

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Paul E. Rosenthal, Esq.
FOLEY & LARDNER, LLP
111 North Orange Avenue, Suite 1800
Post Office Box 2193
Orlando, FL 32802-2193
(407) 423-7656

AFTER RECORDING RETURN TO:

Beth Eikenberry, City Clerk
CITY OF OCOEE
150 North Lakeshore Drive
Ocoee, Florida 34761
Tax Parcel Identification Number(s) _____

ANNEXATION AGREEMENT
[Sewer and Water Service]

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this ___ day of _____ 200_____, by and between the **CITY OF OCOEE**, a Florida municipal corporation, whose mailing address is 150 N. Lakeshore Dr., Ocoee, Florida 34761 (the "City") and _____, whose mailing address is _____ (the "Owner").

W I T N E S S E T H:

WHEREAS, the Owner owns certain real property located at _____, Tax Parcel Identification Number _____ as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, the Property is located within the City sewer and water territorial areas as set forth in the Territorial Agreements (as defined below); and

WHEREAS, the Property is located within the Joint Planning Area as defined in Joint Planning Area Agreement dated February 11, 1994 between the City and Orange County as it may be amended from time to time (the "Joint Planning Area Agreement"), but the Property does not currently meet the statutory requirements for voluntary annexation under the provisions of Section 171.044, Florida Statutes; and

WHEREAS, the Owner of the Property has requested, and the City has agreed, subject to the terms, conditions and limitations hereinafter set forth, that the City shall provide sewer and water service to the Property; and

WHEREAS, in consideration of the City providing sewer and water service to the Property, the Owner desires to voluntarily petition the City to annex the Property pursuant to Section 171.044, Florida Statutes; provided, however, at this time the City cannot annex the

Property because the Property does not currently meet the statutory requirements for voluntary annexation under the provisions of Section 171.044, Florida Statutes; and

WHEREAS, the parties acknowledge and agree that this Agreement constitutes a petition for the voluntary annexation of the Property pursuant to Section 171.044, Florida Statutes; and

WHEREAS, the Owner agrees that at the time the City makes a determination that the Property meets the statutory requirements for voluntary annexation under the provisions of Section 171.044, Florida Statutes, and upon the request of the City, the Owner shall execute all applications and documents required by the City, pay all applicable fees, costs and expenses, and provide all documentation required by Florida law, including, but not limited to, Section 171.044, Florida Statutes, necessary for the voluntary annexation of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual promises and agreements set forth herein and other good and valuable consideration the receipt of which is hereby acknowledged and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and by this reference are incorporated herein as part of this Agreement.

SECTION 2. Annexation.

A. The Owner and the City acknowledge and agree that this Agreement constitutes a petition for the voluntary annexation of the Property pursuant to Section 171.044, Florida Statutes. The Owner and the City further acknowledge and agree that the petition cannot be processed at this time because the Property does not meet the statutory requirements for voluntary annexation under the provisions of Section 171.044, Florida Statutes.

B. The City shall have the right, but not the obligation, to process the petition; provided, however, that the petition shall not be processed by the City unless and until a determination is made by the City, in its sole and absolute discretion, that the Property meets the statutory requirements for voluntary annexation under the provisions of Section 171.044, Florida Statutes, or such other provisions of the Florida Statutes as may then be applicable to voluntary annexations. Following such determination by the City and upon the written request of the City, the Owner shall within thirty (30) days of receipt of such written request from the City (i) execute all applications and documents required by the City at the time of such request in order to process the Owner's petition for voluntary annexation including, but not limited to, the Application for Annexation and Initial Rezoning Consistent with the Ocoee Comprehensive Plan and the Annexation and Initial Zoning Hold Harmless Agreement; (ii) pay all applicable fees, costs and expenses associated with the petition for voluntary annexation as required by the City; and (iii) provide all documentation required by Florida law, including, but not limited to, Section 177.044, Florida Statutes, for the voluntary annexation of the Property including, but not limited to, a metes and bounds legal description of the Property. Following the Owner's compliance with the foregoing, the City shall have the right, but not the obligation, to process this petition for voluntary annexation without further action and/or request of the Owner.

C. In the event the City determines, in its sole and absolute discretion, that the requested annexation is inconsistent with the Ocoee Comprehensive Plan, the Owner must apply for a Comprehensive Plan Amendment and pay the applicable development review fees in connection therewith. In the event the City determines, in its sole and absolute discretion, that a developer agreement is required in connection with the annexation, then the Owner must pay the applicable development review fees in connection therewith. The Owner shall pay such additional development review fees as may be required by the Code of the City of Ocoee in effect at the time of annexation.

