

FIRST AMENDMENT TO ANNEXATION AGREEMENT

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT (this “**Amendment**”) is made this _____ day of _____, 202____ by and between 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**”). In the event of any conflict or inconsistency between the terms and provisions of the Agreement (as defined below) and this Amendment, the terms and provisions of this Amendment shall be construed to control and prevail.

WITNESSETH:

WHEREAS, Lulfs and the City entered into that certain Annexation Agreement, recorded on June 13, 2008 in Official Records Book 2984, Page 828 of the public records of St. Lucie County, Florida (the “**Agreement**”) to voluntarily annex into the City certain property in St. Lucie County, Florida (the “**County**”), as more particularly described therein (the “**Property**”); and

WHEREAS, Lulfs desires to modify the Intended Uses of the Property contemplated by the Agreement and the parties desire to formalize those changes; and

WHEREAS, Lulfs has voluntarily committed to expanding the various benefits that the development of the Property will provide to the City and the public, and the parties desire to formally memorialize those benefits as set forth herein; and

WHEREAS, Lulfs and the City have agreed to modify the Agreement as specified herein.

NOW, THEREFORE, for valuable consideration, including the mutual promises and other considerations contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and Lulfs agree as follows:

1. **Recitals**. The above recitals are affirmed as being true and correct and are hereby incorporated herein by reference.
2. **Modification of Land Use Restrictions**. Paragraph 4 of the Agreement is hereby deleted, and the following is substituted in lieu thereof:

4. **Land Use**. Lulfs proposes to develop the Property with a mix of residential, retail, office, and institutional uses as set forth more specifically in Table A.1 (“**Intended Uses**”). Lulfs has submitted a request to amend the City’s Comprehensive Plan to assign land use designations to the Property to permit it to be developed with the Intended Uses. Specifically, Lulfs has submitted a land use amendment to change the future land use designations for the Property from 90 Acres of Commercial Service/Light Industrial/Heavy Industrial (CS/LI/HI), 311.5 Acres of Commercial Service/Light Industrial, Residential, Office, and Institutional (CS/LI/ROI), and 63 Acres of General Commercial/ Residential, Office, and Institutional (CG/ROI) to 398.23 Acres of Low Density Residential (RL), 33.22

Acres of General Commercial/Commercial Service/Institutional (CG/CS/I), 13.18 Acres of Open Space Recreation (OSR), and 19.87 Acres of Open Space Conservation (OSC). The City shall process said application in a timely manner in accordance with applicable statutes, ordinances and other regulations, and subject to Paragraph 6.

The overall distribution of the allowable mix of uses density and intensity shall conform to Table A.1. In no event will the Property exceed the maximum density and intensity established in Table A.1:

Table A.1 - Distribution Mix of Uses/Density and Intensity Proposed (Overall)

Use	Square Feet/Units
Retail	100,000 s.f. - 200,000 s.f.
Office	50,000 s.f. - 150,000 s.f.
Institutional	15,000 s.f. - 50,000 s.f.
Residential	up to 1,350 units

3. **Modification of Zoning Provision.** Paragraph 5 of the Agreement is hereby deleted, and the following substituted in lieu thereof:

5. **Zoning.** The City agrees that upon an amendment to the land use designation for the Property consistent with Paragraph 4 hereof, it shall process a rezoning application for the Property to PUD (Planned Unit Development) 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 portions of the Property not yet platted with subdivided lots may be used for agriculture or agricultural related purposes. At such time that a development permit for non-agricultural development is issued for a portion of the property, or a plat establishing subdivided lots for nonagricultural development is recorded in the Public Records of St. Lucie County, Florida for a portion of the Property, that portion of the Property so platted or permitted shall no longer be used for agriculture or agricultural related purposes.

Additionally, Lulfs recognizes that the Intended Use is near a wastewater treatment plant and to lessen impacts of the Intended Uses on adjacent properties and ensure compatibility of land uses within the PUD and adjacent to the PUD the following buffer requirements will be contained in the PUD reviewed by the City Council for consideration.

Linear Buffer.

