

Prepared by and Return to:

Fred Reilly, Esquire  
City Attorney – City of Haines City  
620 East Main Street  
Haines City, Florida 33844  
Tel. (310) 927-3954

## **VOLUNTARY ANNEXATION AGREEMENT**

This VOLUNTARY ANNEXATION AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date defined below by and between **CITY OF HAINES CITY**, a municipal corporation, with an address of 620 E Main Street, Haines City, Polk County, Florida (hereafter "**CITY**"), and **TENOLD HOLDING INC.**, a Florida corporation with a mailing address of 1714 Cape Coral Parkway, Cape Coral, Florida 33904 (hereafter "**OWNER**"). OWNER and CITY may be sometimes referred in this Agreement, individually, as a “**Party**” and, collectively, as the “**Parties**”. “**Effective Date**” shall be the date when the last one of CITY and OWNER has executed this Agreement, as stated on the signature page(s) hereof.

### **RECITALS**

1. OWNER owns property located in Polk County, Florida, legally described on **Exhibit "A"** attached to this Agreement (hereafter the "**Property**").
2. A portion of the Property is currently located within the corporate limits of the City and the remainder of the Property is currently located in unincorporated Polk County.
3. That portion of the Property which is currently located in unincorporated Polk County, Florida, and which is legally described on **Exhibit "B"** attached to this Agreement

(hereafter the “**Annexation Property**”), is currently zoned for VAC – Vacant, AA – Agricultural Active, RR – Rural Residential, COM – Commercial, and AP – Agricultural Passive.

4. CITY has identified the Annexation Property as a logical candidate for annexation into CITY and, as such, CITY will exercise its planning authority over all of the Property upon annexation of the Annexation Property.

5. CITY has encouraged OWNER to annex the Annexation Property into CITY and CITY anticipates it will receive a continuing permanent benefit by virtue of annexing the Annexation Property and acquiring the right to provide municipal services to the Annexation Property.

6. OWNER is desirous of annexing the Annexation Property into CITY and to have the Property receive a Comprehensive Plan designation and Zoning Category and have utility and municipal services that will allow for and facilitate OWNER’s future development plans, all as more particularly described in this Agreement.

7. Each of CITY and OWNER hereby represents and warrants to the other that this Agreement is binding and enforceable on CITY and OWNER in accordance with its terms. OWNER hereby further represents that it has the unrestricted right to impose on the Property all of the covenants and conditions set forth herein.

8. CITY and OWNER are desirous of cooperating with each other to allow for the Parties’ objectives to be achieved.

ACCORDINGLY, in consideration of the above Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

**SECTION 1. RECITALS.** The above Recitals are true and correct and are incorporated into this Agreement.

**SECTION 2. 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 163 and 166, Florida Statutes),

and the CITY's Charter. The Parties specifically agree that this Agreement does not constitute a "development agreement" under the Florida Local Government Development Agreement Act, Section 163.3220-163.3243, Fla. Stat.

**SECTION 3. ANNEXATION.** By signing this Agreement, OWNER hereby files a Petition for Voluntary Annexation of the Annexation Property conditioned upon the prior or concurrent adoption of this Agreement. Thereafter, the CITY will prepare an Annexation Ordinance for consideration by the City Commission of the CITY.

**SECTION 4. REPRESENTATION OF OWNERSHIP.** OWNER is the fee simple owner of record of the Property.

**SECTION 5. APPLICATION FOR DEVELOPMENT PERMITS AND APPROVALS AND PROVISION OF MUNICIPAL SERVICES.** After the annexation of the Annexation Property, OWNER may, at any time and from time to time, submit applications for development permits and approvals to CITY, including, but not limited to, the Development Approvals (as defined in Section 8 below). Subject to the availability of water and wastewater services, upon the issuance of any such permits or approvals by CITY, CITY agrees to immediately provide all municipal services in such capacities, quantities, frequency and as otherwise necessary to provide adequate levels of service to support any development authorized by such permits or approvals. Based upon OWNER's estimates of development totals and timing of the demand for such water and wastewater services, CITY shall use all reasonable efforts to provide water and wastewater services at the time of commencement of a phase of development for which such service is required, as provided in Section 8, below.

