Accessory uses include customary accessory uses of a residential nature, clearly incidental and subordinate to the principal use, including 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. Carports are not permitted in Single Family Dwelling residential districts.

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

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(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 Tracts may be clustered or transferred from Residential Tracts to Residential Tracts or Commercial Tracts; 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. At least ten percent (10%) of the total number of Dwelling Units on the Real Property must be Affordable Housing Dwelling Units. 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 Tracts 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 Tract Development.

(a) Uses. An Industrial Parcel shall be used and Developed only for industrial use purposes. The City’s zoning regulations shall bind the Real Property. Prohibited uses include all uses not specifically or provisionally permitted herein, and any use not in keeping with the character of the Industrial Parcel. 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 and 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;

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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 .5 Floor Area Ratio.

(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

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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 Tract Development.

(a) Uses. An Institutional Parcel shall be used and Developed only for institutional use purposes. The City's zoning regulations shall bind the Real Property. Prohibited uses include all uses not specifically or provisionally permitted herein, and any use not in keeping with the Institutional Parcel. The institutional Land Use designation is intended to accommodate existing public and semi-public services including: governmental administration buildings; public schools and not-for-profit educational institutions; 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 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

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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) Wells. Prior to Development of any portion of the Real Property, the Owner/Developer shall cooperate with the County to transfer capacity needed to serve the Development from any permitted water wells on the Real Property to the County Utility for water supply purposes.

(d) Transmission, Distribution System. 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. Deeds, easements, or dedicated public rights of way for said Facilities shall be provided by the Owner/Developer of the portion of the Real Property affected at the time of conveyancing or dedication. Conveyancing of deeds, easements or dedication of public Right of Way shall be at the sole cost and expense of the Owner/Developer of the portion of the Real Property affected at the time of conveyancing or dedication. The deed of conveyance shall include covenants by which the Owner/Developer covenants with the City that the Owner/Developer is lawfully seized of said land in fee simple; that the Owner/Developer has good right and lawful authority to sell and convey said land; that the Owner/Developer does hereby fully warrant the title to the said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except as agreed to or accepted by the grantee. Dedication or conveyance shall be in the form required by the City. The Owner/Developer shall pay all owner's title insurance policy issuance costs for the policy issued to the appropriate governmental entity grantee and title search and examination fees, documentary stamp tax, applicable intangible tax, or other taxes, if applicable, recording fees, and any other charges in effect at the time of recording of the deed, dedication, or other conveyance in the Public Records of Indian River County, including but not limited to attorneys' or paralegals' fees, and title insurance policy fees. The tangible physical Facilities shall be conveyed by Bill of Sale free and clear of security interests, and any taxes on the conveyance thereof shall be paid by the Owner/Developer. Bills of sale, dedications, deeds, and easements shall be in form and substance acceptable to the City Attorney and the County Attorney. A maintenance bond in form, amount, duration, and substance, acceptable to the City Attorney and the County Attorney shall be posted in favor of the City or the County, applicable, upon completion of construction and acceptance of conveyance by the City or County.

(e) 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.

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(f) 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 or dedication or conveyance, be free and clear of all mortgages, liens, and encumbrances.

(b) Utility Easements. Utility easements on residential, commercial, institutional, and industrial, Tracts, as determined by the City shall be of City determined width along front, side, and rear Lot lines and shall be provided at the sole cost and expense of the Owner/Developer where appropriate as determined by the City to accommodate Utilities or access to Stormwater Management Systems. There shall be at least a 10-foot wide Utility and drainage easement centered along those side Lot lines having or proposed to have water, sewer, and/or Stormwater drainage Utilities. All Utility and drainage easements shall as determined by the City be dedicated or conveyed to the public at no cost to the City. The Owner/Developer shall provide access easements or rights to all Utility easements and Stormwater Management System retention/detention facilities of width and at such locations as the City, County, or other governmental agency, may reasonably require. The foregoing Utility easements shall be conveyed by easement deed free and clear of all mortgages, security interests, or encumbrances which would limit the City, County, or other governmental entity, from using the easements in the manner intended. The deed of conveyance shall include covenants by which the Owner/Developer covenants with the City that the Owner/Developer is lawfully seized of said land in fee simple; that the Owner/Developer has good right and lawful authority to sell and convey said land; that the Owner/Developer does hereby fully warrant the title to the said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except as agreed to or accepted by the grantee. Dedication or conveyances shall be in the form required by the City or County, as appropriate. The Owner/Developer shall pay all owner's title insurance policy issuance costs for the policy issued to the appropriate governmental entity and title search and examination fees, documentary stamp tax, applicable intangible tax, or other taxes, if applicable, recording fees, and any other charges in effect at the time of recording of the deed, dedication, or other conveyance in the Public Records of Indian River County, including but not limited to attorneys' or paralegals' fees, title insurance policy fees. The deed of conveyance or form of dedication or other conveyance shall be in form and substance acceptable to the County Attorney or the City Attorney, as applicable to the conveyance. Conveyancing of easements, deeds, or dedication of public Right of Way shall be at the sole cost and expense of the Owner/Developer of the portion of the Real Property affected at the time of conveyancing or dedication. The tangible physical Public Facilities within the easement or other conveyed piece of land shall be conveyed by Bill of Sale free and clear of security interests and any taxes on the conveyance thereof shall be paid by the Owner/Developer. Bills of sale, dedications, and easement shall be in form and substance acceptable

