

Prepared By:
City of Port St. Lucie
City Attorney's Office
121 SW Port St. Lucie Blvd
Port St. Lucie, FL 34984

**IMPACT FEE MITIGATION AGREEMENT BETWEEN CITY OF PORT ST. LUCIE
AND CHENEY BROTHERS, INC.**

THIS IMPACT FEE MITIGATION AGREEMENT ("Agreement") is executed as of the ___ day of _____ 2022, by and among the City of Port St. Lucie, a Florida municipal corporation (the "City") and Cheney Bros., Inc., a Florida for profit corporation (the "Company").

WITNESSETH:

WHEREAS, it is the policy of the City to stimulate economic growth in the City of Port St. Lucie by attracting new businesses to the City of Port St. Lucie or by encouraging the expansion of existing businesses within the City of Port St. Lucie, or a combination thereof; and

WHEREAS, the creation of new employment opportunities for citizens of the City of Port St. Lucie and the increased tax revenues resulting from such business expansion or relocation within the City of Port St. Lucie is beneficial to the local economy and enhances the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to Chapter 159, Article V of the City of Port St. Lucie Code of Ordinances ("City's Code of Ordinances"), a copy of which is attached hereto and incorporated into this Agreement as **Exhibit "A,"** the City has established an Economic Development Impact Fee Mitigation Program for certain qualified target businesses in order to mitigate any real or perceived disadvantage occurring from the imposition of impact fees and to create permanent employment expansion opportunities for City citizens; and

WHEREAS, the Company, currently a regional food wholesaler and distributor, was established in 1925, and employs 2,900 employees, as well as management level executives; and

WHEREAS, the company is going to build an approximately 365,000 square foot distribution facility on a 53.6 acre parcel of land owned by the Company in Legacy Distribution Park at Tradition located in the Tradition Commerce Park within the City of Port St. Lucie (the "Project") legally described on **Exhibit "B"**; and

WHEREAS, the Company has committed to expand its qualified target industry business in the City of Port St. Lucie as evidenced by the Impact Fee Mitigation Application submitted to the City; and

WHEREAS, as a result of the above-referenced Project, the Company will create new jobs in Port St. Lucie meeting the threshold requirements set forth in section 159.504(A)(1),(4) of the City's Code of Ordinances and remain in the City for a period of at least ten (10) years while maintaining certain job creation and salary commitments if the City provides to the Company an Economic Development Impact Fee Waiver; and

WHEREAS, the City and the Company desire to enter into this Agreement whereby the Company agreed to create two hundred and seventy-five new jobs in Port St. Lucie meeting the threshold requirements set forth in section 159.504(A)(1),(4) of the City's Code of Ordinances and remain in the City for a period of at least ten (10) years while maintaining certain job creation and salary commitments in exchange for an Economic Development Impact Fee Waiver. The Company anticipates that it will create a total of two hundred and seventy five (275) jobs;

WHEREAS, the employment schedule for the new jobs is as follows:

Year 1 – 175 total new jobs

Year 2 – 225 total new jobs (including new jobs generated in Year 1)

Year 3 – 275 total new jobs. (including new jobs generated in Years 1-2)

; and

WHEREAS, the Company will be required to pay City impact fees in conjunction with the issuance of the building permits for the Project; and

WHEREAS, the Company, has been determined to be eligible to receive an Economic Development Impact Fee Waiver pursuant to section 159.504(A)(1),(4) of the City's Code of Ordinances by the City Manager and receive the waiver set forth in section 159.506(A)(1) of the City's Code of Ordinances; and

WHEREAS, the Company acknowledges that this Agreement shall be contingent upon the Company meeting the performance requirements as outlined in this Agreement; and

