

AFTER RECORDING RETURN TO:
Jeanette Williams, CMC
City Clerk
City of Sebastian
1225 Main Street
Sebastian, Florida 32958

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 29th day of August 2019, by and between the CITY OF SEBASTIAN, a Florida municipal corporation, whose mailing address is 1225 Main Street, Sebastian, Florida 32958 (the "City") and, GRAVES BROTHERS COMPANY, whose mailing address is 2770 Indian River Blvd., Suite 201, Vero Beach, Florida 32960 (the "Owner").

WHEREAS, the City is a Florida municipal corporation located within Indian River County, Florida; and

WHEREAS, the Owner listed herein is the fee simple title holder to certain real property currently located within the unincorporated area of Indian River County; and

WHEREAS, the real property at issue is approximately 1,118 acres, which is reasonably compact, is contiguous to the municipal boundary of the City, will not result in the creation of enclaves, and is more particularly described in Exhibit 1, attached hereto and hereinafter referred to as "property"; and

WHEREAS, the Owner desires to annex the property described in Exhibit 1 into the municipal boundaries of the City; and

WHEREAS, the Owner will initially maintain the agriculture use of the property, but desires to eventually develop the property for other certain uses as provided herein; and

WHEREAS, the Owner has applied to the City to change the Comprehensive Plan Future Land Use Map on the property to facilitate the development of the property in the future; and

WHEREAS, contingent upon approval of the annexation petition, Owner has applied to the City to assign a Comprehensive Plan Future Land Use Map as set forth in Ordinance No. O-19-05, which is incorporated herein by reference; and

WHEREAS, the Parties desire to enter into this Agreement in order to memorialize their understanding and agreements with respect to the annexation of the property, and with respect to the future development and use of the property; and

WHEREAS, upon compliance with the obligations of this Agreement, the development of the property will be consistent with the City's Comprehensive Plan and land development regulations; and

WHEREAS, the City has found and determined that the City's interest will be best served by annexing the property into its municipal boundaries and by entering into this Agreement to ensure that development of the property is in accordance with the City's Comprehensive Plan (CP) and Land Development Code (LDC); and

WHEREAS, the property is particularly suited for inclusion in to the City due to its proximity to existing traffic corridors and transportation systems, and annexation will yield significant benefits to the City in the form of measured development, increased employment opportunities and employment base, an increased tax base, and permanent conservation and preservation of natural ecosystems; and

WHEREAS, the City is entering into this Agreement pursuant to the authority of the Florida Constitution (including Article VIII, Section 2(b) and (c) thereof), the general powers conferred upon municipalities by statute and otherwise (including Chapter 166, Florida Statutes), and the City's Charter; and

WHEREAS, all the requirements set forth in Section 171.044, Florida Statutes, and as otherwise set forth in Florida law and the City's Codes and Ordinances, for the voluntary

annexation of real property have been fulfilled, or will be fulfilled through compliance with this Agreement.

NOW THEREFORE, in consideration of the exchange of mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the City and the Owner agree as follows:

1. Recitals. The forgoing recitations are true and correct, and are incorporated herein by reference; and all exhibits to this Agreement as hereby deemed to be a part hereof.

2. Owners. The Owner represents that they hold fee simple title to the real property and have lawful authority to petition for the voluntary annexation of the property set forth herein.

3. Annexation.

(a) The City hereby acknowledges that Owner has submitted a petition requesting the voluntary annexation of the real property by the City in accordance with Section 171.044, Florida Statutes, and the City agrees to consider and act upon the Annexation Petition. The Owner commits and agrees that while the Annexation Petition is voluntary, Owner is prohibited from withdrawing its petition and that to do so would result in a breach of this Agreement if annexation of the property is approved at second reading of the annexation ordinance on August 28, 2019, or such other date for second reading as established by the Sebastian City Council, but not later than August 28, 2020. The Owner and the City agree that the annexation ordinance shall be properly noticed in accordance with Section 171.044(2), Florida Statutes, and scheduled for second reading on August 28, 2019.

(b) In the event the Department of Economic Opportunity fails to support approval of the Future Land Use for the property, or the City fails to adopt the future land use set forth in this Agreement, the Owner reserves the right to request the City to take all necessary

steps to promptly and expeditiously de-annex the property; and the City agrees it will take those steps necessary to fulfill this request to the extent legally permissible. Upon de-annexation (contraction) this Agreement shall terminate.

