

Return to:

City of Flagler Beach
City Clerk
105 2nd Street
Flagler Beach, FL 32136

VERANDA BAY PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (“Agreement”) is made and entered into by and between the **City of Flagler Beach, a municipal corporation** organized and existing under the laws of the State of Florida (hereinafter referred to as the “City”), whose address is 105 South 2nd Street, Flagler Beach, Florida 32136, and **Palm Coast Intracoastal, LLC, a Florida limited liability company (“PCI”)** whose address is 3129 Springbank Lane, Charlotte, North Carolina 28226, **Veranda Bay Investments, LLC, a Florida limited liability company (“Veranda”)** whose address is 3129 Springbank Lane, Charlotte, North Carolina 28226 and **Highway 100 Commercial LLC (“HC 100”)** whose address is 800 North Highland Ave, Suite 200, Orlando, Florida 32803 (hereinafter collectively referred to as the “Owners”) this ___ day of _____, 2024, (the “Effective Date”) and shall automatically become null and void unless the events described in Section 12(C), below, have occurred on or before the date set forth therein.

RECITALS

A. The parties desire to annex the following properties (the “Annexed Property”, **Exhibit “A”**) into the City of Flagler Beach.

B. PCI is the owner of certain real property located in Flagler County, Florida consisting of approximately 215.57 acres, which real property is more particularly described in **Exhibit “A”** attached hereto (hereinafter referred to as the “PCI Property”);

C. Veranda is the owner of certain real property located in Flagler County, Florida consisting of approximately 580 acres, which real property is more particularly described in **Exhibit “A”** attached hereto (hereinafter referred to as the “Veranda Property”);

D. HC100 is the owner of certain real property located in Flagler County, Florida consisting of approximately 18.94 acres, which real property is more particularly described in **Exhibit “A”** attached hereto (hereinafter referred to as the “HC100 Property”);

E. PCI conveyed parcels of land and lots of records to third parties (the “Sold Lots”) generally identified in those final plats recorded at Plat Book 40, Pages 59 through 64 (Phase 1A) and Plat Book 40, Pages 65 through 70 (Phase 2A). Pursuant to Section 3.2(r) of the Master Declaration of Covenants, Conditions, Restrictions and Easements for Veranda Bay, recorded in Official Records Book 2723, Page 302, all of Public Records of Flagler County, Florida, the owners of the Sold Lots consented to their respective Sold Lot being annexed into the City of Flagler Beach delegated to PCI the power and authority to do so. The Sold Lots are more particularly described on “**Exhibit B**”;

F. PCI is also the declarant and developer of a mixed use project generally known as Veranda Bay (f/k/a The Gardens at Hammock Beach) (the “Project”) encompassing the Annexed Property subject to numerous governmental approvals (the “Approvals”) which include but are not limited to those identified on **Exhibit “C”**;

G. The Annexed Property is presently located in the unincorporated areas of Flagler County and is assigned the Agriculture & Timberlands, Conservation, Mixed use: High Intensity, and Residential: Low/Medium Density/Single Family future land use designations under the provisions of the Flagler County Comprehensive Plan;

H. The Annexed Property is assigned the Planned Unit Development zoning classification under the provisions of the Flagler County Land Development Code and is subject to that PUD Development Agreement (the “PUD DA”) recorded at Official Records Book 1429, Page 19 et seq, as identified in the Approvals;

I. As negotiated in the PUD DA, the Owners, as a successor, previously conveyed approximately 1,100 acres of land designated as environmental lands to Flagler County for the purpose of preservation, conservation and public recreation for the benefit of citizens of Flagler County (the “Dedicated Lands”);

J. The City desires to annex the Annexed Property into the City of Flagler Beach recognizing that (i) the Annexed Property is intended to be developed as a mixed use development consistent with the Approvals, and (ii) the Parties to this Agreement desire to amend the PUD DA;

K. Under Section 171.044(1), Florida Statutes, property sought to be annexed must be reasonably compact and contiguous to the boundaries of the annexing municipality;

