

This instrument was prepared under the direction of:
City of Port St. Lucie City Attorney's Office
Prepared by:
CITY OF PORT ST. LUCIE
City Attorney's Office
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984

(Space above this line reserved for recording office use only)

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2024, by and between the **City of Port St. Lucie, a Florida municipal corporation**, whose address is 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida 34984 ("**City**"), and **ABC Liquors Inc., a Florida corporation**, whose address is 8989 S. Orange Ave., Orlando Florida 32824 ("**ABC**"). The City and ABC may be referred to individually as a "Party" or collectively as "the Parties."

RECITALS

WHEREAS, ABC is the fee simple owner of that certain real property and improvements located at 2091 SW Gatlin Blvd., Port St. Lucie, Florida 34953 with tax parcel identification number 3420-650-1202-000-9 and as more particularly described on the attached **Exhibit "A"** (the "**ABC Property**"); and

WHEREAS, City owns that certain real property more particularly described on the attached **Exhibit "B"**, which includes a culvert pipe and other stormwater drainage infrastructure and ancillary improvements ("**City Property**"); and

WHEREAS, ABC, through its predecessor in title, reserved a drainage, utilities and ingress/egress easement over, across, and through the City Property, as indicated in the City Property deed recorded in Book, 880 Page 583 of the Official Records of St. Lucie County ("**Reserved Easement**"); and

WHEREAS, during the construction of the ABC store on the ABC Property, City contacted ABC, and advised ABC that it was required to repair a damaged culvert pipe on the City Property and within the Reserved Easement because the culvert pipe was necessary to utilize the Reserved Easement to access to the ABC site; and

WHEREAS, ABC, through its counsel, corresponded with City, taking the position that the request was improper; and

WHEREAS, the City, through its counsel, denied its request was improper; and

WHEREAS, following subsequent communications and correspondence with City, ABC designed, permitted, and constructed one-hundred and sixty-eight (168) linear feet of a new culvert pipe and restored the surrounding area at a cost of fifty-six thousand one hundred eighty-six dollars and twenty cents (\$56,186.20) under protest, asserting that the City was responsible for replacing the old culvert pipe and the costs ABC incurred related to replacing the old culvert pipe, and with a complete reservation of rights to seek remuneration for the costs of doing so (the "Dispute"); and

WHEREAS, the Parties subsequently engaged in settlement negotiations, and ABC and the City agreed to settle the Dispute as set forth below in more detail.

NOW, THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated by reference as material provisions of this Agreement.

2. **Settlement.**

a. **Waiver and Release.** Soley with regard to the Dispute, ABC on behalf of itself, its successors and assigns, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, and all persons acting by, through, under, or in concert with them, and each of them, hereby releases and discharges the City, together with its departments, successors, insurers, assigns, agents, present and former employees, officers, appointed and elected officials (both in their individual/personal capacities), attorneys, representatives, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, known or unknown, which ABC has, or

may have had, against the City, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the Dispute.

Solely with regard to the Dispute, the City, together with its departments, successors, insurers, assigns, agents, present and former employees, officers, and appointed and elected officials (both in their individual/personal capacities hereby releases and discharges ABC on behalf of itself, its successors and assigns, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, and all persons acting by, through, under, or in concert with them, and each of them, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, known or unknown, which the City has, or may have had, against ABC, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the Dispute.

This Agreement resolves any claim for relief related to the Dispute that has or could have been alleged by ABC against the City, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, costs, and attorneys' fees related to or arising from the Dispute.

b. **Maintenance of Culvert Pipe.** ABC agrees to enter into and provide to the City an easement maintenance agreement ("Maintenance Agreement") in substantially the same form as attached in **Exhibit "D"** within ten (10) calendar days of the Parties executing this Agreement to be held in trust by the City and not to be effective unless and until recorded in the public records contingent upon payment by the City to ABC of the sums required in this Agreement per Section 2(c) below.

c. **Payment.** In consideration of ABC's general release and waiver of claims against the City, and ABC's execution of the easement agreement, the City shall pay to ABC the total sum of **Twenty-Eight Thousand Ninety-three Dollars and Ten Cents (\$28,093.10)** within thirty (30) calendar days of the Effective Date of this Agreement.

