FIFTH AMENDMENT TO ANNEXATION AGREEMENT

(AMENDING OBLIGATIONS OF SOUTHERN GROVE PARCEL OWNER)

THIS FIFTH AMENDMENT TO ANNEXATION AGREEMENT (the "Amendment") is made and entered into this 28th day of DECEMBER, 2009 by and between Horizon Acquisition 5, LLC, a Florida limited liability company ("Southern Grove"), and the City of Port St. Lucie, a Florida municipal corporation ("the City"). Southern Grove and the City are sometimes referred to herein individually as a 'Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Horizons Acquisition 5, LLC, Horizons Acquisition 2, LLC, St. Lucie Associates II, LLLP, St. Lucie Associates III, LLLP, ACR Properties, LLC, and the City of Port St. Lucie originally entered into and executed that certain Annexation Agreement approved by the City Council of the City on July 19, 2004, as amended by that certain First Amendment to Annexation Agreement dated May 16, 2005, and as further amended by that certain Second Amendment to Annexation Agreement approved by the City Council of the City on July 25, 2005 (as amended, the "Agreement"); and

WHEREAS, prior to the date hereof, Horizons Acquisition 2, LLC sold the property owned by it subject to the Original Agreement to Minto Kennedy Groves, Inc ("Minto"); and

WHEREAS, prior to the date hereof, St. Lucie Associates II, LLLP merged into St. Lucie Associates III, LLLP ("STLIII"), and STL III thereafter merged into St. Lucie Associates IV, LLLP ("STLIV");

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WHEREAS, prior to the date hereof, STLIV and Minto formed and are partners in rerland/Kennedy LLP ("Riverland"); and

WHEREAS, prior to the date hereof, ACR properties, LLC sold the property owned by it subject to Original Agreement to ACR Acquisition, LLC; ("Wilson Grove"); and

WHEREAS, on or about November 16, 2009, the City of Port St. Lucie entered into a Third nendment with Riverland; and

WHEREAS, on or about November 16, 2009, the City of Port St. Lucie entered into a Fourth nendment with Wilson Grove; and

WHEREAS, as of the date hereof, Southern Grove is the owner of that certain 3,156 acres of real operty, more or less, more particularly described in Exhibit "A" attached hereto less any portion thereof

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT
SAINT LUCIE COUNTY
FILE # 3429143 01/08/2010 at 10:57 AM
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RECORDING: $95.00

conveyed to governmental authority (the "Southern Grove Property"), which real property has been annexed into the City, is subject to the Agreement, and is subject to that certain Development of Regional Impact development order issued by the City (the "Southern Grove Development Order"); and

WHEREAS, general economic conditions have changed since the Agreement was executed and the Southern Grove Development Order was issued, and due to such change in general economic conditions, the City seeks to acquire a site within the Tradition DRI to help create economic development and job growth opportunities within the southwest annexation area and to otherwise amend, modify and restate certain terms and provisions of the Agreement; and

WHEREAS, Southern Grove seeks to help the City to acquire a site within the Tradition DRI to help create economic development and job growth opportunities within the southwest annexation area and to otherwise amend, modify and restate certain terms and provisions of the Agreement; and

WHEREAS, the City of Port St. Lucie and Tradition Outlet, LLC have entered into a Purchase and Sale Agreement for approximately 15 acres within the Tradition DRI for subsequent transfer to Wyndcrest DD Florida to help create economic development and job growth opportunities within the southwest annexation area; and

WHEREAS, paragraph 24 of the Agreement provides that each Developer may amend the Agreement by written agreement with the City without any other Developer insofar as such amendment does not adversely impact the other Developers; and

WHEREAS, the Parties, seeking to address the foregoing, desire to amend, modify and restate certain terms and provisions of the Agreement as hereinafter provided, none of which have or are intended to have any adverse impact on any other Developer.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby amend, modify and restate the Agreement as follows:

1. The foregoing recitations are true and correct and are hereby incorporated herein by this reference, and all exhibits to this Amendment are hereby incorporated herein and made a part hereof by this reference. Any capitalized term used but not defined in this Amendment shall have the meaning given to such term in the Agreement.

2. Southern Grove hereby represents to the City that it is the fee simple owner of the Southern Grove Property, less any portion thereof conveyed to governmental authority, and has the right, power

and lawful authority to enter into, execute, deliver and perform under this Amendment.