L. The Annexed Property is reasonably compact and contiguous and will satisfy all requirements for voluntary annexation set forth in Chapter 171, Florida Statutes;

M. Section 171.062(1), Florida Statutes, provides as follows:

“An area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation.”;

N. Section 166.021(8) (b) and (c), *Florida Statutes*, specifically states, with regard to economic development, that:

“(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purpose of this subsection.”

and

“(c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.”;

O. The City desires to ensure that any amendment to the Approvals and the development of the Annexed Property is compatible with surrounding land uses, that adequate public facilities exist or will be in place concurrent with the impact of such development in the manner required by applicable law;

P. The City has taken action to (i) expand the capacity of its potable water, waste water and reuse water utility services and (ii) increase the rates of its adopted impact fees both anticipating that the Annexed Property will be developed at a greater density and intensity than as presently provided in the Approvals.

Q. In the event the Approvals are amended, the City and the Owners desire to (i) implement land use densities and intensities that are compatible with the economic development goals of the City and (ii) develop the Annexed Property at its highest and best use;

R. The City represents to the Owners that adequate public facilities and services, including but not limited to potable water and wastewater, currently exist to serve the Annexed Property and will be available at the time of development in accordance with applicable laws regarding concurrency;

S. This Agreement is authorized by, permitted by, and consistent with the provisions of the City's Home Rule Charter; the City's Comprehensive Plan, Chapter 163, *Florida Statutes*, Chapter 166, *Florida Statutes*, the State Comprehensive Plan (Chapter 187, *Florida Statutes*); Article VIII, Section 2(b), *Constitution of the State of Florida*, Chapter 171, *Florida Statutes*; and other applicable law; and serves and advances a vital public purpose;

T. The City finds and determines that the City's interest will be best served by annexing the Annexed Property into its municipal boundaries and by entering into this Agreement to ensure that the proposed development of the Annexed Property is consistent with the Approvals and, if amended, is in accordance with the City's Comprehensive Plan;

U. Owners seek to obtain for the Annexed Property the benefits and privileges of inclusion within the boundaries of the City, which include the designation of the Annexed Property on the City's Future Land Use Map and the assignment of zoning categories to allow for the development of the Annexed Property consistent with the Approvals and the provisions of all services, facilities, and utilities as are available to all residents of the City; and

V. The purpose of this Agreement is to set forth the understandings and agreements of the Parties with respect to the foregoing, and other matters set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Recitals

(A) The above recitals are adopted as the findings of the City of Flagler Beach City Commission.

(B) The above recitals are true and correct, are incorporated into this Agreement by reference, and form a material part of this Agreement upon which the Parties have relied, including, but not limited to, the assertions that the Owners own a portion of the Annexed Property and have legal authority and are empowered to enter into this Agreement to make binding commitments.

Section 2. Annexation.

(A) This Agreement, upon execution by the Owners, shall serve as and constitute an annexation petition by the Owners for the annexation of the Annexed Property into the City, provided that the City shall thereafter annex the Annexed Property into the City subject to the terms and conditions of this Agreement.

(B) This Agreement is entered into under the authority of the Florida Constitution (including Article VIII, Section 2(b) thereof), the general powers conferred upon municipalities by statute and otherwise (including Chapter 163 and 166, Florida Statutes), and the City's Charter. The persons executing this Agreement represent that they have full authority and the necessary approval and authorization to enter into and execute this Agreement on behalf of the applicable Party and all landowners of the Subject Property. The City hereby represents, warrants, and covenants to and with the Developer that this Agreement has been validly approved by the Flagler Beach City Commission, that it has been duly executed and delivered by the City, that it is consistent with the City's Comprehensive Plan (adopted by the City pursuant to Chapter 163, Part II, Florida Statutes) and the land development regulations of the City of Flagler Beach (including, without limitation, the City's Land Development Regulations and, collectively, the "**City Regulations**"), and that the enforceability hereof is not subject to impairment on the basis of any public policy or police power.