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to the City Attorney. A maintenance bond in form, amount, duration, and substance, acceptable to the City Attorney shall be posted in favor of the City upon completion of construction and acceptance of construction by the City.

(c) Roadways; Public Rights of Way.

(1) 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) The aforementioned connections to County Road 510, 82nd Avenue, 69th Street, the existing City and area road network, will all be made 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, and maintained by an incorporated property owner's association having jurisdiction over the Real Property.

(3) If required by the City, the Owner/Developer, its assigns, shall convey the responsibilities and rights for repairs and maintenance responsibility of all transportation Public Facilities to an incorporated property owners' association with the power of assessment and lien rights over private property served by the affected Public Facility, all as determined by the City. The property owners' association shall be responsible, at its or their sole expense, to be responsible for the construction and maintenance of all transportation Public Facilities, including but not limited to roadways, mass transit, bike lanes, sidewalks, or rights of way for Public Facilities not accepted by the City or County.

(4) 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.

(5) Parcels of the Real Property for the foregoing right of way shall be dedicated or conveyed by the Owner/Developer to the City, County, or other appropriate governmental entity upon mutual consent of the owner which shall not be unreasonably denied, by warranty deed free and clear of all mortgages, security interests, or encumbrances, which would limit the City and the County from using the Government Parcel or other portions of the Real Property as provided in this section. The deed shall include covenants by which the Owner covenants with the City that the Owner is lawfully seized of said land in fee simple; that the Owner has good right and lawful authority to sell and convey said land; that the Owner does hereby fully warrant the title to the said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except as agreed to or accepted by the grantee. The Owner shall pay all owner's title insurance policy issuance costs for the policy issued to the appropriate

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governmental entity and title search and examination fees, documentary stamp tax, applicable intangible tax, or other taxes, if applicable, recording fees, and any other charges in effect at the time of recording of the deed, dedication, or other conveyance, in the Public Records of Indian River County, including but not limited to attorneys or paralegals' fees, title insurance company fees. The deed shall be in form and substance acceptable to the County Attorney or the City Attorney, as applicable to the conveyance. Conveyancing of deeds, easements or dedication of public Right of Way shall be at the sole cost and expense of the Owner/Developer of the portion of the Real Property affected at the time of conveyancing or dedication. The tangible physical Public Facilities shall be also be conveyed by Bill of Sale, and any taxes on the conveyance thereof shall be paid by the Owner/Developer. Bills of sale, dedications, deeds, and easement shall be in form and substance acceptable to the City Attorney or other applicable governmental agency attorney. A maintenance bond in form, amount, duration, and substance, acceptable to the attorney of the governmental agency accepting construction and conveyance of rights therein shall be posted in favor of said governmental agency upon completion of construction and acceptance of conveyance by the governmental agency.

(d) Stormwater Retention/detention and treatment; Wetland protection.

(1) Notwithstanding other provisions of this Agreement or the conceptual acceptability of the plans for Development, the Owner/Developer shall be responsible for providing sufficient and acceptable portions of the Real Property for Stormwater Management System treatment and retention/detention and treatment to serve the Real Property consistent with City and St. Johns River Water Management District regulations, in effect at the time of issuance of a Final Development Order.

