

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (this "Agreement") is made and entered into by and among the CITY OF PORT ST. LUCIE, a municipal corporation of the State of Florida (the "City") and KENCO COMMUNITIES AT PORT ST. LUCIE, INC., a Florida corporation ("Kenco").

WITNESSETH

WHEREAS, the City is a Florida municipal corporation located within St. Lucie County, Florida; and

WHEREAS, Kenco owns certain real property in unincorporated St. Lucie County, Florida, as described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, approximately 1,280 feet of the Property's 3,973 feet eastern boundary adjoins the municipal boundary of the City; and

WHEREAS, therefore, a substantial part of a boundary of the Property is coterminous with a part of the municipal boundary of the City; and

WHEREAS, therefore, the Property is contiguous to the City; and

WHEREAS, Robert N. Klein, of Dean, Mead, Minton & Klein, as agent for Kenco, has filed a petition for voluntary annexation of the Property into the City dated September 15, 2003; which petition has been signed, ratified and adopted by Kenco; and

WHEREAS, Kenco desires to obtain for the Property the benefits and privileges of inclusion within the boundaries of the City which include the designation of the Property on the City's Future Land Use Map and the assignment of zoning categories to allow the most appropriate development of the Property and the provision of all services, facilities, and utilities as are available to all residents of the City; and

WHEREAS, the City has determined that the Property is concentrated in a single area; and

WHEREAS, annexation of the Property will not result in the creation of unincorporated areas being enclosed on all sides by a single municipality or by a single municipality and a natural or manmade obstacle that allows vehicular access only through unincorporated areas; and

WHEREAS, therefore, the annexation of the Property will not result in the creation of enclaves; and

WHEREAS, annexation of the Property will not result in the creation of either unincorporated or incorporated areas that are winding or turning; and

WHEREAS, therefore, annexation of the Property will not result in the creation of finger areas in a serpentine pattern; and;

WHEREAS, annexation of the Property will not result in the creation of either unincorporated areas that are isolated from other unincorporated areas or incorporated areas that are isolated from other incorporated areas; and

WHEREAS, therefore, annexation of the Property will not result in the creation of pockets; and

WHEREAS, therefore, the Property is reasonably compact; and

WHEREAS, the petition for annexation bears the signature of a person who is authorized to act on behalf of Kenco, the sole owner of the Property; and

WHEREAS, therefore, the petition of annexation bears the signatures of all owners of property in the area proposed to be annexed; and

WHEREAS, the annexation of the Property into the municipal boundaries of the City would be in the best interest of the City and the future residents of the Property; and

WHEREAS, Kenco and the City desire to establish certain development guidelines which specify the manner in which the Property will be developed; and

WHEREAS, Kenco desires to enter into this Agreement to memorialize its understanding and agreements with respect to the annexation, development and use of the Property; and

WHEREAS, upon Kenco's compliance with their respective obligations under this Agreement, the development of the Property will be consistent with the City's comprehensive plan and land development regulations; and

WHEREAS, Kenco and the City agree that it would be beneficial to the parties to initiate the development approval process prior to the effective date of the annexation to expedite development of the Property.

NOW, THEREFORE, in consideration of the mutual promises and other considerations contained herein, the parties hereto agree as follows:

1. **Recitations**. The recitations set forth above are true and correct and are incorporated herein by reference.

2. **Annexation**. On September 15, 2003, Kenco filed a voluntarily petition requesting the City to annex the Property into the municipal boundaries of the City. The parties shall take all actions necessary to effect the annexation of the Property in a timely manner in accordance with the procedures set forth in Section 171.044, Florida Statutes, and any other

applicable ordinances or regulations. It is the desire of all parties that the annexation be accomplished as rapidly as possible.

3. **Effective Date.** This Agreement shall become effective upon execution by both parties.

4. **Land Use.** Kenco proposes to develop the Property with no more than 875 residential dwelling units and up to 290,000 square feet of commercial, retail, professional office and/or institutional use, which Kenco initially believes will be allocated as follows: up to 180,000 square feet of commercial/retail; up to 30,000 square feet of office/showroom and up to 80,000 square feet of institutional use (collectively, the "Intended Uses"). Kenco has submitted a request to amend the City's Comprehensive Plan to include the Property and to assign land use designations to the Property to permit it to be developed with the Intended Uses. The City shall process said application in a timely manner in accordance with applicable statutes, ordinances and other regulations, and subject to paragraph 6 below.