(C) The Owners consent to or petitioned for annexation of their respective properties. The Owners have delegated and assigned to PCI the right and responsibility for negotiating this Agreement on behalf of all the Owners.

~~**Section 3. No Annexation Fees.** It is understood and agreed that no fees, costs or expenses will be charged to or become due from the Owners to the City or to any other governmental authority, private individual or entity on account of or in connection with the City's review and processing of the annexation petition or the annexation of the Annexed Property into the corporate limits of the City; provided, however, that the Owners shall pay their own attorneys' fees and consulting fees.~~

Section 34. Development Conditions and Public Facilities

(A) Water/Sewer/Reuse: The Annexed Property, after the effective date of this Agreement, shall be located within the City's urban service boundary. Except as provided herein, the City's municipal services including but not limited to water, sanitary sewer and reuse water ("Services") shall be provided to the Annexed Property. As a material part of this Agreement, the City represents to the Owners that it shall provide at a minimum 850,000 gallons of water and waste water treatment capacity to the Annexed Property. Therefore, the City shall reserve sufficient potable, wastewater, and reuse water capacity for the Annexed Property. However, in the event the City cannot immediately provide and pay for one or any of these Services to the Annexed Property upon the Owners' written request, the Owners shall be permitted, without objection by the City, to either (i) obtain Services from third parties and/or (ii) construct such Services. For example, in the event the City cannot provide water sanitary sewer to the Annexed Property as provided above, the City shall permit the Owners to obtain such service from an

adjacent provider or construct facilities to provide such services. The City shall not charge a CDD or a property owners association fees for the use or consumption of City reuse water for its respective common areas. Moreover, the City shall not require the Declarant to prepay water and sewer “impact”, “connection” or “CIAC” fees until the City issues a building permit for a residential or non-residential structure.

(B) Solid Waste: Solid waste collection services are available to serve the demands generated by the Annexed Property as it is to any other owner of City property and will be available concurrent with the impacts of the development of the Annexed Property. If reasonably possible, the Owners shall utilize the City’s solid waste collection franchise.

(C) Public Safety: The City will provide fire (having a first response agreement with Flagler County as part of its service network), police, and EMS facilities, including the equipment and services necessary to serve the Annexed Property at a level consistent with the City’s adopted level of service. All such public services are available to support the development of the Annexed Property.

(D) Transportation: Transportation issues and transportation impacts will be addressed through the City’s concurrency management system as presently adopted, Chapter 163, Florida Statutes, and traffic studies performed by a qualified engineer. The City shall not require any above or below grade crossings for any intersection affected by Project.

(E) Permitting and Permit Review. As provided 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 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 the City’s jurisdiction under its police power, processed in good faith and in a timely fashion. 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 actions. The Parties further recognize and agree that these proceedings will be conducted openly, fully, freely, and fairly in accordance with law, and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing contained in this Agreement shall entitle Owners to compel the City to take actions, except to timely process such applications. Owners must process any final plats of the Annexed Property for approval by the City which may include the posting of proper bonds as provided by Florida law and Section 9.02.04 of the City Regulations. The Owners are permitted to market for sale any parcel or lot pending approval and recording of final plats (as may be bonded), provided that title to such will not be conveyed to third party purchasers prior to the recording of final plats.

(F) Buffers/Open Space/Trees: The Owners shall ensure that buffers along John Anderson Highway ~~provide a 25-foot minimum and 50-foot average. ∴ (i) 100 ft in width along the eastern side of the right of way and (ii) fifty (50) feet in width along the western side of the right of way.~~ Further, the Owners shall ensure that buffers along Bulow Creek provide a 25-foot

minimum and 75-foot average. The Owners shall also provide a natural buffer no less than seventy-five (75) feet from the edge of the Bulow Creek riverbank. In addition, the Owner shall provide a minimum of 300 acres of land as open space as may be defined by its current Land Development Regulations (LDR) or subsequent development agreements. ~~In consideration of these commitments and the Dedicated Lands, the Project shall be exempt from all other City tree preservation, protection and mitigation rules and ordinances unless otherwise agreed to in writing by the parties.~~ This commitment to provide land in open space shall allow under brushing and passive recreation including non-habitable structures within the open space.