3. Paragraph 4(a)(i) of the Agreement is hereby deleted in its entirety, and the following paragraph is hereby inserted in place thereof:

The City finds and agrees that residential uses of varying densities, commercial uses, office uses, warehouse/industrial uses, employment centers, schools, institutional uses, civic uses, and utility uses are appropriate uses of the Southern Grove Property and that such uses will benefit the City's residents. Southern Grove, based on the Southern Grove Development Order, intends to include in the development of the Southern Grove Property not less than 7,388 residential units and not less than 6,236,704 square feet of non-residential uses (the "Southern Grove Development Plan"). Notwithstanding anything to the contrary contained in the Agreement or this Amendment, however, Southern Grove shall have the right to seek modification to the Southern Grove Development Order and the Southern Grove Development Plan to, among other things, either increase or decrease the number of residential units and the square footage of non-residential uses.

4. Paragraph 4(d) of the Agreement is hereby deleted in its entirety, and the following paragraph is hereby inserted in place thereof:

The City acknowledges and agrees that the applicable rules and regulations of the South Florida Water Management District and the Army Corps of Engineers shall govern all wetland jurisdictional determinations and any related wetlands mitigation with respect to the Southern Grove Property and that any wetland permit issued by the South Florida Water Management District and the Army Corps of Engineers for all or any portions of the Southern Grove Property shall satisfy all City rules, regulations, codes, permitting and other requirements pertaining to wetlands and littoral plantings for the portion or portions of the Southern Grove Property subject to any such permits.

5. Paragraph 4(j) of the Agreement is hereby deleted in its entirety, and the following paragraph is hereby inserted in place thereof. The Parties acknowledge and agree that there shall be no obligation to reserve or convey land to the City for the purpose of establishing a four-year university/college for any of the Properties, upon the conveyance of the 15 acre site under the Purchase and Sale Agreement between the City of Port St. Lucie and Tradition Outlet, LLC. The original condition in the Annexation Agreement, Paragraph 4(j), shall be automatically reinstated and remain in full force and effect, if one of the following events occurs:

1. The City fails to obtain financing for the Wyndcrest DD Florida project on or before March 31, 2010; or
2. Tradition Outlet, LLC fails to pay the taxes on the 15 acre parcel by March 31, 2010; or
3. If after closing prior to March 31, 2010, the City fails to obtain financing for the Wyndcrest DD, Florida facility, causing the 15 acre parcels to revert back to Tradition Outlet, LLC.

6. Paragraph 4(n) of the Agreement is hereby deleted in its entirety, and the following paragraph is hereby inserted in place thereof:

All land conveyed to the City pursuant to the Agreement or this Amendment shall be conveyed at no cost to the City in fee simple title, free and clear of all liens and encumbrances and, when stated as such, shall be calculated as Net Usable Acres. The City agrees to accept title to any lands conveyed to it under the Agreement or this Amendment with a reservation of right (subject to the limitation set forth below) in favor of Southern Grove allowing Southern Grove, for so long as any farming and/or other agricultural operations are being conducted on all or any portion of the Southern Grove Property, the right to: (a) continue to use such land for or in connection with any farming and/or other agricultural operations being conducted on all or any portion of the Southern Grove Property provided only labeled fertilizers, insecticides, herbicides, pesticides and other chemicals are used in such farming and/or other agricultural operations in accordance with their labeled directions; and (b) enter into farming and/or other agricultural leases that include such land without (i) the need of any consent, joinder or other approval by the City, or (ii) any payment to the City of any money, compensation or other consideration for the use of such land by Southern Grove and/or any farm or agricultural tenant thereof. The foregoing reservation of right, however, shall be subject to termination by: (y) Southern Grove at any time by delivering a written notice of termination to the City; or (z) the City or its assigns on not less than 12 months prior written notice to Southern Grove after a design contract for road and/or other improvements to be built on the property has been signed by the City. The City shall deliver a copy of the design contract to Southern Grove simultaneously with its delivery of a termination notice, and the City's right of termination shall only apply to the portion of the property on which such road and/or other improvements will be constructed. The term "Net Usable Acres" shall mean that the acreage of the particular land to be dedicated 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, or any protected species, any of which would adversely affect the use of such land for its intended purpose.

