COUNCIL ITEM 10B
DATE 4/8/10

ORDINANCE 10- 17

AN EMERGENCY ORDINANCE PROVIDING FOR THE SIXTH AMENDMENT TO THE SOUTHWEST ANNEXATION AGREEMENT FOR SOUTHERN GROVE; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City had previously entered into a Fifth Amendment to the Southwest Annexation Agreement with Southern Grove on or about December 29, 2009; and

WHEREAS, the Fifth Amendment provides for several conditions to reinstate and for reverter of the 15 acre property should the City and or Southern Grove fail to meet certain obligations on or before March 31, 2010; and

WHEREAS, the City nor Southern Grove met those obligations by March 31, 2010, and the City and Southern Grove would like to extend these dates to May 31, 2010.

NOW THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. That there is hereby authorized the Sixth Amendment to the Southwest Annexation Agreement between the City and the Southern Grove as attached hereto as Exhibit "A." The Mayor and City officials are hereby authorized to execute any and all documents necessary to complete the Sixth Amendment to Southwest Annexation Agreement.

Section 2. This Ordinance shall become effective immediately upon approval.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this 8th day of April, 2010

CITY COUNCIL
CITY OF PORT ST. LUCIE

By: _____
Patricia P. Christensen, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM: _____
Roger G. Orr, City Attorney

CITY OF PORT ST. LUCIE CORPORATE SEAL FLORIDA

Shared/Ordinances/2010/sw 6th amendment

**SIXTH AMENDMENT TO ANNEXATION AGREEMENT**

**(AMENDING OBLIGATIONS OF SOUTHERN GROVE PARCEL OWNER)**

THIS SIXTH AMENDMENT TO ANNEXATION AGREEMENT (the "Amendment") is made and entered into this 8th day of April, 2010 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"); and

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

WHEREAS, prior to the date hereof, ACR properties, LLC sold the property owned by it subject to the 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 Amendment with Riverland; and

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

WHEREAS, on or about December 28, 2009, the City of Port St. Lucie entered into a Fifth Amendment with Horizons Acquisition 5, LLC; and

WHEREAS, as of the date hereof, Southern Grove is the owner of that certain 3,156 acres of real property, less any portion thereof 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, paragraph five (5) of the Fifth Amendment provides for certain conditions to occur by March 31, 2010; and

WHEREAS, Southern Grove and the City have not or may not meet the conditions by March 31, 2010, Southern Grove and the City mutually agree to extend the date to May 31, 2010.

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(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 May 31, 2010; or
2. Tradition Outlet, LLC fails to pay the taxes on the 15 acre parcel by May 31 2010; or
3. If after closing prior to May 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.

4. 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<br>10521 SW Village Cetner Drive, Suite 200<br>Port St. Lucie, Florida 34987 |
| With a copy to | Barry Somerstein, Esq.<br>P.O. Box 1900<br>200 East Broward Blvd.<br>Ft. Lauderdale, FL 33302 |

5. Miscellaneous.

(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: Jerry A Bentrott
Name: Jerry H. Bentrott
Title: Interim City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Pam E B Halin
City Attorney

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

WITNESSES

Marlene Hernandez

Print Name: Marlene Hernandez

Jean E. Sakowski

Print Name: Jean E. Sakowski

Horizon Acquisition 5, LLC,
a Florida limited liability company

By: Wesley S. McCurry

Name: Wesley S. McCurry

Title: President

STATE OF FLORIDA
**COUNTY OF ST. LUCIE**

The foregoing instrument was acknowledge before me this 2ND day of April, 2010, by Wesley S. McCurry as the 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 867269
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:

*H:\lenise\contracts, agmts, lease agmts, interlocals\sixth amendment to SW annexation.docx*

# MEMORANDUM

TO: JERRY A. BENTROTT, INTERIM CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY

FROM: PAM E. BOOKER HAKIM, SENIOR ASSISTANT CITY ATTORNEY

DATE: APRIL 2, 2010

SUBJECT: SIXTH AMENDMENT TO THE SOUTHWEST ANNEXATION AGREEMENT

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Attached please find an Emergency Ordinance for a Sixth Amendment to the Southwest Annexation Agreement, between the City of Port St. Lucie and Southern Groves. The City and Southern Groves entered into a Fifth Amendment to the Southwest Annexation Agreement on December 30, 2009, for the conveyance of the 15 acre Wyndcrest DD Florida, Inc property. The Fifth Amendment provided for several conditions to be met by the City and Southern Groves on or before March 31, 2010. Those conditions have not been met. The Parties would like to extend the dates for meeting those conditions to May 31, 2010. Therefore, the dates in the Sixth Amendment are the only changes from the Fifth Amendment to the Sixth Amendment.

Should you have any questions or need additional information, please do not hesitate to contact me at x.6525.

PBH/dmf
Attach.

RECEIVED

APR [illegible]

City Manager's Office

ORDINANCE 10-17
WAS PASSED AS AN
EMERGENCY ORDINANCE
THEREFORE IT HAD ONLY
1 READING AND
NO LEGAL AD