(2) All Stormwater facilities on the Real Property shall utilize Best Management Practices as promulgated by the Florida Department of Environmental Protection and the St. Johns River Water Management District for Stormwater pollution prevention in order to minimize impacts to the Sebastian River and the Indian River Lagoon. In the event of a conflict between regulations of the Florida Department of Environmental Protection and the St. Johns River Water Management District, the City shall timely provide direction as to implementation of those requirements.

(3) All Development on the Real Property must provide the City and the County with documentation demonstrating compliance with applicable provisions of the St. Johns River Water Management District Applicant's Handbook, as revised or superseded from time to time, regarding the potential for secondary impacts to Wetlands, as determined by the City or the St. Johns River Water Management District. Additionally, should a U.S. EPA Section 404 permit be required for Development to federal jurisdictional Wetlands, a copy of said documents demonstrating compliance with the federal guidance regarding the assessment of indirect effects and impacts in the Wetlands will be timely and promptly provided to the City and the County.

(e) Open Space. At least fifty percent (50%) of the Real Property shall be Preserved or provided as Open Space. Open Space areas shall be retained as natural areas or used for agriculture, recreation, Stormwater Management, or similar uses that complement the rural nature of the area and further defined within the City's Comprehensive Plan Ordinance No. O-22-13. Common Open Space shall not include conventional, individual yard areas. Common Open Space may include agricultural

areas, parks, recreation areas, Conservation and natural areas, and water bodies (not to exceed thirty percent (30%) of the Open Space requirement.)

(f) Other reservations, Impact Fees, or dedications. Other reservations, Impact Fees, or dedications of portions of the Real Property may, from time-to-time, be required by the City in accordance with or as a part of the Subdivision approvals subject to this Agreement. Such fees, reservations, and dedications are to be imposed in accordance with the ordinances and standards in effect at the time of Platting or Subdividing. Other parties or institutions, such as the County or the Florida Department of Transportation, may have other or additional requirements for reservation, dedication, donation, or exaction, and that this Agreement shall not restrict said agencies, nor is this Agreement intended to address such circumstances.

Section 3.7. Application of Subsequently Revised Fees. All governmental application, processing and inspection fees that are revised from time to time during the term of this Agreement shall apply to the Development of the Real Property; provided, that: (1) such fees, standards, and specifications shall potentially apply to other possible Development projects in other areas of the City, whether existing or otherwise; and (2) their application to the Real Property is prospective only.

Section 3.8. Concurrency. The Owner/Developer agrees that Concurrency must exist for Development on the Real Property. At the Owner/Developer's cost and expense the Real Property Development shall meet the required Levels of Service of Public Facilities at the time of issuance of a Final Development Order, or at such later time as may be determined by the City. The Owner/Developer is advised by the City and agrees that in advance of seeking a Final Development Order, at the Owner/Developer's sole cost and expense, it may need to reserve Public Facility capacity adequate to meet Development impacts generated by Development on the Real Property permitted by this Agreement. The Owner/Developer is further advised and agrees that the reservation of capacity for Concurrency management purposes provided for is not to be construed to be an actual reservation of physical capacity for service by any regulating agency, including the City or County, without the Owner/Developer satisfying all governmental requirements for application; payment of reservation; hook-up, impact, or other fees; and satisfying permitting requirements of other governmental agencies such as the County, the St. John's River Water Management District, the Florida Department of Transportation, and State Department of Environmental Protection. Before a Development Permit is issued which does not have Level of Service capacity reserved for Concurrency management purposes, a Concurrency management system evaluation pursuant to the City Code of Ordinances, or as applicable the County Code of Ordinances, all as amended from time to time, shall be required. Public Facilities required to serve Development on the Real Property, and meeting the applicable Levels of Service therefore, must be in place and available to serve new Development on the Real Property as required by City or County Land Development Codes, Florida law, the City Comprehensive Plan, all as applicable at the time a certificate of occupancy, or certificate of completion, is issued for the new Development. Public Facilities may be considered to be "in place and available" if the Public Facility: Has been constructed; Is subject to a construction surety equal to 125% of the cost thereof as estimated by the City's engineer and two year maintenance agreement/surety bond, Is subject to a proportionate fair share agreement which has been executed by the City, the State of Florida (if the Public Facility is to be constructed and operated by the State of Florida, or the County (if the Public Facility is to be constructed and operated by the County) setting the time for construction completion (or phasing thereof) of the Public Facility; DRI Development Order; or in the case of transportation Public

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Facilities operated by the County or the Florida Department of Transportation met through a proportionate fair share contribution as required by Section 163.3180, Florida Statutes (as amended from time to time).

