

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

CASE NO.

1:05CV158 MMP/AK

ARTHUR D. WEISS,

Plaintiff,

vs.

THE CITY OF GAINESVILLE, a  
municipal corporation organized  
under the laws of the State of  
Florida,

Defendant.

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**CIVIL ACTION BY COMPLAINT FOR DEPRIVATION OF CIVIL RIGHTS,  
BREACH OF CONTRACT, BREACH OF IMPLIED COVENANT  
OF GOOD FAITH, DECLARATORY RELIEF, INVERSE CONDEMNATION,  
DAMAGES AND INJUNCTIVE RELIEF SOUGHT AND  
DEMAND FOR JURY TRIAL**

The Plaintiff, Arthur D. Weiss, by and through his undersigned counsel, sues the Defendant, City of Gainesville, for injunctive relief and damages resulting from the Defendant's intentional deprivation of the Plaintiff's constitutionally protected rights. This action is brought pursuant to Title 42 §1983 of the Code of Laws of the United States of America, the Florida Constitution, Florida's common law of contracts and Chapter 86, Florida Statutes.

**JURISDICTIONAL BASIS OF THE CLAIMS**

1. This action is brought pursuant to Article 1, Section 10 and 42 U.S.C §1983 and claims violations of the Plaintiff's civil rights as guaranteed by the Contracts Clause and Fourteenth Amendment to the United States Constitution.

2. This Court has jurisdiction of the claims pursuant to 28 U.S.C. §1331. The action arises out of the Constitution of the United States of America and alleges violations of constitutionally protected rights of the Plaintiff, who is a citizen of the United States of America.

3. The claims brought under the Florida Constitution, common law of contracts and statutory law arise from the same operative nucleus of facts and circumstances that form part of the same case and controversy. Accordingly, the court has jurisdiction over these supplemental claims pursuant to 28 U.S.C. §1367.

4. All of the actions of the Defendant giving rise to this action substantially occurred in Alachua County, Florida.

5. The amount in controversy exceeds \$100,000.00, exclusive of statutory entitlement to attorney's fees and costs.

#### **THE PARTIES**

6. The Plaintiff, Arthur D. Weiss (hereinafter "Weiss"), at all relevant times, owned a 940 acre parcel that is now located in the City of Gainesville, Alachua County, Florida. This parcel is known as the Gainesville North Community Activity Center PUD aka Greenways of Gainesville. See attached exhibit A.

7. The Defendant, City of Gainesville (hereinafter the "City") is an incorporated municipality empowered by and deriving its authority from Article 8, Section 2 of the Florida Constitution and Fla. Stat. Chapter 166. The governing authority of the City of Gainesville, Florida is its City Commission.

**PREDICATE FACTS SUPPORTING**  
**THE CAUSES OF ACTION**  
**PRECIS**

8. This cause of action is brought as a result of the City's purposeful and ostensibly authorized violations of Arthur Weiss's rights under Article 1, Section 10 and the Fourteenth Amendment of the United States Constitution. The City adopted and applied by ordinance, a single-family residential classification, which unreasonably impaired, altered and extinguished existing terms and its obligations under a contract with Weiss in violation of the contracts clause. This single-family classification was adopted and applied to Weiss based on improper pre-textual motives and for arbitrary and capricious reasons without any rational basis thereby frustrating and significantly impairing Weiss's legitimate vested rights and valuable property interests without due process of law, which resulted in great economic loss, mental anguish and personal suffering. These violations were done under the color and authority of state law and constitute state action. The aforementioned conduct gives rise to the state supplemental claims for breach of contract, breach of implied covenant of good faith, declaratory relief and inverse condemnation.

**THE ANNEXATION AGREEMENT**

9. On October 30, 1989, an Annexation Agreement was entered into between Arthur Weiss and the City of Gainesville for the inclusion of 940 acres owned by Weiss into the City. The Agreement was for a specific term of 15 years and was to become effective on the date when the City annexed the property subject to the agreement.

10. The Annexation Agreement, pursuant to §10 of the agreement and elsewhere, expressly created certain development rights permitting Weiss to use and

develop the property in a manner consistent with Exhibit B of the Agreement. Exhibit B provided for mixed uses and densities for a Planned Use District (PUD) classification of 718 acres east of NW 43<sup>rd</sup> St. Specifically, these permitted uses under the agreement included commercial use devoted to office and retail, multi-family, and retail single family residential uses. See attached Exhibit B.