- a. Lulfs will create a linear buffer along the northern boundary of the Property west of the proposed extension of McCarty Road (the "**Linear Buffer**"). The Linear Buffer shall be two hundred feet (200') wide, with a future land use

designation of Open Space Conservation (OSC). Lulfs shall construct within the Linear Buffer a stabilized, multi-use path (the “**Path**”), to be constructed in such a way as to permit the use of the path by the public. Lulfs shall ensure that the Path will be connected to the planned sidewalks and multi-use pathways to be constructed throughout the Property’s development. The Linear Buffer is intended to insulate future residents and the public from the City’s wastewater treatment plant located north of the Property and to serve as an upland conservation and recreation area.

b. Concurrent with Lulfs’ submission of the first landscape plan for any subdivision plat within the Property, Lulfs shall submit a supplemental native planting plan for the Linear Buffer (the “**Planting Plan**”). The Planting Plan shall identify and define any open areas within the Linear Buffer that do not contain existing native vegetation and require additional native planting (the “**Open Areas**”) and shall detail the native vegetation that shall be planted in the Open Areas within the Linear Buffer, as well as professional removal of invasive species prior to planting native species.

c. Once construction and planting of the Linear Buffer and Path have been completed, the Linear Buffer containing the Path shall be turned over to, and maintained by, a homeowner’s association or community development district (collectively, the “**CDD or Association**”). Lulfs has voluntarily agreed to convey an easement over the Path, permitting public access to and use thereof, to the City, in form agreeable to the City, and that Lulfs will record the easement in the Public Records of St. Lucie County upon the completion of the Path.

d. The Linear Buffer shall be planted in its entirety in accordance with the Planting Plan with the first subdivision plat for the area north of Astoria Blvd and west of McCarty Road. The Path shall be constructed in phases concurrently with the Northwest Berm as more specifically set forth below. In the event that the CDD or Association, as applicable, does not maintain the Linear Buffer, the City may give the CDD or Association, as applicable, thirty (30) days prior written notice of the City’s intent to maintain same. If the CDD or Association, as applicable, does not commence such maintenance within thirty (30) days of receipt of such notice, and does not diligently complete such maintenance within a reasonable amount of time not to exceed ninety (90) days after receipt of such notice, then the City may, at the City’s option, complete such maintenance and bill the CDD or Association, as applicable, for the City’s out-of-pocket cost plus 10% of the out-of-pocket cost, for such maintenance, and the CDD or Association, as applicable, shall pay the City such bill within ten (10) business days. The foregoing notice and cure period is inapplicable to emergency circumstances, and the City may take all actions necessary to remediate such emergency circumstances.

Berms. Concurrent with Lulfs’ development of subdivision plats along the northern and southern boundaries of the Property or adjacent to the Linear Buffer, Lulfs shall construct fifty-foot (50’) wide landscape berms (the “**Berms**”), the

locations of which are shown in **Exhibit “A”**, attached hereto and made a part hereof. The Berms shall serve to further insulate the Property from development to the north and south of the Property and from the wastewater treatment plant.

For each section of the Berms to be constructed, Lulfs shall submit a construction plan and a landscape plan (collectively, the “**Berm Section Plans**”) for such section of the Berms. Each section of the Berms shall be no less than six feet (6’) in height and shall be increased to eight feet (8’) where feasible, based upon final topographic and survey information in the location of each section of the Berms. Lulfs shall be required to obtain approval of each Berm Section Plan concurrently with the landscape plan for the corresponding subdivision plat. The Berms shall be constructed as follows:

a. Northeast Berm. The “**Northeast Berm**” shall be that portion of the northern berm to be built east of McCarty Road on Parcel ID Number 3321-200-0000-000-9 and immediately south of parcel ID 3302-701-0003-010-2 (the parcel containing the City’s access road between the City’s wastewater treatment plant and Glades Cut Off Road). The construction and landscaping of the Northeast Berm shall be included in the bonded improvements for the first plat within the Property, and shall be constructed in its entirety concurrently with the infrastructure for such plat.

b. The Northwest and South Berms. As shown in **Exhibit “A”**, west of McCarty Road the north berm will be located immediately south of the Linear Buffer (the “**Northwest Berm**”), and the south berm shall span from east to west along a portion of the south boundary of the Property adjoining tax parcel ID # 3320-701-0013-000-8 (the “**South Berm**”). The construction and landscaping of the Northwest Berm and the South Berm shall occur in sections, concurrently with the construction of infrastructure for adjacent plats. Each section of the Northwest Berm and the South Berm shall be included in the bonded improvements for the adjacent plat, and shall be constructed concurrently with the infrastructure for such plat. Along with the construction of each section of the Northwest Berm, the adjacent section of the Path within the Linear Buffer shall also be constructed. Therefore, the bonding for each section of the Northwest Berm shall also include the cost of construction of the adjacent section of the Path.