Section 3.9. Environmental Impact Assessment. Prior to the Development or land clearing of any portion of the Real Property, the Owner/Developer may be required by the City to complete an environmental impact assessment to determine: (1) the existence, location, and extent of wetlands, or surficial aquifer recharge areas, on the Real Property, which are subject to the jurisdiction of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection, the St. John's River Water Management District, or the City; and (2) the location and existence on the Real Property of a Protected Species of plant or animal prior to the time of Development which might cause an incidental or other Taking of said species. The City may require the Owner/Developer to take appropriate action to protect and preserve said Protected Species. The Owner/Developer agrees that no Development, land clearing, or use of the Real Property, shall Take, Harm or Harass any Protected Species or remove or reduce to possession or cause the death or damage to a Protected Species of plant or vegetation without all appropriate governmental permits.

ARTICLE IV
DEVELOPMENT PROGRAM

Section 4.1. Payment of City and County Impact Fees, Special Assessment, and other Fees.

(a) The Owner and the Developer, by virtue of this Agreement, with regard to payment of any type or amount of special assessment, permit fee, Development review fee, or Impact Fee, assessed by the City or County, shall not be: (i) exempted from payment; or (ii) vested with regard to the amount or fee computation method of said fee(s) or assessment due to paid.

(b) All City inspection fees, as required by the City Code or resolution of the City Council, as amended from time to time, for inspection of the construction of Subdivision or other Development Infrastructure or Public Facilities shall be paid by the Owner/Developer within thirty (30) days of construction plan approval.

Section 4.2. Permits to be Obtained.

(a) Failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner or the Developer of the necessity of complying with the law governing and permitting requirements, conditions, term, or restriction.

(b) All permits required pursuant to this Agreement or otherwise required by the City or any other governmental agency, shall be obtained at the sole cost of the Owner/Developer. Further, the existence of this Agreement shall not obligate the City or any other governmental agency to grant any permit. Permits shall be granted pursuant to applicable permitting standards in the Land Development Codes or other regulatory standards.

(c) Pursuant to Section 166.033, Florida Statutes, as amended, the Owner and the City agree that approval of this Agreement by the City does not in any way remove the obligation of the Owner or any Developer of the Real Property to obtain a permit from the County, the State of Florida or any federal agency and does not create any liability on the part of the City for approval of this Agreement or any Development Permit issued pursuant to this Agreement. Should the Owner/Applicant fail to obtain the requisite approvals, permits or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of County ordinance or other regulations of the State of Florida or federal law, the City shall not be joined in that violation. All applicable state and federal permits must be obtained before commencement of the construction or Development.

Section 4.3. City Processing and Review of Development Permit Applications. The City hereby agrees that it will accept the applications, which are complete, from the Owner or the Developer for processing and review of all Development applications for Development Permits or other entitlements, if any, for use of the Real Property in accordance with the provisions of this Agreement; provided, that applications are submitted in accordance with all City rules and regulations and all fees are timely and properly paid. This provision shall not prohibit the City from seeking additional information regarding an application or denial of said application, if the application is not in compliance with applicable governmental regulation.

Section 4.4. Review Process. In an effort to expedite permit review, the City agrees to review building permit construction drawings simultaneously with a preliminary Plat. Said review of the construction plans shall not be finalized by the staff before the City Council approves the preliminary Plat. Should the preliminary Plat require modification following the City Council review and approval, the cost of revising the construction drawings shall be borne by the Owner/Developer.

Section 4.5. Insurance.

(a) The Owner/Developer agrees that before commencing work or construction of public roads, rights-of-way, Stormwater Management Systems, water or sewer lines, other capital Infrastructure, or Public Facilities, to be connected to any governmental Infrastructure or system for the Development of the Real Property, or portions thereof, the Owner or the Developer, as appropriate, shall obtain at its sole cost and expense and thereafter maintain during said work or construction the insurance required under this paragraph and receive the approval of the City as to form of the policy, amount of the policy, and carrier. In addition, the Owner or Developer shall ensure its general contractor, any other contractors in privity with the Owner or Developer, and any tenants maintain the insurance coverages set forth below.