11. Moreover, Exhibit B to the agreement governed all future comprehensive plan amendments and the rezoning of the property by the City and could only be modified as mutually agreed upon by both parties.

12. In consideration for the specific uses set forth above, Weiss, under the Annexation Agreement, obligated himself to specific development exactions such as the dedication of land for the widening of U.S. 441, the construction of turning lanes, traffic lights and open spaces for parking.

13. Under §6.0 of the Annexation Agreement, no other development exactions were to be enacted by the City after the date the parties executed the agreement.

14. Both the City and Weiss were also obligated under §8.0 of the agreement to diligently pursue all reasonable actions necessary to fulfill their obligations throughout the existence of the 15-year term of the agreement.

#### **WEISS'S RELIANCE ON THE CITY'S REPRESENTATIONS AND ACTIONS**

15. In reliance of the representations of the City contained in the Annexation Agreement, Weiss consented to the annexation of his 718 acres on the east side of NW 43<sup>rd</sup> Street by the City in September 1992.

16. On October 27, 1992 and February 22, 1993, Norman Bowman of the Department of Community Development represented to Weiss that the City was in the process of attempting to implement the proposals.

17. In further reliance of the City's representations, Weiss, pursuant to the terms of §8.0 of the Annexation Agreement, proceeded with the voluntary annexation of the remaining 215 acres located west of NW 43<sup>rd</sup> St., which was completed in 1993. As such, the annexation agreement became effective and its fifteen-year term commenced.

18. Consistent with its obligations under the Annexation Agreement, in July 1993, the City began the Land Use amendment process to bring Weiss's property into the City's comprehensive plan. The City determined that the proposed comprehensive plan amendment providing for the PUD classification in the future land use element of the comprehensive plan was consistent with the City's current comprehensive plan and would not negatively impact any of the seven concurrency management areas such as roads, mass transit, sewer and water. The City further represented that the other mass transit facilities would be online so as to further alleviate any concerns over concurrency.

19. In reliance of the City's continued actions and representations in the implementation of the terms of the Annexation Agreement, Weiss proceeded with a Development of Regional Impact – Application for Development Approval (DRI/ADA) process for his property. Weiss hired numerous consultants and engineers to prepare the necessary reports, engineering and environmental studies as part of the application process.

20. In furtherance of his obligation under the Annexation Agreement and reliance upon the City's representations and actions, Weiss incurred approximately one

million dollars in expense directly attributable to the development review process and DRI application.

21. On August 22, 1994, the City Commission approved the proposed comprehensive plan amendment providing for the PUD classification of the Weiss property in the future land use element of the comprehensive plan upon final passage of Ordinance 4000/0-94-08.

22. However, in the event Weiss abandoned the PUD development process, Ordinance 4000/0-94-08 provided a sunset provision that required the City to rezone the property within four years or the PUD future land use district would become null and void and the future land use map would require amendment upon proper notice to reflect the property's underlying future use as single family.

23. Weiss was assured by the City and by the annexation agreement that extensions would be provided if he were diligently pursuing the development application process. In reliance of the City's representations and existing law that prohibited government from abusing and engaging in an arbitrary legislative process that relieved it of its contractual obligations, Weiss continued to proceed with the significant expenditures in preparing the DRI application.

24. In 1998, after extensive preparation and collaboration with the City, Weiss submitted the DRI application to the Department of Community Affairs, North Central Regional Planning Council, Department of Environmental Protection, the Department of Transportation and many other agencies and paid an application fee of \$75,000 dollars.

25. Because the City wanted the rezoning of the Weiss property to PUD be done concurrently with the DRI approval, consistent with the express terms of §8.0 of the

annexation agreement and its representations to Weiss, the City provided several extensions of the sunset provision in its comprehensive plan for the rezoning of Weiss's property to PUD so that Weiss could continue in good faith the DRI process.

26. Weiss continued to diligently pursue the DRI application process and submitted responses to requests for additional information by the various agencies and completed an extensive traffic and environmental studies. The primary concern that held up the DRI approval process was the concurrency issues related to traffic trips. According to the Department of Transportation and other commenting agencies, developments subsequently approved by the City near the proposed project required Mr. Weiss to take into account traffic trips reserved for those projects in determining whether Mr. Weiss's projected traffic trips exceeded the adopted levels of service for U.S. 441.

27. Various offsite improvements were required in addition to the ones that Mr. Weiss committed to in the annexation agreement in order to comply with concurrency requirements. The proposed estimates for the offsite road improvement for Phase One were \$2.5 million dollars.