WHEREAS, the City finds and declares that it is in the public interest to award an Economic Development Impact Fee waiver in conjunction with the Company's agreement to create new jobs in the City of Port St. Lucie, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Company hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct hereby incorporated as forming the intent and purpose of this Agreement.
2. **Impact Fee Waiver.** Pursuant to the City of Port St. Lucie's Economic Development Impact Fee Mitigation Program and the Florida Statutes, the Company, is entitled to a waiver of up to \$962,500 in Port St. Lucie City mobility, parks, public buildings and law enforcement impact fees for the Project ("Impact Fees"), based upon the Company's commitment to create two hundred and seventy-five new jobs meeting the threshold requirements set forth in section 159.504(A)(1)(4) of the City's Code of Ordinances (275 new jobs multiplied by \$3,500.00 for each new job per section 159.506(A)(1) of the City's Code of Ordinances. The impact fee waiver is limited to \$962,500, and the Company will be required to pay any City impact fees exceeding the \$962,500 City impact fee waiver. The impact fee waiver is limited to the Site Plan known as, P21-279, as currently approved. If the initial impact fees paid are less than the approved amount, the remaining balance will not be applied to future impact fees. The Company will be required to apply for an impact fee mitigation for any amendments expanding the Site Plan that require additional impact fee payments.
3. **Term.** This Agreement shall take effect upon execution by all parties and shall continue for a period of ten (10) years from the date of issuance of the certificate of occupancy for the Project, subject to the Company's compliance with the provisions of 159.504(A)(1),(4) of the City's Code of Ordinances and this Agreement.
4. **Performance Standards.** The Company shall provide the City with the following documentation for each year following the issuance of the certificate of occupancy for the Project and throughout the remainder of the term of this Agreement to confirm that the job creation and salary level commitments have been achieved (the employment schedule for the new jobs is year 1 – 175 total new jobs, year 2 – 225 total new jobs and year 3 – 275 total new jobs) for the Project as set forth in this Agreement and section 159.504(A)(1),(4) of the City's Code of Ordinances:
 - a. Company's quarterly reports (UCT-6) for the Project; and,
 - b. Total gross hours worked and total gross wages for all employees working out of the Project; and,

- c. Total gross hours worked and total gross wages for top two wages earners working out of the Project.
5. **Criteria for Measuring Adequate Performance.** "New job" shall mean a full-time salaried employee, or a full-time equivalent (a "FTE") employee who works at least thirty-five (35) paid hours per week, created as a result of the Project. New jobs may include positions obtained from a temporary employment agency or employee leasing company, through a union agreement, or co-employment under a professional employer organization agreement that result directly from the Project. New Jobs shall not include temporary or seasonal jobs associated with cyclical business activities, or to substitute permanent employees on a leave of absence, or temporary construction jobs related to the Project. In tabulating hours worked, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.
6. **Consequences for Nonperformance.** In the event the Company fails to meet the required Performance Standards set forth in this Agreement for any year during the ten (10) year period following the issuance of the certificate of occupancy for the Project, the Company shall be required to pay the waived impact fees on a pro rata basis for each year or partial year it is out of compliance. For example, if the Company fails to meet a employment goal during one (1) year in the ten (10) year period, the yearly pro rated amount to be repaid would be \$32,113.10 if the total impact fees mitigated by the City were \$321,131.20. The Company agrees that the impact fees waived by the City shall constitute a lien on the property described in **Exhibit "B"** (the "Property"), whose priority shall relate back to the effective date of this Agreement regardless of the date of recordation, and shall be superior to all other liens on the Property except taxes (unless expressly subordinated by separate written agreement of the parties) and shall continue for ten (10) years from the date of issuance of the certificate of occupancy or until the impact fees waived are repaid. Should the Company be in default of this Agreement and the default is not cured within thirty (30) days after written notice to the Company, the City may bring a civil action to enforce this Agreement. In addition, the lien may be foreclosed or otherwise enforced by the City by legal action or suit in equity as for the foreclosure of a mortgage on real property. This remedy is cumulative with any other right or remedy available to the City.
7. **Limitation of Waiver and Assignability.** The waiver established by this Agreement is applicable only to the Project as described herein, and approved by Site Plan P21-279 and located on the Property. The waiver is not transferable to any other property owned by the Company in the City of Port St. Lucie and shall not be transferable as a waiver for impact fees that are not specifically set forth in this Agreement. However, the Company may assign all or part of the waiver provided

in this Agreement to a successor in title and interest to the Property, provided that the successor in title and interest agrees to assume the obligations of the Company to the City under this Agreement. The assignment will not be effective without the written consent of the City which consent will not be unreasonably withheld. Such assignment will be deemed approved within fifteen (15) days of written notice to the City by certified mail of the proposed assignment, unless the City provides its reasonable objection in writing to the Company within that time period. A copy of the assignment shall be provided by the Company to the City, at the address set forth in this Agreement, and the original assignment shall be recorded in the public records of St. Lucie County, Florida.

8. **Binding Effect.** This Agreement shall be binding upon the parties to this Agreement and their respective heirs, personal representatives, successors and assigns. In the case of sale or transfer of the Property or Project or a portion of the Property or Project, the Company shall remain liable for the impact fees waived until the Performance Standards set forth in this Agreement are satisfied or until the impact fees are paid in full. In addition, this Agreement shall run with the land described in **Exhibit "B"** and shall remain an encumbrance on the Property until the provisions set forth in this Agreement are satisfied.
9. **Release of Encumbrance.** Upon satisfactory completion of the Performance Standards set forth in this Agreement and ten (10) years after the date of the issuance of the certificate of occupancy for the Project, or upon payment of the waived impact fees, the City shall, at the expense of the City, record any necessary documentation evidencing the termination of the impact fee waiver encumbrance, including, but not limited to, a release of the encumbrance, and lien if any.
10. **Recordability of Agreement.** This Agreement shall be recorded by the Company at the expense of the Company in the Official Records of St. Lucie, Florida, within fifteen (15) days after execution of this Agreement by all parties.
11. **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been delivered and given for all purposes, whether or not the same is actually received, if sent by registered or certified mail, postage prepaid, and addressed to the parties at the following addresses:

To the City:
City Manager
121 Port St. Lucie Blvd

With a Copy to:
City Attorney
121 SW Port St. Lucie Blvd.