D. The Owner acknowledges and agrees that this Agreement does not in any way obligate or require the City to annex the Property or grant to the Owner any particular zoning which may be requested in connection with such annexation.

E. The Owner acknowledges and agrees that any zoning granted to the Owner in connection with the Property shall be consistent with the terms and conditions of the Joint Planning Agreement as it may be amended from time to time.

SECTION 3. Sewer and Water Service.

A. Subject to the terms, conditions and limitations set forth in this Agreement, the City agrees to provide sewer and water service to the Property upon compliance by the Owner with all applicable regulations of the City and the payment all fees, costs and expenses associated therewith. The Owner shall execute all developer agreements for sewer and water as required by the City in connection with the provision of sewer and water service to the Property.

B. This Agreement does not in any way reserve any sewer and water capacity or guarantee the availability thereof.

C. The Owner acknowledges and agrees that for so long as the Property is not located within the corporate limits of the City, the monthly rates and charges for sewer and water service as established by the City from time to time shall be charged at the same rate charged to consumers within the corporate limits of the City plus a surcharge equal to twenty-five percent (25%) of such monthly rates and charges for sewer and water service or such other surcharge as the City may impose from time to time. The Owner agrees to pay all such charges for sewer and water service and surcharges as required by the City.

D. The Owner acknowledges and agrees that the Property is not located in the corporate limits of the City and that sewer and water capital charges as established by the City from time to time shall be charged at the same rate to consumers within the corporate limits of the City plus a surcharge equal to twenty-five percent (25%) of such sewer and water capital charges or such other charges as the City may impose from time to time. The Owner agrees to pay all sewer and water capital charges and surcharges as required by the City.

SECTION 4. Agreement Runs with the Land. In consideration of the City providing sewer and water service to the Property, the Owner and the City acknowledge and agree that this Agreement is irrevocable and, further, this Agreement and all other rights and

obligations of the parties hereunder are intended to and shall run with the Property, and shall bind, and inure to the benefit of, the parties hereunder and their respective successors in title.

SECTION 5. Representations.

A. The Owner hereby warrants and represents to the City that the Owner currently owns fee title to the Property and has full power and authority to enter into this Agreement and that the Property is free and clear of all liens and encumbrances [except for the lien of the mortgages referenced in the Joinder, Consent and Subordination attached hereto].

B. The City makes no representations or warranties with regard to this Agreement and reserves the right to process Owner's petition for voluntary annexation in its sole and absolute discretion.

SECTION 6. Title Evidence and Survey.

A. As a condition precedent to the execution of this Agreement by the City, the Owner shall provide title evidence, in a form and substance satisfactory to the City, showing the Owner as the owner of fee simple title to the Property. Such title evidence shall also show whether the Property is encumbered by a mortgage or otherwise. In the event the Property is encumbered, the Owner shall provide a Joinder, Consent and Subordination of all mortgagees to this Agreement prior to the execution of this Agreement by the City.

B. Unless the Property is a platted lot as shown in the title evidence required above, as a condition precedent to the execution of this Agreement by the City, the Owner shall provide a survey in accordance with the minimum technical standards for land surveys set forth in Chapter 61G17-6, Florida Administrative Code. Such survey shall be consistent with the legal description of the Property set forth in **Exhibit "A"**.

SECTION 7. Notices. Any notice required to be given hereunder shall be in writing and shall be delivered in person or by certified mail, postage paid, return receipt requested as follows. If such notice is to be given to the City, such shall be given at the address set forth above. If such notice is to be given to the Owner, such shall be given at the address shown in the tax collector's records for the Tax Parcel Identification Number set forth above. Any notice, direction or other communication delivered or mailed, as directed above shall be deemed to be delivered as of three (3) days after the date of mailing or, if delivered personally, when received.

SECTION 8. Defaults and Remedies. IN THE EVENT THE OWNER FAILS TO COMPLY WITH ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND SUCH FAILURE CONTINUES FOR THIRTY (30) DAYS AFTER WRITTEN NOTICE FROM THE CITY, THE CITY MAY DISCONNECT AND TERMINATE ANY SEWER AND WATER SERVICE PROVIDED TO THE PROPERTY. THE OWNER HEREBY CONSENTS TO SUCH DISCONNECTION AND TERMINATION OF SEWER AND WATER SERVICE AND EXPRESSLY WAIVES ANY CLAIMS BASED UPON THE DISCONNECTION AND TERMINATION OF SUCH SEWER AND WATER SERVICE BY THE CITY. **OWNER'S INITIALS:**_____

SECTION 9. Indemnification.

