

C08-1~ -537

EDWIN M. FRY, Jr. CLERK OF THE CIRCUIT COURT  
SAINT LUCIE CO.  
FILE # 3279378 11/17/2008 at 08:44 AM  
OR BOOK 3033 PAGE 1644 - 1663 Doc Type: AGR  
RECORDING: \$171.50

This Instrument Prepared By:  
W. LEE DOBBINS, ESQ.  
Dean, Mead, Minton & Zwemer  
Post Office Box 2757  
Fort Pierce, Florida 34954  
(772) 464-7700

### CONTRIBUTION AGREEMENT

**THIS CONTRIBUTION AGREEMENT** (the "Agreement") is hereby entered into by and between ST. LUCIE COUNTY, a political subdivision of the State of Florida (the "County") and KENCO COMMUNITIES AT PORT ST. LUCIE, INC., a Florida corporation ("Kenco").

### WITNESSETH:

**WHEREAS**, the County and Kenco entered into that certain Settlement Agreement (the "Agreement") dated November 18, 2004 and attached hereto and made a part hereof as Exhibit "A", as amended by that certain First Amendment to Settlement Agreement (the "First Amendment") dated December 23, 2005 and attached hereto and made a part hereof as Exhibit "B", providing for the payment of certain voluntary contributions by Kenco to the County for the cost to improve Midway Road and to mitigate the impact of Kenco's development on Midway Road, located on the real property described in Exhibit "C", attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, pursuant to Section I, Paragraph 4 of the Agreement, Kenco delivered to the County a Letter of Credit in the amount of \$1,750,000.000 (the "Letter of Credit"); and

**WHEREAS**, pursuant to Section II of the Agreement, entitled "Conditions Precedent", the County is obligated to return the Letter of Credit to Kenco, upon delivery by Kenco to the County of, (a) a written request that the County return to Kenco the Letter of Credit (the "Written Request"), and (b) execution of a "Contribution Agreement", containing terms and conditions that are mutually and reasonably satisfactory to the County and Kenco; and

**WHEREAS**, Kenco delivered the Written Request to the County on August 13, 2008; and;

**NOW THEREFORE**, in consideration of Ten Dollars (\$10.00) in-hand paid, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In accordance with Section I, Paragraphs 3 and 7 of the Agreement, Kenco shall pay a voluntary contribution of Two-Thousand Dollars (\$2000.00) per residential unit at the time of application for a building permit for each residential unit constructed on the Property, provided however, that the foregoing obligation shall be subject to the provisions of Paragraph 1 of the First Amendment.

2. Any voluntary contribution paid by Kenco to the County pursuant to Paragraph 1 above, shall be utilized in accordance with the provisions of Section I, Paragraph 5 of the Agreement.

3. This Contribution Agreement shall not be interpreted to limit the County's ability to collect Road Impact Fees as provided in the County's impact fee ordinances, provided however, that such Road Impact Fees shall be credited against Kenco's obligation to pay the County a Voluntary Contribution as more specifically set forth in Paragraph 1 of the First Amendment.

4. The County shall deliver the Letter of Credit to Kenco within ten (10) days after the execution of this Contribution Agreement by Kenco and the County.

5. All provisions of the Agreement and the First Amendment shall remain in full force and effect.

6. Should any litigation arise between, among or involving any of the parties concerning or arising out of this Agreement, including, but not limited to, actions for damages, specific performance, declaratory, injunctive or other relief, and whether at law or in equity, and including appellate and bankruptcy proceedings as well as at the trial level, the prevailing party in any such litigation or proceeding shall be entitled to recover reasonable attorneys' fees and costs for same.

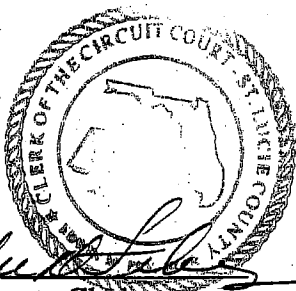
7. Upon execution by the parties hereto, this Contribution Agreement shall be recorded in the public records of St. Lucie County, and shall be binding upon Kenco's and the County's successors and assigns in accordance with Section IV of the Agreement, entitled "Successors".