#### **THE IMPAIRMENT OF THE ANNEXATION AGREEMENT AND PROPERTY INTERESTS**

28. During the development review process for the DRI, there was a subsequent change in the City's governing body. The new members of the elected City Commission were politically hostile to Weiss's project.

29. In an effort to derail the DRI project, the City embarked on a course of conduct to first unlawfully terminate the annexation agreement without Weiss's knowledge and without obtaining written modification to the contract. Even though the City personally represented to Weiss both prior to and after the annexation of his property

that he had the absolute right to apply for DRI based on a PUD classification under the terms of the annexation agreement, the City, through coercion, knowingly obtained the unauthorized acquiescence from Weiss's agents to unlawfully waive the annexation agreement.

30. After several public hearings from October 2000 through 2002 that involved additional deliberate attempts to frustrate Weiss's development efforts, the City Commission, on March 4, 2002, rendered a final decision when it formally adopted Ordinance 0-01-20, which amended its comprehensive plan by changing the future land use designation for Weiss's property from PUD to single family residential. This legislative decision by the City's final policy makers formally killed the DRI project and relieved the City from its obligations under the annexation agreement. Any future applications by Weiss would have been an exercise in futility.

31. This adverse final decision was made despite the express terms of the Annexation Agreement that controlled the development of Weiss's property and the recommendation and findings of the City Planning Board and City staff that made clear that Weiss had been diligent and that the City needed to allow sufficient time for the DRI approval process to be concluded.

32. The underlying reasons given for the unauthorized change in the comprehensive plan were based on environmental and concurrency concerns. These reasons were purely pre-textual, transparent and lacked any justifiable basis given the findings and determinations of City staff, the Planning Board, and the previous City Commission. The concurrency issues were also clearly resolvable based on the proposed off site road improvements. Simply put, the City wanted to relieve itself from the



obligations of the annexation agreement and its representations that had induced Weiss into the annexation and his million-dollar expenditure for the DRI process. The City wanted to avoid financial responsibility for the necessary infrastructure to meet transportation concurrency requirements while placating a growing political demand for an increased greenbelt.

33. As a result of the political shifting sands in the make up of the City Commission and its subsequent politically motivated adoption of Ordinance 0-01-20 containing the Weiss amendment on March 4, 2002 that effectively prevented Weiss from developing his PUD project and impaired his contract, Weiss suffered the loss of vested development rights acquired by common law and by the Development Agreement. Weiss also suffered the loss of other state recognized property interests flowing from his ownership interests such as the value of his property and the right to use it a manor consistent with existing laws that was free from arbitrary encroachment.

### COUNT I

#### ARTICLE 1, SECTION 10 AND 42 U.S.C. §1983 CIVIL RIGHTS VIOLATIONS

34. Paragraphs 1 through 33 alleged above are incorporated and realleged into this count and action.

35. This count is an action against the City of Gainesville, Florida for violations of Arthur D. Weiss's rights under Article 1, Section 10 and the Fourteenth Amendment. The City Council at all material times was imbued with authority under the City charter to enact legislation and make policy for the City.

36. The City, through its City Commission, has engaged in an intentional course of legislative conduct to frustrate Weiss's legitimate vested rights, property

interests and contractual rights for purely personal and political reasons that are not rationally related to serve a legitimate governmental interest and completely beyond its legitimate police powers. Accordingly, the City Commission's aforementioned unlawful activities and violations of Weiss's civil rights were also accomplished under the color of state law and constitute state action.

37. The City, through its adoption of Ordinance 0-01-20's Weiss Amendment, has purposefully and knowingly subjected Weiss to a deprivation of rights, privileges, and immunities secured by Article I, Section 10 and the Fourteenth Amendment to the United States Constitution by:

a. Violating and abridging Weiss's rights under Article 1, Section 10 by unreasonably, arbitrarily and capriciously impairing and altering exiting obligations under the City's Annexation Agreement with Weiss by changing the future land use designation of the his property thereby preventing Weiss from developing his property consistent with the PUD zoning classification development rights secured by §10 of the contract. Because the City, based on bad faith and political motives, targeted Weiss through the adoption of Ordinance 0-01-20 and prevented him from completing the DRI application and the development process, the City also impaired or altered §8.0 of the contract by its failure to pursue all reasonable actions necessary to fulfill its obligations under the contract. By burdening Weiss with additional development exactions, the City's conduct also impairs §6.0, which limited exactions to those in the agreement.