A. The Owner hereby agrees to indemnify and save the City harmless from and against all losses, costs, expenses, claims, damages, judgments, liabilities and causes of action whatsoever (collectively, "Claims") including reasonable attorneys' fees and paralegal fees both at trial and at appellate levels, arising out of or alleged to have arisen out of this Agreement or been occasioned, in whole or in part, by the exercise of the City of its rights granted hereunder. The Owner shall use its best efforts to promptly notify the City in writing of any Claim and shall provide the City with information regarding the Claim as the City may reasonably request, but the failure to give such notice or provide such information shall not diminish the Owner's obligations under this Section.

B. No Claim whatsoever shall be made or asserted against the City by the Owner for or on account of anything done or as a result of anything done or omitted to be done in connection with this Agreement.

SECTION 10. Recording. The Owner acknowledges and agrees that the City shall record this Agreement in the Public Records of Orange County, Florida, and the Owner agrees to pay all costs associated therewith.

SECTION 11. Territorial Agreements. The references herein to the Territorial Agreements refer to (i) the Orange County/City of Ocoee Service Territorial Agreement (Contract No. S-87-8), dated June 8, 1987, as amended by the First Amendment thereto dated February 11, 1994, as it may be amended from time to time, and (ii) the Orange County/City of Ocoee Sewer and Water Service Territorial Agreement (Contract No. W-88-06), dated November 14, 1988, as amended February 11, 1994, as it may be amended from time to time.

SECTION 12. Real Property Taxes for Conveyance. In the event of any conveyance of real property by the Owner to the City, real property taxes in connection with the conveyance shall be prorated as of the day before the acceptance of the conveyance by the City and the prorated amount shall be paid by the Owner and shall be escrowed in accordance with the provisions of Section 196.295, Florida Statutes.

SECTION 13. Miscellaneous.

A. ANY FUTURE OWNERS OF THE PROPERTY SHALL TAKE TITLE TO THE PROPERTY SUBJECT TO THIS AGREEMENT AND BY ACCEPTING A DEED OF CONVEYANCE TO THE PROPERTY, AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

B. The Property shall be deemed a single parcel and any subparcels of the Property which are created by subdivision or by any other means shall be subject to the terms and conditions of this Agreement, subsequent sale and individual ownership notwithstanding.

C. This Agreement may not be modified or amended, or any term or provision hereof waived or discharged except in writing, in recordable form, signed by the parties

hereto, or their respective successors and assigns. Any such modification or amendment shall not be effective until recorded in the Public Records of Orange County, Florida.

D. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Florida.

E. All of the terms of this Agreement, whether so expressed or not, shall be binding upon the respective successors, assigns and legal representatives of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns and legal representatives.

F. The headings of this Agreement are for reference only and shall not limit or otherwise affect the meaning thereof.

G. In the event the either party institutes a legal proceeding against the other party, to enforce the terms of this Agreement or for breach of any of the terms, conditions or covenants of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees, paralegal fees and costs, both at the trial and appellate levels.

H. In the event a third party institutes a legal proceeding against the City and/or the Owner, regarding the enforceability of this Agreement or any other matters arising out of or related to this Agreement, the annexation of the Property or the provision of sewer and water service, then in such event the Owner shall pay all costs, fees, charges, and expenses of the City relative thereto, including but not limited to attorney's fees and paralegal fees at both the trial and appellate levels.

I. In addition to each and every remedy now or hereafter existing at law or in equity, the parties hereto expressly agree that City shall have the right to enforce this Agreement by an action for specific performance.

J. As from time to time requested by the City, the Owner agrees to execute such additional documents as may be necessary in order to effectuate the provisions of this Agreement.

K. This Agreement embodies and constitutes the entire understandings of the parties with respect to the subject matter hereof and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

L. The attached Exhibits are part of this Agreement as though fully set forth in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed as of the day and year first written above.

Signed, sealed and delivered in the presence of:

Signature

Print/Type Name

Signature

Print/Type Name

“CITY”

CITY OF OCOEE, a Florida municipal corporation

By: _____
S. Scott Vandergrift, Mayor

Attest: _____
Beth Eikenberry, City Clerk

(SEAL)

FOR USE AND RELIANCE ONLY BY THE CITY OF OCOEE, FLORIDA. APPROVED AS TO FORM AND LEGALITY this ____ day of _____, 200__.