8. This Contribution Agreement may be executed in any number of identical counterparts each of which shall be deemed to be an original for all purposes but all of which shall constitute one and the same instrument, and a copy of such signature received through telefax transmission shall bind the party whose signature is so received as if such signature were an original. In making proof of this Contribution Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the parties hereto have executed this Contribution Agreement on the date shown below the signature of each.



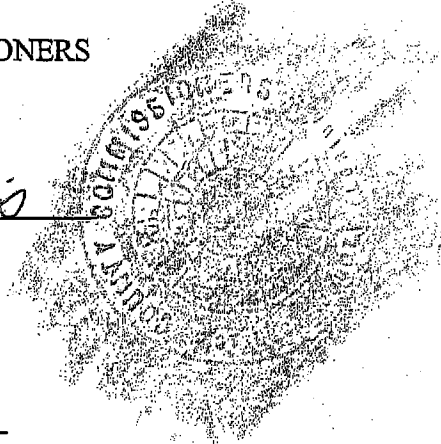
ATTEST:

*Michelle L. [Signature]*  
Deputy Clerk

COUNTY:

BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA

By: *Paula A. Lewis*  
Vice - Chairman



APPROVED AS TO FORM AND  
CORRECTNESS:

By: *[Signature]*  
County Attorney

Date: 10-28-08

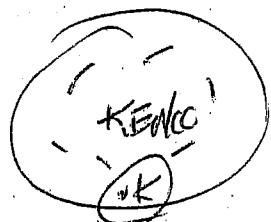
KENCO:

KENCO COMMUNITIES AT PORT ST. LUCIE, INC.

By: *[Signature]*  
Print Name: DEAN J. [Signature]  
Its: ARTHUR [Signature] RESUME [Signature]

Date: 10/3/08

[Corporate Seal]



**EXHIBIT "A"**

**SETTLEMENT AGREEMENT**



EXHIBIT "A"

**IN THE CIRCUIT COURT OF THE  
NINETEENTH JUDICIAL CIRCUIT,  
IN AND FOR ST. LUCIE COUNTY, FLORIDA  
APPELLATE DIVISION**

ST. LUCIE COUNTY, a political subdivision  
of the State of Florida,

Petitioner,

vs.

CIRCUIT CASE NO.: 04-CA-000377 (PC)

CITY OF PORT ST. LUCIE, a municipal  
corporation,

Respondent,

and

KENCO COMMUNITIES AT PORT ST.  
LUCIE, INC., a Florida corporation; and  
LENNAR HOMES, INC., a Florida corporation,

Intervenors.

---

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into by and  
between St. Lucie County, a political subdivision of the State of Florida, (the "County")  
and Kenco Communities at Port St. Lucie, Inc., a Florida corporation ("Kenco").

**WITNESSETH**

WHEREAS, an action is pending in the Circuit Court of the Nineteenth Judicial  
Circuit in and for St. Lucie County, Florida, Case No. 04-CA-000377(PC) (the "Action");  
and

WHEREAS, Kenco has been granted leave by the St. Lucie Circuit Court to intervene in the Action; and

WHEREAS, the County has requested the Court in the Action to quash an administrative order and ordinance of the City of Port St. Lucie, a Florida municipal corporation ("City"), authorizing the annexation of land located in the County owned by Kenco and which is vital to the developmental plans of Kenco, said land more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, Kenco and the County agree that it is in their best interest to amicably resolve their differences, without the need for further litigation and expense; and

NOW THEREFORE, in consideration on the promises herein contained, the County and Kenco agree as follows:

**I. OBLIGATIONS AND REPRESENTATIONS**

1. Within thirty-six (36) months following the issuance of final development permit approvals by the City of Port St. Lucie, Kenco will commence improvements to McCarty Road for approximately one (1) mile immediately south of Midway Road to Newell Road for a two-lane roadway section in accordance with standard County road design specifications. These improvements shall not be eligible for credits against road impact fees.

2. The County understands that Kenco is endeavoring to organize the formation of a voluntary financing mechanism (the "Mechanism") for the funding for design and construction of the improvements to approximately 4.5 miles of Midway

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Road west of I-95 to State Road 70 (Okeechobee Road), or such portion thereof, to create a four-lane boulevard section, with utilities consistent with applicable laws.