7. Paragraph 5(j)(i) of the Agreement is hereby deleted in its entirety.

8. Paragraph 5(o)(iii) of the Agreement is hereby deleted in its entirety, and the following paragraph is hereby inserted in place thereof:

The Parties hereby acknowledge that the road network based on the roadways as shown on Exhibit "B" attached hereto (the "Existing Dedicated Road Network") has been approved by the applicable governmental authorities and that Southern Grove has conveyed to the City all road right-of-way for the Existing Dedicated Road Network located within the Southern Grove Property. The initial two-lanes of the roads shown on the Existing Dedicated Road Network may, in Southern Grove' sole discretion, be constructed on one side of the right-of-way. All roadways shall be designed for the ultimate roadway section. All storm water facilities shall be designed, permitted, and sized to accommodate the ultimate roadway section. All roadways designed by Southern Grove shall be reviewed and accepted by the City's Site Plan Review Committee. In the event that any wetland(s) are impacted by the roadway construction, Southern Grove shall be responsible for the permitting, design, size, and construction any wetland or surface water mitigation required by SFWMD and/or ACOE for the ultimate roadway section, to include any potential offsite mitigation requirements. Southern Grove shall provide the City, as the case may be, temporary or permanent drainage easements on the Southern Grove Property (outside of the road right-of-way) for any road constructed by it through the Southern Grove Property. If Southern Grove constructs any road through any Property owned by another Developer, then the City shall use its good faith efforts to acquire (within 30 days after request by Southern Grove) from the Developer who owns the Property through which the road is being constructed the temporary or permanent drainage easements. If the City does not acquire the temporary or permanent drainage easements, necessary for the construction of such road, then Southern Grove shall have the right to use the road right-of-way of the future lanes located within such Developer's Property for temporary drainage purposes. Notwithstanding the foregoing, the City's actions to acquire the temporary or permanent drainage easements and/or allowing Southern Grove to use the road Right-of-Way, in no way relieves or modifies the Developer's obligations under paragraph 5(o)(ii) of the original Annexation Agreement. In addition, if Southern Grove constructs the initial two-lanes of any road on the Property owned by another Developer or if Southern Grove constructs any of the future lanes, then in either such event Southern Grove shall receive road impact fee credits for such construction on a dollar-for-dollar basis.

9. Paragraph 7 of the Agreement is hereby deleted in its entirety, and the following paragraphs are hereby inserted in place thereof:

(a) The City acknowledges and agrees that: (i) certain provisions of the Southern Grove Development Order are inconsistent with the provisions of this Amendment; and (ii) Southern Grove will be making application to the City for certain amendments to the Southern Grove Development Order to, among other things, amend the provisions of the Southern Grove Development Order to be consistent with the provisions of this Amendment. The City agrees to review and consider the approval and adoption to extent permissible by law and otherwise proceed with any requested amendment to the Southern Grove Development Order applied for by Southern Grove to, among other things, make the provisions of the Southern Grove Development Order consistent with the provisions of this Amendment. However, the terms, conditions and provisions of the Development Order shall be the controlling document, in the event of any inconsistencies.

(b) Notwithstanding the City's agreement to review, consider the adoption and/or approval of, support to the extent permissible by law and otherwise proceed with any requested application made by Southern Grove, all such considerations and actions by the City shall be undertaken in accordance with established requirements of state statutes and City ordinances, including notice and hearing requirements. Nothing in this Amendment is intended to limit or restrict the powers and responsibilities of the City in acting on development related applications. The Parties further acknowledge and agree that all proceedings shall be conducted openly, fully, freely and fairly in accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing contained in the Agreement or this Amendment shall entitle Southern Grove to compel the City to take any action on any applications, save and except to timely and fairly process such applications.

10. Southern Grove, pursuant to paragraph 19 of the Agreement, hereby designates the following persons (and their respective addresses) to receive notices on Southern Grove' behalf under the Agreement:

To Southern Grove	Wesley S. McCurry 10521 SW Village Cetner Drive, Suite 200 Port St. Lucie, Florida 34987
With a copy to	Barry Somerstein, Esq. P.O. Box 1900 200 East Broward Blvd. Ft. Lauderdale, FL 33302

11. Notwithstanding anything contained in this Amendment or the Agreement to the contrary, the parties acknowledge that it is foreseeable that property west of the current Annexation Properties, west of Range Line Road may at some point in time apply to be annexed into the City of Port St. Lucie. In the event of any annexation of property west of the Annexation Properties as presently defined by the Agreement, then as part of any conditions of annexation, such property owner(s) shall be required to reimburse Southern Grove and City the cost incurred by such party for the design and construction of i) Becker Road from I-95 to the west property line of the Southern Grove Property, and ii) the Becker Road Interchange at I-95, <u>based upon proportionate share of the impacts caused by the development. Southern Grove and the City shall work together to determine the proportionate share.</u>

12. <u>Miscellaneous</u>.