3. **Representations and Warranties.**

a. **No Outstanding or Known Future Claims or Causes of Action.** Each Party represents and warrants that it has not filed with any governmental agency or court any type of action or report against the other Party, and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the release claims set forth in Section 2 above.

b. **No Assignment or Transfer of Claims.** Each Party represents and warrants that they are the rightful owner of and have not encumbered, assigned, or transferred, nor will they in the future attempt to encumber, assign, or transfer, any claim for relief or cause of action released in Section 2 above.

c. **Parties' Authority to Settle.** The Parties represent and warrant that they have full authority to enter into, deliver, and perform under this Agreement, and that all acts and actions have been taken to grant such authority, and that no third-party consent, which has not already been obtained, is required.

d. **Signatories' Authority to Execute Agreement.** Each signatory to this Agreement represents and warrants that they are authorized to execute this Agreement on their Party's behalf.

e. **No Violation of By-laws, Covenants, or Restrictions.** Each Party represents and warrants that its execution of this Agreement is not in violation of any By-law, Covenants, or other restrictions placed upon them by their respective entities.

4. **Miscellaneous.**

a. **No Admission.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by either Party of any liability or unlawful conduct of any kind. The Parties make this Agreement solely to resolve the Dispute, and the Parties are further desirous of resolving the Dispute without the burden, expense, and uncertainties involved in any further and/or potential litigation.

b. **Taxes; Indemnification.** ABC shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by any federal, state, local, or regional taxing authority as a result of the City's payment of the settlement amount to ABC under this Agreement. ABC understands that the City has not made, and ABC does not rely on, any representations regarding the tax treatment of the sums paid under this Agreement. ABC further agrees to indemnify and hold the City harmless in the event that any governmental

taxing authority asserts against the City for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the settlement amount in this Agreement.

c. **Entire Agreement.** This Agreement, including the recitals and Exhibits, including but not limited to the Maintenance Agreement, constitutes the entire agreement and understanding between the Parties and supersedes all prior negotiations or agreements, proposed or otherwise, written, or oral, concerning the Dispute. Each Party acknowledges that in entering into this Agreement, they have not relied on any promise, representation, or warranty not contained in this Agreement.

d. **Modification.** This Agreement may be modified only by an instrument in writing, signed by the Parties. This Agreement may not be modified orally.

e. **No Sole Drafter.** The Parties agree that they, in consultation with their attorneys, have jointly prepared and approved the language and provisions of this Agreement, and that should any dispute arise concerning the interpretation of this Agreement or any provision herein, no Party shall be deemed the sole drafter, nor shall any such language be presumptively construed in favor or against any Party.

f. **Headings.** The titles and headings to the articles and/or sections of this Agreement are inserted for the convenience of reference only and shall not affect the construction of any provision of this Agreement.

g. **Severability.** In the event any one of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect that invalidity, illegality, or unenforceability shall not affect any other provision of Agreement.

h. **Enforcement.** Nothing in this Agreement shall be construed as, or constitute, a release of any Party's right to enforce the terms of this Agreement or the Maintenance Agreement.

i. **Competency.** No signatory or Party to this Agreement is a minor or incompetent within the meaning of the laws of the State of Florida; nor is any signatory or Party to this Agreement under the influence of alcohol, prescription medications, other drugs, or any other substances that would impair his/her exercise of judgment; nor has any signatory or Party been coerced or placed under duress so as to inhibit that person's free will or knowledge and understanding of the terms of this Agreement.

j. **Choice of Law; Venue.** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Florida. In the event it is necessary for either Party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. 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 paragraph shall survive the termination or expiration of this Agreement.

k. **Effective Date.** This Agreement shall not become effective and binding until it is fully executed by the Parties and, if required, authorized by their respective legislative and/or corporate bodies ("Effective Date").

ALL PARTIES CERTIFY THAT THEY HAVE READ THIS AGREEMENT AND FULLY UNDERSTAND AND AGREE TO EACH OF THE ABOVE TERMS, CONDITIONS, AND PROVISIONS.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed this Agreement as of the date(s) set forth below.