**SECTION 6. PETITION AND CONSENT TO ANNEX.** In consideration for the services and other benefits to be provided by CITY to OWNER, OWNER hereby petitions CITY and agrees and consents to voluntarily annex the Annexation Property into the municipal boundaries of the City of Haines City. CITY agrees that there shall be no costs to OWNER in order for CITY to review and process such annexation petition. Said voluntary annexation shall be effectuated in accordance with the general laws of the State of Florida that apply to voluntary annexation, and this Agreement shall constitute the petition and consent required by Chapter 171, Florida Statutes. This Agreement constitutes consent to annex the Annexation Property

under the voluntary procedures and under any other applicable annexation procedures authorized by the Florida Statutes.

**SECTION 7. EXCLUSIVE SERVICE AREA OF CITY.** OWNER agrees that, so long as CITY fulfills its duty to provide water and wastewater service to the Property as provided under this Agreement, CITY shall be the exclusive provider of water and wastewater services to the Property.

**SECTION 8. APPROVALS.** The approvals and CITY obligations listed in this Section 8 shall be collectively referred to as the “**Development Approvals.**” The purpose of listing the individual Development Approvals in this Agreement is to enumerate specific development approvals that may be necessary for the OWNER to further develop the Property. In addition, the parties expressly agree that the prospective obligations stated in this Section 8 may be achieved subject to (i) the submittal of applications by the OWNER, (ii) review of applications by the City staff, Planning Commission and/or other applicable governmental entities having jurisdiction, (iii) recommendations by the City staff, Planning Commission and/or other applicable governmental entities having jurisdiction concerning the applications, and (iv) the final approval of applications by the City Commission and/or all governmental entities having jurisdiction. The Development Approvals are:

8.1 The approval by CITY of the annexation of the Annexation Property into the City.

8.2 The approval by CITY of an amendment of CITY’s Growth Management Plan, Haines City, Florida (the “**Comprehensive Plan**”) in the form of a Selected Area Plan (which plan shall include development standards) to be submitted by OWNER which amendment shall allow for any use then currently permitted in the Comprehensive Plan. For purposes of example and clarification, the current permitted use under the CITY’s Comprehensive Plan allows for a Floor Area Ratio of 2.0 for non-residential uses and a density of 24 units per acre for residential uses on the Property.

8.3 The approval by CITY of an application for a Planned Unit Development zoning district to be submitted by OWNER that would approve, among other things, any use currently permitted at the time of application in the zoning code on the Property, provided that any light

industrial use shall be ancillary to other permitted uses on the Property and provided further that no heavy industrial uses shall be permitted on the Property. Said application may seek a Floor Area Ratio (FAR) of up to 2.0 and a density of up to 24 units per acre. For purposes of clarification with respect to applications to be considered at a future date, parking structures shall not be counted as comprised of building area in the calculation of FAR and wetlands shall be counted as land area for FAR and density calculations, regardless of whether such wetlands are developable or not. The Planned Unit Development application (to be considered by the City Commission at a future date) and/or other applications to applicable governmental entities having jurisdiction, may also include variances to or exemptions from required setbacks from wetland areas and on-site ditches and canals. Further, simultaneously with the approval of Planned Unit Development zoning for the Property, the Parties shall enter into a development agreement pursuant to Sections 163.3220-163.3243, Florida Statutes, with a duration not to exceed thirty (30) years for the development project approved by the Planned Unit Development zoning, provided that the CITY and OWNER may, by mutual agreement, extend the duration of the development agreement.

8.4 The approval by CITY and all governmental entities having jurisdiction for the OWNER to clear the Property of trees and other vegetation as well as to grade, excavate, fill, and relocate soils so as to change the topography of the Property consistent with approved development.

8.5 The approval by all governmental entities having jurisdiction for U.S. 27 and FL-544 of the OWNER'S installation and/or construction, as applicable, at desired locations, of traffic signals and vehicular ingress and egress to the Property as well as OWNER'S desired turn lanes and median openings on these two roadways. CITY shall, to the greatest extent possible (as determined by the CITY) cooperate with and support OWNER's efforts to obtain the foregoing approvals from the governmental entities having jurisdiction.

8.6 The approval of any potential local, state, and federal economic incentives which may be available including, but not be limited to, an "opportunity zone" designation and its associated income tax benefits. CITY shall, -to the greatest extent possible (as determined by the CITY) cooperate with and support OWNER'S efforts to obtain any such potential local, state and federal economic incentives

It is understood that certain of CITY's prospective obligations stated in this Section 8 herein are subject to public hearings to be held by the City Commission and, as such, this Agreement shall not be construed as a pre-determination of the outcome of said hearings; however, the Parties agree that the CITY's prospective obligations are and will be a significant inducement to Owner to annex the Property into Haines City.