b. Violating and abridging Weiss's Substantive Due Process rights by significantly arbitrarily and capriciously without any rational basis impairing his vested rights and valuable ownership interests such as the right to use his property and the value

of his property. The City Commission for purely political reasons targeted Weiss when it adopted and retroactively applied to Weiss the provisions of Ordinance 0-01-20 changing the land use designation of Weiss's property in order to frustrate Weiss's ability to develop his property under the terms of the existing annexation agreement, representations and actions by the City relied upon by Weiss. Such action by the City Commission was inconsistent with its planning staff, planning board and previous City Commission who found that Weiss's PUD project was consistent with the City's comprehensive plan goal and objectives. Additionally, Weiss relied in good faith upon the City's representations and actions, has made substantial changes in his position and incurred a million dollars in development expense that it would be highly inequitable and unjust to destroy the rights he has acquired based on the City's arbitrary and capricious, irrational and bad faith conduct. Accordingly, the City's adoption and retroactive application of Ordinance 0-01-20's provisions changing the use of Weiss's property exceeded its police powers.

38. Weiss is entitled to and requests attorney's fees and costs upon the successful prosecution of this 42 U.S.C. §1983 action, pursuant to 42 U.S.C. §1988.

39. Weiss sues for special and economic damages specifically including the impairment of its vested rights and the loss of profit, as well as damages related to mental pain and anguish.

40. Weiss is also entitled to permanent injunctive relief so that the City is enjoined from applying the single-family future land use designation and the single family residential zoning classification that are inconsistent and in conflict with the

obligations contained in the annexation agreement, its representations and actions relied upon by Weiss.

WHEREFORE, Weiss demands a judgment for damages, permanent injunction and attorneys fees, costs against the City and trial by jury.

## COUNT II

### BREACH OF CONTRACT

41. Paragraphs 1 through 33, as alleged, are incorporated and realleged in this count and action.

42. Weiss sues the City for breach of the annexation agreement dated October 30, 1989.

43. The City has breached the express provisions of the annexation agreement, which permitted Weiss to develop his property consistent with the permitted uses set for in Exhibit B to the agreement. Accordingly, the City has also breached §6, §8, and §10 of the agreement.

44. In addition to violating the express terms of the contract as set forth above, the City Commission has embarked on a course of bad faith dealing based on political motives in order to avoid its express and implied duties and obligations under the contract. The City has failed to take the necessary actions as required under the express terms of the contract as set forth § 8 of the contract. The City's conduct as described herein, amounts to a minimum, constructive fraud against Weiss if such conduct is not remedied.

45. The aforementioned unconscionable conduct as well as other duplicitous acts were initiated at the direction of the City so as to impermissibly interfere and impair the contract

WHEREFORE, Arthur D. Weiss demands judgment and trial by jury for breach of contract, the breach of implied covenant of good faith against the City and for his general damages incurred as a result of the City's breach.

#### COUNT IV

#### DECLARATORY RELIEF

46. Paragraphs 1 through 33, alleged above are incorporated and re-alleged into this count and action.

47. This is a cause of action for declaratory judgment pursuant to Florida Statutes Chapter 86.

48. Weiss has vested property rights with respect to the PUD classification based on the representations that the City made to him that induced his consent to the voluntary annexation and the million-dollar expenditure related to the DRI application process.

49. The City Commission, on March 4, 2002, rendered a final decision when it formally adopted Ordinance 0-01-20 which amended its comprehensive plan by changing the future land use designation for Weiss's property from PUD to single family residential. This legislative decision by the City's final policy makers formally killed Weiss's DRI project.

50. Since Weiss has demonstrably relied to his substantial detriment on the representations and actions of the City at the time he consented to the voluntary

annexation of his property and expended significant sums of money for its development, it would be unjust and highly inequitable to permit the City to destroy those vested rights through conduct that is arbitrary, capricious, and confiscatory. Such conduct would also be inconsistent with Weiss's substantive due process rights under the Federal and State Constitutions.

51. Based on the forgoing events any attempt to make further application or seek variances would be an exercise in futility

WHEREFORE, Arthur D. Weiss seeks a judgment in his favor declaring that the City's adoption of Ordinance 0-01-20 changing the future land use designation for his property from PUD to single family residential is invalid based on the doctrine of equitable estoppel and also invalid on alternative grounds based on the City's arbitrary and capricious conduct in violation of the Florida Constitution guarantee under Article 1 Section 9 of substantive due process. Weiss requests that the court restore his rights under the annexation agreement and further requests his costs and attorney's fees based on the City's pre-suit bad faith conduct pursuant to the court's inherent power, and any other relief if the court may deem appropriate.

#### COUNT V

#### INVERSE CONDEMNATION

52. Paragraphs 1 through 33, as alleged, are incorporated and realleged in this count and action.

53. This cause of action is brought in the alternative pursuant to the Florida Constitution for inverse condemnation.

54. The City's adoption of Ordinance 0-01-20 changing the future land use

designation for Weiss's property from PUD to single family residential did not substantially advance a legitimate governmental interest since it was based on purely political motives and for the purpose of relieving itself from its obligations under the Annexation Agreement. Such action is also contrary to the actions and determinations of City staff, planning board, and the previous City Commission that found Weiss's project to be consistent with City's comprehensive plan, goals and objectives.

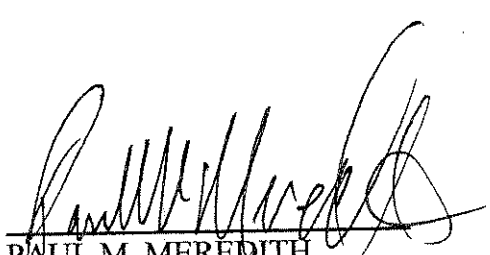
55. As a direct result of the City's conduct, Weiss has been prevented from developing his property consistent with the express terms of the annexation agreement, previous representations and actions of the City relied upon by Weiss and has suffered a significant diminution in the value of his property and the loss of his investment backed expectations.

56. Accordingly, Weiss is entitled to just compensation for the temporary taking of his property and in the alternative, compensation for the diminution in the value of his property if the taking is permanent.

57. Based on the adoption of the Comprehensive Plan Amendment by the City Commission specifically targeting Weiss's property for a change in future land use designation from PUD to single family residential that is in direct violation of the Annexation Agreement, any future applications for variances or compensation to the City would be an exercise in futility.

WHEREFORE, Arthur D. Weiss respectfully requests judgment in his favor for just compensation and damages as a result of the temporary taking or in the alternative, the diminution in the value of his property for a permanent taking, his costs and attorney's fees, and any other relief if the court may deem appropriate and a trial by jury.

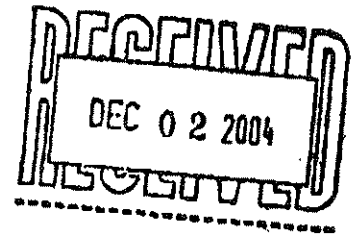
Dated this 16 day of September, 2005.



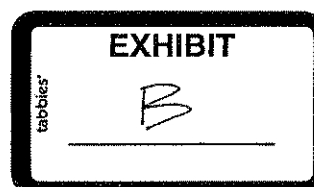
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ANNEXATION AGREEMENT  
BETWEEN  
ARTHUR D. WEISS  
AND  
THE CITY OF GAINESVILLE,  
a Florida municipal corporation



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ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this 16th day of October, 1989, by and between ARTHUR D. WEISS ("Owner"), and the CITY OF GAINESVILLE, a municipal corporation of the State of Florida ("City").

W I T N E S S E T H:

WHEREAS, Owner owns a parcel of real property located in unincorporated Alachua County, a legal description of which is attached hereto and made a part hereof as Exhibit "A" ("Property"); and

WHEREAS, Owner desires to develop the Property as a high-quality planned development under the complete, unified, legal control of Owner; and

WHEREAS, the City regards U.S. Route 441 as a major gateway to the City, and therefore prefers any development of property abutting this significant artery to include aesthetic considerations resulting in high quality development with landscaping and signage controls; and

WHEREAS, in reliance upon the undertakings and obligations of the City, as set forth herein, Owner has, simultaneously with the execution of this Agreement, filed a letter of consent for annexation of the Property by referendum into the City pursuant to Section 171.0413, Florida Statutes based upon the understandings which form the basis of this Agreement; and

WHEREAS, the City desires to annex the Property into the City and, to that end, shall initiate the process required by law to annex the Property by referendum pursuant to Section 171.0413, Florida Statutes; and

WHEREAS, Owner and the City believe that it is in the best interest of each party to enable the Property to be developed in accordance with the

conceptual plan described herein, and in accordance with applicable Florida law, the Charter and Code of Ordinances of the City of Gainesville, Florida;

NOW, THEREFORE, for and in consideration of mutual benefits and the public interest and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1.0 Recitals. The foregoing recitations are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

2.0 Authority. 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 166, Florida Statutes), and the City's Charter.

3.0 Annexation. Simultaneously with the execution of this Agreement, Owner has filed a letter of consent for annexation of the Property by referendum into the City in compliance with Section 171.0413, Florida Statutes, and all other applicable state and local laws and regulations. The City shall immediately initiate the process to establish that annexation pursuant to a referendum in compliance with Section 171.0413, Florida Statutes, and all other applicable state and local laws and regulations.

