

Prepared By and Return To:  
Robert N. Klein, Esq.  
Klein & Dobbins, P.L.  
805 Virginia Avenue, Suite 25  
Fort Pierce, FL 34982

**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 LULFS GROVES, LLLP, a Florida limited liability limited partnership ("Lulfs").

**WITNESSETH**

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

**WHEREAS**, Lulfs owns certain real property comprising approximately 464.5 ± acres in unincorporated St. Lucie County, Florida, as described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, the Property's northern and southern boundaries adjoin the municipal boundaries of the City; and

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

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

**WHEREAS**, Lulfs filed a petition for voluntary annexation of the Property into the City on January 31, 2008; and

**WHEREAS**, Lulfs 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 within and bounded on all sides by a single municipality, or by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality; 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 Lulfs, 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**, Lulfs and the City desire to establish certain development guidelines which specify the manner in which the Property will be developed; and

**WHEREAS**, Lulfs 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 Lulfs' compliance with its obligations under this Agreement, the development of the Property will be consistent with the City's comprehensive plan and land development regulations; and

**WHEREAS**, Lulfs 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 January 31, 2008, Lulfs filed a voluntary 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. Lulfs agrees to indemnify and defend the City in the event of any lawsuit challenging the legality of the annexation of the Property and City agrees to cooperate with Lulfs as maybe required on such defense.

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

4. **Land Use.** Lulfs proposes to develop the Property with no more than 500 residential dwelling units, and up to 3,000,000 square feet of commercial, industrial, retail, professional office and/or institutional use (collectively, the "Intended Uses"); provided however, that Lulfs shall not commence vertical construction of any residential dwelling units prior to two (2) years after the Effective Date of this Agreement. Lulfs 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 to the Property City land use designations, the City shall process a rezoning application or applications for the Property to PUD (Planned Unit development) or to a zoning district or districts compatible with the approved land use designations 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, and portions thereof not yet platted with subdivided lots, 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 or portions thereof.

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 potable water, wastewater and reclaimed irrigation quality water, and represents that the City has sufficient existing or planned plant capacity to provide same to the Property to meet the needs of the Intended Uses. The City acknowledges that Lulfs may petition the City to 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. Lulfs shall have no right to own or operate a utility. The City agrees to provide potable water, wastewater and reclaimed irrigation quality water service to the Property with a capacity sufficient to accommodate the Intended Uses, so long as Lulfs pays all related fees and costs that are usual and customary for such capacities. Pursuant to and consistent with the City's Code of Ordinances and utility policies, on or before development of the Property, Lulfs shall install, or cause to be installed, at its sole cost and expense, the on-site and off-site potable water, wastewater and reclaimed irrigation quality water transmission facilities to serve 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 Lulfs pursuant to Section 63.22 of the City's Code of Ordinances. The parties agree that upon completion and acceptance by the City of the foregoing lines, such lines shall be transferred to the City to be owned and maintained by the City in perpetuity.

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 utility service agreement which provides for Lulfs' reservation of line and plant capacities and any credit due to Lulfs for over-sizing lines.

8. Stormwater.

a. The City and the CDD(s), when and if formed, may 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 Lulfs, shall be assessed for any stormwater utility assessment until that portion of the Property (i) has been platted for urban development, and (ii) is no longer used for agriculture or agricultural related purposes. The parties agree that Lulfs 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.

b. Lulfs agrees to cooperate in the creation of a master storm water system for the "NW Annexation Area", if requested by the City, to the extent Lulfs is reasonably able to do so; however, the foregoing shall not in any way delay development of the property. The "NW Annexation Area" is defined by the existing Urban Service Boundary to the west, Midway Road to the north, I-95 to the east and Glades Cut-off Road to the south. The Property is within the NW Annexation Area.