In the event that the CDD or Association, as applicable, does not maintain the North Berm, the City may give the CDD or Association, as applicable, thirty (30) days prior written notice of the City’s intent to maintain same. If the CDD or Association, as applicable, does not commence such maintenance within thirty (30) days of receipt of such notice, and does not diligently complete such maintenance within a reasonable amount of time not to exceed ninety (90) days after receipt of such notice, then the City may, at the City’s option, complete such maintenance and bill the CDD or Association, as applicable, for the City’s out-of-pocket cost,

plus 10% of the out-of-pocket cost, for such maintenance, and the CDD or Association, as applicable, shall pay the City such bill within ten (10) business days. The foregoing notice and cure period is inapplicable to emergency circumstances, and the City may take all actions necessary to remediate such emergency circumstances.

4. **Modification of No Waiver of Police Power Provision.** Paragraph 6 of the Agreement is hereby deleted, and the following substituted in lieu thereof:

6. **No Waiver of Police Power.** Lulfs agrees that this Agreement does not authorize approval of any specific land use amendment, development order, subdivision, site plan proposal or other development related permit. However, Lulfs agrees that minimum standards in this Agreement shall guide and bind the development of the Property. As provided above and otherwise herein, the parties recognize and agree that certain provisions of this Agreement will require the City and/or its board, departments or agencies, acting in their governmental capacity, to consider certain changes to 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 or regulations, 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 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.

5. **Modification of Stormwater Management Provision.** Paragraph 8 of the Agreement is hereby deleted, and the following substituted in lieu thereof.

8. **Stormwater.** The Parties agree that Lulfs shall be responsible for its stormwater permitting with respect to the Property. As each development parcel is designed and constructed, Lulfs shall also design and construct a stormwater management system within such development parcel to retain the required volumes of water consistent with South Florida Water Management District ("SFWMD") criteria for flood control. The stormwater management system shall be designed and constructed to provide stormwater treatment and attenuation/storage, in accordance with SFWMD requirements, for the ultimate build-out of all public rights-of-way located within the Property. All discharged water from the surface water management system shall meet the water quality standards of the SFWMD, any other applicable agencies, and the Florida Administrative Code, including but not limited to Code Rule 62-302 at the time of permitting of such development parcel.

6. **Modification of Roadway Improvements Provision.** Paragraph 9 of the Agreement is hereby deleted, and the following is substituted in lieu thereof:

9. **Right-of-Way Conveyance and Roadway Improvements**

a. **Roadway Improvements (City)**

- i. Lulfs agrees to design and construct, at its expense, two (2) on-site travel lanes of the extension of McCarty Road between the northern boundary of the Property and the connection with Burnside Street at the southern boundary of the Property. The typical section shall be a 2-lane roadway and configured to accommodate a future 4-lane roadway.
- ii. Lulfs agrees to design and construct, at its expense, two (2) on-site travel lanes of E/W 6 (Astoria Blvd.) from Glades Cut-Off Road to the western boundary of the Property. The typical section shall be a 2-lane divided roadway and configured to accommodate a future 4-lane roadway.
- iii. In conjunction with Lulfs rezoning pursuant to Paragraph 5 of this Agreement, details and a timeframe for design and construction (as applicable) of the roadways outlined in sections 9(a)(i)-(ii) will be established through a Developer's Agreement between Lulfs and the City.
- iv. The City shall maintain and enforce appropriate standards and specifications for the design and construction of public and semi-public services in order to promote cost effectiveness and quality control consistent with all applicable federal, state, regional, and local standards, and ensure the improvements are constructed consistent with City design standards.