(a) If any provisions of this Amendment are held to be invalid, void or unenforceable, the remaining provisions of this Amendment shall not be affected or impaired and each remaining provision shall remain in full force and effect. In the event that any term or provision of this Amendment is determined by appropriate judicial authorities to be illegal void or otherwise invalid, said provision shall be given its nearest legal meaning or be construed as deleted as such authority determines and the remainder of this Amendment shall be construed to be in full force and effect.

(b) This Amendment may be executed in any number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, 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 (east one such counterpart.

(c) The City shall record this Amendment with the Clerk of the Circuit Court for St. Lucie County within 14 days after the City executes the same. Southern Grove and/or Horizons Acquisitions 5, LLC, shall be responsible for the recording costs.

(d) In the event there is any conflict between any terms or provision in the Agreement and any term or provision of this Amendment, the terms and provisions of this Amendment shall control. The Agreement, except as amended and modified by this Amendment, remains in full force and effect.

(e) Whenever any paragraph has been deleted and replaced in its entirety in this Amendment, it is intended by the Parties that the deletion and replacement: (a) is as to Southern Grove only; and (b) shall have no impact on any other Developer under the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

CITY OF PORT ST. LUCIE, a Florida municipal corporation

By: _____

Name: Gregory J. Oravec

Title: Acting City Manager

APPROVED AS TO FORM AND CORRECTNESS:

_____ City Attorney

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written

WITNESSESS

Shirley E. Smith

Print Name: Shirley E. Smith

Jean E Sakowski

Print Name: Jean E. Sakowski

Horizon Acquisition 5, LLC,
a Florida limited liability company

By: _____

Name: Wesley S. McCurry

Title: President

STATE OF FLORIDA
COUNTY OF ST. LUCIE

The foregoing instrument was 2009, by LLC, a Florida acknowledged before me this 28th day of December, 2009, by Wesley S McCurry as the ~~Manager~~ President of Horizon Acquisition 5, LLC, a Florida limited liability company, on behalf of said company and partnership. He is personally known to me or has produced _____ as identification.

JEAN E. SAKOWSKI
MY COMMISSION # DD 667269
EXPIRES: March 8, 2013
Bonded Thru Notary Public Underwriters

Jean E. Sakowski

Notary Public

Jean E. Sakowski

Typed, Printed or Stamped Name

My Commission Expires:

Dennis/contracts/fifth amend.to annex agreement west changes

EXHIBIT "A"

Legal Description

Horizon St. Lucie Groves – South

A parcel of land lying in Section 15, 22, 23, 26, and 35, Township 37 South. Range 39 East, St. Lucie County, Florida more particularly described as follows:

COMMENCE at the intersection of the centerline of Gatlin Boulevard (also being the north line of Section 15) and the westerly limits of Gatlin Boulevard Right-of-Way and the westerly limits of those lands described in an Order of Taking, dated July 24, 1979 and recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive, Public Records of St. Lucie County, Florida, and as shown on the Florida Department of Transportation Right-of-Way maps for State Road #9 (I-95), Section 94001-2412, dated 6/2/77, with last revision of 9/11/79; thence along the westerly lines of the parcels described in the said Order of Taking, recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive, and along the westerly line of said I-95 Right-of-Way the following courses and distances; thence South 00°01'45" West, a distance of 100.00 feet; thence South 89°58'15" East, a distance of 242.61 feet; thence along the westerly line of a 20 foot wide F.P.& L. easement, as described in an Order Granting Petitioners Motion for relief from Order of Taking and Amending Order of Taking, as same is recorded in Official Record Book 349 at Pages 90 through 93, inclusive, Public Records of St. Lucie County, Florida, the following courses and distances.

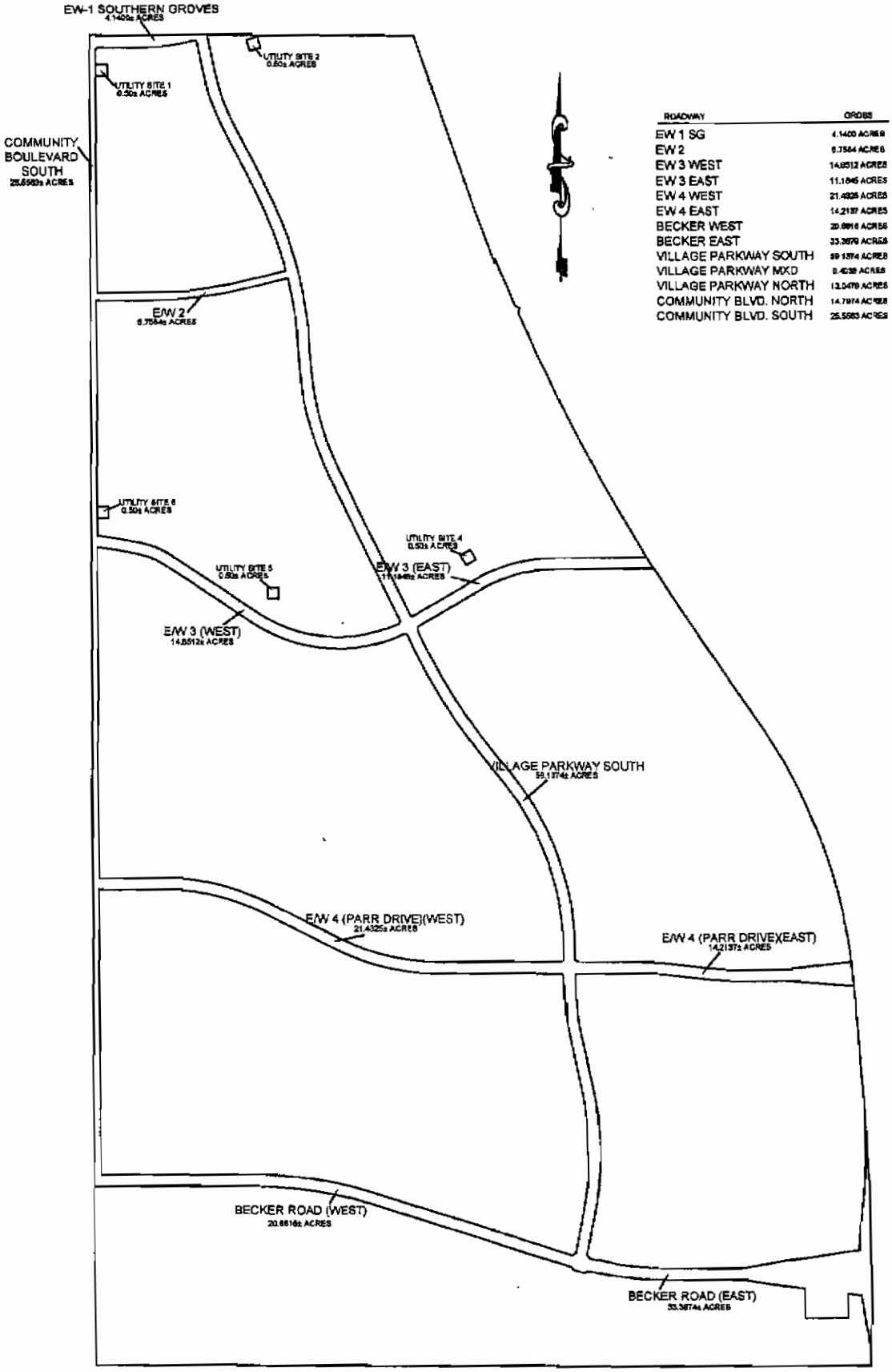
South 00°01'45" West, a distance of 20.00 feet;
thence South 89°58'15" East, a distance of 318.60 feet;
thence South 81°56'34" East, a distance of 515.34 feet;
thence South 69°58'48" East, a distance of 276.75 feet;
thence South 52°20'12" East, a distance of 908.27 feet;
thence South 43°16'30" East, a distance of 590.74 feet;
thence South 27°42'53" East, a distance of 590.97 feet;
thence South 19°56'04" East, a distance of 1197.74 feet;
thence South 18°47'19" East, a distance of 819.08 feet to the POINT OF BEGINNING; thence continue South 18°47'19" East, a distance of 1746.61 feet to the beginning of a curve, concave easterly, having a radius of 24749.33 feet and a central angle of 03°11'10", the chord of which bears South 20°22'54" East; thence southerly along the arc of said curve to the left, a distance of 1376.21 feet to a point of intersection with a non-tangent line; thence North 00°02'34" East, to a point in the said westerly line of the lands described in the Order of Taking recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive and along the said westerly line of I-95 Right-of-Way, a distance of 53.48 feet to appoint of intersection with a non-tangent curve, concave northeasterly, having a radius of 24729.33 feet and a central angle of 01°31'59", thence along the said westerly line of the parcels described in the Order of Taking recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive, and along the said westerly line of I-95 Right-of-Way the following courses and distances: thence southerly along the arc of said curve to the left, a distance of 661.68 feet, said arc subtended by a chord which bears South 22°37'35" East to a point of intersection with a non-tangent line; thence South 65°16'33" East, a distance of 59.98 feet: thence South 23°27'14" East, a distance of 5.99 feet; thence South 10°06'31" West, a distance of 72.11 feet; to a point of intersection with a non-tangent curve, concave northeasterly, having a radius of 24729.33 feet and a central angle of 10°31'36", thence southeasterly along the arc of said curve to the left, a distance of 4543.26 feet, said arc subtended by a chord which bears South 28°54'46" East, to the curves end; thence South 34°10'33" East, a distance of 1712.58 feet; to the beginning of a curve, concave westerly, having a radius of 6987.97 feet and a central angle of 29°45'21", thence southeasterly along the arc of said curve to the right, a distance of 3629.11 feet to the curves end; thence South 04°25'12" East, a distance of 1751.36 feet; to the beginning of a curve, concave westerly, having a radius of 24381.33 feet and a central angle of 04°30'14", thence southerly along the arc of said curve to the right, a distance of 1916.56 feet to the curves end; thence South 00°05'02" West, a distance of 724.96 feet; thence South 09°10'27" West, a distance of 101.27 feet; thence South 00°05'02 West, a distance of 483.47 feet to a point in the northerly line of those certain lands

described in a deed dated May 12, 1951 to the Central and Southern Florida Flood Control District, recorded in Deed Book 165 at pages 361 through 362, Public Records of St. Lucie County, Florida, and a point in the northerly Right-of-Way line of the South Florida Water Management District Canal C-23, thence North 89°54'36" West, along the said northerly line of those lands described in Deed Book 165, at pages 361 and 362 and along said Right-of-Way; line of the C-23 Canal Right-of-Way, a distance of 4896.74 feet; thence North 89°54'26" West along the northerly line of those lands described in a Special Warranty Deed to the Central and Southern Florida Flood Control District dated May 12, 1951 and recorded in Deed Book 166 at pages 168, 169, and 170, Public Records of St. Lucie County, Florida and, continuing along the said Right-of-Way line of the C-23 Canal Right-of-Way, a distance of 5221.40 feet to a point in the easterly line of that certain 30 foot wide parcel described in a Special Warranty Deed to Metropolitan Life Insurance Company, dated the 1st day of September, 1987, and recorded in Official Record Book 557 at pages 676 through 680, inclusive, Public Records of St. Lucie County, Florida; thence departing said C-23 Canal Right-of-Way, North 00°05'34" East, along the said East line of the 30 foot wide parcel conveyed to Metropolitan Life Insurance Company in the deed recorded in Official Record Book 557 at Pages 676 through 680, a distance of 17341.94 feet to the northeasterly corner of the said 30 foot wide parcel and a point in the easterly prolongation of the North line of that certain parcel described in a Special Warranty Deed to Metropolitan Life Insurance Company dated September 18, 1985, and recorded in Official Record book 477 at Pages 560 through 566, inclusive, Public Records of St. Lucie County, Florida; thence South 89°50'39" East, along the just said northerly line of the parcel described in the Special Warranty Deed to Metropolitan Life Insurance Company recorded in Official Record Book 477 at Pages 560 through 566, and the easterly prolongation thereof, a distance of 4218.53 feet to POINT OF BEGINNING.

Containing 3155.78 acres, more or less.

EXHIBIT "B"

Existing Dedicated Road Network



ROADWAY	GROSS
EW 1 SG	4.1400 ACRES
EW 2	6.7564 ACRES
EW 3 WEST	14.6512 ACRES
EW 3 EAST	11.1845 ACRES
EW 4 WEST	21.4325 ACRES
EW 4 EAST	14.2137 ACRES
BECKER WEST	20.6616 ACRES
BECKER EAST	33.3670 ACRES
VILLAGE PARKWAY SOUTH	59.1374 ACRES
VILLAGE PARKWAY MXD	0.4038 ACRES
VILLAGE PARKWAY NORTH	13.0479 ACRES
COMMUNITY BLVD. NORTH	14.7974 ACRES
COMMUNITY BLVD. SOUTH	25.5583 ACRES