4.0 Conceptual Plan. Exhibit "B" hereto is a conceptual plan for the development of the property. The sizes, configurations and boundaries of the parcels and roadways shown in Exhibit "B" are for conceptual planning purposes only and shall not bind Owner to develop the Property in strict conformity with Exhibit "B". In the event of any conflict between the terms of this Agreement and the provisions of the conceptual plan set forth on Exhibit "B",

this Agreement shall control, except that, in the event of any conflict between the terms of this Agreement and the terms of the notes and legend included in Exhibit "B", the notes and legend in Exhibit "B" shall control.

The City agrees to recommend to the Florida Department of Transportation ("FDOT") the curb cuts, median cuts and full left and right turn ingress and egress to the Property from U.S. Route 441 at the four (4) access points shown in Exhibit "B". Owner agrees to construct, at his expense, and dedicate the right of way necessary for turn lanes and traffic signals on U.S. Route 441 adjacent to the Property if required by FDOT during the development of regional impact review process to offset the impact of development of the Property. The parties acknowledge that the four (4) access points shown in Exhibit "B" align with median openings on U.S. Route 441. The parties further acknowledge that FDOT has sole jurisdiction over the number and location of road connections from the Property to U.S. Route 441.

The classification labels and descriptions pertaining to the parcels in Exhibit "B" are approximate. Parcels A, B, C and D shall be used for residential purposes unless the parties otherwise agree in writing. The parties acknowledge that the residential portions of the Property, as shown in Exhibit "B", shall consist of a maximum of two thousand two hundred twenty four (2,224) dwelling units on approximately six hundred (600) acres. The locations of the greenbelt and environmental areas shown in Exhibit "B" are approximate, the exact location and configuration of said greenbelt and environmental areas shall be subject to change pursuant to regulations of the Florida Department of Environmental Regulation and other state and federal permitting agencies.

The parties acknowledge that the parcels in Exhibit "B" are calculated in gross acres and when developed will include, as necessary, storm water retention and detention areas, as well as the greenbelt areas and environmental areas shown in Exhibit "B". Additionally, Owner agrees, when developing the Property, to designate Three thousand eight hundred (3,800) linear feet of the frontage of the Property adjacent to U.S. Route 441 as a landscaped setback area ("Landscaped Setback"). The location(s) and configuration(s) of the Landscaped Setback shall be determined by Owner. The Landscaped Setback may include, at Owner's discretion, storm water retention and detention areas, greenbelt and environmental areas, landscaping, roadway and driveway crossings, unpaved portions of public road rights-of-way, easements and signage. The Landscaped Setback shall average approximately 100 feet in width.

Parcels G, H and I shall be developed for a combination of business, office, office research, light industrial, service and retail uses, and accessory uses allowed by City Code. Parcels G, H and I constitute approximately 185 gross acres. The parties agree that development on Parcels G, H and I shall occur within 120 acres. The remaining area of 65 acres can be used, at Owner's discretion, for storm water detention and retention areas, greenbelt and environmental areas, landscaping, Landscaped Setback, roadways and driveways, rights-of-way, easements and signage.

The parties acknowledge that portions of the environmental areas shown in Exhibit "B" may, during the development of regional impact review process, be identified as wetlands. Wetlands, shall be as defined in 33 CFR 328.3(b). Owner may use or develop wetlands provided that no net loss of wetlands will occur and that the development of wetlands will be in compliance with all

federal, state, and local regulations. Owner shall include, in his development of regional impact application for development approval, a copy of a letter requesting that the United States Army Corps of Engineers determine the extent of its jurisdiction over any wetlands which may exist on the Property.