b. **Roadway Improvements (County)**

- i. Lulfs will agree to design and construct, or contribute its proportionate 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 and improvements to a section of Glades Cut-Off Road. Lulfs' proportionate share of such improvements will be determined pursuant to a mutually agreed upon methodology established through a Developer's Agreement, or similar agreement, between Lulfs and the County at the time of rezoning pursuant to Paragraph 5 of this Agreement.
- ii. Lulfs will have no obligation to obtain any right-of-way required for the extension of McCarty Road from the northern boundary of the Property, north to E/W 5. Lulfs ability to develop will not be hindered by the County's inability to obtain any required right-of-way for the extension of McCarty Road.

c. Right-of-Way Conveyance (City)

- i. Lulfs agrees to convey the right-of-way necessary for the extension of McCarty Road, as a collector roadway¹ between the northern boundary of the Property and connection with Burnside Street at the southern boundary of the Property.
- ii. Lulfs agrees to convey the right-of-way necessary for E/W 6 (Astoria Blvd.) as an arterial roadway from Glades Cut-off Road to the western boundary of the Property.
- iii. In conjunction with Lulfs rezoning, pursuant to Paragraph 5 of this Agreement, details and a timeframe for conveyance of the rights-of-way outlined in sections 9(c)(i)-(ii) will be established through a Developer's Agreement between Lulfs and the City. The exact amount of land area for the conveyances shall be calculated at the time of conveyance. However, Lulfs understands that the Developer's Agreement will contain, in addition to other provisions, provisions requiring the rights-of-way to be conveyed to the City free and clear of all liens and encumbrances, consistent with Paragraph 31 of this Agreement, and a requirement that Lulfs ensure the rights-of-way are a minimum width of one hundred and thirty-five feet (135') for arterials and one hundred feet (100') for collector roads with exclusive ten foot (10') City of Port St. Lucie utility and communication easements on each side of each right-of-way.

d. Acquisition of Third-Party Property Interests

With respect to all construction of road improvements and conveyance of road right-of-way required by this Paragraph 9, Lulfs will have no obligation to obtain or acquire any real property or road right-of-way outside of the Property from any third party with respect to any road improvement specified herein. However, to the extent that the City or County must acquire said real property interest, Lulfs will be responsible for its fair share of the acquisition costs. Lulfs' fair share will be determined pursuant to a mutually agreed upon methodology established through a Developer's Agreement between Lulfs and the City at the time of rezoning pursuant to Paragraph 5 of this Agreement.

7. Modification of Impact Fees Provision. Paragraph 10 of the Agreement is hereby deleted.

8. Modification of Payment of Public Facilities Provision. Paragraph 12 of the Agreement is hereby deleted.

¹ To the city road standards for the portion within the City's jurisdiction.

9. **Modification of Affordable Housing Provision.** Paragraph 13 of the Agreement is hereby deleted, and the following is substituted in lieu thereof:

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. Lulfs agrees to pay \$250 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 ("Affordable Housing Donation"). 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 points for qualified homebuyers; (d) rehabilitation of existing affordable housing; (e) construction of new affordable housing by private developers or not-for-profit entities; and (f) other appropriate affordable housing strategies.

Furthermore, Lulfs agrees and acknowledges that:

- a) it has voluntarily determined to donate the Affordable Housing Donation to the City; and
- b) the City did not require the Affordable Housing Donation in exchange for the right for Developer to develop its own property, including but not limited to the Property; and
- c) the conveyance of the Affordable Housing Donation does not constitute an exaction; and
- d) the value of the Affordable Housing Donation and all other costs relating to Affordable Housing Donation are a donation to the City; and
- e) it is not entitled, waives any right to, and will not seek reimbursement or impact fee credits for expenses it incurs relating to the conveyance or value of the Affordable Housing Donation; and
- f) Section 163.31801(5)(a), Florida Statutes is inapplicable to the Affordable Housing Donation.

10. **Modification of Successors and Assigns Provision.** Paragraph 16 of the Agreement is hereby deleted, and the following is substituted in lieu thereof:

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. If Lulfs, or its successors or assigns, sells or conveys substantially all of the Property, it may assign its rights and obligations hereunder to the purchaser thereof. The obligations and entitlements hereunder may also be assigned in whole or in part to one or more property owners associations or CDDs, but such assignment shall not release Lulfs, or its successors or assigns, from such obligations and entitlements until Lulfs, or its successors or assigns, sell the last residential unit within the Property, and it shall not be released from any breach or violation of its obligations existing prior to such assignment.

11. **Modification of Attorneys' Fees Provision.** Paragraph 17 of the Agreement is hereby deleted in its entirety.