**SECTION 9. BINDING AGREEMENT.** This Agreement shall run with the land and be binding upon all Parties or persons subsequently owning the Property and by acceptance of a conveyance, grant, devise, lease or mortgage, all grantees, devisees, lessees and mortgagees and all parties claiming by, through, or under such person or entity, agree to be bound by all of the provisions of this Agreement.

**SECTION 10. TERM.** The term of this Agreement shall be coextensive with the term of the development agreement contemplated in Section 8.3 as such development agreement shall be extended by mutual agreement of the parties.

**SECTION 11. DEFAULT; ENFORCEMENT.** Either Party shall be deemed in default under this Agreement if such Party shall have failed to perform any of its obligations under the Agreement and, in the case of such a failure to perform any of its obligations, such Party shall have failed to cure any such failure within thirty (30) days after notice to such Party by the other Party specifying and detailing the particulars of wherein and whereby the Party receiving such notice has failed to perform any such obligations. In the event of any default under this Agreement, the Parties agree that the sole and exclusive remedies available to the non-defaulting Party shall be to recover damages arising from the default and to enforce the defaulting Party's obligations through injunctive relief; provided, however, in no event shall the non-defaulting Party have the right to terminate this Agreement. In connection with any dispute arising under, from or as a result of this Agreement, the Parties agree that the prevailing Party in any litigation (including any bankruptcy, appellate and post judgment proceedings) regarding such dispute shall be entitled to recover all reasonable attorney's fees, legal assistant's fees, expert fees and costs incurred prior to initiating litigation, in connection with litigation, prior to trial, at trial, or on appeal as well as those incurred prior to and in arbitration, mediation, administrative, bankruptcy or creditor's reorganization proceedings. For the purposes of this Agreement, attorney's fees shall also include reasonable attorney's fees, legal assistant's fees, expert fees and

costs incurred in connection with the determination of what attorney's and legal assistant's fees and costs are reasonable.

**SECTION 12. GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Florida without regard to principles of conflicts of laws. The Parties acknowledge that a substantial portion of negotiations and anticipated performance of this Agreement occurred or shall occur in Polk County, Florida. The Parties consent and agree that (i) Polk County, Florida shall be the exclusive, proper, and convenient venue for any legal proceeding in state court relating to this Agreement and (ii) the federal district court having jurisdiction for Polk County, Florida shall be the exclusive, proper, and convenient venue for any legal proceeding in federal court relating to this Agreement, and each Party hereby waives any defense, whether asserted by motion or pleading, that said county or court is an improper or inconvenient venue.

**SECTION 13. BINDING EFFECT; ASSIGNABILITY.** This Agreement shall be binding upon and enforceable by and against the Parties hereto and their successors and assigns. This Agreement shall be assignable by OWNER to any various successive owners of all or part of the Property without the need for consent by CITY. OWNER shall, however, provide written notice to CITY of any and all such assignees. This Agreement is not otherwise assignable by OWNER or by CITY.

**SECTION 14. RECORDATION.** A copy of this Agreement shall be recorded by CITY at CITY's expense, in the Public Records of Polk County, Florida promptly after the Effective Date.

**SECTION 15. DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the Parties hereto, and no right of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement either express or implied is intended or shall be construed to confer upon or give any person or legal entity, including, but not limited to, any governmental entity other than the Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants and conditions herein contained shall

inure to the sole benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

**SECTION 16. INTERPRETATION.** This Agreement has been negotiated at arms' length by CITY and OWNER, and the Parties mutually agree that for the purpose of construing the terms of this Agreement, neither Party shall be deemed responsible for the drafting hereof. Accordingly, this Agreement shall not be more strictly construed against either Party. All references in this Agreement to exhibits, schedules, paragraphs, subparagraphs and sections refer to the respective exhibits, schedules and subdivisions of this Agreement, unless the reference expressly identifies another document. Typewritten or handwritten provisions which are inserted in or attached to this Agreement as addenda or riders, if initialed by all Parties hereto, shall control all printed or pretyped provisions of this Agreement with which they may be in conflict. The captions of this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope of intent of the provisions hereof.

**SECTION 17. WAIVER.** The failure or delay of any Party at any time to require performance by the other Party of any provision of this Agreement, even if known, shall not affect the right of such Party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.