4. Development of the Annexed Property.

(a) Development Plans for property. The City finds and agrees that residential uses of varying densities, commercial uses, office uses, warehouse/industrial uses, schools, institutional uses, civic uses, and utility uses are appropriate uses of the property and that such uses will benefit the City's residents.

(b) Owner recognizes that this Agreement does not authorize approval of any specific development plan or proposal.

(c) Planned Unit Development. The parties agree that any future rezoning shall be consistent with the City's Comprehensive Plan, as existing or as amended, and shall be accomplished only through a Planned Unit Development (PUD) or a Master Planned Unit Development (MPUD).

(d) The Owners agree to make provision for a mixed-use "Town Center" area and housing types shall be mixed to meet various income levels and lifestyle choices as part of the development in accordance with the PUD as approved by the City.

(e) Extractions. The Owner agrees that, the allocation and donation of institutional lands necessary for governmental services such as post offices, public safety, schools etc., and the dedication of ROW to the appropriate entity to promote an interconnected, extended and improved grid road system, along with a well-planned transportation system of roads and streets throughout the development, in coordination with Indian River County, to specifically include 81st Street, 77th Street, and 73rd Street, as well as 74th Avenue; shall be

identified by concurrency analysis in accordance with the City of Sebastian land development codes and ordinances, at the time of development. .

(f) Conservation. The Owner agrees that, dedication of conservation lands shall be made to the 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 at the time of rezoning and development.

(g) The Owner agrees that, the allocation of parks and recreational lands consistent with the City's Comprehensive Plan and land development codes 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, will be required at the time of development.

(h) The Owner agrees and will provide buffers adjacent to low density areas outside of the PUD Overlay to include increased greenspace along the site's south property line and the part of the east property line south of Liberty Park TND.

(i) As a condition of the PUD process the open space requirements shall be as defined in Section 54 of the City's Land Development Code.

5. Transportation: At time of development, the Owner or its successor shall work together with the City to establish a satisfactory, well planned roadway network. Transportation concurrency shall be satisfied at the time required by constructing improvements or execution of a mutually agreeable Proportionate Fair Share Agreement; or a mutually agreeable Developer's Agreement; or a mutually agreeable Impact Fee Assessment.

6. Wetlands: The City acknowledges and agrees that at the present time, the applicable rules and regulations of the St. John's River Water Management District govern all wetland jurisdictional determinations and any related wetlands mitigation, and that any

wetland permit issued by the St. John's River Water Management District for any portion of the property shall satisfy all City wetland permitting requirements for the portion of the property subject to such permit.

7. Improvements: Neither the City nor the County shall not be required or obligated in any way to construct or maintain or participate in the construction or maintenance of any improvements (except for maintenance of improvements dedicated to and accepted by the City at its sole discretion). The Owner, its grantees, successors or assigns in interest, or an association, as applicable, shall be responsible for the maintenance of all improvements not dedicated to and accepted by the City.

8. Land Use. The future land use of the property is set forth in Ordinance No. O-19-05, which is incorporated by reference as though fully set forth herein.

9. Utilities.

(a) Pursuant to the Interlocal Agreement between Indian River County and the City, water and wastewater utilities will be provided exclusively by Indian River County. Drainage and Stormwater shall be handled by the Sebastian River Improvement District. If either the County or the SRID fails to comply with their lawful obligation to provide such services, the Owner will be free to seek other alternatives. To the extent not funded by others, the Owner shall be responsible for funding design, permitting and construction of the Infrastructure in order to serve the needs of the future development of the property at full build-out and in accordance with the level of service established by the City's Comprehensive Plan, as amended from time to time. This Infrastructure shall be built to the City and permitting agencies' reasonable and customary standards. It is recognized by the Parties that said Infrastructure may be constructed in phases commensurate with the creation of demand by development.

(b) As a condition of future developments, sufficient land area shall be allocated for infrastructure required to support the development and mandate hook-up to central potable water and wastewater systems for all new developments. These services shall be provided by the County or alternative services as set forth herein; however, no septic systems would be allowed in accordance with City policy and land development codes.