3. If a request to create the Mechanism is not delivered to the County within 48 months of the date of this Agreement, Kenco will pay a voluntary contribution of \$2,000.00 per residential unit (estimated to total \$1,750,000.00 based upon 875 projected residential units) to the County for the cost to improve Midway Road. The actual cost will be based on the number of approved units pursuant to Kenco's final site plan for the Property. There will be no additional fee or contribution applicable to non-residential uses on the Property. This contribution shall not be eligible for credits against road impact fees. Kenco shall have the right to connect to County roads to provide access to the Property, subject to issuance of driveway permit(s) (which shall not be unreasonably withheld or delayed) in accordance with standard County rules and regulations, without the payment of fees other than as shall be required to submit the application for such permit(s) and without the obligation to construct or pay for any non-site related transportation improvements.

4. Kenco will secure its obligation to pay the County pursuant to Paragraph 3 above by delivery to the County of a letter of credit, in form and content reasonably agreeable to the County, in the amount of \$1,750,000.00 (the "Letter to Credit") within sixty (60) days from the date of this Agreement. Upon either (x) creation of the Mechanism and levy of any assessment provided for therein, or (y) payment by Kenco pursuant to Paragraph 3 above, the Letter of Credit will be immediately returned to Kenco.

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5. Any money received by the County from Kenco pursuant to this Agreement, whether by payment from Kenco or drawdown on the Letter of Credit by the County, shall reduce Kenco's proportionate share pursuant to the Mechanism, if created, or be applied by the County expeditiously either to purchase right of way for, or to construction of improvements to, Midway Road west of I-95, if no Mechanism is created.

6. Kenco agrees to reserve a sufficient portion of the Property, as reasonably determined by the County, for additional right of way for both Midway Road and McCarty Road; provided, however, that such reserved area shall not exceed one hundred (100) feet wide along Midway Road nor sixty (60) feet wide along McCarty Road.

Kenco will receive no direct monetary compensation for this right of way, but as to the dedication of right of way along McCarty Road, if Kenco shall apply for impact fee credits for donation of right of way that is non-site related against the impact fees collected by the County for building permits issued for construction on the Property, the County agrees to grant such credits in accordance with the County's ordinances.

7. Kenco may develop additional properties in the future with access to Midway Road west of I-95 and address the impact of same upon Midway Road by the payment of the then current road impact fee, plus the voluntary contribution of an additional amount per residential home calculated based upon the same criteria utilized to determine the payment per unit hereunder, not to exceed \$2,000 per unit, up to a maximum of 1,500 additional residential units. Kenco shall have the rights set forth in this Paragraph 7 for a period of time not to exceed 72 months from the date of this Agreement. There will be no additional fee or contribution applicable to non-residential uses on any additional properties. The provisions of this Paragraph 7 shall only address

A. B. F.

the impact of traffic for such additional properties and shall not act in any way as a waiver by the County of any rights available to it by law with regard to development of such additional future properties.

8. On or before 12:00 p.m. on November 22, 2004, the County will send by telefax and US Mail the letter, attached hereto as Exhibit "B" and made a part hereof, to the Florida Department of Community Affairs ("DCA").

9. Upon receipt by the County of the Letter of Credit, the County will file the appropriate pleadings necessary to dismiss and/or withdraw the Action in all respects as to Kenco, including the County's request that Port St. Lucie Ordinance 03-169 authorizing the annexation of Kenco's property be quashed. Each party will bear its own fees and costs.

## II. CONDITIONS PRECEDENT

Kenco's obligations set forth above are conditioned upon (a) approval of Kenco's pending land use amendment for the Property by DCA, (b) Kenco receiving final site plan approval from the City, for the construction of not less than 680 residential units, and (c) all appeals periods for the foregoing expiring without any appeal having been filed. In the event (i) the foregoing conditions are not satisfied within 18 months following the date of this Agreement (the "Deadline"), or (ii) no request to create the Mechanism is delivered to the County, or if delivered, the Mechanism is not created, then Kenco shall have the right to request, in writing, the return of the Letter of Credit. If Kenco makes such request, the County shall return the Letter of Credit to Kenco, upon delivery by Kenco to the County of the "Contribution Agreement" (as defined below). Notwithstanding the foregoing, Kenco shall have the right to unilaterally extend the

X *RF*

Deadline (not to exceed an additional 24 months) upon written notice to the County of same, in which event the foregoing sentence shall apply to the Deadline, as extended.