**SECTION 18. EXHIBITS.** All exhibits attached hereto are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

**SECTION 19. NOTICES.** All notices and deliveries which are required or permitted hereunder must be in writing, shall be sent to the physical addresses, email addresses or facsimile numbers set forth below and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee): (i) on such Business Day when delivered by personal delivery between the hours of 9:00 AM and 5:00 PM on a Business Day; (ii) on such Business Day when delivered by facsimile prior to 5:00 PM on a Business Day, as evidenced by the receipt of completed transmission; however, if the receipt of completed

transmission indicates the transmission was completed other than prior to 5:00 PM on a Business Day, then on the next Business Day; (iii) on such Business Day when delivered by email, with any attachments in PDF format, prior to 5:00 PM on a Business Day, as evidenced by either the receipt of completed transmission or, in absence thereof, emailed reply acknowledging receipt; however, if the receipt of completed transmission or, in absence thereof, emailed reply indicates the transmission was completed other than prior to 5:00 PM on a Business Day, then on the next Business Day; or (iv) on the next Business Day after deposit (prior to the deadline for delivery on such Business Day) with a nationally recognized overnight delivery service, e.g., FedEx, which provides evidence of delivery.

As to CITY:

James Elensky, City Manager  
City of Haines City  
620 E. Main Street  
Haines City, FL 33844  
Email: james.elensky@hainescity.com  
Fax Number: (863) 421-5561

With a copy to:

Fred Reilly, Esquire  
City Attorney - City of Haines City  
Reilly International Law Firm, P.A.  
33 North Sixth Street, No. 2  
Haines City, Florida 33844  
Email: fredreilly@attorney-solicitor.com

As to OWNER:

Øystein Tenold, President  
Tenold Holding Inc.  
1714 Cape Coral Parkway  
Cape Coral, FL 33904  
Email: tenold@tenold-gruppen.no

With a copy to:

David M. Mechanik, Esquire  
Mechanik Nuccio Hearne & Wester, P.A.  
305 S. Boulevard  
Tampa, Florida 33606-2150  
Email: dmm@floridalandlaw.com  
Fax Number: (813) 276-1560

The Parties agree that, if any Party hereto is represented by legal counsel, such legal counsel is authorized to deliver notice directly to the other Party on behalf of his or her client, and the same shall be deemed proper notice hereunder if delivered in the manner hereinabove specified. Any Party hereto may, at any time by giving three (3) days' notice to the other Party hereto, designate any other addresses in substitution of the foregoing addresses to which such notice or copy thereof shall be given and other persons or entities to whom copies of all notices hereunder shall be sent.

**SECTION 20. ENTIRE AGREEMENT.** This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties hereto with respect to subject matter addressed herein, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written with respect to subject matter addressed herein, except as herein contained.

**SECTION 21. AMENDMENT.** Amendments to and waivers of the provisions of this Agreement shall only be effective if made by written amendment executed by both Parties.

**SECTION 22. TIME.** Time is hereby declared of the essence in the performance of each and every provision of this Agreement. If any time period or deadline under this Agreement ends on a day other than a Business Day, then such time period or deadline shall be extended until the next Business Day. Any reference in this Agreement to time periods less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and any other non-Business Day.

**SECTION 26. BUSINESS DAY.** For the purposes of this Agreement, “**Business Day**” shall mean any day, other than a Saturday or Sunday, that national banks in Polk County, Florida are required to be open for business.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, this Agreement has been executed by the Parties as of the Effective Date.

**TENOLD HOLDING INC.,  
a Florida profit corporation**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
(Type or Print Name)

By: \_\_\_\_\_  
Øystein Tenold, President

Date Executed: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
(Type or Print Name)

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me, by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Øystein Tenold, as President of TENOLD HOLDING INC., a Florida profit corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification and who [ ] did [ ] did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name

My Commission Expires:

**CITY OF HAINES CITY, FLORIDA  
a municipal corporation**

ATTEST:

\_\_\_\_\_  
Omar Arroyo, Mayor – Commissioner

Date Executed: \_\_\_\_\_

\_\_\_\_\_  
Sharon Lauther, MMC, City Clerk

**STATE OF FLORIDA  
COUNTY OF POLK**

The foregoing instrument was acknowledged before me, by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Omar Arroyo, as Mayor-Commissioner, and Sharon Lauther, as City Clerk, on behalf of the City of Haines City, a Florida municipal corporation. They are personally known to me or who have produced \_\_\_\_\_ as identification and who [ ] did [ ] did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name

My Commission Expires:

**EXHIBIT A**  
**The Property**

**EXHIBIT B**

**The Annexation Property**