5. **Zoning.** The City agrees that upon assigning the Property a City land use designation, the City shall process a rezoning application for the Property to PUD (Planned Unit Development) in accordance with the process required under the City's Code of Ordinances (the "Code") to permit the Intended Uses consistent with the land use designations. Notwithstanding the foregoing or anything contained in this Agreement to the contrary, any rezoning shall accommodate and permit use of the Property for agriculture or agricultural related purposes until such time as a plat establishing subdivided lots for nonagricultural development is recorded in the Public Records of St. Lucie County, Florida for the Property.

6. **No Waiver of Police Power.** As provided above and otherwise herein, the parties recognize and agree that certain provisions of this Agreement will require the City and/or its boards, departments or agencies, acting in their governmental capacity, to consider certain changes in the City's Comprehensive Plan, zoning ordinances or other applicable City codes, plans or regulations, as well as to consider other governmental actions as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statute and City ordinances, including notice and hearing requirements, in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on applications for comprehensive plan changes and applications for other development. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public.

7. **Utilities.**

a. The City desires to provide municipal utility services to the Property, including water, wastewater and irrigation, and represents that the City has sufficient existing or planned plant capacity to provide same. The City acknowledges that Kenco may create one or more Community Development Districts ("CDD's") in accordance with the requirements of Chapter 190, Florida Statutes, to finance and construct utility infrastructure, and to finance,

construct, own and maintain other infrastructure, to and for the Property. Kenco shall have no right to own or operate a utility. The City agrees to provide wastewater and potable water service to the Property with a capacity sufficient to accommodate the Intended Uses, so long as Kenco pays its fair share of the cost. Pursuant to and consistent with Sections 63.16 and 63.22 of the Code, on or before development of the Property, Kenco shall install, or cause to be installed, at its sole cost and expense, the on-site water and wastewater transmission facilities to service the Property; provided, however, that to the extent such transmission facilities are upsized or looped at the City's request to serve additional property other than the Property, the City shall reimburse Kenco for that amount that exceeds its hydraulic share in a manner mutually acceptable to Kenco and the City. The parties agree that upon completion and acceptance by the City of the on-site water and wastewater lines, such lines shall be transferred to the City to be owned and maintained by the City in perpetuity. Kenco and City agree that the location and design of any transmission water or sewer lines and easements for same shall be located in areas mutually agreed upon by the parties.

b. The parties agree to negotiate in good faith to enter into appropriate agreements to ensure that the municipal utility services described above are available and constructed as contemplated herein to serve the Property. Said agreements shall include, but not be limited to, a developer's agreement which provides for Kenco's hydraulic share contribution and reservation of line and plant capacity.

8. **Stormwater.** The City and the CDD(s), when and if formed, shall enter into an interlocal agreement which shall provide for the rebate to such applicable CDD of 75% of the stormwater utility assessments collected by the City from the Property. Notwithstanding any regulations to the contrary, no portion of the Property, nor Kenco, shall be assessed for any stormwater utility assessment until (i) the Property has been platted for urban development, and (ii) the Property is no longer used for agriculture or agricultural related purposes. The parties agree that Kenco shall be responsible for its stormwater permitting and with respect to the Property, for compliance with all National Pollution Discharge Elimination System rules and regulations. The CDD(s), when and if formed, shall be responsible for the maintenance of the stormwater system. In no event shall the City be entitled to impose or collect stormwater utility fees or assessments allocable to the years 1993 through 1997 against or with respect to the Property.

9. **Transportation System; Special Assessment Program.**

a. Kenco acknowledges that the improvement (including road surface, drainage and utilities) of (i) McCarty Road to the south boundary of the Property (the "McCarty Improvements"), and (ii) together with other benefited property owners, Midway Road from I-95 to McCarty Road (the "Midway Improvements") may be necessary and desirable in connection with development of the Property for the Intended Uses. The City hereby finds and agrees that constructing the McCarty Improvements and the Midway Improvements, through a special assessment district created pursuant to Chapter 170, Florida Statutes, is appropriate.

b. Upon written request by Kenco, the City agrees, as expeditiously as possible and in accordance with Chapter 170, Florida Statutes, to create a special assessment

district for the financing of the McCarty Improvements and/or the Midway Improvements for properties which will be specially benefited by such improvements and to include the Property in such special assessment district, such that such specially benefited properties shall each bear their pro-rata share of the cost of such improvements based on a reasonable formula and/or allocation.

c. In the event a special assessment district is created, Kenco hereby agrees to the inclusion of the Property into the special assessment district created by the City for the financing of the McCarty Improvements and/or the Midway Improvements which will specially benefit the Property and any other property benefited by such improvements.