The Contribution Agreement shall provide, upon terms and conditions that are mutually and reasonably satisfactory to the County and Kenco, that the County shall be paid \$2,000.00 at application for building permit for each residential unit constructed on the Property in addition to the then existing road impact fee. The Contribution Agreement shall be recorded in the public records to be binding upon successor and assigns in accordance with the provisions of Article IV below.

### III. FURTHER ASSISTANCE AND ASSURANCES

The County and Kenco shall hereafter both timely execute all documents and do all acts necessary, convenient or desirable to effect the provisions of this Agreement, including the review by the County of plans and specifications. Planning, design, engineering and construction of improvements to all roads shall reasonably conform to applicable standards of the County.

### IV. SUCCESSORS

The provisions of this Agreement shall be deemed to obligate, extend to, and inure to the benefit of and be a burden on the County and Kenco (with regard to the Property), their heirs, successors, assigns, transferees, grantees, and indemnitees, whether voluntarily or involuntarily, and shall run with the Property. In the event the Property is subdivided or split into more than one parcel, then each parcel shall share pro rata in the benefits and burdens of this Agreement based on the number of residential units approved for each parcel.

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## V. INTERPRETATION

This Agreement shall be interpreted and enforced under and governed by the laws of the State of Florida. Any change or modification to this Agreement shall be made in writing and with the consent of all parties to the Agreement.

## VI. SEVERANCE

If any provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed to be severed and deleted; and neither such provision, nor its severance and deletion, shall affect the validity of the remaining provisions.

## VII. INTEGRATION

This Agreement (after full execution and delivery) memorializes and constitutes the entire agreement and understanding between the County and Kenco and supersedes and replaces all prior negotiations, proposed agreement and agreements, whether written or unwritten. The parties acknowledge that no other party, nor any agent or attorney of any other party, has made any promise, representation, or warranty whatsoever.

## VIII. ENFORCEABILITY

In the event any party hereto shall commence legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as the result of a breach of any covenant or condition of this Agreement, the prevailing party in such proceeding shall be entitled to recover from the losing party its cost of suit, including reasonable attorney's fees, as may be fixed by the Court.

## IX. VENUE

Venue for any legal proceeding in this matter shall be in St. Lucie County.

X RF

**X. NOTICES**

Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by hand delivery, by certified U.S. mail, return receipt requested or by overnight courier, as follows:

If to Kenco:                    Dean Borg  
   Kenco Communities, Inc.  
   105 Isle Verde Way  
   Palm Beach Gardens, FL 33418

With copy to:                 Klein & Dobbins, P.L.  
   805 Virginia Avenue  
   Suite 25  
   Fort Pierce, FL 34982  
   Attn: Robert N. Klein, Esq.

If to County:                 St. Lucie County  
   c/o County Attorney's Office  
   2300 Virginia Avenue  
   Fort Pierce, FL 34982

**XI. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and shall become effective when such counterparts have been executed by each of the parties.

The signatories to this Agreement represent that they have read and understand the foregoing provisions and are fully authorized and competent to enter into this Agreement.

[Signature Pages to Follow]

X-25

COUNTY:

BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA

ATTEST:

Michelle D. Lewis  
Deputy Clerk

By: Paula A. Lewis  
Chairman



APPROVED AS TO FORM AND  
CORRECTNESS:

By: [Signature]  
County Attorney

Date: 11/15/04

KENCO:

KENCO COMMUNITIES AT PORT ST. LUCIE,  
INC.

By: [Signature]  
Print Name: Richard Finkelstein  
Its: President

Date: 11/18/04

[Corporate Seal]

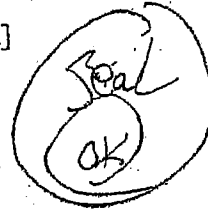


Exhibit "A"

LEGAL DESCRIPTION KENCO EAST

(ALL LYING AND BEING IN ST. LUCIE COUNTY, FLORIDA)

PARCEL 1:

THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP THIRTY-SIX (36) SOUTH, RANGE THIRTY-NINE (39) EAST.