12. **Addition of Conveyance of Property Paragraph.** The following Paragraphs, specifying property provided by Lulfs to the City and to the public, are hereby added to the Agreement:

25. **Conveyance of Park Property.** 12 Net Usable Acres of the Property will be conveyed to the City, free of all easements (other than those given to the City's Utility Services Department), rights-of-way, obligations that would inhibit those 12 net useable acres from its intended use as a public park site (the "**Park**"), wetlands and environmentally protected areas, provided that the Park shall be subject to a use restriction that limits the use of such parcel to that use. The Park will be conveyed to the City before a building permit is issued for the 100th residential dwelling unit within the Property or two years from the approval of the project, whichever is sooner, unless otherwise agreed to in writing by the City.

26. **Conveyance of Donation Property.** Lulfs desires to voluntarily donate property as follows:

- a) Five coterminous Net Usable Acres of the Property will be donated as follows (the "**Civic Site**"): (i) two and a half (2.5) acres will be conveyed to the St. Lucie County Fire District (the "**District**"), upon the District's agreement to accept said site, and upon agreement as to location agreed by Lulfs and the District, and with connections for water and sewer to be provided by Lulfs at a location to be agreed upon by Lulfs and the District, and (ii) two and a half (2.5) acres will be conveyed to the City, at a location to be determined by Lulfs and the City and subject to appropriate use restrictions; and
- b) Easement over the Path to the City or any related improvements, as outlined in Paragraph 5 (collectively the items listed under (a) and (b) are referred to as the "Donation Property").

The Civic Site will be conveyed to the City or District² (as applicable) before a building permit is issued for the 100th residential dwelling unit within the Property or two years from the approval of the project, whichever is sooner, unless otherwise agreed to in writing by the City or District (as applicable).

Furthermore, Lulfs agrees and acknowledges that:

- a) it has voluntarily determined to donate the Donation Property to the City; and
- b) the City did not require the Donation Property in exchange for the right for Developer to develop its own property, including but not limited to the Property; and
- c) the conveyance of the Donation Property does not constitute an exaction; and
- d) the value of the Donation Property and all other costs relating to the conveyance of the Donation Property including, but not limited to surveys, attorneys' fees, costs, title expenses, and customary closing costs are a donation to the City; and
- e) it is not entitled, waives any right to, and will not seek reimbursement or impact fee credits for expenses it incurs relating to the conveyance or value of the Donation Property; and
- f) Section 163.31801(5)(a), Florida Statutes is inapplicable to the Donation Property.

13. Utility Systems Department Considerations. The following Paragraphs, specifically addressing issues relating to water, wastewater and reclaimed water utility service, are hereby added to the Agreement:

26. Utility Easements. Lulfs shall provide non-exclusive utility easements for the future construction of potable water, wastewater, and reclaimed water-related infrastructure for the benefit of the Port St. Lucie Utility Systems Department (the “**USD**”), pursuant to a utility infrastructure plan subject to the review and approval of the USD (the “**Infrastructure Plan**”). The Infrastructure Plan may include oversized utility lines as needed by the USD to serve future development (subject to agreed-upon oversizing credits to Lulfs), in addition to the infrastructure required to serve the Property.

27. Compensation for Gate Construction. Lulfs shall pay One Hundred and Fifty Thousand Dollars (\$150,000.00) (the “Gate Fee”) to the USD for the installation of a motorized gate and/or system of gates with remote connectivity, design and commercially reasonable features at the sole but reasonable discretion of the USD (the “**Gate**”), preventing unauthorized traffic from McCarty Road from accessing the Parcel. Full payment of the Gate Fee shall be paid to the USD within 180 days of the date of approval

² If the District does not agree to accept the site the conveyance timeframe herein is no longer applicable.

of the PUD rezoning of the Property. Upon completion of the installation of the Gate or payment for same by the USD, whichever occurs later (but no later than 60 days thereafter), the USD shall deliver invoices to Lulfs evidencing the total cost of the installation of the Gate. If the total cost of the installation of the Gate is less than \$150,000, then together with the delivery of the foregoing invoices to Lulfs, the USD shall also deliver a payment to Lulfs refunding the difference between the actual cost to install the Gate and \$150,000. If the Gate and/or system of gates is not installed within twenty-four (24) months of the portion of McCarty Road adjacent to the Parcel being open to the public, the payment shall be refunded to Lulfs.