Port St. Lucie, FL 34984
(772) 873-6374

Port St. Lucie, FL 34984
(772) 871-5294

To the Company:
Warren Newell
Cheney Bros., Inc.
1 Cheney Way
Riviera Beach, FL 33404
(561) 845-4700

With a Copy to:
Legal Department/Cheney Bros., Inc.
1 Cheney Way
Riviera Beach, FL 33404
(561) 845-4700

or to such address as the parties may from time to time specify by writing. Any such notice may at any time be waived by the person entitled to receipt of such notice.

12. **Headings.** The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
13. **Pronouns.** In this Agreement, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, wherever it appears appropriate from the context.
14. **Survival.** All covenants, agreements, representations and warranties made in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
15. **Waivers.** Any waiver issued by City of any provision of this Agreement shall only be effective if issued in writing by City, and shall be specific, only to the particular matter concerned, and shall not apply to any other matters. Any party's failure to enforce strict performance of any covenant, term, condition, promise, agreement or undertaking set forth in this Agreement shall not be construed as a future waiver or relinquishment of any other covenant, term, condition, promise, agreement or undertaking set forth in this Agreement, or waiver or relinquishment of any other

covenant, term, condition, promise, agreement or undertaking at any time in the future.

16. **Mediation.** In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for St. Lucie County. The fee of the mediator shall be shared equally by the parties.

17. **Governing Law and Venue.** This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The parties agree that proper venue for any suit concerning this Agreement shall be St. Lucie County, Florida. The Owner/Landlord and the Company agree to waive all defenses to any suit filed in Florida based upon improper venue or forum nonconveniens. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. This clause shall survive the expiration or termination of this Agreement.

18. **Force Majeure.** The deadlines set forth herein, are subject to extensions by either Party for a Force Majeure Event (as herein defined). As used herein, a “**Force Majeure Event**” shall include governmental moratorium or unavailability of essential supplies, utilities (e.g., power or water), or labor through no fault of the requesting Party, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, pandemic, epidemic, hurricane, tropical storm, tornado, flooding, or supply chain issues (where the item subject to the supply chain issue cannot be replaced by an approved equivalent upon commercially reasonable terms), causing delays not the result of the requesting Party. Any extension of any deadline set forth in this Agreement due to a Force Majeure Event shall be only for delay in performance that actually results from such Force Majeure Event. In the event that either Party claims a delay for a Force Majeure Event, the requesting Party shall make a claim for an extension in writing to the other Party within fifteen (15) business days after becoming aware of the need for same as a result of the occurrence of a Force Majeure Event for which such claim is being made. The claim shall clearly state the reason, provide a detailed explanation given as to why the event is considered to be a Force Majeure Event and provide sufficient documentation to support such claim. If no written objection to such claim for extension is received from the other Party within fifteen (15) business days from the date of the written extension request, such extension shall be deemed given. If a written objection is made, the Parties shall

meet and confer within fifteen (15) business days to address their differences and may not take legal action or declare a default prior to such conferral taking place.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF PORT ST. LUCIE

Witness
Print Name: _____

By: _____
Russ Blackburn
City Manager

Witness
Print Name: _____

STATE OF FLORIDA)
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me **by means of** **physical presence** or **online notarization**, on this ____ day of _____, 2022, by Russ Blackburn, the City Manager of the City of Port St. Lucie, a Florida municipality. He is personally known to me.

Notary Public

Typed printed or stamped name of Notary Public

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

James Stokes
City Attorney

COMPANY
Cheney Bros., Inc.

X By: [Signature]

Witness
Print Name: W. NEWELL

X [Signature]
Witness
Print Name: SHAY ROHMANN

X STATE OF) FLORIDA
COUNTY OF) PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, on this 15 day of APRIL, 2022, by MICHAEL SULLIVAN as CFO for Cheney Bros., Inc., a Florida corporation who is either personally known to me [] or has produced his driver's license as identification.

[Signature]
Notary Public
SHAY ROHMANN

Typed printed or stamped name of Notary Public