EXCEPTING THEREFROM ALL RIGHTS-OF-WAY FOR DRAINAGE CANALS AND PUBLIC ROADS.

PARCEL 2:

LOTS 1 TO 16 INCLUSIVE IN SW ¼, A SUBDIVISION OF ALL OF SECTION 4, TOWNSHIP 36 SOUTH, RANGE 39 EAST, AND THE N ½ OF THE NW ¼ OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, LESS CANALS AND ROAD RIGHTS-OF-WAY.

THE NORTH 40 FEET OF THE S ½ OF THE NW ¼ OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, LESS THE FOLLOWING RIGHTS-OF-WAY:

- (1) THE WEST 48 FEET THEREOF FOR NORTH ST. LUCIE RIVER DRAINAGE DISTRICT CANAL #90;
- (2) THE EAST 50 FEET OF THE WEST 98 FEET THEREOF FOR McCARTY ROAD; AND
- (3) THE EAST 46 FEET THEREOF FOR NORTH ST. LUCIE RIVER DRAINAGE DISTRICT CANAL # 91;

LESS AND EXCEPTING THEREFROM:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, RUN S89°37'55"E ALONG THE SOUTH LINE OF SAID SECTION 9, A DISTANCE OF 124.5 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF McCARTY ROAD; THENCE RUN NORTH 3946.54 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING, CONTINUE NORTH 40.0 FEET TO A CONCRETE MONUMENT; THENCE RUN S88°21'10"E A DISTANCE OF 2551.20 FEET TO A CONCRETE MONUMENT; THENCE RUN N89°15'W A DISTANCE OF 2550.36 FEET TO THE POINT OF BEGINNING.

*Handwritten initials: J RF*

**EXHIBIT "B"**

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

EXHIBIT "B"

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

12/23/05

THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT (the "Amendment") is hereby entered into by and between ST. LUCIE COUNTY, a political subdivision of the State of Florida (the "County") and KENCO COMMUNITIES AT PORT ST. LUCIE, INC., a Florida corporation ("Kenco").

WITNESSETH:


WHEREAS, the County and Kenco entered into that certain Settlement Agreement (the "Agreement") dated November 18, 2004, providing for the payment of certain voluntary contributions by Kenco to the County for the cost to improve Midway Road and to mitigate the impact of Kenco's development on Midway Road; and

WHEREAS, on or about September 6, 2005, the County adopted Ordinance No. 05-030, providing for road impact fees to be levied upon new residential construction within the City of Port St. Lucie (the "Road Impact Fees"); and

WHEREAS, due to the imposition of these Road Impact Fees, the County and Kenco have deemed it appropriate to amend and clarify the terms of the Agreement, so that Kenco does not pay double fees to the County for the impact of its development, as provided hereinbelow.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Any Road Impact Fees paid by Kenco to the County with respect to the Property, or any additional properties with access to Midway Road west of I-95, shall be credited against Kenco's obligation to pay the County a voluntary contribution pursuant to Paragraphs 3 and 7 of the Agreement (the "Voluntary Contribution"), such that if the Road Impact Fee paid is greater than the Voluntary Contribution amount, no Voluntary Contribution will be paid, and if the Road Impact Fee paid is less than the Voluntary Contribution amount, the difference shall still be due and payable by Kenco in accordance with Paragraphs 3 and 7 of the Agreement. (Example 1: If Kenco is obligated by the Agreement to pay the County a Voluntary Contribution of \$2,000.00 per home with respect to the development of a property, and Kenco is also obligated to pay Road Impact Fees in the amount of \$2,059.00 per home with respect to the same property, then payment of such Road Impact Fees shall be credited against Kenco's obligation to pay the Voluntary Contribution, thereby eliminating Kenco's obligation to pay any Voluntary Contribution with respect to such property.) (Example 2: If Kenco is obligated by the Agreement to pay the County a Voluntary Contribution of \$2,000.00 per home with respect to the development of a property, and Kenco is also obligated to pay Road Impact Fees in the amount of \$1,500.00 per home with respect to the same property, then payment of the Road Impact Fees shall be credited against Kenco's obligation to pay the Voluntary Contributions, thereby reducing the amount of the Voluntary Contributions to \$500.00 per home with respect to such property.)

 12/23/05

2. Any Road Impact Fees paid by Kenco to the County with respect to the Property or any additional properties with access to Midway Road west of I-95, shall be utilized in accordance with the provisions of Paragraph 5 of the Agreement.

3. Upon the satisfaction of Kenco's obligations pursuant to Paragraph 3 of the Agreement, either by the payment of voluntary contributions or by the payment of Road Impact Fees or a combination thereof, the Letter to Credit shall be immediately returned to Kenco.

4. Except as otherwise provided herein, all provisions of the Agreement shall remain in full force and effect as amended hereby.

5. This Amendment may be executed in any number of identical counterparts each of which shall be deemed to be an original for all purposes but all of which shall constitute one and the same instrument, and a copy of such signature received through telefax transmission shall bind the party whose signature is so received as if such signature were an original. In making proof of this Amendment, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

A handwritten signature, possibly "K. J. [unclear]", is enclosed within a hand-drawn circle. The signature is written in dark ink and is somewhat stylized.

[SIGNATURE PAGE TO FOLLOW]

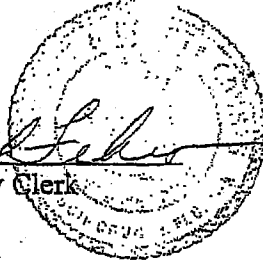
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Settlement Agreement on the date shown below the signature of each.

COUNTY:

BOARD OF COUNTY COMMISSIONERS  
ST. LUCIE COUNTY, FLORIDA

ATTEST:

*Melinda L. Leber*  
Deputy Clerk



By: *[Signature]*  
Chairman

APPROVED AS TO FORM AND  
CORRECTNESS:

By: *[Signature]*  
County Attorney

Date: 12/20/05

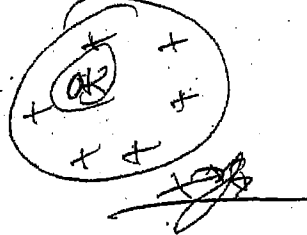
KENCO:

KENCO COMMUNITIES AT PORT ST. LUCIE, INC.

By: *[Signature]*  
Print Name: Yean J. Borg  
Its: Authorized Representative

Date: 12/23/05

[Corporate Seal]



**EXHIBIT "C"**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT "C"**

LEGAL DESCRIPTION KENCO EAST

(ALL LYING AND BEING IN ST. LUCIE COUNTY, FLORIDA)

PARCEL 1:

THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP THIRTY-SIX (36) SOUTH, RANGE THIRTY-NINE (39) EAST.

EXCEPTING THEREFROM ALL RIGHTS-OF-WAY FOR DRAINAGE CANALS AND PUBLIC ROADS.

PARCEL 2:

LOTS 1 TO 16 INCLUSIVE IN SW ¼, A SUBDIVISION OF ALL OF SECTION 4, TOWNSHIP 36 SOUTH, RANGE 39 EAST, AND THE N ½ OF THE NW ¼ OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, LESS CANALS AND ROAD RIGHTS-OF-WAY.

THE NORTH 40 FEET OF THE S ½ OF THE NW ¼ OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, LESS THE FOLLOWING RIGHTS-OF-WAY:

- (1) THE WEST 48 FEET THEREOF FOR NORTH ST. LUCIE RIVER DRAINAGE DISTRICT CANAL #90;
- (2) THE EAST 50 FEET OF THE WEST 98 FEET THEREOF FOR McCARTY ROAD; AND
- (3) THE EAST 46 FEET THEREOF FOR NORTH ST. LUCIE RIVER DRAINAGE DISTRICT CANAL

LESS AND EXCEPTING THEREFROM:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9, TOWNSHIP 36 SOUTH, RANGE 39 EAST, RUN S89°37'55"E ALONG THE SOUTH LINE OF SAID SECTION 9, A DISTANCE OF 124.5 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF McCARTY ROAD; THENCE RUN NORTH 3946.54 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING, CONTINUE NORTH 40.0 FEET TO A CONCRETE MONUMENT; THENCE RUN S88°21'10"E A DISTANCE OF 2551.20 FEET TO A CONCRETE MONUMENT; THENCE RUN N89°15'W A DISTANCE OF 2550.36 FEET TO THE POINT OF BEGINNING.