9. **Roadway Improvements**

a. Lulfs agrees to participate in a special assessment district or other similar funding mechanism for the improvement of Midway Road from I-95 west to Okeechobee Road and to pay its fair share cost of such improvements, based on anticipated impacts for development of the Property, less impact fees, if any, due to St. Lucie County for development on the Property.

b. Lulfs agrees to pay its fair share of the cost to, or at its expense to, construct two (2) lanes of the extension of McCarty Road between the northern and southern boundaries of the Property.

c. Lulfs agrees to pay its fair share of the cost to, or at its expense to, construct two (2) lanes of E/W 6 from Glades Cut-Off Road to the western boundary of the Property. Notwithstanding the foregoing, any construction of E/W 6 by Lulfs, west of its intersection with the extension of McCarty Road, will be timed to coincide with development of that portion of the Property, as the market conditions shall determine.

d. Lulfs agrees to pay its fair share of the cost to construct two (2) lanes of the extension of McCarty Road from the northern boundary of the Property north to E/W 5. Lulfs will have no obligation to obtain any right-of-way required for this portion of McCarty Road, nor will its ability to develop be hindered by the City's inability to obtain any required right-of-way.

e. Lulfs understands that the City desires right-of-way widths of 150 feet for arterials and 100 feet for collector roads with exclusive 10-foot City of Port St. Lucie utility and communication easements on each side of the right-of-way. Where physical or practical constraints do not prevent Lulfs from doing so, Lulfs will endeavor to establish right-of-way widths for applicable roads consistent with the City's desires. All right-of-way in the control of Lulfs shall be dedicated to the City of Port St. Lucie.

10. **Impact Fees.** The City agrees not to object to Lulfs' request, if made, for County transportation impact fee credits available pursuant to the construction of, and/or land dedications for, County-owned roads in excess of what is required for Lulfs' development. The City agrees that it may provide credit to Lulfs against impact fees imposed by the City for the value of public improvements constructed, or paid for, by Lulfs, for funding contributions to public improvements made by Lulfs in excess of what is required for Lulfs' development.

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 exemption"). The City agrees to support Lulfs' 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 of Public Facilities.** In addition to the amount due hereunder from Lulfs for utilities set forth in paragraph 7 above, Lulfs agrees to pay the City the aggregate amount of One Thousand Two Hundred Dollars (\$1,200.00) per dwelling unit approved pursuant to rezoning of the Property, or a portion of the Property, to Planned Unit Development (PUD) or other applicable zoning district(s), 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. Lulfs shall pay to the City the total amount due in accordance with the foregoing, calculated by multiplying the number of approved dwelling units by \$1,200.00, prior to approval of a site plan based on the number of units set forth therein.

13. **Affordable Housing.** The Port St. Lucie Comprehensive Plan does not require any affordable housing mitigation or contribution by Lulfs. However, Lulfs has offered to provide voluntary support for affordable housing by means of a local condition. Lulfs shall pay \$500 for each residential unit constructed on the property, payable at the time of building permit application, into an affordable housing trust fund or other dedicated account established by the City. The City shall determine how to disburse the moneys in such trust fund to encourage affordable housing through such means as (a) acquisition of land; (b) a program of down payment assistance; (c) prepaying of points for qualified homebuyers; (d) rehabilitation of existing affordable housing; (3) construction of new affordable housing by private developers or not-for-profit entities; or (f) other appropriate affordable housing strategies.

14. **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.

15. **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. Notwithstanding the foregoing, if Lulfs is prevented from annexing the Property into the City then this Agreement shall become null and void.

16. **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 Lulfs shall mean and refer only to Lulfs. The obligations of Lulfs 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, Lulfs shall thereafter be relieved of future obligations for such assigned obligations

hereunder.

17. **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.

18. **Recording.** Lulfs shall record this Agreement with the Clerk of the Circuit Court for St. Lucie County after the City executes the Agreement.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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

LULFS:

Lulfs Groves, LLLP  
7457 Park Lane  
Lake Worth, FL 33467  
Attn: Michelle Lancianese

With Copy To:

Bobby Poyner  
15789 Cypress Lane  
Wellington, FL 33414

and

Robert N. Klein, Esq.  
Klein & Dobbins, P.L.  
805 Virginia Avenue  
Suite 25  
Fort Pierce, FL 34982

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



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; Lulfs 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 9<sup>th</sup> day of June, 2008.

ATTEST  
Laura A. Pulipò  
City Clerk

CITY:  
CITY OF PORT ST. LUCIE  
By: Patricia Christensen  
Patricia Christensen, Mayor

Date: 6/9/08

APPROVED AS TO FORM AND  
CORRECTNESS:

Pam E. B. Hakim  
City Attorney

LULFS:

LULFS GROVES, LLLP, a Florida limited liability limited partnership

By: LULFS GROVES, INC., a Florida corporation, its General Partner

By: Brian Lulfs  
Brian Lulfs, President

Date: 5-22-08

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 22 day of May, 2008, by BRIAN LULFS, as President of Lulfs Groves, Inc., a Florida corporation, General Partner of LULFS GROVES, LLLP, a Florida limited liability limited partnership. He  personally appeared before me,  is personally known to me,  or has produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Notary: Carol A. Marrero  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida Carol A. Marrero  
My commission expires \_\_\_\_\_

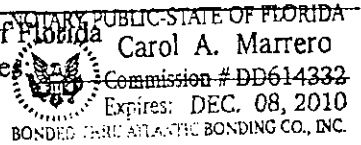


Exhibit "A"

Legal Description for Lulfs Groves

Official Records Book 783, Page 758

That part of Section 20, Township 36 South, Range 39 East, lying north and east of the Diversion Canal, excepting therefrom that part thereof conveyed by Florida Cattle Company, a corporation, to Abraham Slot, et al., by that certain Warranty Deed recorded in Deed Book 108, Page 315, Public Records of St. Lucie County, Florida.

All that part of the southwest quarter of Section 21, Township 36 South, Range 39 East, lying north and west of the Florida East Coast Railway Right-of-Way, excepting therefrom a strip of land 200 feet wide located in the northeast quarter of the southwest quarter of Section 21, Township 36 South, Range 39 East, lying adjacent to and north and west of the Florida East Coast Railway.

All of that part of Section 29, Township 36 South, Range 39 East, lying north and west of the Florida East Coast Railway and north and east of the Diversion Canal:

The northwest quarter of Section 21, Township 36 South, Range 39 East, St. Lucie County, Florida. Less and except right-of-way for public roads, drainage canals and Florida East Coast Railway and also less and except the portion of the above described land sold to the Florida Power and Light Company as recorded in O. R. Book 209, Page 2744; Public Records of St. Lucie County, Florida.

Lying north of a line described as:

Begin at the northeast corner of the northwest 1/4 of Section 21, Township 36 South, Range 39 East, St. Lucie County, Florida, run south  $0^{\circ}19'21''$  west, along the 1/4 section line 2074.21 feet; thence run south  $44^{\circ}46'01''$  west a distance of 846.19 feet to the Point of Beginning, thence run south  $89^{\circ}22'21''$  west a distance of 2047.67 feet, thence run north  $89^{\circ}27'12''$  west a distance of 4900 feet more or less to the easterly line of Central and South Florida Flood Control District Canal Number C-24.

Also described as:

Metes and bounds legal description.

A parcel of land lying in Sections 20 and 21, Township 36 South, Range 39 East, St. Lucie County, Florida, being more particularly described as follows:

Beginning at the north one - quarter corner of said Section 21, proceed south 00°18'12" west, along the north - south one- quarter section line of said Section 21, a distance of 2003.16 feet to a point on the westerly right of way line of State Road 709 ( Glades Cut-Off Road) a varying width right-of-way as recorded in Deed Book 134, Page 337, Public Records of St. Lucie County, Florida; thence south 44°45'38" west, along said westerly right-of-way line and departing said north-south one-quarter section line, a distance of 947.22 feet; thence south 89°22'21" west, departing said westerly right of way line, a distance of 1977.66 feet; thence north 89°27'12" west, a distance of 4895.45 feet to a point on the northerly right-of- way line of the C-24 Canal as described in Official Records Book 243, Page 655, Public Records of St. Lucie County, Florida; thence north 43°03'50" west, along said northerly right-of-way line, a distance of 87.50 feet; thence north 01°10'43" west, departing said northerly right-of-way line, a distance of 2605.61 feet to a point on the north line of said Section 20; thence south 89°37'58" east, along said north line, a distance of 2367.08 feet to the north one-quarter corner of said Section 20; thence south 89°57'57" east, continuing along said north line, a distance of 2645.13 feet to the northeast corner of said Section 20, also being the northwest corner of said Section 21; thence south 89°57'57" east, along said north line, a distance of 2651.53 feet to the Point of Beginning.

Said parcel containing 464.5 acres, more or less.