(G) Stormwater, Flood Plain, Compensating Storage. In the event that the Owners or a CDD undertakes responsibility for all or part of the stormwater management system developed on the Annexed Property, the parties shall enter into a separate agreement to adjust a portion of the stormwater service charge collected by the City to account for stormwater that is treated by the Annexed Property's systems, as applicable or as may be exempt. The City further acknowledges that the stormwater management plan and compensating storage plans for the Annexed Property shall be solely regulated and permitted by State and Federal government agencies ("Stormwater Plans"). Future phases of development of the Annexed Property shall not be required to comply with City's stormwater management or compensating storage requirements. The City agrees to cooperate with Owners' efforts to obtain Conditional Letters of Map Revision ("CLOMR.s") and Final Letters of Map Revisions ("LOMRs") with FEMA on an expedited basis.

(H) Mass Grading/Phased Infrastructure: The Annexed Property shall be developed in phases with some infrastructure being shared between phases ("Shared Infrastructure"). The parties agree that the Owners shall have the right to mass grade and construct Shared Infrastructure in portions of the Annexed Property not subject to a preliminary plat or site plan development order so long as such Shared Infrastructure is related to an approved development order. The Owners shall have the right but not the obligation to create overall master plan and mass grade plan for roadways, utility infrastructure and stormwater system generally depicting infrastructure that may be shared between phases (stormwater systems, roads, etc). Such plans shall permit phased construction of such improvements in advance of future phases of development at the Owners election, subject to approval by the City Manager.

~~(I) Fee Waivers. In consideration of the significant economic benefit of the Annexed Property to the City, the City shall waive comprehensive plan amendment, rezoning, master plan, and site plan application fees for projects within the Annexed Property for two (2) years after the Effective Date of this Agreement. The City shall also waive subdivision platting application fees for two (2) years after the Effective Date of this Agreement.~~

(J) Agriculture Exemption: Portions of the Annexed Property presently qualify for a statutory agricultural exemption. So long as the Annexed Property maintains and satisfies the statutory requirements, the City shall agree and acknowledge that portions of the Annexed Property may continue with its present agricultural and silviculture uses to maintain such qualifications.

(K) Phasing/Timelines: The City agrees that the Owners have satisfied any and all phasing obligations as may be provided by City regulations and ordinances including but not limited to City Ordinance 2024-06. Specifically, the City agrees and acknowledges that it (i) has

complied with said requirements, (ii) is not subjected to being deemed lapsed and (iii) all vested rights shall remain.

~~(KL)~~ Community Development Districts: The City agrees and acknowledges that the Annexed Property is subject to the Gardens at Hammock Beach Community Development District, Flagler County, Florida (“District”), pursuant to Chapter 190, Florida Statutes, which was initially established by Flagler County. The City agrees that it shall accept and acknowledge the powers granted to the District pursuant to state law. The City agrees to execute all documents that may be necessary or take any action necessary to transfer the local government jurisdiction affecting the District to the City, to the extent such may be necessary. In addition, the City agrees and acknowledges that it shall, in good faith, assist the Owners, at the Owner’s sole discretion, to amend the District’s existing boundaries and establish an additional community development district governing that portion of the Annexed Property west of John Anderson Highway which shall be permitted to finance, fund, plan, establish, acquire, construct, enlarge or extend, equip, operate and maintain projects, systems and facilities for the purposes described in Section 190.012, F.S. including but not limited to, any transportation improvements that may be required by this Agreement or other development orders.

~~(LM)~~ Agriculture/Silviculture: The Subject Property has been and will continue to be used for silviculture purpose. Silviculture activities may continue to occur on the Subject Property until that portion of the Subject Property approved for development obtains all necessary permits. All silviculture activities shall continue to comply with all federal and state requirements. All silviculture activities shall comply with the State of Florida Division of Forestry Best Management Practices. The Subject Property shall therefore remain eligible for all agricultural exemptions as provided by law.