The parties acknowledge that pursuant to Rule 9J-12.007(12), F.A.C., as it presently exists, the City is required to submit its comprehensive plan to the Florida Department of Community Affairs for initial compliance review on June 1, 1991. The parties agree that unless Owner petitions the City for a land use plan amendment in substantial compliance with Exhibit "B", prior to June 1, 1991, the Property shall continue to be governed by Alachua County's Land Use Plan, zoning ordinances and land development regulations until such time as the City adopts its comprehensive plan as required by Section 163.3184, Florida Statutes, and rezones the Property to comply with the City's adopted comprehensive plan as provided by Section 171.052(2), Florida Statutes. Before the time that the City approves its land use plan and rezones the Property, Owner shall be entitled to any development permits which Owner has been validly issued by Alachua County as of the effective date of this Agreement.

The parties acknowledge that Exhibit "B" shall be the basis for Owner's development of the Property, future amendments to the City's comprehensive plan, and rezoning of the Property, subject to such modifications as may be mutually agreed upon by the parties. The parties recognize and acknowledge that Owner may engage one or more developers or builders, other than Owner, to effect the development of the Property, including the sale of all or portions of the Property to such developers or builders. The parties hereto further



recognize and acknowledge that as the development process proceeds, it may be necessary to amend Exhibit "B" and the City's adopted land use plan as may be mutually agreed upon by the parties.

The parties acknowledge that the development of the Property shall be subject to the development of regional impact review process as contained in Section 380.06, Florida Statutes. Owner agrees to file an application for development approval pursuant to Chapter 380, Florida Statutes, within twenty-four (24) months of the completion of construction by Alachua County of a permanent Northwest 43rd Street bisecting the property for a linear distance of at least one thousand (1,000) feet. Nothing contained herein shall be construed as requiring the City to construct Northwest 43rd Street.

The City shall do what is reasonably necessary and within its governmental powers and authority to grant and allow development permits and approvals for the orderly development of the Property. Owner or his authorized representative shall submit to the City such applications and other documentation and comply with such other procedures as may be normally and customarily required by the City for land use plan amendments, rezonings, plats, site plans and other development approvals or permits. Nothing contained herein shall preclude the City from exercising its proper zoning and development review powers for the protection of the public and in accordance with the legitimate exercise of the police power for the protection of the community.

Except as otherwise set forth herein, all development of the Property shall be subject to compliance with City ordinances, and with regulations of state, local and federal agencies relative to environmental and wetlands protection. Nothing in this Agreement shall be deemed to limit the right of

the City Commission to amend its development regulations, building codes, zoning codes, land use plans or other ordinances for the protection of the public health, safety and welfare. Except as otherwise set forth herein, none of the provisions of this Agreement shall be deemed to amend, modify or otherwise change the provisions of any ordinance or regulation of the City or any other governmental agency.

5.0 Property Ownership. Owner acknowledges and represents to the City that Owner is the owner of the Property and that Owner is empowered to enter into this Annexation Agreement. Owner further represents that nothing in this Agreement is barred or prohibited by any other agreement between Owner and any governmental agency or any other third party.

6.0 Public Facilities. City water service is currently available at the boundary of the Property. City sewer lines will be available at the boundary of the Property when needed by Owner in accordance with the City's water and wastewater extension policy. City water and sewer plant capacity to serve the dwelling units and non-residential uses shown in Exhibit "B", shall be provided by the City at the time Owner requests service to the Property according to the City's adopted rules, regulations and procedures for provision of said service in effect at the date of application for said service.

Owner shall pay all regular and authorized City utility, water, wastewater, electric and stormwater permit fees, user rates and impact fees where applicable. Owner shall not, however, be required to pay any impact fees or development exactions enacted by the City after the date the parties execute this Agreement.

7.0 Reservation or Dedication of Land. Owner hereby agrees to dedicate to the public the school site and park sites shown in Exhibit "B". Owner further agrees to preserve, or dedicate to the public such environmental areas and greenbelt areas shown in Exhibit "B" as the parties may agree. Any such environmental or greenbelt areas dedicated to the public shall be counted as park dedication pursuant to any City ordinance or regulation requiring such park land dedication. Owner further agrees to dedicate a twelve foot (12') strip of land to the City for right-of-way for expansion of U.S. Route 441, within thirty (30) days of the award of a construction contract for the widening of U.S. Route 441 to six (6) lanes adjacent to the Property. The City shall not be required to pay for land dedicated pursuant to this paragraph.

8.0 Due Diligence. The City and Owner further covenant that they shall immediately commence all reasonable actions necessary to fulfill their obligations hereunder and shall diligently pursue the same throughout the existence of this Agreement.

9.0 Miscellaneous.

9.1 Entire Agreement. This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

9.2 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identity of the party or parties, personal representatives, successors or assigns may require.