10. No Waiver of Police Power. As provided above and otherwise herein, the parties recognize and agree that certain provisions of this Agreement will require the City and/or its boards, departments or agencies, acting in their governmental capacity, to consider certain changes in the City's Comprehensive Plan, zoning ordinances or other applicable City codes, plans or regulations, as well as to consider other governmental actions as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statute and City ordinances, including applicable notice and hearing requirements, in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on applications for comprehensive plan changes and applications for other development. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public.

11. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement shall run with and bind the property as covenants running with the land and this Agreement shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees and assigns.

12. The City acknowledges its intention, in good faith, to fulfill the following:

(a) Coordinate the pro-rata funding of the interchange, bridge crossings, or roadways with adjacent property owners/developers when such other properties are benefited by these improvements.

(b) Implement a "cost-recovery" agreement when the Owner funds more than its pro-rata share of an improvement.

(c) Work with the Owner to secure appropriate impact fee credits based upon fair share apportionment payments and/or actual construction of improvements.

(d) Review and process any permit applications or other requests for approval submitted to the City to ensure that development within the property proceeds in a timely manner. The City further agrees to assist during the review processes of any other governmental approvals and permits for the property.

13. General Terms:

(a) The terms "contribute", "dedicate", "dedication", "convey", "conveying", or "conveyance" as used in this Agreement relating to a municipal or governmental transfer, shall mean to transfer ownership to the City or other governmental body, without any cost to or payment by the City or other governmental body, such dedication or conveyance shall be a gift by the Owner, without any compensation.

(b) Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

(c) Owner, upon execution of this Agreement, shall pay to the City the cost of recording this Agreement in Indian River County, Florida.

(d) This Annexation is subject to various provisions contained in Chapter 171 Florida Statutes, Municipal Annexation or Contraction. A portion of the boundary of the

property is contiguous to the City. "Contiguous" is defined in Section 171.031(11) Florida Statute, to mean "that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality." Should there be any legal challenge to the annexation of the property, whether based on contiguity, enclaves or any other theory, the Owner agrees to assume all risk associated with the challenge. The Owner further agrees to indemnify and hold harmless the City from all claims, suits and judgments in any way arising out of or relating to the annexation of the property. This indemnity and hold harmless shall extend to all costs, fees and expenses, including, but not limited to, reasonable attorneys' fees and expert witness fees incurred by the City in the investigation or defense of any challenge to the annexation whatsoever, including but not limited to Chapter 164, Chapter 171 and any legal challenge filed in Court, including all levels of court and any attorneys' fees that the City may be ordered to pay pursuant to Section 171.081 Florida Statutes (collectively a "Third Party Claim"). Promptly after receipt of notice of the making or commencement by any third party of any claim, action, lawsuit, or proceeding as to which indemnification may be sought (a "Third Party Claim"), the City shall notify Owner. Failure to do so shall not relieve Owner from any liability that it may have under this section unless Owner is prejudiced by the lack of such notice; provided that, in such case Owner shall not be responsible for that portion of the liability caused by the prejudice resulting from the lack of notice. If any such Third Party Claim is brought against the City, Owner shall be entitled to participate and, to the extent they may elect by written notice delivered promptly to the City after receiving notice from the City, to assume the defense with counsel reasonably satisfactory to the City. The parties agree to cooperate fully in connection with the defense, negotiation, or settlement of any such legal proceeding, claim, or demand. The City shall have the right to employ counsel in any such case, with counsel reasonably acceptable to the Owner, and the fees and expenses of this counsel

shall be at the expense of the City, subject to reimbursement from Owner. In any of these events, fees and expenses of the City's counsel shall be borne by Owner. Owner may not settle any Third Party Claim without the consent of the City. After any final judgment or award has been rendered by a court, arbitration board, or administrative agency of competent jurisdiction and the time in which to appeal from it has expired, a settlement has been consummated, or Owner and the City arrive at a mutually binding agreement with respect to each separate matter alleged to be indemnified by Owner, the City shall forward to Owner notice of any sums due and owing by *it* with respect to the matter, and Owner immediately shall pay all of the sums owing, by wire transfer or certified or bank cashier's check, to the City.

14. Attorneys' Fees. Should any party to this Agreement bring an action against any other party to enforce any provision of the Agreement, the prevailing party in said action shall be entitled to recover its reasonable attorneys' fees and court costs in all trial and appellate proceedings.

15. Notices. Every notice, demand, consent, approval or other document or instrument required or permitted to be given to any party to this Agreement shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, to the following address (or such other address as any party may designate from time to time in writing).

<i>For City:</i>	<i>For Owner:</i>
Paul Carlisle, City Manager 1225 Main Street Sebastian, Florida 32958 <i>with a copy to:</i> City Attorney 1225 Main Street Sebastian, Florida 32958	Jeff E. Bass President Graves Brothers Company 2770 Indian River Blvd., Suite 201 Vero Beach, Florida 32960 <i>with a copy to:</i> Registered Agent on file.

16. Effective Date and Duration. This Agreement shall become effective upon execution by both parties.

17. Miscellaneous.

(a) Entire Agreement. This Agreement contains and sets forth all the promises, covenants, agreements, conditions and understandings between the Parties with respect to the subject matter of this Agreement.

(b) Terms and Words. All terms and words used in this Agreement regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

(c) Severability. If any provisions of this Agreement are held to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected or impaired and each remaining provision shall remain in full force and effect. In the event that any term or provision of this Agreement is determined by appropriate judicial authorities to be illegal void or otherwise invalid, said provision shall be given its nearest legal meaning or be construed as deleted as such authority determines and the remainder of this Agreement shall be construed to be in full force and effect.

(d) Headings. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

(e) Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation between the Parties related to this Agreement shall be Indian River County, Florida.

(f) Permits. Conditions. Terms. or Restrictions. The failure of this Agreement to address a particular permit, condition, term, or restriction existing at the time of execution of

this Agreement shall not relieve Owner of the necessity of complying with the law governing said permitting requirement, condition, term, or restriction.

(g) Amendments. This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by the parties owning the affected portion of the property with the same formality and or equal dignity herewith.

(h) Recording. This Agreement shall be recorded by the City, at Owner's expense, in the Official Records of Indian River County, Florida.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

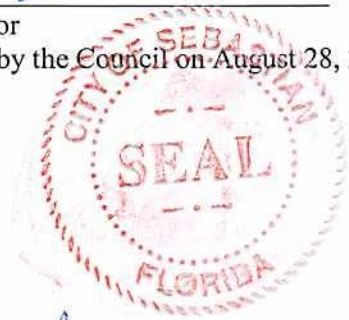
ATTEST:

CITY OF SEBASTIAN, FLORIDA
1225 Main Street
Sebastian, FL 32958


Jeanette Williams, MMC – City Clerk


Jim Hill, Mayor
As Approved by the Council on August 28, 2019

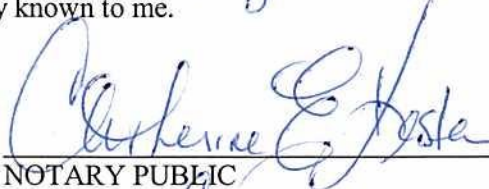
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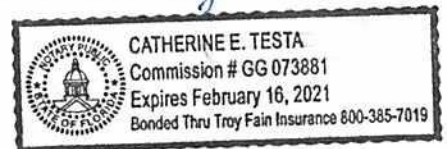


STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledge before me this 29 day of August, 2019, by Jim Hill, Mayor of the City of Sebastian, Florida who is personally known to me.

SEAL


NOTARY PUBLIC
Print Name: CATHERINE E TESTA
Commission No. GG073881
My Commission Expires: February 16, 2021





OWNER:

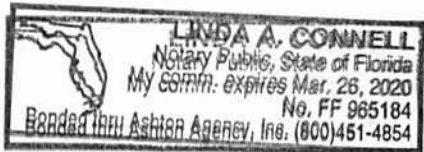
GRAVES BROTHERS COMPANY

By: [Signature]
Jeff Bass, President

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledge before me this 29th day of August, 2019, by Jeff Bass, President of the Graves Brothers Company who is personally known to me.

SEAL



[Signature]
NOTARY PUBLIC
Print Name: Linda A Connell
Commission No. FF 965184
My Commission Expires: MAR 26, 2020