28. Reclaimed Water. With respect to any development within the Property, Lulfs shall enter into a reclaimed water agreement with the USD, providing that such development shall accept no less than the same volume of reclaimed water as it produces in wastewater. Lulfs may allocate the use of the accepted volume of reclaimed water within and amongst the Intended Uses, in Lulfs' sole discretion.

29. Wastewater Treatment Plant Disclosure. Attached to every purchase agreement and at the closing of each sale of a residence within the Property, Lulfs shall provide a disclosure to the purchaser notifying the purchaser of the adjacent wastewater treatment plant, in a form substantially similar to that shown in **Exhibit "B"**, attached hereto and by this reference incorporated herein.

14. No Concurrency Reservation or Finding of Complete Mitigation. The following Paragraph, specifically addressing the intent of this Agreement relating to concurrency and mitigation, is hereby added to the Agreement:

30. No Concurrency or Complete Mitigation Finding; Impact & Mobility Fee Credits.

Lulfs will be required to pay impact and mobility fees at the time of development. This Agreement does not reserve concurrency or provide complete mitigation for any of the development contemplated for the Property. Concurrency and mitigation obligations will be determined and satisfied as part of Developer's Agreements entered into by Lulfs with the City and County, associated with the rezoning contemplated by Paragraph 5. Subject to Paragraphs 13 and 25, nothing in this Agreement shall prevent Lulfs from receiving impact or mobility fee credits or other compensation for any conveyance of land or for any provision of public infrastructure to the City, County or other local government entity, provided Lulfs is eligible for such impact or mobility fee credits or other compensation pursuant to the applicable City, County or other governmental entity's ordinances or regulations at the time that Lulfs enters into such developer agreements. Notwithstanding the foregoing, Lulfs will not be eligible for credits for water, sewer, reclaimed water or fiber impact improvements, unless same is specifically addressed through utility service agreements.

15. **Conveyance Requirements.** The following Paragraph, specifically addressing conveyance requirements is hereby added to the Agreement:

31. **Conveyance Requirements.**

(a) **Special Warranty Deed.** All property conveyed to the City, as contemplated in this Agreement, shall be conveyed as Net Usable Acres and at no cost to the City in fee simple title, by special warranty deed (the “Deed”), free and clear of all liens and encumbrances that would prevent or limit the proposed use of the property for its intended use. Net Usable Acres shall mean that the acreage of the particular property to be conveyed shall be net of and not include any wetlands on such land, any environmental contaminants on such land in violation of applicable law, any road rights-of-way or off-site drainage facilities, any easements (except utility easements and drainage easements providing utilities or drainage to the property being conveyed), or any protected species, any of which would adversely affect the use of such property for its intended purpose.

(b) **Title, Survey and Closing Costs.** Prior to conveyance of property, Lulfs at its sole cost and expense, shall provide to the City: (i) a title insurance commitment by a Florida licensed title insurer showing ownership and any matters appearing in the Public Records of St. Lucie County, Florida, encumbering the relevant property; (ii) a survey showing all encumbrances of record (iii) all soil studies for the site, the Army Corps permits and other documentation in Lulfs’ possession or custody relating to the characteristics of the land being conveyed; and (iv) a title opinion confirming that the title insurance commitment does not show any title encumbrances that would prohibit or limit the use of the relevant property for its intended purpose. Additionally, Lulfs shall pay all traditional closing costs, including recording fees, documentary stamps, taxes or assessments outstanding on the relevant property at the time of the conveyance as well as for the owner’s title insurance policy for the relevant property.

16. **Agreement Remains in Effect.** Except as specifically modified and amended hereby, the Agreement shall remain in full force and effect.

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

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the City and Lulfs have executed this Amendment as of the date first set forth above.