9.3 Severability. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.

9.4 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 one in the same instrument.

9.5 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

9.6 Term. This Agreement shall become effective upon the annexation of the Property into the City. This Agreement, once effective, shall be binding upon and enforceable by and against the parties hereto and their assigns. This Agreement shall remain in effect for a term of fifteen (15) years from the effective date, at which time all terms, conditions, provisions and understandings of this Agreement shall expire and become null and void and of no further force and effect. A copy of this Agreement shall be recorded among the Public Records of Alachua County, Florida, upon taking effect.

9.7 Notice. Any notice to be given shall be in writing and shall be sent by certified mail, return receipt requested, to the party being noticed at the following addresses:

AS TO CITY: City Manager  
City of Gainesville  
Post Office Box 490  
Gainesville, Florida 32602

COPY TO: City Attorney  
City of Gainesville  
Post Office Box 1110  
Gainesville, Florida 32602

AS TO OWNER: Arthur D. Weiss  
19687 Oak Brook Circle  
Boca Raton, Florida 33434

COPY TO: Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.  
Post Office Box 1900  
Fort Lauderdale, Florida 33302  
Attention: Dennis D. Mele

10.0 Development Rights. Owner shall have the right to use and develop the Property as described in this Agreement. Furthermore, Owner does not waive any right to use or develop the Property arising under the common law or the laws of the State of Florida.

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

CITY:

CITY OF GAINESVILLE, a Florida  
municipal corporation

By Cynthia Moore Chestnut  
Cynthia Moore Chestnut, MAYOR

ATTEST:

Mary Ann B. Frazer  
Mary Ann B. Frazer, Clerk of the Commission

APPROVED AS TO FORM:

[Signature]  
OCT 27 1989 CITY ATTORNEY

Signed, sealed and delivered  
in the presence of:

[Signature]  
[Signature]

OWNER:

By: Arthur D. Weiss  
ARTHUR D. WEISS

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF ALACHUA )

I HEREBY CERTIFY that on this 30th day of October, 1989, before me personally appeared Cynthia M. Chestnut, Mayor of the CITY OF GAINESVILLE, a municipal corporation under the laws of the State of Florida, to me well known and known to me to be the person who executed the foregoing instrument as such officer and acknowledged the execution thereof to be his free act and deed as such officer for the use and purposes therein mentioned and that he affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and official seal this 30th day of October, 1989.

Cynthia Watson (SEAL)  
NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES DECEMBER 11, 1989

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF BROWARD )

I HEREBY CERTIFY THAT ON THIS 20th day of October, 1989, before me personally appeared ARTHUR D. WEISS, to me well known and known to me to be the individual described in and who executed the foregoing instrument, and acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal this 20th day of October, 1989.

Dennis D. Mele (SEAL)  
NOTARY PUBLIC  
State of Florida at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. NOV 19, 1990  
BONDED THRU GENERAL INS. UND.

LEGAL DESCRIPTION  
OF THE PROPERTY

A portion of Section 10, Township 9 South, Range 19 East, being more particularly described as follows:

The East half ( $\frac{1}{2}$ ) of the Northeast quarter ( $\frac{1}{4}$ ) of said Section 10, Township 9 South, Range 19 East, less the East 50 feet; and

Commencing at the Northwest corner of said Section 10, Township 9 South, Range 19 East, said Northwest corner also being the Point of Beginning, of the hereinafter described parcel, thence North 89 degrees 37'43" East, along the North line of said Section 10, a distance of 3,947.81 feet to the West line of the Northeast one-quarter (NE  $\frac{1}{4}$ ) of the Northeast one-quarter (NE  $\frac{1}{4}$ ) of said Section 10, thence South 00 degrees 32'16" East, along said West line, a distance of 1,560.41 feet, thence South 89 degrees 39'06" West, a distance of 3,951.68 feet, to the West line of said Section 10, thence North 00 degrees 23'44" West along the West line of said Section 10, a distance of 1,558.81 feet to the Point of Beginning;

## TOGETHER WITH:

That part of Section 11, Township 9 South, Range 19 East, lying Southwest of U.S. 441 Right-of-Way, less the West 150 feet;

## TOGETHER WITH:

That part of Section 12, Township 9 South, Range 19 East, lying Southwest of U.S. 441 Right-of-Way, less the West 100 feet;

## TOGETHER WITH:

All rights, title and interest, if any, in and to any rights-of-way and vacated rights-of-way.

All of said lands lying in Alachua County, Florida.

EXHIBIT "A"