

PRE-ANNEXATION AGREEMENT

This Agreement is made this _____ day of _____, 2021 by and between the CITY OF VENICE, FLORIDA, a municipal corporation (hereinafter referred to as "City"), and FNG HOLDINGS-LAND, LLC, a Florida limited liability company (hereinafter referred to as "Owner").

WHEREAS, the Owner owns a parcel of land comprising approximately 5 (+/-) acres located in Sarasota County, Florida, which is more particularly described by the legal descriptions and map attached hereto as Exhibit "A" (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Owner has filed an annexation petition pursuant to Section 171.044, Florida Statutes, seeking to voluntarily annex and include the Subject Property within the corporate limits of the City; and

WHEREAS, the City has determined it will receive certain benefits from the development of the Subject Property under the jurisdiction of the City that it would otherwise forego should the Subject Property develop in unincorporated Sarasota County; and

WHEREAS, the Amended and Restated Joint Planning and Interlocal Service Boundary Agreement (JPA/ILSBA) between the City and County identifies the Subject Property as a potential area for future annexation in the City; and,

WHEREAS, this Agreement is a contract between the parties and is not meant as nor shall it be construed as a development order or any form of development approval; and

WHEREAS, the City has determined that in the event the Subject Property is annexed into the City, it would best serve the public interest that it be annexed subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the terms, conditions, and mutual covenants contained herein, the City and Owner agree as follows:

1. INTRODUCTORY CLAUSES. The above Whereas clauses are ratified and confirmed as true and correct.
2. CONDITION PRECEDENT. This Agreement shall not be binding or enforceable by either party unless and until the City duly adopts an ordinance annexing the Subject Property into the corporate limits of the City.
3. COMPREHENSIVE PLAN AND ZONING. The Subject Property currently has a Sarasota County Future Land Use designation of Medium Density Residential, a Sarasota County zoning designation of Open Use Estate 1, and is located within Area 4 of the JPA/ILSBA. The Owner shall petition the City to redesignate the Subject Property to a City Future Land Use

designation and rezone the Subject Property to a district or districts under the City Zoning Code concurrent with the City's consideration and adoption of an ordinance annexing the property into the corporate limits of the City. Following annexation, the Subject Property shall be subject to all codes, laws, ordinances, and regulations in force within the City.

4. CONCURRENCY EVALUATION NOT MADE: NO RELIANCE OR, VESTED RIGHT.

Nothing contained in this Agreement, nor any review of the impacts of the proposed development of the Subject Property upon public facilities and services that has occurred during the process of reviewing or negotiating this Agreement, shall be considered a determination that adequate public facilities will be available concurrent with the impacts of development of the Subject Property.

5. EXPANSION OF WATER AND SEWER UTILITY INFRASTRUCTURE. At the time of

development of the Subject Property, the Owner, or its successors and assigns, shall design, construct, and pay for installing, extending, sizing, and upsizing all offsite and onsite potable water and wastewater utility pipeline and lift-stations necessary to serve the full buildout of the project. All such work shall be performed in accordance with plans and specifications approved through the City's construction permitting process and in accordance with the current version of the City standard details. Fire flows shall be determined by the Fire Chief in coordination with the Utilities Director and City Engineer. Owners, or their successors and assigns, shall convey necessary onsite potable water and wastewater pipelines and lift stations to the City or its designee, together with any such easements over the Subject Property as may be required for access to and maintenance of said pipelines and appurtenances. Utilities conveyed to the City shall be accepted for maintenance in accordance with all applicable state and local codes and policies which shall be applied to both onsite and offsite utility improvements.

6. ADDITIONAL REQUIREMENTS.

- A. Owner is required to provide, at its cost, all access to the site including roadways, utilities and common area improvements as approved by the Utilities Director and City Engineer.
- B. Internal roadways and stormwater facilities shall be designed and constructed at the expense of Owners. Internal roadways and stormwater facilities shall be privately owned and maintained.
- C. Owner shall comply with all applicable requirements of the JPA/ILSBA, as amended.

7. WATER UTILITY CHARGES. The Owner, or its successors and assigns, shall pay all water utility rates, fees, and charges, including any capital charges such as water plant capacity charges, as determined by the City Code of Ordinances in effect at the time a building permit is issued for improvements that will be connected to the City's water utility systems.
8. IMPACT FEES. The City collects certain impacts fees it has enacted as well as certain impact fees enacted by Sarasota County that apply within the City. Development of the Subject Property shall be subject to such current impact fees, as well as any additional impact fees adopted by Sarasota County or the City in the future that may be imposed at the time of development.
9. ATTORNEY FEE REIMBURSEMENT. The Owner shall reimburse the City all monies paid by the City to the City Attorney for services rendered concerning the annexation and in accordance with Sec. 86-586 of the City Code.
10. INDEMNITY. It is agreed that if the City shall accept and include the Subject Property for inclusion within its corporate limits pursuant to the petition for annexation, the Owner shall and will indemnify and hold the City harmless from all costs, including reasonable attorneys' fees, that may be incurred by it in defending any and all litigation involving the validity of such annexation proceeding.

The Owner further covenants and agrees that, if the contemplated annexation shall ultimately be held invalid by court proceedings or excluded from the City limits by future legislation, then if and to the extent that the City shall continue to supply water and other utility services to the Subject Property, it shall be entitled to charge at such rates as may be prescribed from time to time by the City for comparable services outside the corporate limits. Moreover, the Owner further covenants and agrees to waive any claim for a refund of ad valorem taxes levied by and paid to the City on the Subject Property for any periods subsequent to the acceptance by the City of the Owner's petition for annexation and prior to the establishment of the invalidity thereof in the manner aforesaid.
11. DEFAULT. Upon the breach by either party of any term or condition of this Agreement, and upon the failure to cure same after thirty (30) days written notice from either party, then the non-defaulting party shall have the right to enforce performance of the same or to perform any such term or condition and recover the costs of same from the defaulting party.
12. ATTORNEY'S FEES. In the event of any default pursuant to the terms of this Agreement, the prevailing party shall be entitled to recover all attorney's fees and costs from the other party, whether the same be incurred for negotiation, trial, or appellate proceedings.

13. BINDING ON SUCCESSORS. The covenants contained herein shall run with the Subject Property and shall inure to the benefit of and be binding upon the respective successors, heirs, legal representatives, and assigns of the parties to this Agreement.
14. ENTIRE AGREEMENT. This document constitutes the entire agreement of the parties and cannot be changed or modified except by instrument in writing duly approved by both parties.
15. CONSTRUCTION OF AGREEMENT. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.
16. INCORPORATION INTO ORDINANCE. This Agreement shall be incorporated into and shall become a part of the ordinance annexing the Subject Property into the City.
17. SEVERABILITY. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions are omitted.

IN WITNESS WHEREOF, the City and the Owners set their hands and seals hereto on the day and year first above written.

CITY OF VENICE, FLORIDA

ATTEST:

Ron Feinsod, Mayor

Approved by City Council

Date: _____

APPROVED AS TO FORM:

City Attorney

WITNESSES:

FNG HOLDINGS-LAND, LLC

Print Name: _____

Print Name: _____

F. Nicholas Gahhos, Manager

WITNESSES:

Print Name: _____

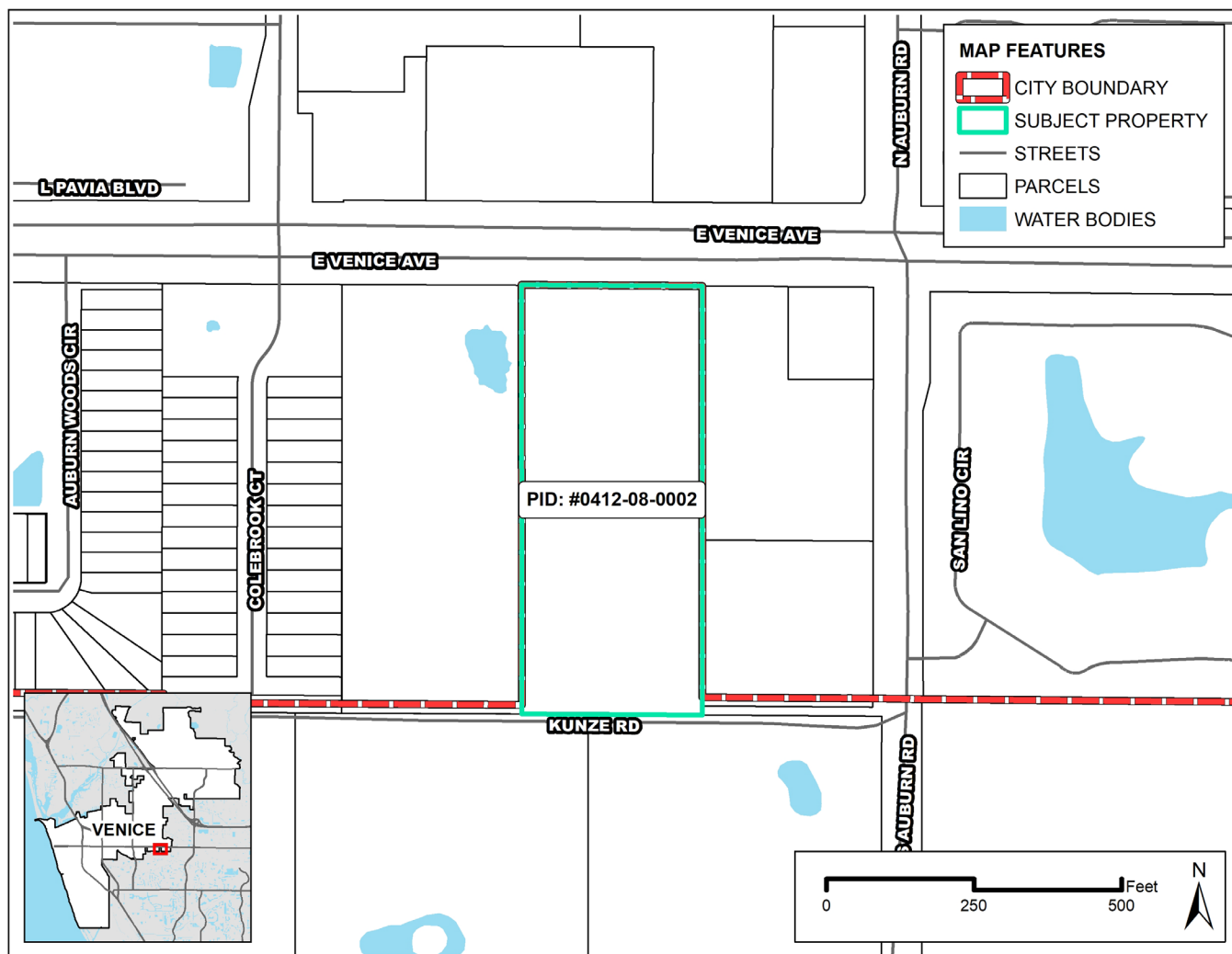
Print Name: _____

EXHIBIT “A”

SUBJECT PROPERTY LEGAL DESCRIPTION

PID# 0412-08-0002

The West 304 feet of the East 641 feet of the North 726 feet of Section 9, Township 39 South, Range 19 East, being Tract 2 of an unrecorded Plat of KENT ACRES, Sarasota County, Florida.



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