“CITY”

City of Port St. Lucie

ATTEST:

Sally Walsh, City Clerk

By: _____
Shannon M. Martin, Mayor

Date: _____

APPROVED AS TO FORM AND
CORRECTNESS:

Richard Berrios, 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, its President

Exhibit “A”

Berm Locations

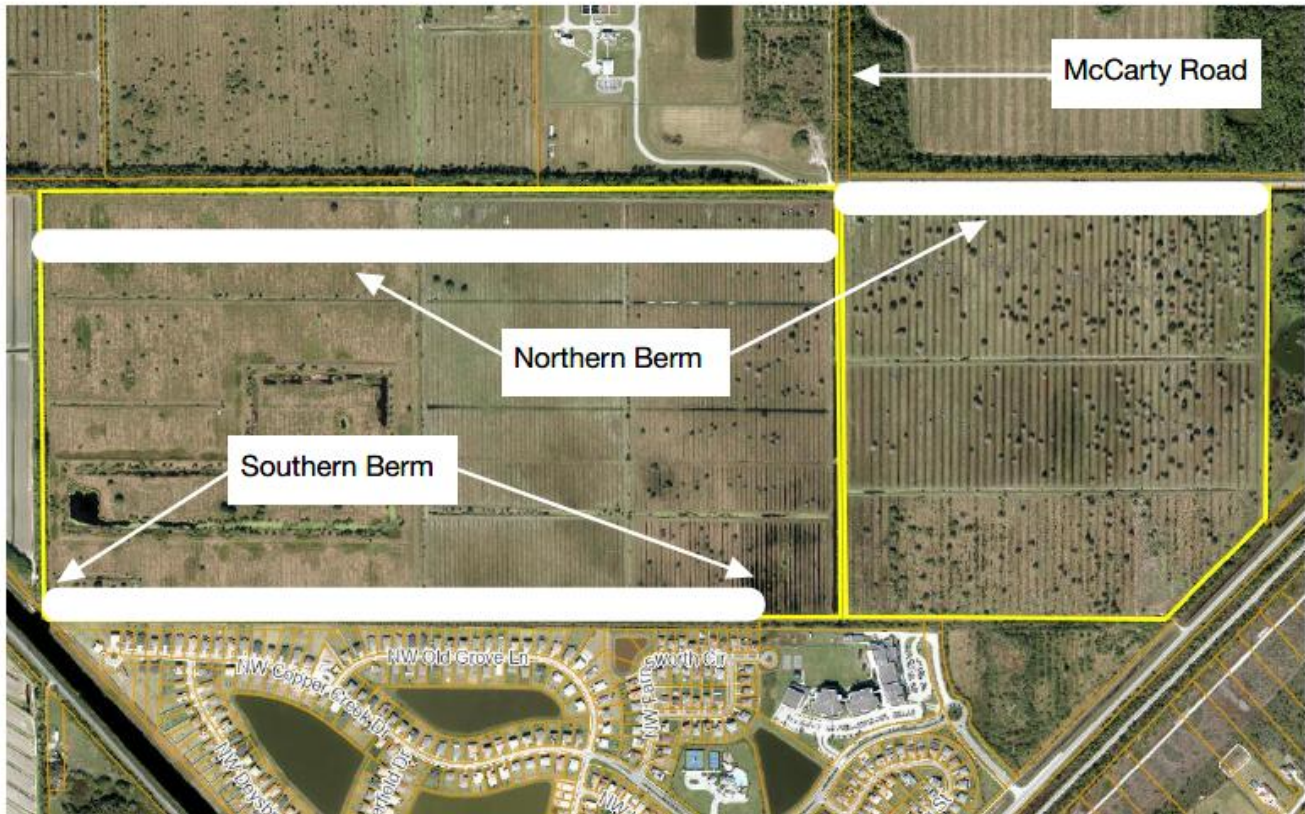


Exhibit “B”

Wastewater Treatment Plant Disclosure

The City of Port St. Lucie operates a wastewater treatment plant (the “**Wastewater Plant**”) in the immediate vicinity of the lot purchased by Buyer in this transaction (the “**Lot**”). Depending upon the location of Buyer’s Lot, operations at the Wastewater Plant, including related truck traffic, may cause unpleasant odors, noise, vibrations and/or light at Buyer’s Lot. In executing this Disclosure of Adjacent Uses, Buyer acknowledges and accepts whatever impact the Wastewater Plant and related truck traffic may have on their Lot, of whatever nature and whether or not such risks are specifically identified herein.

The undersigned does hereby acknowledge receipt of the foregoing Disclosure of Adjacent Uses as of the ____ day of _____, 20____.

Buyer:

Print Name:_____

Print Name:_____