~~(MN)~~ Miscellaneous: Owners will be permitted to conduct marketing and sales events on the Annexed Property on an ongoing basis without further approval in a manner not inconsistent with City Code.

Section 45. General Obligations/Commitments of the Parties

(A) The City has reviewed the Approvals affecting the Annexed Property and finds that the Approvals including but not limited to present zoning classification and development agreement are consistent with the City’s comprehensive plan. Moreover, the City Staff has generally evaluated the suitability to amend the Approvals affecting the Annexed Property for development of a mixed use community including but not limited to residential uses (single-family and multi-family), office, retail, commercial, a marina and open space areas as generally depicted on the Conceptual Plan (**Exhibit “D”**). The City Staff and Commission generally concur that the Annexed Property is suitable for development as a multi-use, master planned community as depicted on the Conceptual Plan, and that such development can provide for a pattern of harmonious and transitioned land uses, generally comports with sound and generally accepted land use planning and development practices and principles, and that such use will benefit the City’s residents. The City and Owners agree that a golf course, as provided in the Approvals, is not an appropriate use of the Annexed Property for various reasons including environmental impacts from pesticides or herbicides to the surrounding lands.

(B) Notwithstanding the above, the Parties acknowledge that the City cannot contract to approve specific Comprehensive Plan amendments or rezoning requests; provided, however, that this provision shall not serve to otherwise limit the terms of this Agreement. The City's only obligation with respect to Comprehensive Plan amendments and rezoning requests is to timely process the Owners' applications expeditiously, consider all evidence presented in support of and in opposition to the applications, and make decisions to approve or deny the applications based upon the legal standards that govern such applications.

(C) The City agrees that all concurrency requirements related to the Annexed Property are vested by the Approvals, as may be amended and reviewed in accordance with Chapter 163, *Florida Statutes*, and other applicable regulatory requirements.

(D) The City agrees that, if requested by the Owners, their affiliates or designees, it will promptly process for City Commission the consideration to annex other lands of Owners or their affiliates consistent with the terms of this Agreement and State law.

(E) The City agrees that, subsequent to annexation, the City shall accept all preliminary plats, site plans, construction drawings and final plats presently approved by the County (collectively, the "Plats"). The City shall timely make inspection during the completion of construction provided for in the Plats and not impose new or additional comments or requirements that may be typically required by the City. The City shall honor, accept, and approve the development as provided in the Plats and previously approved construction plans consistent with County rules and regulations even if such portions might be inconsistent with the City's rules and regulations. Notwithstanding, the parties may by mutual agreement amend any Flagler County development order affecting the Annexed Property.

Section 56. De-annexation/Contraction. Any potential proposed de-annexation(s) or contractions of (i) the Annexed Property or (ii) any part or parts of the Annexed Property will be considered in accordance with the provisions of Chapter 171, *Florida Statutes*. In the event of (i) litigation brought by any third party or other governmental entity including, but not limited to, Flagler County, Florida, as a result of the annexation or this Agreement, or (ii) any termination of this Agreement under Sections 12(B) or (C), the City agrees, in good faith, to cooperate in any de-annexation or contraction to remove the Annexed Property from the City within sixty (60) days of Declarant's written request and permit the Owners to terminate this Agreement.

Section 67. Duty To Cooperate/Comprehensive Plan Amendment, etc.

(A) The City and the Owners agree to cooperate at all times in a timely manner and in good faith in the acquisition and exercise of development rights and entitlements in the Annexed Property. The good faith cooperation by the City and the Owners shall extend to the acquisition by the Owners of all applicable necessary local, State and Federal permits, development orders, licenses, easements and other approvals or rights in connection with the development of the Annexed Property in accordance with all applicable land use, zoning, land development, building and construction regulations.