d. Kenco agrees to provide the City an engineer's report(s) establishing the properties which would be specifically benefited by the levying of a special assessment for construction of the McCarty Improvements and/or the Midway Improvements; provided, however, that Kenco agrees that the Pony Pines Subdivision shall not be specifically benefited and therefore not required to pay for such improvements. Kenco further agrees to design the facilities identified in the engineer's report(s), which design shall be in accordance with the City's or County's standards, as applicable. The City agrees that Kenco shall be reimbursed from special assessment funds for the costs of each engineer's report, the design of the facilities identified as needed in the engineer's reports, and any other eligible costs advanced by Kenco.

e. The City agrees that the location and design of any stormwater management facilities to be constructed within an area of the Property shall be subject to the approval of Kenco.

f. Both the City and Kenco desire that the annexation of the Property and if requested by Kenco, the levying of any special assessment for financing the McCarty Improvements and/or the Midway Improvements, and the construction of the improvement are accomplished as rapidly as possible. In that regard, the City and Kenco anticipate that if the special assessments are levied, the McCarty Improvements and/or the Midway Improvements will be completed concurrent with the development of the Property.

g. The City and Kenco acknowledge that they intend to enter into a new capacity agreement, or amend the Capacity Agreement attached hereto as Exhibit "B", ensuring the adequate provision of public roads to serve the Property, reserving traffic capacity and providing for traffic concurrency as a result of the construction of the McCarty Improvements and/or the Midway Improvements.

h. The City and Kenco understand and acknowledge that McCarty Road and Midway Road are owned and maintained by St. Lucie County. The City agrees to negotiate and enter into an interlocal agreement or agreements with St. Lucie County authorizing the McCarty Improvements and/or the Midway Improvements pursuant to the special assessment district and to include any property specifically benefited to be assessed for such improvements.

i. To the extent that additional agreements are necessary to provide more specificity regarding the obligations and time periods referenced in this Section 9, the City and Kenco agree to negotiate in good faith to enter into appropriate agreements providing for same.

10. **Impact Fees.** The City agrees to support Kenco's request for its proportionate share of transportation impact fee credits available pursuant to the construction of, and/or land dedications for, the Midway Improvements. To the extent that the City imposes current or future impact fees applicable to future development within the Property, including but not limited to those for transportation, parks and schools, the City agrees that it may provide credit to Kenco against such impact fees for the value of public improvements constructed, or paid for, by Kenco, for funding contributions to public improvements made by Kenco.

11. **Taxation and Assessments.** The City acknowledges that the Property is used for agricultural purposes and in the past has benefited by a Greenbelt Exemption for ad valorem tax purposes (the so-called "agricultural exception"). The City agrees to support Kenco's receipt of a Greenbelt Exemption for the Property, or such undeveloped portion thereof, as the case may be, as long as the Property, or such undeveloped portion, is being used for agricultural purposes or agricultural related purposes prior to non-agricultural development. Further, the City agrees that the Property can be used for agriculture or agricultural related purposes after annexation.

12. **Payment for Public Facilities.** In addition to the amount due hereunder from Kenco for utilities set forth in paragraph 7 above, Kenco agrees to pay the City One Million Dollars (\$1,000,000.00) as consideration to ensure that adequate public facilities (excluding water, wastewater and irrigation) exist to serve the Property and to provide concurrency for the Intended Uses. Kenco shall pay the foregoing amount to the City one (1) day prior to the date on which the City holds the public hearing for the second reading of the ordinance annexing the Property into the City (the "Annexation Ordinance"); provided, however, that title to said funds shall not vest in the City unless and until the Annexation Ordinance is approved by the City Council and the Annexation Ordinance becomes effective; provided, further, however, that in the event the Annexation Ordinance is challenged and a court of competent jurisdiction, or arbitration or mediation panel in a binding process, issues an order invalidating the Annexation Ordinance and/or the annexation of the Property, the City agrees to pay One Million Dollars (\$1,000,000.00) to Kenco within ten (10) days following the date that such order becomes final and non-appealable. The parties agree to enter into a Capacity Agreement, in form and content substantially similar to that attached hereto as Exhibit "B" and made a part hereof, which will address the foregoing payment to the City and which will constitute a vested rights determination for concurrency purposes.

13. **Time of the Essence.** The parties hereto covenant that time is of the essence and each party shall immediately commence all actions necessary to fulfill their respective obligations under this Agreement.

14. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional in any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

15. **Successors and Assigns.** The obligations imposed and entitlements created pursuant to this Agreement shall run with and bind the Property as covenants running with the land. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns, heirs and personal representatives; provided, however, that references herein to Kenco shall mean and refer only to Kenco. The obligations of Kenco may be assigned in whole or part to one or more property owners associations or to the CDD(s), if formed, and in such event, Kenco shall thereafter be relieved of future obligation for such assigned obligations hereunder.

16. **Attorneys' Fees.** Should any party to this Agreement bring an action against any other party to enforce any provision of this Agreement, the prevailing party in said action shall be entitled to recover its reasonable attorneys' fees and court costs in all trial and appellate proceedings.

17. **Recording.** The City shall record this Agreement with the Clerk of the Circuit Court for St. Lucie County within fourteen (14) days after the City executes the Agreement.

18. **Entire Agreement.** This Agreement contains and sets forth all of the promises, covenants, agreements, conditions and understandings between the parties with respect to the subject matter of the Agreement as of the date hereof.

19. **Headings.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

20. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation between the parties related to this Agreement shall be St. Lucie County, Florida.

21. **Amendment.** This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by all parties with the same formality and or equal dignity herewith. The parties agree that this Agreement may be amended, subject to the City's reasonable approval, to include other property adjacent to the Property provided such other property satisfies all requirements for voluntary annexation set forth in Chapter 171, Florida Statutes.

22. **Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given either (i) when delivered in person to the persons designated hereinbelow for that purpose, (ii) upon delivery to an overnight courier (e.g. Federal Express, Airborne) as evidenced by the sender's copy, addressed as set forth hereinbelow; (iii) upon mailing by United States certified mail, return receipt requested, postage paid, to such address. Such notice shall be deemed received, when either (i) delivered in person to the agents designated hereinbelow for that purpose, (ii) on the first business day after delivery to an overnight courier (e.g. Federal Express, Airborne) as evidenced by the sender's copy, addressed as set forth hereinbelow, or (iii) three (3) days after deposited in the United States Mail, by

certified mail, postage prepaid, return receipt requested, addressed to the other party. The addresses of the parties are as follows:

CITY:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Manager

With Copy To:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Attorney

KENCO:

Kenco Communities at Port St. Lucie, Inc.
1000 Clint Moore Road
Suite 110
Boca Raton, FL 33487
Attn: Ken Endelson and Richard Finkelstein

With Copy To:

Dean J. Borg
Senior Vice President
Kenco Communities, Inc.
105 Isle Verde Way
Palm Beach Gardens, FL 33418

and

Dean, Mead, Minton & Klein
1903 S. 25th Street
Suite 200
Fort Pierce, FL 34947
Attn: Robert N. Klein, Esq.

23. **Effective Date.** The "Effective Date" of this Agreement shall be the date the last party signs this Agreement.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; Kenco signing by and through its duly authorized representative and the City through its City Council, signing by and through its Mayor, authorized to execute same by City Council action on the 26th day of January, 2004.

CITY:
CITY OF PORT ST. LUCIE

ATTEST:

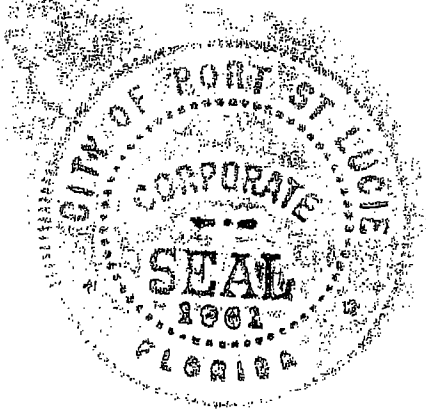
Kenneth D. Phillips
City Clerk

By: *Robert E. Minsky*
Robert E. Minsky, Mayor

Date: 1-28-04

APPROVED AS TO FORM AND
CORRECTNESS:

Sam E. Booth
City Attorney



KENCO:
KENCO COMMUNITIES AT PORT ST.
LUCIE, INC.

By: *Richard Finkelstein*
Print Name: Richard Finkelstein
Its: President

[Corporate Seal]

Date: 1-26-04

EXHIBIT "A"

LEGAL DESCRIPTION

Exhibit "A"

PARCEL 1:

The Southeast Quarter (SE 1/4) 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 SW1/4, a subdivision of all of Section 4, Township 36 South, Range 39 East, and the N1/2 of the NW1/4 of Section 9, Township 36 South, Range 39 East, LESS canals and road rights-of-way.

TOGETHER WITH:

~~The North 40 feet of the S 1/2 of the NW 1/4 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 S 89°39'55" 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 S 88°21'10" E a distance of 2551.20 feet to a concrete monument; thence run N 89°15' W a distance of 2550.36 feet to the Point of Beginning.