[SIGNATURES FOLLOW]

ABC LIQUORS INC., a Florida corporation

By: Charles E. Bales III

Printed Name: Charles E. Bales III

Title: PRESIDENT & CEO

STATE OF FLORIDA)

COUNTY OF Orange)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 20th day of August, 2024 by Charles E. Bales III as President + CEO on behalf of ABC LIQUORS INC., a Florida corporation who is personally known to me, or who has produced the following identification _____

Robin L. Martin

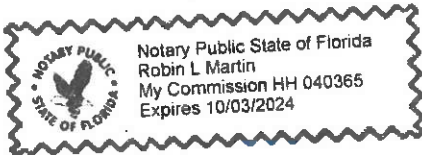
Signature of Notary Public

Print Name: Robin L. Martin

Notary Public, State of Florida

My Commission expires 10/03/2024

NOTARY SEAL/STAMP



**CITY OF PORT ST. LUCIE, a Florida
municipal corporation**

By: _____
Jesus Merejo, City Manager

STATE OF FLORIDA)

COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2024 by _____ as _____ on behalf of the **City of Port St. Lucie, Florida, a Florida municipal corporation** who is [] personally known to me, or who has [] produced the following identification _____.

NOTARY SEAL/STAMP

Signature of Notary Public
Print Name: _____
Notary Public, State of _____
My Commission expires _____

ATTEST:

Sally Walsh, City Clerk

APPROVED AS TO FORM:

By: _____

City Attorney

EXHIBIT "A"

Description of ABC Property

All of Lots 1 and 2, together with a portion of Lots 17, 18, 19, 20, 21 and a portion of an abandoned sixty five foot drainage right-of-way all lying within Block 1714, PORT ST. LUCIE SECTION THIRTY ONE, according to the Plat thereof as recorded in Plat Book 14, pages 22 and 22A through 22G, of the Public Records of St. Lucie County, Florida, being more particularly described as follows:

Beginning at the Northwest corner of said Lot 2, Block 1714, thence N 87 degrees 37' 06" E a distance of 7.43 feet to a point of curvature of a curve concave to the North; thence Easterly along the arc of said curve having a radius of 130.00 feet, through a central angle of 23 degrees 38' 40" a distance of 53.65 feet to a point of tangency; thence N 63 degrees 58' 26" E, a distance of 63.55 feet to a point of curvature of a curve concave to the Southwest; thence Easterly and Southerly along the arc of said curve having a radius of 25.00 feet, through a central angle of 87 degrees 49' 34", a distance of 38.32 feet to a point of reverse curve of a curve concave to the East; thence Southeasterly along the arc of said curve having a radius of 1425.00 feet, through a central angle of 6 degrees 08' 27", a distance of 152.73 feet; thence S 55 degrees 39' 33" W along a radial line, a distance of 40.00 feet to a point on a curve of curve concave to the East from which a radial line bears N 55 degrees 39' 33" E; thence Southeasterly along the arc of said curve having a radius of 1465.00 feet, through a central angle of 3 degrees 59' 15" a distance of 101.95 feet; thence S 87 degrees 37' 06" W, a distance of 439.97 feet; thence N 02 degrees 22' 54" W, a distance of 90.0 feet; thence N 87 degrees 37' 06" E, a distance of 192.91 feet; thence N 02 degrees 22' 54" W, a distance of 125.00 feet to the Point of Beginning.

TOGETHER WITH that certain 50 foot easement as set forth in that certain Instrument recorded in Official Record Book 880, page 583, of the Public Records of St. Lucie County, Florida.

EXHIBIT "B"

Description of City Property

From the point of Beginning, which is the Northwest corner of Lot 17, Block 1714, PORT ST. LUCIE, SECTION THIRTY ONE, according to the plat thereof, recorded in Plat Book 14, pages 22, 22-A through 22-G, St. Lucie County, Florida public records; run South $02^{\circ}22'54''$ East a distance of 65.0 feet to a point; thence run North $87^{\circ}37'06''$ East a distance of 310.0 feet to a point; thence run North $02^{\circ}22'54''$ West a distance of 40 feet to a point; thence run South $87^{\circ}37'06''$ West a distance of 270.0 feet to a point; thence run North $02^{\circ}22'54''$ West a distance of 25.0 feet to a point; thence run South $87^{\circ}37'06''$ West a distance of 40 feet to the Point of Beginning.

Subject to a 50 ft. wide easement, with said easement comprising the east 50 ft. of the west 191 ft. as measured perpendicular to the west line of the above described drainage easement, which is hereby reserved by the Grantor for purposes of drainage, ingress, egress and utilities.

PARCEL 3

EXHIBIT "C"

Description of Easement Area

EXHIBIT "D"

Maintenance Agreement