APPROVED BY THE OCOEE CITY COMMISSION AT A MEETING HELD ON _____, 200__. UNDER AGENDA ITEM NO. ____.

FOLEY & LARDNER, LLP

By: _____
City Attorney

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared S. SCOTT VANDERGRIFT and BETH EIKENBERRY, personally known to me to be the Mayor and City Clerk, respectively, of the CITY OF OCOEE, a Florida municipal corporation, and that they severally acknowledged executing the same on behalf of said municipality in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said municipality.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 200__.

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____

My Commission Expires (if not legible on seal): _____

[EXECUTION PAGE FOR CORPORATE OWNER]

IN WITNESS WHEREOF, the Owner has caused this Agreement to be duly executed the ___ day of _____, 200__.

Signed, sealed and delivered in the presence of:

“OWNER”

_____, a _____ corporation

Signature

By: _____

Print/Type Name

Name: _____

Signature

Title: _____

Print/Type Name

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____, as _____ of _____, a _____ corporation, who [] is personally known to me or [] produced _____ as identification, and that _____ he acknowledged executing the foregoing instrument on behalf of said corporation in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him/her by said corporation, and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this ___ day of _____, 20__.

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

[EXECUTION PAGE FOR INDIVIDUAL OWNER]

IN WITNESS WHEREOF, the Owner has caused this Agreement to be duly executed the
_____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

“OWNER”

Signature

Print/Type Name

Signature

Print/Type Name

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State
and County aforesaid to take acknowledgements, personally appeared
_____, who [] is personally known to me or [] produced
_____ as identification, and that _____ he acknowledged executing the
foregoing instrument for the purposes and uses therein described.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of
_____, 20__.

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

[EXECUTION PAGE FOR GENERAL PARTNERSHIP OWNER]

IN WITNESS WHEREOF, the Owner has caused this Agreement to be duly executed the day of _____, 20__.

Signed, sealed and delivered in the presence of:

“OWNER”

_____, a _____ general partner

Signature

By: a _____ corporation, as general partner

Print/Type Name

By: _____

Signature

Name: _____

Print/Type Name

Title: _____

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____, as _____ of _____, a _____ corporation, as general partner of _____, a _____ general partnership, who [] is personally known to me or [] produced _____ as identification, and that _____ he acknowledged executing the foregoing instrument on behalf of said corporation and said partnership in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him/her by said corporation and said partnership, and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20__.

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

[EXECUTION PAGE FOR LIMITED PARTNERSHIP OWNER]

IN WITNESS WHEREOF, the Owner has caused this Agreement to be duly executed the _____ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

“OWNER”

_____, a
_____ limited partnership

Signature

By: a
_____ corporation, as general partner

Print/Type Name

By: _____

Signature

Name: _____

Print/Type Name

Title: _____

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared _____, as _____ of _____, a _____ corporation, as general partner of _____, a _____ limited partnership, who [] is personally known to me or [] produced _____ as identification, and that _____ he acknowledged executing the foregoing instrument on behalf of said corporation and said partnership in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him/her by said corporation and said partnership, and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20__.

Signature of Notary

Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

JOINDER, CONSENT AND SUBORDINATION

The undersigned hereby certifies that _____ is the holder of a mortgage, lien or other encumbrance upon the above described property, and that the undersigned hereby joins in and consents to the foregoing instrument by the owner thereof and agrees that its mortgage, lien or other encumbrance, which is recorded in Official Records Book _____, Page _____, in the original sum of \$ _____, of the Public Records of Orange County of Florida, shall be subordinated to the foregoing instrument.

Signed, sealed and delivered
in the presence of:

“OWNER”

Signature

By: _____

Print/Type Name

Print Name: _____

Its: _____

Signature

(CORPORATE SEAL)

Print/Type Name

STATE OF _____
COUNTY OF _____

THIS IS TO CERTIFY, that on this _____ day of _____, 2004, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared _____, as _____ of _____ who [] is personally known to me or [] produced _____ as identification, and that who acknowledged that ___ he as the individual described in and who executed the foregoing instrument and acknowledged the execution thereof to be his/her free act and deed as such officer thereunto duly authorized, that the official seal of said corporation is duly affixed thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the above date.

NOTARY PUBLIC

Name: _____

My Commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION