

**ANNEXATION AGREEMENT BETWEEN VILLAGE OF WELLINGTON, ACME  
IMPROVEMENT DISTRICT AND HOMELAND PROPERTY OWNER'S  
ASSOCIATION, INC.**

**THIS AGREEMENT**, (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of February, 2019, by and between the **VILLAGE OF WELLINGTON, FLORIDA**, a municipal corporation organized pursuant to the laws of the State of Florida (hereinafter "Wellington"), **ACME IMPROVEMENT DISTRICT**, a dependent district of the Village of Wellington, Florida (hereinafter "Acme") and **HOMELAND PROPERTY OWNER'S ASSOCIATION, INC.**, a Florida not for profit corporation (hereinafter "Homeland or Association").

**WHEREAS**, Association is a property owner's association organized as not for profit corporation operating in accordance with Chapter 720 Florida Statutes, (2018) for the purpose of operating a residential community located in unincorporated Palm Beach County with boundaries immediately contiguous to Wellington's southeastern municipal boundary; and

**WHEREAS**, Association's Board of Directors believes its members have an interest in annexing their properties into Wellington so long as the annexation can be done in a manner that increases the efficiency of services provided to the properties and preserves the essential character of the neighborhood; and

**WHEREAS**, the Homeland neighborhood lies within the Lake Worth Drainage District; and

**WHEREAS**, Association maintains the roadways, drainage, and bridle easements within the community; and

**WHEREAS**, the Parties believe Acme could provide the maintenance obligations of Association in a more efficient manner; and

**WHEREAS**, Association has the authority under its governing documents to transfer its maintenance responsibilities to a governmental entity; and

**WHEREAS**, annexation into Wellington will provide benefits and increased levels of service to the neighborhood.

**NOW THEREFORE**, the Parties do agree as follows.

**SECTION 1 – INCORPORATION**

The foregoing recitals are true and correct and are hereby incorporated herein and made a part hereof. All exhibits to this Agreement are hereby deemed incorporated herein and a part hereof.

## **SECTION 2 – AUTHORITY TO ENTER INTO THIS AGREEMENT**

The parties represent they are empowered to enter into this Agreement.

## **SECTION 3 – REAL PROPERTY SUBJECT TO THIS AGREEMENT**

The properties subject to this Agreement are more particularly and legally described in “Exhibit “A” attached hereto and incorporated herein (collectively, the “Property”).

## **SECTION 4 – EFFECTIVE DATE, TERM OF AGREEMENT AND BINDING EFFECT**

The Agreement is effective immediately upon approval and execution by all Parties.

## **SECTION 5 – PURPOSE OF AGREEMENT**

The purpose of the Agreement is to establish a process for Wellington to consider annexation of the Property into its municipal boundaries and provide for the transfer of maintenance responsibilities for the roadways, drainage and bridle paths from Homeland to Acme, while maintaining the essential character and development patterns of the Property.

## **SECTION 6 – HOMELAND DESCRIPTION**

Homeland is a platted community consisting of 283 5-acre lots located south of 50<sup>th</sup> street on Wellington’s southeastern boundary. Homeland is immediately adjacent to Wellington on Homeland’s Northern and Western boundaries. The lots are developed as residential property with many of the lots having equestrian activities on them, which are consistent with the development patterns in Wellington’s Equestrian Overlay Zoning District (EOZD). The residential equestrian nature of the community makes it a good fit for Wellington. The lands were platted in 1977 and the area has been under constant development since then. The legal description of the lands subject to annexation is Homeland Plat as recorded in the public records of Palm Beach County in Plat Book 33, Page 111.

The Homeland Property Owners Association (Association) enforces the covenants and restrictions that are applicable to the lands within Homeland and also maintains the common areas and easements within the community. The roadways include Homeland Road, which is deeded to the Association and serves as the main entrance to the community and spine for the internal roadway system. The rest of the roadways are easement roads that the Association has maintenance responsibility for. All the roads within Homeland are paved. The Association also maintains drainage easements and canals. The community has

a number of bridle paths that are maintained by the Association. The Association maintains and staffs a guardhouse located on a portion of Homeland Road.

## **SECTION 7 – PROCESS OF ANNEXATION INTO WELLINGTON**

7.1 Wellington shall initiate the annexation of the property pursuant to the uniform method of annexation described in Section 171.0413 Florida Statutes (2018).

7.2 Homeland will have a facilities report of the Property prepared by a licensed Florida engineer that will describe the roadways, drainage, bridle paths and other common areas currently maintained by Homeland. The facilities report will identify the existing permits for the Property issued by South Florida Water Management District and/or Lake Worth Drainage District. The facilities report will be transmitted to Wellington within \_\_\_\_ days of the effective date of this Agreement.

7.3 Wellington's staff will prepare a report in accordance with Section 171.042 Florida Statutes (2018) that among other things certifies that area to be annexed meets the criteria set forth in Section 171.043 Florida Statutes (2018). The staff report will be completed within \_\_\_\_ days of Wellington's receipt of the facility report from Homeland. A copy of the staff report will be sent to Homeland within 3 days of its completion.

7.4 If Wellington's staff report concludes the Property meets the statutory criteria for annexation an annexation ordinance will be prepared by Wellington's staff and presented to Wellington's Council for consideration and approval. Public hearings on the proposed annexation ordinance shall be noticed in accordance with Florida Statutes. Association's Board of Directors shall be notified of the scheduled public hearings on the annexation ordinance at least 7 days prior to the date of the initial public hearing.

7.5 The annexation of the Property shall be contingent upon the members of the Association having affirmatively voted to dissolve the Association and Acme being willing and able to assume the maintenance of the roadways, drainage and bridle trail easements. Following annexation the roadways shall remain roads for the exclusive use of the property owners, their guests and invitees and the guardhouse shall remain a manned guardhouse.

7.6 The annexation ordinance shall contain a provision for the Wellington's Village Council to call a single referendum election of electors residing within the Property. The Palm Beach County Supervisor of Elections Office shall conduct the referendum election. Wellington will contract with the Supervisor of Elections and pay for the costs of the referendum election. Regardless of the outcome of the referendum, Homeland will pay Wellington an

amount equal to the costs incurred by Wellington to have the Supervisor of Elections Office conduct the referendum election.

7.7 Except as set forth above for the cost of the facility report and the cost of the conduct of the referendum election by the Supervisor of Elections of Office any and all fees, costs and expenses associated with the development of the annexation report and related ordinances shall be borne by Wellington and shall not subject to reimbursement by Homeland or assessment on the landowners within the Property.

## **SECTION 8 – PROCESS OF ANNEXATION OF PROPERTIES INTO ACME**

8.1 Prior to the effective date of the annexation of the Property into Wellington, Acme's powers shall have been expanded to allow for the maintenance of private facilities including drainage, bridle trails and roadways.

8.2 Wellington and Acme shall create and establish a unit of development having jurisdiction over the Property in accordance with Section 189.02 Florida Statutes (2018). The purpose of the special unit of development will be to provide maintenance and operation of the internal roadway, drainage, and bridle paths. The existing guardhouse and guard gate will remain in service and the roadways will remain for the exclusive use and benefit of the landowners and residents within the Property. The costs for such maintenance and operations will be borne by the owners of lands within the Property and will be assessed on an annual basis by Acme for such costs. Acme may choose to collect the assessments in accordance with the uniform method for levy, collection and enforcement of non-ad valorem assessments set forth in Section 197.3632 Florida Statutes (2018).

8.3 The creation of the unit of development may require the amendment of the Acme Improvement District's Water Control Plan. The amendment of the Water Control Plan will require an engineering study to support the proposed plan and assessments. Acme shall contract for the required engineering study to support the creation of the unit of development and amendment to the Water Control Plan. Homeland shall reimburse Acme for the costs associated with the required engineering study.

8.4 Following the establishment of the unit of development, Homeland will convey its interests in Homeland Road including the gate and guardhouse by quitclaim deed to Acme, subject to the provision the roadway is for the exclusive use and benefit of the unit of development and its landowners, residents and invitees to control ingress and egress. The description of Homeland Road is attached hereto as Exhibit " ".

8.4 Following the establishment of the unit of development, Homeland will assign its maintenance obligations and interests over the platted internal roadway, drainage, and bridle trail easements to Acme.

8.5 Wellington and/or Acme shall bear the fees and costs associated with the development and passage of any and all required ordinances to amend Acme's powers, annex the Property into Acme, create the unit of development for the Property, and amend the water control plan, with the exception of the required engineering study.

## **SECTION 9 – FUTURE LAND USE AND ZONING DESIGNATION OF PROPERTY**

9.1 The annexation of the Property will necessitate land use and zoning designations placed on the property to be consistent with Wellington's comprehensive plan. Wellington will initiate these ordinances relative to the land use designation and rezoning along with any text amendments necessary to allow the comprehensive plan and zoning regulations to be effective on the Property following annexation. The proposed land use designation would be Residential B and the zoning designation AREOZD subject to the subarea H regulations. A draft of the proposed subarea H regulations is attached hereto as Exhibit " ". The parties understand that the land use and zoning ordinances are the subject to the staff's professional judgment, a public hearing process, input from Wellington's boards and committees and therefore final outcome and resulting approved ordinances cannot be known or guaranteed at this time. The parties agree the annexation will not be contingent on the proposed land use designation, zoning designation and/or subarea H regulations being adopted as currently suggested.

9.2 Wellington's staff will process the land use, zoning, and textual amendments through the EPC and PZAB and through first reading of the ordinances by the Village Council prior to the annexation being effective. Adoption of the land use and rezoning ordinances would not finally consider for adoption until after the annexation has been approved by a referendum of the electors residing within Property and the annexation ordinance was effective.

9.3 Wellington staff will process an ordinance amendment to Section 70.2 of Wellington's Code of Ordinances extending the current prohibition of gasoline, diesel or fuel powered watercraft on public lakes and canals to the lakes and canals located within the Property. The suggested language change to Section 70.2 is attached hereto as Exhibit " ".

9.4 All costs, fees, and expenses associated with the development and consideration of the required ordinances to address the land use designation,

zoning designation, land development regulations and watercraft control will be borne solely by Wellington.

## **SECTION 10 – GENERAL TERMS AND CONDITONS**

**10.1 Compliance with law not identified in this Agreement.** The actions described in and authorized by this Agreement shall be done in accordance with all required permits, Wellington's Comprehensive Plan and Land Development Regulations and in accordance with all applicable laws, regulations and ordinances. The failure of this Agreement to address a particular condition, term or restriction shall not relieve the Parties of the necessity of complying with the law governing said requirements, conditions, terms, or restrictions, and that any matter or thing required to be done under the existing laws of the State of Florida or Village of Wellington shall not be otherwise amended, modified, or waived unless such modification, amendment or waiver is expressly provide for in this Agreement with specific reference to the provisions so waived, modified or amended.

**10.2 Laws enacted after Effective Date.** If State or Federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as is necessary to comply with the relevant State or Federal laws. However this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law. Wellington may apply subsequently adopted laws or policies to the Property as permitted or required by the law or policy.

**10.3 Land Use, Zoning, and other Ordinances and approvals.** The Parties hereto recognize and agree that certain provisions of this Agreement require Wellington, Acme, and their respective Council, boards, departments or agencies, acting in their governmental capacity to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of the Constitutions of the United States and Florida, Florida state statutes and Wellington's municipal ordinances, in the exercise of Wellington's jurisdiction under its police power. Nothing in this Agreement shall be construed to prohibit Wellington or Acme from duly acting under its police powers to approve, approve with conditions, or reject any ordinance or application dealing with the Property.

**10.4 Successors and Assigns.** This Agreement shall be binding upon the Parties, their successors, assigns, and legal representatives.

**10.5 Notices, demands and communications.** Formal notices, demands and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the respective party as set forth in **Exhibit “ “**. Written notices, demands, and

communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail.

**10.6 Conflict of Interests.** No member, official or employee of Wellington shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

**10.7 Non-Liability of Wellington Officials, Employees and Agents.** No member, official, employee or agent of the Village of Wellington or Acme Improvement District shall be personally liable to Homeland or any successor in interest, in the event of any default or breach by Wellington, Acme, or for any amount which may become due to Homeland or successor as a result of a default or breach by Wellington or Acme.

**10.8 Applicable Law.** This Agreement shall be governed by, construed and enforced under and pursuant, to the laws of the State of Florida, and venue of any action shall lie exclusively in Palm Beach County, Florida.

**10.9 Severability.** If any term, provision, paragraph, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**10.10 Legal Actions.** In the event any legal action (including arbitration) is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney fees and costs incurred in the action at both trial and appellate levels.

**10.11 Execution of Other Documentation.** The Parties agree to cooperate with each other and execute any further documentation that may reasonably be necessary to carry out the intent and the obligations of the Parties under this Agreement. This paragraph shall not be construed to eliminate or reduce Wellington's discretion in reviewing the various Ordinances contemplated by this Agreement.

**10.12 Waivers.** No waiver of any provision of this Agreement shall be effective unless the waiver of any provision to this Agreement be in writing and signed by all Parties. Any waiver or consent shall be effective only in the specific instance and for the specific instance for which given and shall not be construed to be a continuing waiver.

**10.13 Drafting of agreement.** The Parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against any of the Parties based solely on the drafting of the Agreement.

**10.14 Entire Agreement.** This document embodies the whole agreement of the Parties. There are no promises, conditions, or allegations by any of the Parties other than those contained herein; and this document shall supersede all previous communication, representations and or agreements, whether written or verbal between the Parties hereto. This Agreement may be modified only in writing executed by the Parties and/or their successors, as the case may be.

**10.15 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument.

## **SECTION 11 – CONTINGENCIES**

**11.1** The efficiencies of Wellington and Acme providing an enhanced level of service to that currently being offered to the landowners is predicated on the avoidance of a duplication of responsibilities and costs that occur if the Association remains in existence other than to wind down its affairs post annexation. The annexation of the Property is contingent on the approval of the Association membership to dissolve the Association. The Association shall present its membership with an opportunity to void certain declarations and covenants presently existing on the Property and authorize the Association to dissolve post annexation. If the membership does not choose to dissolve the Association this Agreement shall be voided. Association shall inform Wellington of the results of the dissolution decision before Wellington advertises the annexation ordinance for first reading. In the event the membership does not authorize dissolution all annexation efforts shall cease and Wellington shall not further consider any of the ordinances contemplated herein as they relate to the Property.

**11.2** In the event the annexation ordinance is approved and becomes effective and Wellington does not implement the necessary powers for Acme to assume its responsibilities and/or Acme fails to establish the unit of development to carry out its responsibilities and obligations under this Agreement, then Wellington shall present, consider and approve an ordinance that would provide for a single referendum of electors residing within the Property to vote on de-annexing from Wellington.



**SIGNATURE PAGE**

In witness whereof, the parties have executed this Agreement this \_\_\_\_ day of February, 2019.

**VILLAGE OF WELLINGTON**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Village Clerk

**ACME IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

**HOMELAND PROPERTY OWNERS'  
ASSOCIATION, INC.**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
Village Attorney