(B) The City will consider the adoption of a Comprehensive Plan Amendment contemplated by this Agreement, and the Owners will cooperate with the City by providing the

City with all requested data and analysis to include the Annexed Property in the City Comprehensive Plan. The City shall promptly consider the proposed Comprehensive Plan Amendment and, if approved, immediately transmit the adopted Comprehensive Plan Amendment to the Florida Department of Economic Opportunity (FDEO). Upon the FDEO's review, the City shall work in good faith with the Owners to address any questions or concerns raised by the FDEO prior to the City's final adoption.

Section 78. Limitation of Funding Obligations. Except as provided in Section 4 of this Agreement, the City shall have no obligation to Owners to fund any public facilities or infrastructure within the Annexed Property. Rather, the City shall have a good faith obligation to provide off-site Services and infrastructure necessary to develop the Annexed Property consistent with the Approvals and their intended amendments.

Section 89. Further Assurances. In addition to the acts recited in or set forth in this Agreement, the City and the Owners agree to perform or cause to be performed, in a timely manner, any and all further acts as may be reasonably necessary to implement the provisions of this Agreement including, but not limited to, the execution and/or recordation of further instruments; provided, however, that the City's obligations shall be subject to such limitations of law as may be applicable to municipalities.

Section 94. Remedies. Nothing in this Agreement shall be construed to limit the right of either the Owners or the City to pursue any and all available remedies, if any, under non-tort or constitutional law related to a Party's non-performance under this Agreement. The City shall not be deemed to have waived sovereign immunity in any manner or respect, provided this provision shall not limit the City's contractual obligations under this Agreement.

Section 104. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal Parties to this Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the Parties hereto and their respective designated representatives, successors and assigns as provided in Section 15. In the event that a party files an action in court relating to this Agreement, the parties agree that they shall submit to mediation within sixty (60) days after the parties responsive pleadings are filed.

Section 112. Effectiveness of Agreement

(A) This Agreement shall serve as an annexation petition upon execution by the Owners, which may be relied on by the City in accordance with the terms of this Agreement upon the Owners' execution of the Agreement but shall become effective as an agreement between the Owners and the City upon its being duly executed by the City. If the City does not execute this Agreement or does not complete the annexation of the Annexed Property, both within 30 days of the date that Owners have executed this Agreement, then the petition for annexation may be revoked by the Owners and, upon demand, the City shall immediately release and deliver the Annexation Petition to the Owners, and the City shall record, at the City's expense, a Notice of

Termination of this Agreement and any pending annexation petition for the Annexed Property in the Public Records of Flagler County, Florida. Upon annexation and receipt of a request by Owners, the City shall expeditiously process a Comprehensive Plan Amendment and Rezoning.

(B) Notwithstanding any other provisions of this Agreement, the Owners may, at its sole discretion, terminate this Agreement by notifying the City, in writing, of such termination within thirty (30) days following a legal challenge to the annexation of the Annexed Property filed by any third parties, including, but not limited to, Flagler County, Florida.

(C) To the extent allowed by law and notwithstanding any other provisions of this Agreement, if the Comprehensive Plan Amendment and anticipated Rezoning for the Annexed Property have not been adopted, approved and finalized, with all applicable appeal periods having expired within sixty (60) days following the Effective Date of this Agreement (the “Condition Subsequent”), (i) this Agreement, and any annexation pursuant thereto, shall become null and void and of no further force and effect, unless prior to such date Owners have delivered to the City a written notice expressly waiving or extending the Condition Subsequent; and (ii) the City shall immediately consider the request to de-annex the Annexed Property from the City as provided herein and by state law.

~~Section 13. Indemnification. City agrees to indemnify the Owners from any and all damages arising from the negligent acts or omissions of City or its officers, employees or agents under and pursuant to this Agreement but in no case shall it waive its sovereign immunity rights pursuant to Section 768.28, F.S. Owners agree to indemnify the City from any and all damages arising from the negligent acts or omissions of Owners or their officers, employees or agents under and pursuant to this Agreement but limited to the extent of liability of Owners.~~

Section 124. Time Of The Essence. Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement. The Parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

Section 135. Successors and Assigns. This Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the City and the Owners and their respective assignees and successors in interest.

Section 146. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida. Further, to the extent permissible under the laws of the State of Florida, if there is a conflict between this Agreement and the terms of the City Regulations, the terms of this Agreement shall control.

Section 157. Binding Effect. Each Party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it.

Section 168. Recording. Within five (5) business days after the approval of this Agreement by the City and the Owners’ execution of this Agreement, the City shall, at its sole cost

and expense, record a fully executed copy of this Agreement in the Public Records of Flagler County, Florida.

Section 179. Choice of Law and Venue. Florida law shall govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be in Flagler County, Florida and Orlando Middle District for federal actions.

Section 1820. Effect on Change in Law. If State or Federal laws are enacted after execution of this Agreement which are applicable to and preclude the Parties' compliance with the terms of this Agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws and the intent of the Parties hereto; provided, however, that the City agrees that it shall not modify this Agreement in any manner which would in any way be inconsistent with the intent of the Parties to provide for development of the Annexed Property in accordance with the terms and conditions hereof, except where required by law.

Section 1921. Construction or Interpretation of the Agreement. This Agreement is the result of bona fide arm's length negotiations between the City and the Owners, and all Parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one Party than against any other Party.

Section 202. Permits, Conditions, Terms or Restrictions. The failure of this Agreement to address a particular permit, condition, terms, or restriction existing at the time of execution of this Agreement shall not relieve Owners of the necessity of complying with the law governing said permitting requirement, condition, terms, or restriction.

Section 213. Attorneys' Fees and Costs. In the event of any action to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal or any bankruptcy or collection proceedings.

Section 224. Captions/Exhibits.

(A) The headings or captions of the sections and subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance and shall not be afforded any.

(B) The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement. If an exhibit is inconsistent with any term of this Agreement, such term(s) of this Agreement shall govern and take priority.

Section 235. Parties Bound. Following the recordation of this Agreement, the benefits and burdens of this Agreement shall become a covenant running with the title to the Annexed Property, and all parts and parcels thereof, and this Agreement shall be binding upon the inure to

provided in the Settlement Agreement, recorded at Official Records Book 1560, Page 471 et seq and Interlocal agreement, recorded at Official Records Book 2129, Page 1549 et seq, are void and unenforceable against the Owners or their respective successors and assigns.

| **Section 279. Modification.** This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith approved by the City.

| **Section 2830. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

**THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK**

WHEREFORE, the Parties hereto have caused these presents to be signed all as of the date and year first above written.

ATTEST:

CITY OF FLAGLER BEACH

City Clerk

City Manager

**STATE OF FLORIDA
COUNTY OF FLAGLER**

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization by _____ as City Manager of the City of Flagler Beach, on its behalf, and who is personally known to me on this ____ day of _____, 2024.

NOTARY

For the use and reliance of the City of Flagler Beach only. Approved as to form and Legal sufficiency.

City Attorney

WITNESSES

**PALM COAST INTRACOASTAL, LLC, a
Florida limited liability company**

Print Name: _____

By: _____

William G. Allen Jr., Manager

Address: _____

Print Name: _____

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization by William G. Allen Jr., as Manager of Palm Coast Intracoastal, LLC and who is personally known to me on this ____ day of _____, 2024.

NOTARY

WITNESSES

**VERANDA BAY INVESTMENTS, LLC, a
Florida limited liability company**

Print Name: _____

By: _____

William G. Allen Sr., Manager

Address: _____

Print Name: _____

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization by William G. Allen Sr., as Manager of Veranda Bay Investments, LLC and who is personally known to me on this ____ day of _____, 2024.

NOTARY

WITNESSES

**HIGHWAY 100 COMMERCIAL, LLC, a
Florida limited liability company**

Print Name: _____

Address: _____

By: _____
**Michelle Chira, Trustee of the Michelle
Chira Revocable Trust, Manager**

Print Name: _____

Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization by Michelle Chira, Trustee of the Michelle Chira Revocable Trust, as Manager of Highway 100 Commercial, LLC and who is personally known to me on this ____ day of _____, 2024.

NOTARY