(b) At a minimum all insurance to be obtained will name the Owner/Developer, the general contractor, and the City or County, as their respective interests may appear, and will require the insurer to give written notice of any cancellation or change to be sent to both the Owner/Developer, and the City or County at least thirty (30) days prior to cancellation, termination, or material change.

(c) Unless otherwise approved by the City, in its sole discretion, with the exception of professional liability insurance, all insurance shall be Occurrence Form, to the extent that such form of insurance is available on commercially reasonable terms. No insurance obtained shall be “claims made’ unless affirmatively approved in writing by the governmental agency insured by same. Policies of

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insurance, shall not have a deductible of more than $10,000, shall be with an insurance company licensed by the State of Florida Insurance Commissioner, or said Commissioner's successor, to issue the policy presented, issued by a company having an A.M. Best's Rating Guide financial strength rating of A or better and a financial size category of VII or better. In the event that A.M. Best's Rating Guide is discontinued, the City and the Owner/Developer shall amend this Agreement to provide a successor rating service and ratings, which in the City's reasonable judgment is similar, to what is required by this Agreement.

(d) The Owner/Developer, its general contractor, any other contractors in privity with the Developer and any tenants shall be solely responsible for all deductibles and retentions contained in their respective policies.

(e) The City will be included as an "Additional Insured" on the Commercial General Liability, Umbrella Liability, and Builders' Risk polices. The City will also be named as "Loss Payee" as respects all fire and property damage insurance policies. The Owner/Developer's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.

(f) The Owner/Developer will ensure that each insurance policy obtained by it or by its contractors provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.

(g) Evidence of Insurance. Prior to the Owner/Developer commencing Development or construction or work on a portion of the Real Property, satisfactory evidence of the required insurance shall be provided to the City. Satisfactory evidence shall be either: (a) a copy of the declaration page certified by the insurer to the City designating the City as a "loss payee" or "additional insured" as appropriate; or (b) a certified copy of the actual insurance policy. The City, at is sole option, may from time to time request a certified (by the insurer) copy of any or all insurance policies required by this Agreement from the Owner/Developer. The Owner/Developer, in the manner provided in this Agreement for giving notice, shall forward to the City any of the instruments required hereunder within thirty (30) days of request by the City or, on a yearly basis, not later than the effective date of any policy or policy renewal. Use of a certificate of insurance shall *not* be acceptable proof that the insurance is in force. If the Owner/Developer does not furnish proof of insurance as set forth in this Section within thirty (30) days of the receipt of a request therefore from the City or on a yearly basis, or if the Owner/Developer fails to at all times maintain adequate insurance as required herein, the City may, but shall not be obligated to obtain insurance to satisfy this Section. In such event, the City shall invoice the Owner/Developer for the costs and premiums attributable to such insurance at the rate of 18% or such other than highest legal rate of interest, and the Owner/Developer shall pay to the City, within ten (10) days after the Owner/Developer's receipt of the invoice.

(h) Required Coverages. As a minimum, the Owner/Developer will procure and maintain (or cause to be procured and maintained) the following coverages:

(1) Builders Risk. During all construction on the Real Property, Public Facilities, or modifications to existing Public Facilities that impact the planned Public Facilities on the Real Property, the Owner/Developer shall obtain Builders Risk insurance (to include the perils of wind and

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flood) with minimum limits equal to the "Completed Value" of the buildings, Public Facilities, or structures being erected or installed or the total value of the modifications being made. The Builder's Risk insurance shall be for direct physical loss or damage resulting from an uninsured peril to the building, structures, and the Public Facility improvements, including materials and equipment that are intended for the incorporation into the improvements, whether located on or adjacent to the Real Property, in storage, in transit, of on any governmentally owned or controlled property; and

(2) Professional Liability. The Owner/Developer must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to the Development construction activities of Public Facilities is obtained prior to the commencement of any construction activities on the Real Property. If coverage is provided on a "Claims Made" basis, the policy must provide for the reporting of claims for a period of two (2) years following the completion of all Public Facilities construction activities. The minimum limits acceptable are $5,000,000 per occurrence and $5,000,000 in the aggregate annually (all as adjusted for inflation through an inflation rider). Required professional liability insurance shall provide coverage from the commencement of design work for each phase of Development and shall continue for no less than five (5) years after the completion of each phase of the Project.

(3) Commercial General Liability. During the Term of this Agreement, the Owner/Developer of the Real Property shall maintain Commercial General Liability Insurance. Coverage shall include, as a minimum: (i) Premises Operations, (ii) Personal Injury Liability, (iii) Property Damage, (iv) Expanded Definition of Property Damage, (v) Products and Completed Operations, and (vi) Incidental Contractual Liability in both the primary and umbrella policy coverage. The minimum limits acceptable shall be not less than $2,000,000 per occurrence for bodily injury or death of one or more persons and not less than $5,000,000 per occurrence for property damage in the aggregate, all with respect to the Real Property or arising out of the maintenance, use, or occupancy thereof, and naming the City and, as appropriate, the County, or other governmental entity, as an "additional insured". The use of an excess/umbrella liability policy of no less than $10,000,000 to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy. No primary policy shall have a deductible of more than $25,000, and the excess/umbrella policy shall provide insurance for any loss or damage over the maximum limits of the primary policy.

(4) Workers' Compensation and Employers Liability. The Owner/Developer shall maintain Workers' Compensation Insurance, employer's liability insurance and any other insurance as required by Florida Statutes. In addition, the Owner/Developer and its contractors must obtain Employers' Liability Insurance with limits of not less than: (i) $500,000 Bodily Injury by Accident, and (ii) $500,000 Bodily Injury by Disease, each employee (all as adjusted for inflation through an inflation rider).

(5) Business Automobile Liability. During the term of any Development on the Real Property, the Owner/Developer and any general contractor shall maintain Business Automobile Liability Insurance with coverage extending to all Owned, Non-Owned and Hired autos used by Owner/Developer or contractor or sub-contractor or materialman in connection with its operations under this Agreement or with regard to this Real Property. The minimum limits acceptable shall be $3,000,000 Combined Single Limit (CSL) (as adjusted for inflation through an inflation rider). The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long

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as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Business Automobile Liability policy.

(6) Fire and Extended Coverage. The Owner/Developer shall also maintain at the Owner/Developer's sole cost and expense, fire, Fire Legal Liability, flood, and casualty insurance with extended coverage on all of the Public Facility or proposed improvements in an amount equal to the full insurable value thereof, based upon replacement cost. Regarding flood insurance, the full insurable value shall refer to the maximum amount obtainable up to the actual replacement cost of the structure(s) regardless of the amount available under any Federal flood insurance program. Said insurance shall be in the Owner or Developer's name with the City, or the City's designee, designated as the "loss payee". The Developer, at the Developer's sole cost and expense, shall also maintain, on all of its equipment, personal property, and inventory on or adjacent to the Real Property, fire insurance and casualty coverage to the extent of at least eighty percent (80%) of the replacement value thereof, the proceeds of which are payable, in the event of a loss. The City shall, in no event, be liable to the Owner, the Developer, or any of their contractors, for any damage, injury, or destruction to said property.

(7) All Risk Property Insurance. The Owner/Developer must maintain, or require its contractors to maintain, Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a M.A.I. appraiser acceptable to both the Owner/Developer and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. To the extent available, coverage will extend to furniture, fixtures, equipment and other personal property associated with the Development project, improvements, and Public Facilities. The policy must also provide "Law and Ordinance" coverage, while giving deference to the age of the improvements or Public Facilities, with limits acceptable to both the City and the Owner/Developer.

(i) Premiums and renewals. The Owner/Developer shall pay as the same become due all premiums for the insurance required by this Section, shall renew or replace each such policy and deliver to the City evidence of the payment of the full premium thereof prior to the expiration date of such policy.

(j) Adequacy of Insurance Coverage.

(1) The adequacy of the insurance coverage required by this Section may be reviewed periodically by the City in its reasonable discretion. The City may request a change in the insurance coverage, if it is commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Real Property and the Owner/Developer improvements or Public Facilities; provided, that such coverage is available at commercially reasonable rates (including without limitation, fiduciary liability and directors and officer's liability insurance).

(2) The Owner/Developer shall have the right to contest the request for a change in insurance, but must be commercially reasonable.

(3) In the event that insurance proceeds are not adequate to rebuild and restore the damaged Public Facility improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Owner/Developer/Contractor's failure to

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adequately insure the Public Facility improvements as required herein, the Owner/Developer shall rebuild and restore such Public Facility improvements pursuant to the terms hereof and shall pay any such deficiency notwithstanding the fact that such insurance proceeds are not adequate.

(4) City Right to Procure Insurance. If the Owner/Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City, at its option, may procure or renew such insurance. In that event, all commercially reasonable amounts of money paid therefor by the City shall be treated as due and payable to the City together with interest thereon at the then highest lawful rate of interest from the date the same were paid by the City to the date of payment thereof by the Owner/Developer. Such amounts, together with all interest accrued thereon, shall be paid by the Owner/Developer to the City within ten (10) days of written notice thereof.

(k) Effect of Loss or Damage. Any loss or damage by fire or other peril of or to any of the Public Facility improvements on or adjacent to the Real Property at any time shall not operate to terminate this Agreement or to relieve or discharge the Owner/Developer or their contractor from the payment of monies or public charges or consummating obligations or duties pursuant to this Agreement or local government ordinances or resolutions in respect thereto, pursuant to this Agreement, as the same may become due and payable, as provided in this Agreement, or from the performance and fulfillment of any of the Owner/Developer's obligations pursuant to this Agreement. No acceptance or approval of any insurance agreement or agreements by the City shall relieve or release or be construed to relieve or release the Owner/Developer or their contractors, from any liability, duty or obligation assumed by, or imposed upon it by the provisions of this Agreement or otherwise.

(l) Proof of Loss. Whenever any improvements or Public Facilities, or any part thereof, constructed on the Real Property (including without limitation, any personal property furnished or installed in the premises) shall have been damaged or destroyed, the Owner/Developer shall promptly make proof of loss in accordance with the terms of the insurance policies and shall proceed promptly to collect or cause to be collected all valid claims which may have arisen against insurers or others based upon any such damage or destruction. The Owner/Developer shall give the City written notices within three (3) City business days of any material damage or destruction. For purposes of this section, "material damage or destruction" shall mean any casualty or other loss the commercially reasonable cost of which to repair is in excess of $25,000 or, notwithstanding the cost of repair, will have a material adverse effect on the day to day operations of the City Development, or any part thereof.

(m) Waiver of Subrogation. A full waiver of subrogation shall be obtained from all insurance carriers. The Owner/Developer shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.

(n) Inadequacy of Insurance Proceeds. The Owner/Developer's liability hereunder to timely commence and complete restoration of the damaged or destroyed improvements, or Public Facilities, shall be absolute, irrespective of whether the insurance proceeds received, if any, are adequate to pay for said restoration.

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ARTICLE V
ENFORCED DELAY, DEFAULT, REMEDIES AND TERMINATION

Section 5.1. 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 5.2. 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 5.3. 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

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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 VI
ENCUMBRANCES AND RELEASES ON REAL PROPERTY

Section 6.1. 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 6.2. 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 6.3. 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 6.4. 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

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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 VII
MISCELLANEOUS PROVISIONS

Section 7.1. 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 7.2. 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 7.3. 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 conveyancing 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 7.4. Hold Harmless. The Owner and any Developer agrees to and shall hold the City, its officers, agents, employees, attorneys, engineers, planners, consultants, and representatives harmless from liability for damages to property (whether real or personal) or claims for damages for personal injury, including but not limited to death, and claims arising from the direct or indirect operations of the Owner/Developer or those of its contractors, subcontractors, agents, employees or other persons acting on their behalf which relate to Development of the Real Property; provided, that said injuries or damages did not occur as a direct result of orders made specifically to the Owner or the Developer, or their respective agents or employees, by the City or its agents. The Owner and the Developer, jointly and severally, agree to and shall defend the City, its officers, agents, attorneys, employees and representatives, from such actions caused or alleged to have been caused by reason of the Owner's and the Developer's activities in connection with this Agreement or Development of the Real Property. In addition, the Owner, and the Developer, jointly and severally, agree to and shall indemnify, hold harmless, and defend the City, its officers, agents, employees and representatives, from actions by third parties against the City based upon: injury and negligence based on a failure to train or supervise workers, employees, materialmen, contractors, subcontractors, or agents of the Owner, and the Developer, or by City workers, employees, contractors, subcontractors, materialmen, or agents in aid of Development of the Real Property, consummated by any one of the foregoing; failure to employ safety measures; injury or negligence of any person arising from Development of the Real Property;

