

**ACR BECKER ROAD  
CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT** (the “**Agreement**”) is made and entered into as of the date that the last party executes this Agreement (“**Effective Date**”), by and between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation (“**City**”), and **ACR Acquisition, LLC** (“**ACR**”) as successor to ACR Properties, LLC. The City and ACR shall each be referred to herein as a “**Party**,” and collectively as the “**Parties**”.

**R E C I T A L S :**

WHEREAS, the City and ACR are parties to that certain Annexation Agreement dated July 19, 2004, as amended by: that certain First Amendment to Annexation Agreement dated May 16, 2005, Second Amendment to Annexation Agreement dated July 11, 2005, Third Amendment to Annexation Agreement dated November 16, 2009, Fourth Amendment to Annexation Agreement dated November 16, 2009, Fifth Amendment to Annexation Agreement dated December 28, 2009, and Sixth Amendment to Annexation Agreement dated April 2, 2010 (collectively, the “**Annexation Agreement**”);

WHEREAS, pursuant to Sections 5(e)(iii) and 5(e)(iv) of the Annexation Agreement, ACR, along with the other parties to the Annexation Agreement, is required to pay to the City the estimated cost of construction of a certain two-lane roadway section of Becker Road or, at the City’s election, contract for the construction and/or design of such roadway;

WHEREAS, the Fourth Amendment to the Annexation Agreement provided that the initial two-lanes of the roads shown on the Existing Dedicated Road Network may, in ACR’s sole discretion, be constructed on one side of the right-of-way, and Becker Road is part of such Existing Dedicated Road Network;

WHEREAS, the City has created a proposed cross-section for its desired design of Becker Road West, which is attached as **Exhibit “A”** hereto (the “**Becker Road West Cross-Section**”).;

WHEREAS, pursuant to Section 5(e)(iv) of the Annexation Agreement, the City has elected to allow ACR to design and construct, using the Becker-Road West Cross-Section prepared by the City, the portion of Becker Road through the Anasca Property (as defined in the Annexation Agreement) from the western edge of the intersection of Becker Road and Roadway N/S B (n/k/a Riverland Boulevard) to the western edge of the intersection of Rangeline Road and Becker Road (the “**ACR Becker Road Section**”), and ACR has agreed to so design, permit and construct the ACR Becker Road Section, all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, by entering into this Agreement, the City acknowledges that the demands set forth in that certain letter from the City addressed to Ramzi Akel and Mitchel Sherman, Esquire, dated November 10, 2021 (the “**Demand Letter**”) have been satisfied, subject to ACR’s performance of its duties and obligations under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained, and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. Recitals; Exhibits. The foregoing recitals and all exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

2. Surety. Within forty-five (45) business days following the Effective Date, ACR agrees to deliver to the City a surety bond in favor of the City in the amount of Thirty Two Million Six Hundred and Eight Thousand Eight Hundred Sixty One and 06/100 (\$32,608,861.06) Dollars (“**Security**”), representing the City’s estimated cost for the construction of the ACR Becker Road Section set forth in the Demand Letter. In addition, within five (5) business days following the Effective Date, ACR shall deposit the full amount of the Security in a bank account and shall provide to the City a letter from a bank officer confirming such deposit. Funds equivalent to the full amount of the Security must remain in the account until the surety bond is posted in favor of the City, and ACR shall provide the City with a weekly letter from a bank officer confirming such funds remain available. From time to time during construction of the ACR Becker Road Section, ACR shall have the right to reduce the Security based on one half of the percentage completion of the work at the time of the request. In that regard, upon ACR’s submission to the City of an engineer’s certificate signed by the engineer of record (“EOR”) certifying the percentage completion, the Security may be reduced by an amount equal to one half of such percentage. By way of example and for illustration purposes only, if the EOR certification reflects that the ACR Becker Road Section is 20% complete, the initial amount of Security shall be reduced to \$29,347,974.90 (i.e., \$32,608,861.06 multiplied by 90%). However, upon Completion of Construction, as defined in Subparagraph 3(c) below, of the ACR Becker Road Section from N/S B to N/S A, including the construction of the intersection at Becker and N/S A, a total of 50% of the Security shall be released, including any reductions during the construction of that Section. The same procedure shall then be followed for the construction of the ACR Becker Road Section from N/S A to Rangeline Road.

3. Construction of ACR Becker Road Section. ACR shall facilitate and cause, at ACR’s sole cost and expense, except as provided in paragraph 4 below, the design, permitting and construction of the ACR Becker Road Section based on the Becker Road West Cross-Section (Exhibit “A” attached hereto), all as provided in this Agreement. ACR shall be responsible to prepare and obtain approval of construction plans for the ACR Becker Road Section rights-of-way. The Parties acknowledge and agree that the ACR Becker Road Section includes design, permitting and construction of the intersections of Becker Road and Roadway N/S A and Becker Road and Rangeline Road. ACR shall be

responsible for the design, permitting and construction of a 12" water main that begins at west of the intersection of Becker Road and NS B, and ends at the intersection of Becker Road and Rangeline Road on the west. ACR shall also be responsible for fire hydrants on the ACR Becker Road Section, and such fire hydrants must meet City and St. Lucie County Fire District requirements. ACR and the City will determine in accordance with City code whether that water main shall run entirely directly down Becker Road, or whether it shall run, in part, through ACR's property. ACR shall not be responsible for the design, permitting and construction of a sewer main in the ACR Becker Road Section.

(a) Construction Plans and Permit Applications. Within one hundred twenty (120) days following the Effective Date, ACR (i) shall furnish to the City and South Florida Water Management District (the "**District**") a 60% complete set of design and construction drawings, plans and specifications ("60% Construction Plans") for the portion of the ACR Becker Road Section from Roadway NS B (beginning west of the intersection) to Roadway NS A based on the Becker Road West Cross-Section. The City shall review and provide comments on the 60% Construction Plans within twenty-one (21) days of receipt. Within fifteen (15) days of receipt of City comments on the 60% Construction Plans, ACR shall furnish to the City a 100% complete set of design and construction drawings, plans and specifications ("100% Construction Plans"). The City shall review and provide approval or comments on the 100% Construction Plans within twenty-one (21) days of receipt. ACR agrees to respond to any additional comments within fifteen (15) days and supply corrected 100% Construction Plans until the City gives final approval, with the City either giving final approval of, or additional comments to, the corrected 100% Construction Plans (and any additional corrections thereto required by the City) within twenty-one (21) days of receipt. Within seven (7) days of the City's approval of the 100% Construction Plans, ACR shall provide a final subdivision plat for the road right of way for processing of approval by the City Council, which processing shall be completed within thirty (30) days of submission by ACR. ACR agrees to respond to comments received from the District based on the same fifteen (15) day response time that ACR has to respond to City comments. ACR shall provide the City a copy of the District permit within three (3) days of ACR's said permit. The City shall issue its engineering and utilities permits for the corrected 100% Construction Plans within seven (7) days of receipt of said plans and receipt of the District permit. Such drawings, plans and specifications, and the construction of the ACR Becker Road Section, shall be in accordance with all applicable laws, rules, and regulations, and shall follow all FHWA/FDOT design criteria. The 100% Construction Plans shall provide for the roadway drainage, treatment and ultimate positive discharge of stormwater as required by the City and the District. Within seven hundred and twenty (720) days following the Effective Date, ACR (i) shall furnish to the City a 100% complete set of design and construction drawings, plans and specifications ("Construction Plans") for the portion of the ACR Becker Road Section from Roadway NS A to Rangeline Road based on the Becker Road West Cross-Section; and (ii) shall receive all required permits. Such drawings, plans and specifications, and the construction of the ACR Becker Road Section, shall be in accordance with all applicable laws, rules, and regulations, and shall follow all FHWA/FDOT design criteria. The 100% Construction Plans and Construction Plans shall

provide for the roadway drainage, treatment and ultimate positive discharge of stormwater as required by the City and the District.

(b) Permits for Construction. ACR shall diligently seek and obtain from the City, and any other applicable governmental authorities, all required permits and approvals as may be required for construction of the ACR Becker Road Section. The City agrees to cooperate with ACR's efforts to obtain all such permits and approvals necessary to construct the ACR Becker Road Section in accordance with this Agreement and any other applicable state or local laws, rules, or regulations. City shall cooperate with ACR to obtain the necessary street lighting agreement(s) between the City and FPL for any streetlights to be installed. City shall execute said FPL street lighting agreement(s) when they are available to the City and return copies of the executed agreements to ACR in a timely manner.

(c) Completion of Construction. ACR shall obtain Completion of Construction (as defined below) of the portion of the ACR Becker Road Section from Roadway NS B to NS A no later than fifteen (15) months following ACR's receipt of all required permits and approvals for construction of that portion as provided in Subparagraphs 3(a) and 3(b) above, and of the portion of the ACR Becker Road Section from Roadway NS A to Rangeline Road no later than fifteen (15) months following ACR's receipt of all required permits and approvals for construction of that portion as provided in Subparagraphs 3(a) and 3(b) above. In the event ACR submits for and obtains permit for the entire ACR Becker Road Section from NS B to Rangeline Road at the same time, ACR shall complete the ACR Becker Road Section from NS A to Rangeline Road no later than thirty-six (36) months from the Effective Date. However, this does not impact the Completion of Construction date for NS A to NS B. For purposes of this Agreement, "**Completion of Construction**" requires (i) a written Certificate of Completion issued by the EOR to the City, (ii) a final walk-through and acceptance by the City of the ACR Becker Road Section in accordance with Section 156.150 of the City Code, (iii) conveyance of the 10' utility easements pursuant to Subparagraph 3(d), and (iv) ACR's posting of a one-year maintenance bond in a principal amount equal to 15% of the actual cost of construction of the ACR Becker Road Section pursuant to Section 156.146 of the City Code.

Any delays beyond the direct and immediate control of ACR for the installation of FPL street lighting shall not be the basis of any default by ACR, a Certificate of Completion shall not be withheld by the EOR based on any such delays, the Completion of Construction shall not be considered delayed on the basis of any such delays, and the opening of the road for traffic shall not be delayed based on any such delays.

(d) Utility Easements. Within one hundred eighty days (180) days of the Effective Date, ACR shall convey to the City a 10' utility easement on the south side of the ACR Becker Road Section and shall provide a property information report or other title documentation requested by the City, in a form acceptable to the City Attorney's Office. The Parties agree that said easement will contain a provision that precludes the

City and other third parties from accessing the easement before ACR's Completion of Construction. Notwithstanding the foregoing, prior to Completion of Construction, the City and its FPL approved contractor(s) may access said easement solely for the purpose of installing FPL conduit in the easement area provided (i) all necessary FPL conduit is installed at the same time, and (ii) the City works with ACR to ensure installation of FPL conduit does not interfere with ACR's development activities. Within three hundred and sixty (360) days of the Effective Date, ACR shall also convey to the City a 10' utility easement on the north side of the ACR Becker Road Section and shall provide a property information report or other title documentation requested by the City, in a form acceptable to the City Attorney's Office. The Parties agree that said easement will contain a provision that precludes the City and other third parties from accessing the easement before ACR's Completion of Construction.

4. Force Majeure; Weather Days. 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 or utilities (e.g., power or water) through no fault of the requesting Party, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, pandemic, hurricane, tropical storm, tornado, or flooding. 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 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 prior to such conferral taking place.

Additionally, any date or deadline set forth in this Agreement may be delayed for inclement weather conditions, as set forth in the following sentence, based on the commercially reasonable concurrence of the City ("**Weather Days**"). City will grant time extensions, on a day-to-day basis, for delays caused by the effects of rain or inclement weather conditions, related adverse soil conditions or suspensions of operations that prevent ACR from constructing the ACR Becker Road Section. If ACR believes a Weather Day has occurred, ACR shall submit a request for time extension within ninety (90) days after the occurrence of the Weather Days, which, in the opinion of ACR, warrants such an extension with reasons clearly stated and a detailed explanation given with sufficient documentation as to why the event is considered to be a Weather Day. If no written objection to such request for extension is received from the City within fifteen (15) business days from the date of the delivery by ACR of the request, such extension shall be deemed given. If a written objection is made by the City, the Parties shall meet and

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

5. Satisfaction of Annexation Agreement Obligation. Upon Completion of Construction in accordance with this Agreement, any of ACR's or the City's obligations which may have existed under Section 5 of the Annexation Agreement with respect solely to Becker Road shall be considered performed and satisfied. This Agreement is an additional obligation related to Becker Road, and shall not satisfy, alter or release any other obligations ACR or the City has, if any, regarding Becker Road pursuant to any development orders, permits or other agreements besides the Annexation Agreement. In the event there is any conflict between any terms or provisions in the Annexation Agreement and the terms or provisions of this Agreement, the terms and provisions of this Agreement shall control.

ACR agrees to abate all claims against the City in Case No. 56-2015-CA-000337 currently pending in the Circuit Court of the 19<sup>th</sup> Judicial Circuit in and for St. Lucie County, Florida, upon complete execution of the Riverland Becker Road Agreement and Mattamy Becker Road Agreement and agrees to dismiss the claims against the City with prejudice upon GL and Mattamy completing the roadway improvements contemplated by those agreements.

6. Default.

a) Defaults Relating to Subsection 3(a), 3(b) & (3)(c) of Agreement:

i. Default by ACR: If ACR fails to timely perform any of its obligations pursuant to Subsection 3(a), 3(b) or (3)(c) this Agreement, the City may send written notice (a "Default Notice") to ACR specifying the nature of the default and the action required to cure the default. If ACR fails to cure such default within thirty (30) days following ACR's receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, the City may diligently complete construction of the ACR Becker Road Section using contractors selected by the City, and to use the Security for payment of all fees, costs and expenses incurred by the City to so complete the construction. The City's sole and exclusive remedy is to recover the third-party costs and expenses incurred in completing the construction of the ACR Becker Road Section from the Security. However, in the event the Security is insufficient to cover the costs and expenses incurred by the City, the City shall have the right to seek reimbursement directly from ACR for any shortfall not covered by the Security. The City shall have no other rights or remedies against ACR in the event of a default relating to Subsection 3(a), 3(b) or 3(c) of this Agreement.

ii. Default by City: If City fails to timely perform any of its obligations pursuant

to Subsection 3(a), 3(b) or 3(c) this Agreement, ACR may send a Default Notice to City specifying the nature of the default and the action required to cure the default. If City fails to cure such default within thirty (30) days following City's receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, ACR may, at its sole and exclusive remedy, seek specific performance of such obligation. ACR shall have no other rights or remedies against the City in the event of a default relating to Subsection 3(a), 3(b) or 3(c) of this Agreement.

b) Other Defaults. For defaults other than those described in Subsection 6(a), if either Party fails to timely perform any of its obligations pursuant to this Agreement, the non-defaulting party may send a Default Notice to the defaulting party specifying the nature of the default and the action required to cure the default. If the defaulting party fails to cure such default within thirty (30) days following receipt of the Default Notice or if such default cannot be cured within said thirty (30) day period and fails to timely commence to cure the default within such thirty (30) days and thereafter diligently pursue completion thereof, the non-defaulting party may, as its sole and exclusive remedy, seek specific performance of such obligation. ACR and the City shall have no other rights or remedies against the defaulting party in the event of a default pursuant to this Subparagraph 6(b).

7. Intersection Agreement. The City shall enter into an agreement with Mattamy Palm Beach, LLC by March 20, 2022, for the construction of the Community and Becker Road Intersection.

8. Notices. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the Party giving such notice) hand delivered by messenger or courier service, by overnight courier service, by regular United States Mail with postage prepaid, or by certified mail, return receipt requested (Airmail if international), and shall be directed to the following persons and places designated by the parties:

**The City:**

PORT ST. LUCIE  
121 S.W. Port St. Lucie Boulevard  
Port St. Lucie, FL 34984  
Attn: Russ Blackburn, City Manager

**ACR:**

ACR Acquisition, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

9. Miscellaneous.

(a) Amendment. Any amendments to this Agreement must be in writing and executed by both Parties with the same formalities as this Agreement.

(b) Invalid Provisions. In case any term or provision of this Agreement is held illegal, unenforceable, or inoperative as a matter of law, the remaining terms and provisions will not be affected thereby but will be valid and remain in full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

(c) Headings. The headings contained in this Agreement are for convenience only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

(d) Time Computation: In computing any period of time under this Agreement, the days are calculated as calendar days unless expressly indicated as business days. Additionally, the calculation begins with the day following the act and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the City, in which case the period of time includes the next business day.

(e) Waivers. Any waiver issued by a Party of any provision of this Agreement shall only be effective if issued in writing by such Party, 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.

(f) Governing Law. 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 Parties agree to waive all defenses to any suit filed in Florida based upon improper venue or forum non-convenience. 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.

(g) Non-waiver of Sovereign Immunity. Nothing in this Agreement shall be deemed to affect the rights, privileges and sovereign immunities of the City as set forth in Section 768.28, Florida statutes or any other provision of law.

(h) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto as it pertains to the subject matter contained herein and shall supersede and take precedence over any and all prior and contemporaneous agreements and understandings between the Parties hereto, unless otherwise stated. No additions,



alterations, or variation of the terms of this Agreement shall be valid, except as provided in Subparagraph 9(a) above. Notwithstanding anything to the contrary herein, this Agreement only relates to Section 5 of the Annexation Agreement with respect to Becker Road, and does not relate to any other issues between the parties hereto, whether arising under the Annexation Agreement or otherwise.

(i) Authority to Sign. Each individual signing this Agreement directly and expressly warrants that he/she has been given and received and accepted authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters concerned herein and stated herein.

(j) No Third-Party Beneficiary. None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party. This Agreement has been entered into for the sole benefit and protection of the City and ACR and is not intended to confer upon any other person or entity any rights or remedies hereunder. This Agreement shall not provide any third-party with any right, remedy, claim, liability, reimbursement, or other cause of action.

*[Signature page immediately follows.]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on behalf of themselves and/or their respective entities, their successors and assigns, on the Effective Date.

**AGREED TO BY ACR this \_\_\_\_\_ day of \_\_\_\_\_, 2022:**

ACR ACQUISITION, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Witnesses: (Two Required)**

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

STATE OF FLORIDA     )  
  ) ss  
COUNTY OF BROWARD )

The foregoing Agreement was acknowledged before me by means of  physical presence or  online notarization on \_\_\_\_\_, 2022, by \_\_\_\_\_, as \_\_\_\_\_ of ACR Acquisition, LLC, on behalf of said company, who is  personal known to me or  has produced \_\_\_\_\_ as identification, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that the foregoing instrument was executed by \_\_\_\_\_ for the purposes therein contained.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**AGREED TO BY CITY this \_\_\_\_\_ day of \_\_\_\_\_, 2022:**

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

Print Name: Russ Blackburn

Title: City Manager

ATTEST:

\_\_\_\_\_  
Sally Walsh, City Clerk

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
James Stokes, City Attorney

STATE OF FLORIDA     )  
  ) ss  
COUNTY OF ST. LUCIE    )

The foregoing Agreement was acknowledged before me by means of  physical presence or  online notarization on \_\_\_\_\_, 2022, by Russ Blackburn, as City Manager, for the City of Port St. Lucie, who is  personal known to me or  has produced \_\_\_\_\_ as identification, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that the foregoing instrument was executed by Russ Blackburn for the purposes therein contained.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# EXHIBIT "A"

## Becker Road West Cross-Section