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improper plan approval or permitting; failure to utilize proper materials, repair or installation methods, or comply with any rules, regulations, ordinances, or laws, and any other negligent or intentional action or omission of the Owner and the Developer, or their respective workers, employees, contractors, subcontractors, or agents. This hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not the City prepared, supplied, or approved plans or specification, or both for the Development of, or the project to be built upon, the Real Property. The Owner and the Developer 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 the Developer relating to Development of the Real Property; provided, said actions or omissions did not occur because of orders made specifically to the Owner or the Developer, or their respective agents by the City. 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 or cancelation of this agreement.

Section 7.5. 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.

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Section 7.6. 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 7.7. 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 7.8. 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 7.9. 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

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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 7.10. Project is a Private Undertaking; Third Party Beneficiaries; Contract Zoning; Failure to Address Permitting.

(a) It is specifically understood and agreed to by and between the parties hereto that: (1) the subject Development is a private Development; (2) the City and the County have no interest or responsibilities for or duty to third parties concerning any improvements or Infrastructure until such time, and only until such time, that the City or the County, as applicable, accepts the same pursuant to the provisions of this Agreement or in connection with the various Plat approvals; (3) the Owner/Developer, shall have full power over the exclusive control of the Real Property herein described subject only to the limitations and obligations of said parties under this Agreement, the City's Comprehensive Plan, and the City's Code of Ordinances and other regulations; and (4) the contractual relationship between the City and Owner or a Developer is such that the Owner and the Developer are independent contractors and not agents of the City.

(b) The Owner, for itself and the Developer, and of their respective successor, assign, or heir, of any portion of the Real Property, hereby agrees that this Agreement does not constitute contract zoning, as defined in Hartnett v. Austin, 93 So.2d 86 (Fla. 1956), and its progeny, or contract planning. The Owner, for itself and any Developer and its or their successors, heirs and assigns, waives any and all claims that this Agreement is or constitutes a form of contract zoning, as defined in Hartnett v. Austin, 93 So.2d 86 (Fla. 1956), and its progeny, or contract planning. In the event of any pre- or post-lawsuit claim or lawsuit alleging that this Agreement is null or void or otherwise not legal, because it constitutes contract zoning, as defined in Hartnett v. Austin, 93 So.2d 86 (Fla. 1956), and its progeny, or contract planning, the Owner, for itself and any Developer, for its or their successors, heirs and assigns, in accordance with Section 7.4 above, shall release and hold harmless, defend, and indemnify the City against any and all damages, attorneys' or paralegals' fees, or costs, whether in negotiation of settlement of the claim, at trial, or on appeal. In such lawsuit, the City shall have its choice of legal counsel. 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.

(c) The failure of this Agreement to address a particular Development Permit or Development Order, Land Development Code, condition, prohibition, term, level of Development, levels of service, or restriction existing at the time of the Effective Date of this Agreement, shall not relieve the Owner/Developer, or its or their heirs, successors and assigns (other than governmental entities), of the necessity of complying with said legal requirements, permitting, conditions, prohibitions, terms, levels of Development, Levels of Service, or restrictions, all existing at the time of the issuance of a Final Development Order for an applicable portion of the Real Property.

Section 7.11. Interpretation; Venue.

(a) Both parties hereto have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter hereof.

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(b) With regard to any lawsuit against the City or the County or the Owner or Developer of any portion of the Real Property, this Agreement is subject to the home venue provision. Venue 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.

Section 7.12. 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 7.13. Effective Date; Duration of Agreement.

(a) The term of this Agreement shall commence upon the Effective Date and shall expire on January 1, 2051, unless extended pursuant to a written amendment to this Agreement executed by the Owner of a portion of the Real Property to be subject to the amendment and the City. All provisions in this Agreement shall become effective on the Effective Date.

(b) 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**********

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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)
) 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 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:

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CITY:

CITY OF SEBASTIAN, a Florida
Municipal Corporation

Sign_____
Print Name:_____
Address:_____
_____

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

Sign_____
Print Name:_____
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: