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## INTEROFFICE MEMORANDUM

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TO: Gregory J. Oravec, City Manager  
FROM: Jesus A. Merejo, Utility Systems Director *JAM*  
SUBJECT: Future Water Supply Plan for the City  
DATE: November 6, 2012

**RECEIVED**

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City Manager's Office

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The headline of a May 5, 1992 Palm Beach Post article read, "**Water Cut Off for 10,000 in Port St. Lucie.**" The article stated, "Record water demand over the weekend depleted supplies for greater Port St. Lucie, forcing utility officials to shut off water Monday for thousands of residents." This water shortage impacted thousands of residents, caused nine schools to close, and forced numerous restaurants and grocery stores to shut doors and lose business.

To understand the Port St. Lucie Utility Systems' plans for today and its future, it is important to understand the water supply issues of the past. The May 1992 water shortage event occurred under St. Lucie County's management approximately two years after they had acquired the system from General Development Utilities. Inadequate maintenance, lack of expansion plans, and the County's absence of a vision for the City's future caused the depletion of the water supply to the system's customers within the Port St. Lucie area. The demands put on the water system that then served approximately 16,000 had stressed it to its breaking point.

Today's Utility: In 1994 the City of Port St. Lucie acquired ownership and maintenance responsibilities over what is now known as the Port St. Lucie Utility Systems Department ("PSLUSD"). The once undersized and rundown utility system has been painstakingly redeveloped and the PSLUSD has become a leader in its industry and one of the premier utility service providers in Florida. Strategic planning and a well executed capital improvement program have been critical components of PSLUSD's success.

Where does PSLUSD stand today? Below is a summary of PSLUSD's achievements based on the 50-100 year vision we have been pursuing:

- Ample water and wastewater treatment plant capacity
  - Water capacity = 41.65 MGD / available capacity = 23.51 MGD
  - Wastewater capacity = 18.00 MGD / available capacity = 9.49 MGD
- Sophisticated technology that is used daily throughout the organization
- More than 1,000 miles each of well maintained underground water and wastewater mains and related appurtenances
- In-house laboratory certified by the National Environmental Laboratory Accreditation Conference (NELAC)
- Self Permitting (authorized by Florida Dept. of Environmental Protection)
- 66,874 accounts billed monthly as of October 8, 2012

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The current water and wastewater treatment capacities, expanded water storage facilities, and underground infrastructure network will serve our projected customer base well into the foreseeable future. However, the PSLUSD's continued success requires long-range planning and taking actions today that will benefit our customers 50-100 years from now.

The concern for providing adequate water utility services is not unique to Port St. Lucie's future. According to a March 11, 2011 article in the *Wall Street Journal*, "faced with climate change and population growth, more and more cities are working to ensure their community's water supply." The article further states, "Instead of planning urban development as if water were abundant, considering it only as an afterthought, leaders are beginning to recognize the link between their city's growth and water management."

Thus, utilities across this nation are challenged with identifying multiple water resources to effectively operate and meet the water demands of their current and future customers. As PSLUSD continues to strategically plan for the long-term future, it is evident that the financial well-being of the City and its utility customers will be dependent on the City's management of its water supplies. In fact, multiple sources of raw water supplies will become critically important to the health, safety, and welfare of this community.

Water Conservation: The entire region has been under water use restrictions imposed by South Florida Water Management District (SFWMD) since April 2007. Water conservation efforts will continue to grow globally and locally and will become an even greater part of the daily operations of utilities throughout South Florida.

Water Supply Sources and Issues: The City's original water supply was from surficial or shallow aquifer wells. Since 1999, we have relied heavily on Floridan Aquifer wells that now supply more than 80% of our daily water demands. However, studies have indicated that the Floridan Aquifer should not be viewed or relied upon as a guaranteed source for water.

As a result of our heavy reliance on the Floridan Aquifer, the City will be in serious competition with other communities that also rely on the Floridan Aquifer. In order to protect the City from future water wars and anticipated permitting challenges from regulatory authorities, now is the time to secure and guarantee our future water supply.

Growth and Water Demands: It is projected that the Utility's service area population will be over 400,000 and the peak customer demand will be at least 70 million gallons of water per day (MGD) by the time we reach the projected build out population in 2060.

Currently, the permitted daily withdrawals and projected flows are as follows:

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	<u>Permitted Daily Water Withdrawals</u>	<u>Percentage of Projected 70 MGD Demands in 2060</u>	<u>Water Source</u>
	6.0 MGD	8%	Surficial Aquifer (shallow)
	<u>45.0 MGD</u>	<u>65%</u>	Floridan Aquifer (deep)
Totals	51.0 MGD	73%	
<i>Future Shortages</i>	<i>19.0 MGD</i>	<i>27%</i>	<i>To Be Determined</i>

When considering the above numbers, it is important to understand that the Floridan Aquifer is a finite resource. The City's ability to obtain additional Floridan Aquifer allocations via regulatory permitting will be increasingly difficult and could become impossible. Thus as we continue to plan for PSLUSD's successful future and continue to serve our customers, we must actively seek out alternative water resources today.

As a result of the foregoing issues, PSLUSD undertook feasibility studies on ocean/sea water desalination; surface waters such as canals, lakes and reservoirs; and aquifer storage and recovery wells.

Ocean / Sea Water Desalination: Studies show a large desalination facility could be built somewhere on Hutchinson Island or a smaller desalination plant could be built somewhere on the east side of the City.

Regardless of where it would be positioned, the biggest positive for a Sea Water Desalination facility, is that it would have an unlimited source of water from the Atlantic Ocean. Although the sea water supply would be unlimited, drawbacks include, but are not limited to: acquiring property; environmental permitting issues; costs for a subaqueous river crossing; an estimated \$250 million to construct a 20.0 MGD treatment facility; and annual operating costs estimated to exceed \$16 million per year for a facility capable of treating 20 million gallons of water per day.

Surface Water Facilities: Annual operating costs for a surface water system comprised of canals, lakes, or reservoirs would be approximately \$10 million less than a similarly sized desalination facility's annual operating costs.

Surface Water Facilities have two main drawbacks: 1) the limited time surface waters are available throughout the year, and 2) the amount of property needed to provide water storage reservoirs. However, combining a surface water system with multiple ASR wells and a process involving capturing "wasted water" would reverse these drawbacks.

As to wasted water, known data indicates that during wet season, more than 44 billion gallons of water spill through the S-97 control structure on the C-23 Canal each year and then discharges to the North Fork of the St. Lucie River each year. That 44 billion gallons of wasted water could instead be

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captured prior to traveling downstream and discharging to the Indian River Lagoon, thus producing a multitude of benefits including: helping meet future 70.29 MGD water demands; helping comply with growing regulations for the reuse of water; helping meet EPA's requirements to reduce nutrient loading in stormwater before it leaves the City; reducing negative impacts from freshwater discharges into the Indian River Lagoon.

Aquifer Storage & Recovery Well Systems (ASR): With an ASR system, surplus water can be pumped deep into the earth via an ASR well. When needed, stored water is "recovered" by pumping it out of the ASR well, so that it can be treated to drinking water standards and distributed to our customers.

Planning for 50-100 Years From Now: It has been established that Port St. Lucie's future demands for drinking water will exceed currently permitted allocations by nearly 20 MGD and that additional water supply resources will be required.

PSLUSD has evaluated potential surface water system sites as part of the surface water feasibility study. Surface water systems require large sites for their operations. Standing out from all the areas and sites studied, was a group of parcels collectively totaling approximately 3,107 acres, owned by the same entity, which would accommodate such an operation. The attached Exhibit A identifies the potential site, which is currently located outside the City's limits and is known as the McCarty Ranch Property.

While not within the City's current limits, the access driveway for the McCarty Ranch Property intersects Range Line Road and is adjacent to the City's SW Annexation Area, which presents positive access options. More importantly, the property has access to the C-23 Canal, which makes it an ideal site for capturing wasted water in reservoirs including in an existing several hundred acre former coquina rock mining pit. The mining pit could be converted into a surface water reservoir.

The McCarty Ranch Property is located near existing, large water distribution mainlines within the western part of the City. In addition, the site would be able to accommodate at least a 1.5 billion gallon ASR wellfield.

Surface Water System Support: Very importantly, SFWMD supports alternative water source projects like the one proposed in this memo and has provided a letter of support (see the attached Exhibit B).

Securing a Future Alternative Water Supply Resource: The City has the opportunity to secure its future water supply and continue its successful operations by purchasing the McCarty Ranch Property today. Doing so will insure the possibility of meeting water demands associated with the City's currently projected growth, as well as growth in other parts of our Utility Service Area. With the site's vast size, the potential also exists that storage and treatment facilities could be expanded to meet water demands related to

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population growth and development that is not currently identified in the City's Comprehensive Plan.

A conceptual timeline for development of the property is attached as Exhibit C.

The attached proposed Agreement for Sale and Purchase is the result of negotiations between PSLUSD, with the assistance of the City's Legal Department, and the current property owner. The Purchase Price is \$10,015,850.00 and is within the range of values assigned to the property by the appraiser hired by the City and the property owner's review appraiser. The purchase of this property would be funded using cost savings from past capital improvement projects, money which cannot be spent on operating costs (i.e. the 2006 Bond as shown in Exhibit D).

Summary: Before closing, the following points are offered for consideration:

- Securing adequate water sources is imperative. Life cannot exist without water.
- Based on existing growth projections and permitted allocations, we know we will have an approximate 20 MGD deficit.
- Our current water resources cannot be taken for granted because their availability are subject to environmental, regulatory and political factors.
- The proposed surface water project would be very good for the environment and would help the City meet future Total Maximum Daily Load (TMDL) requirements associated with the Clean Water Act.
- Negative impacts, including but not limited to algae blooms resulting from freshwater discharges to the Indian River Lagoon, will be significantly reduced with capturing wasted water from the C-23 Canal.
- It will foster continued good working relationships with regulatory agencies such as the Environmental Protection Agency, Florida Dept. of Environmental Protection, and SFWMD.
- Current real estate prices offer a good opportunity to address our future water needs.

Your assistance in forwarding this property acquisition matter for consideration at the next City Council meeting is requested.

If you have any questions or need additional information regarding this matter, please let me know.

c: Roger G. Orr, City Attorney  
Azlina Goldstein Siegel, Asst. City Attorney  
Edwin M. Fry, City Treasurer/Finance Director  
Bradley E. Macek, Asst. Utility Systems Director  
Daniel M. Segui, Deputy Utility Systems Director  
Donna M. Rhoden, Utility Safety & Public Affairs Mgr.

**Exhibit  
"A"**





**Exhibit  
"B"**



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**  
USD ADMINISTRATION

October 10, 2012

Jesus Merejo, Director  
Utility Systems Department  
City of Port St. Lucie  
900 SE Ogden Lane  
Port St. Lucie, FL 34983

Dear Mr. Merejo:

**Subject: City of Port St. Lucie Potential Water Supply Project**

Thank you for meeting with South Florida Water Management District (District) staff on Port St. Lucie's conceptual water supply project to capture, store and utilize excess surface water from the C-23 Canal to meet future water demands. The proposal incorporates storage through a reservoir and aquifer storage and recovery (ASR) wells that would make this water available during the dry season.

Capturing excess water, and use of reservoirs and ASR, are consistent with the District's 2011 Upper East Coast Water Supply Plan. In addition, based on the information provided, this proposal is consistent with the District's Northern Everglades and Estuaries Protection Program and the Comprehensive Everglades Restoration Plan Indian River Lagoon South Project.

The District supports projects implementing water source options contained in our water supply plans. Development of this project by the City should be coordinated with the District's Water Supply and Water Use Bureaus. In addition, design and implementation should be coordinated with the Indian River Lagoon South Project as additional storage capability could result in the need to modify the storage facilities that are proposed for the C-23 basin in the authorized plan.

If you have any questions, please contact Mark Elsner, Water Supply Development Section Administrator, at (561) 682-6156.

Sincerely,

A handwritten signature in blue ink that reads "Terrie Bates".

Terrie Bates  
Director  
Water Resources Division

c: Mark Elsner, SFWMD

**Exhibit  
"C"**

**Conceptual Long Term Plan for Utility and 3,107 Acres**

- 2013 Annex the property into the City of Port St. Lucie
- 2013 Lease portions of property to Agricultural users (revenue)
- 2013 Prepare a detailed Geological survey of property
- 2013 Determine which areas can continue to be mined for rock, and lease areas for mining (revenue)
- 2015 Prepare extensive Aquifer Storage Report to include the use of the Boulder Zone aquifer located below the Underground Source of Drinking Water (USDW), as suggested by SFWMD.
- 2015 Based from the Geological survey, strategically place water storage system, including additional reservoirs and ASR well fields. Plan around these water storage areas for future land uses such as:
  - Water treatment area
  - Natural preserve and conservation areas
  - Recreational areas
  - Commercial agriculture areas
- 2015 Work with FDEP and SFWMD to obtain permits to construct test/production ASR wells
- 2020 Pilot test multiple ASR wells in the Upper Floridan and Boulder Zone
- 2020 Start process of composite sampling of the C-23 water
- 2020 Meet with SFWMD and FDEP throughout the process to coordinate efforts and review plans based on Geological survey and C-23 water analysis
- 2025 Determine which treatment better suites the water conditions, and run multiple water treatment pilot tests to assure proper treatment is implemented. Investigate most economic and efficient way to pump water from the C-23 down the existing easement and to the plant site
- 2030 Start construction of additional surface water system reservoirs
- 2030 Start construction of ASR well field
- 2035 Start construction of surface water system Water Treatment Facility
- 2040 Surface Water Treatment Facility placed into service

**Exhibit  
"D"**

**Funds Available for Acquisition of 3,107-Acre McCarty Ranch Property**

Fund 445 - 2006 CIP Fund

Balance sheet as of 09/30/12	\$14,192,609.74	
Bayshore (Y1117)	(\$3,001,570.00)	
Midway (Y1122)	(\$1,000,000.00)	
Balance	<u>\$10,191,039.74</u>	- available for land purchase

## AGREEMENT FOR SALE AND PURCHASE

This Agreement for Sale and Purchase ("Agreement") is entered into this \_\_\_\_\_ day of, November, 2012, by and between **McCARTY RANCH REPH, LLC, a Florida limited liability company** (hereinafter referred to as "McCARTY RANCH") and the **CITY OF PORT ST. LUCIE, a Florida municipal corporation** (hereinafter referred to as "CITY").

For and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and in further consideration of the terms and conditions hereinafter set forth, the CITY and McCARTY RANCH, intending to be legally bound, agree as follows:

### I. CONVEYANCE OF REAL PROPERTY TO THE CITY.

McCARTY RANCH PROPERTY. McCARTY RANCH is the record, fee simple owner of various parcels of land consisting of approximately 3,107 acres, more or less, and more specifically described in the attached Exhibit "A" (the "MR PROPERTY"). McCARTY RANCH secured ownership to the MR PROPERTY by virtue of the Certificate of Title executed on September 12, 2012, and recorded on October 8, 2012, in Official Records Book 3439 at Page 2494, of the Public Records of St. Lucie County, Florida.

McCARTY RANCH hereby agrees to sell and convey to CITY and CITY hereby agrees to purchase and accept, by Special Warranty Deed and other appropriate documents, all of McCARTY RANCH's right, title and interest in and to the subject real property the MR PROPERTY, together with all tenements, hereditaments, privileges, servitudes, and other rights appurtenant to said MR PROPERTY owned by McCARTY RANCH, if any, in addition to any and all right, title and interest of McCARTY RANCH in and to all building and other permits, plans, specifications, architectural contracts, construction contracts and other agreements relating to the development and construction of improvements on the MR PROPERTY only to the extent it may have any interest, and any other fixtures and other improvements owned by McCARTY RANCH and located thereon, in addition to all fill and top soil thereon owned by McCARTY RANCH, and all oil, gas and mineral rights possessed by McCARTY RANCH, if any, and all right, title and interest of McCARTY RANCH in and to any and all streets, roads, highways, easements, drainage rights, or rights-of-way appurtenant to the MR PROPERTY, if any, and all right, title and interest of McCARTY RANCH in and to all covenants, restrictions, agreements and riparian rights as same may apply to and benefit the MR PROPERTY. This Agreement becomes legally binding upon execution by all parties.

As stated above, McCARTY RANCH obtained fee title to the MR PROPERTY by virtue of the above-described Certificate of Title. McCARTY RANCH obtained all of the right, title and interest of Ocean Bank, a Florida banking corporation ("OCEAN BANK") to bid on the MR PROPERTY at the public sale of the MR PROPERTY pursuant to that certain Assignment of Bid which was transferred, set over and delivered to McCARTY RANCH from OCEAN BANK pursuant to Paragraph 14 of the Agreed Final Judgment of Foreclosure entered by the Circuit Court of the 19<sup>th</sup> Judicial Circuit in and for St. Lucie County, Florida, in the foreclosure action styled *Ocean Bank vs. Bay Hill Holdings, LLC*, Case No. 562012CA002371. The Parties understand that the CITY'S agreement to purchase and accept title to the MR PROPERTY is subject to and contingent upon the simultaneous assignment of any and all rights to the personalty located at or on the MR PROPERTY together with any and all development rights surrendered and delivered to OCEAN BANK under said foreclosure action. Accordingly, McCARTY RANCH hereby agrees to obtain assignments, prior to the Closing Date of any and all rights, title and interest that OCEAN BANK may have pursuant to (i) the Assignment of Leases, Rents, and Profits dated February 27, 2004, and recorded on March 1, 2004, in Official

Records Book 1909 at Page 1274, of the Public Records of St. Lucie County, Florida, and (ii) the Collateral Assignment of Development Document and Covenants dated February 27, 2004, and recorded on March 1, 2004, in Official Records Book 1909 at Page 1282, of the Public Records of St. Lucie County, Florida. McCARTY RANCH understands, agrees and acknowledges that the delivery and assignment to the CITY of the above-described rights to the personality, leases and development documents which it shall obtain from OCEAN BANK it a material inducement for the CITY to enter into this Agreement.

**II. TERMS OF SALE AND PURCHASE.** The following terms and conditions shall apply to the sale and purchase of the MR PROPERTY.

1. PURCHASE PRICE. The CITY agrees to pay  $\pm$  and McCARTY RANCH agrees to accept a total sum of \$10,015,850.00 (the "Purchase Price") for the MR PROPERTY. The Purchase Price shall be paid at Closing and is subject to other adjustments and pro-rations as provided for herein.

2. INTEREST CONVEYED. McCARTY RANCH shall convey fee simple title to the MR PROPERTY to the CITY at Closing by Special Warranty Deed.

3. CLOSING. The closing of this transaction (the "Closing or "Closing Date") shall be completed on or before November 28, 2012, unless otherwise extended by a written mutual agreement between the Parties. The time and place of closing shall be set by mutual agreement of the Parties. Closing may be conducted by mail or electronic means. The Parties hereby agree that each party shall be responsible for their respective costs associated with the transfer and/or conveyance of the MR PROPERTY, unless otherwise agreed to herein. Further, McCARTY RANCH shall deliver possession of the subject property and keys to all locks, if any, to CITY at Closing.

4. TIME. Time is of the essence with regard to all dates or times set forth in this Agreement; however, all obligations are subject to Acts of God or Nature or any other occurrences, which are beyond the control of the Parties. All time periods expressed solely in "days" shall be computed in calendar days, not business days. In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday or a legal holiday shall extend until 5:00 p.m. of the next business day.

5. PRORATIONS. The Parties hereby agree that the typical pro-rations such as, but not limited to, utility services, water and sewer costs, solid waste service, electricity, and ad valorem taxes and assessments normally considered being part of closing costs and expenses shall be prorated at the Closing. Further, any and all delinquent taxes and/or tax certificates, respecting the MR PROPERTY, if any, shall be satisfied and paid for by McCARTY RANCH no later than the Closing Date.

6. LIENS. Subject to McCARTY RANCH'S right to elect not to cure any title defects within the time frame set forth in Paragraph 7 below, all liens of record, including certified municipal, city, and county liens, as well as special assessments, if any, on the MR PROPERTY shall be paid in full at or before Closing by McCARTY RANCH, provided that McCARTY RANCH shall have the right to negotiate the reduction of any such lien or assessment, and if the amount of any such lien or assessment exceeds one percent (1%) of the Purchase Price (as stated in Paragraph 1 of the above Section II) then McCARTY RANCH shall have the right to elect not to fully pay and satisfy said liens, and shall provide written notice to the CITY of such an election. Following receipt of written notice from McCARTY RANCH to not fully pay and satisfy any liens of record that exceed one percent (1%) of the Purchase Price, the CITY shall

have the option of: (i) accepting title subject to the liens of record, or (ii) requesting that McCARTY RANCH consent to a sale of only that portion of the MR PROPERTY not encumbered by any such liens, which consent may be granted or denied, at the sole and absolute discretion of McCARTY RANCH (and should McCARTY RANCH consent, then this Agreement shall be cancelled and rendered null and void as to the portion of the land affected by such liens), and proceed to Closing with the remaining parcels of land based on a per acre adjustment of the Purchase Price using a value of \$3,223.64 per acre, or (iii) declining to accept title to all lands of McCARTY RANCH, and thereupon this Agreement shall be cancelled and rendered null and void and the Parties shall be released of all obligations hereunder and shall have no further claims against each other, with respect thereto, except those which expressly survive the termination hereof. If a pending lien has been filed against the subject real estate which has not been certified as of the date of Closing, and the work and improvements for which the lien was filed have been completed prior to the Closing Date, despite the fact that the pending lien has not been certified, or (ii) a certified lien may be paid over a period of time, the obligation to pay such liens shall be assumed by the CITY as of the Closing Date.

7. TITLE INSURANCE. The CITY may, at its sole cost and expense, obtain a title insurance commitment and, upon McCARTY RANCH'S written request, furnish a copy to the requesting Party. In the event the CITY elects to obtain a title insurance commitment, it must order the same within two (2) business days of the Effective Date. The CITY may, at its sole cost and expense, obtain an owner's title insurance policy for the MR PROPERTY from a title insurance company licensed by the State of Florida ("Title Company") in an amount to be determined by the CITY, if applicable. The CITY shall have five (5) days from receipt of the title commitment to inspect said title documents and report defects, if any, in writing to the appropriate Party. If the title commitment shows title to the MR PROPERTY to be unmarketable, uninsurable, or unacceptable to CITY, in CITY'S sole discretion, then the CITY shall, within said five (5) day period, provide written notification of the unacceptable title defects to McCARTY RANCH. McCARTY RANCH shall have fifteen (15) days from the receipt of such notice to elect to cure the defects, and if after said period McCARTY RANCH shall not have elected to cure the defects, the CITY shall have the option of: (i) accepting title "as is," or (ii) declining to accept title to all lands of McCARTY RANCH, and thereupon this Agreement shall be cancelled and rendered null and void and the Parties shall be released of all obligations hereunder and shall have no further claims against each other, with respect thereto, except those which expressly survive the termination hereof, or (iii) CITY may request that McCARTY RANCH consent to a sale of only that portion of the MR PROPERTY not subject to the title defect based on a per acre adjustment of the Purchase Price using a value equal to \$3,223.64, which consent may be granted or denied, at the sole and absolute discretion of McCARTY RANCH, and should McCARTY RANCH consent, then this Agreement shall be cancelled and rendered null and void as to the portion of the land affected by the title defect. If McCARTY RANCH elects to cure the defect and is unable to do so despite using commercially reasonable efforts or elects not to do so, then CITY shall have the options set forth in this Paragraph 7 above. It is agreed and understood that McCARTY RANCH shall have no obligation to institute or prosecute any litigation to cure any title defect.

8. RYAN CLAUSE. The CITY acknowledges and agrees that there may be deed restrictions, restrictive covenants and such other restrictions appearing on any deed, assignment, declaration, plat, or other conveyance document or instrument, or otherwise common to any subdivision affecting the subject real estate. The CITY'S acceptance of title to the MR PROPERTY, which may be subject to such restrictions, shall not be construed as a waiver of the CITY'S claim of exemption as a governmental unit, from any cloud or encumbrance created by the above-mentioned matters pursuant to *Ryan v. Manalapan*, 414 So.2d 193 (Fla. 1982). The Parties hereby agree that this language shall appear on the face of the deed transferring title to the MR PROPERTY from McCARTY RANCH to the CITY.

9. PROPERTY CONDITION.

A. Delivery. On the Closing Date, McCARTY RANCH shall tender possession of the MR PROPERTY to the CITY in its "AS IS", "WHERE IS", "WITH ALL FAULTS" condition as of the Closing Date.

B. McCARTY RANCH Disclaimer of Condition. CITY UNDERSTANDS, AGREES AND ACKNOWLEDGES THAT McCARTY RANCH HAS ACQUIRED THE MR PROPERTY BY FORECLOSURE, AND CONSEQUENTLY, McCARTY RANCH HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE MR PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY McCARTY RANCH UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY CITY AND McCARTY RANCH, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CITY ACKNOWLEDGES AND AGREES TO ACCEPT THE MR PROPERTY IN ITS "AS IS" CONDITION AS OF THE CLOSING DATE, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE MR PROPERTY, WHETHER KNOWN OR UNKNOWN, WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT. CITY FURTHER AGREES AND ACKNOWLEDGES THAT McCARTY RANCH, AND ITS AGENTS, BROKERS, AND REPRESENTATIVES HAVE NOT MADE, AND McCARTY RANCH SPECIFICALLY NEGATES AND DISCLAIMS, AND NEITHER IT NOR ANY OTHER PERSON IS MAKING, EXCEPT AS SET FORTH SPECIFICALLY HEREIN, ANY REPRESENTATION, WARRANTY, PROMISE, COVENANT, AGREEMENT, ASSURANCE OR GUARANTEE OF ANY KIND OR CHARACTER, EITHER IMPLIED OR EXPRESS, ORAL OR WRITTEN, WITH RESPECT TO THE MR PROPERTY, OR ANY PORTION THEREOF.

CITY HAS RELIED AND WILL RELY SOLELY ON CITY'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THE MR PROPERTY, IT BEING THE EXPRESS INTENTION OF McCARTY RANCH AND CITY THAT THE MR PROPERTY WILL BE CONVEYED AND TRANSFERRED TO CITY IN ITS "AS IS", "WHERE IS" CONDITION AND STATE OF REPAIR, WITH ALL FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTER THAT MAY BE ASSOCIATED WITH THE MR PROPERTY.

CITY, WITH CITY'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH HEREIN, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. CITY ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT McCARTY RANCH WOULD NOT HAVE AGREED TO SELL THE MR PROPERTY TO CITY FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMER AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. EXCEPT AS SET FORTH SPECIFICALLY HEREIN, THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE ANY CANCELLATION OR TERMINATION OF THIS AGREEMENT OR THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND WILL BE INCORPORATED INTO THE DEED.

C. No Representations or Warranties by McCARTY RANCH. CITY acknowledges that except as expressly set forth in this Agreement, McCARTY RANCH has not made any warranties or representations concerning the MR PROPERTY or any component thereof, including, without limitation, the operation of or the costs or results of the operation thereof; the condition of any improvements thereon; the existence, location, quality or condition of any personal property; the concurrency status of the MR PROPERTY; the zoning or other land use restrictions affecting the MR PROPERTY; the enforceability of any contract or other agreement

or right assigned hereunder; the compliance of the MR PROPERTY or any part thereof with any governmental requirement; the use or existence or prior use or existence of Hazardous Materials on the MR PROPERTY; or the accuracy or completeness of any statement or other matter previously disclosed to CITY. EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN, THERE ARE NO EXPRESSED OR IMPLIED WARRANTIES GIVEN TO CITY IN CONNECTION WITH THE SALE OF THE MR PROPERTY. McCARTY RANCH DOES HEREBY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY, HABITABILITY AND FITNESS THAT MAY BE DUE FROM McCARTY RANCH TO CITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THIS SECTION SHALL SURVIVE THE CLOSING.

10. EMINENT DOMAIN. The CITY reserves the right to file a condemnation action to secure clear, fee simple marketable title to the MR PROPERTY against any and all known or unknown persons who may claim any interest whatsoever in and to the subject real estate. In the event the CITY determines that it is in its best interest to acquire title through condemnation proceedings, McCARTY RANCH expressly consents to such proceedings and agrees not to contest the taking on any ground whatsoever, and to accept the Purchase Price as stated in Paragraph "1" of Section II hereinabove, pursuant to a settlement agreement that will incorporate all of the obligations and responsibilities of the Parties, as full and just compensation for the taking of the MR PROPERTY, including any and all attorney's fees and costs, and special damages, if any. Notwithstanding the foregoing, for purposes of clarity, it is agreed and understood that the foregoing paragraph shall not be interpreted or construed to allow the CITY to avoid or delay its obligation to close on or before the Closing Date in accordance with the terms of this Agreement.

11. HAZARDOUS MATERIALS, COMPLIANCE & INSPECTIONS. The term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, and it shall also include solid waste or debris of any kind with regard to the following provisions:

A. Compliance: To its knowledge, McCARTY RANCH has not received any notice: (i) indicating that the MR PROPERTY is not in compliance with any Federal, State and Local environmental laws, or (ii) of (A) any unlawful spill of hazardous materials on the MR PROPERTY, (B) any existing or threatened environmental lien against the MR PROPERTY, or (C) any legal proceeding or investigation regarding the generation, storage, treatment or transfer of hazardous substances on the MR PROPERTY. This provision shall survive closing and is not deemed satisfied by conveyance of title.

Whenever in this Agreement there is any reference to the "knowledge" of McCARTY RANCH or whether McCARTY RANCH is aware of any particular fact, such term refers to the actual (as opposed to the constructive or imputed) knowledge of Carlos Sandino, without the obligation to undertake any independent investigation or inquiry. In addition, whenever in this Agreement a representation or warranty refers to compliance with, violation of or otherwise deals with any applicable law or similar requirement and is qualified by McCARTY RANCH'S knowledge or similar terms, the knowledge of McCARTY RANCH shall not be deemed to include knowledge of the requirements of such laws (or similar requirement) in question as applied to any relevant facts and circumstance or condition but only a fact, circumstance or condition known to Carlos Sandino constitutes noncompliance or violation of such laws (or similar requirement) as understood or believed by Carlos Sandino.

B. Inspections: The CITY may, at CITY'S sole cost and expense, and within the earlier to occur of fifteen (15) days after the CITY'S execution of this Agreement or November 5, 2012 (the "Inspection Period") perform environmental investigations, surveys, and site assessments of the MR PROPERTY. McCARTY RANCH agrees to provide the CITY will

reasonable access and entry to the MR PROPERTY from the Effective Date of this Agreement to the Closing Date. The CITY shall use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of hazardous materials on the subject property. Should such inspections show the existence of hazardous materials on the MR PROPERTY, which CITY is unable or unwilling to accept, the CITY may elect to (i) request that McCARTY RANCH consent to a sale of only that portion of the MR PROPERTY not subject to the contamination based on a per acre adjustment of the Purchase Price using a value equal to \$3,223.64, which consent may be granted or denied, at the sole and absolute discretion of McCARTY RANCH, and should McCARTY RANCH consent, then this Agreement shall be cancelled and rendered null and void as to the portion of the land affected by the contamination, or (ii) terminate this Agreement in its entirety, by giving McCARTY RANCH written notice of its election prior to the expiration of the Inspection Period, or (iii) proceed to closing without adjustment to Purchase Price. If the CITY elects to terminate this Agreement, then all Parties shall be released from all further obligations hereunder and shall have no further claims against each other, with respect thereto, except those which expressly survive the termination hereof, unless McCARTY RANCH, in its sole discretion, elects in writing to remediate such hazardous waste to the satisfaction of the CITY that will be accepting the conveyance of the subject real estate. If McCARTY RANCH is unwilling to remediate such hazardous waste to the CITY'S satisfaction, then the CITY may elect to waive all such remediation and proceed to Closing without adjustment Purchase Price, provided that such election must be made in writing within ten (10) days of CITY'S receipt of written notice from McCARTY RANCH that it is unable or unwilling to remediate the hazardous waste. If the CITY does not waive remediation, this Agreement shall terminate as set forth above.

C. Indemnification: Without limiting any other provision contained in this Agreement, CITY, on behalf of itself and its heirs, successors and assigns, hereby indemnifies, waives, releases, acquits, defends, holds harmless and forever discharges McCARTY RANCH, its respective officers, directors, partners, shareholders, members, managers, employees, agents, representatives and any other person acting on behalf of McCARTY RANCH, and the successors and assigns of any of the preceding, of, from and against any and all losses, liabilities (including strict liability), claims, actions, causes of action, demands, rights, liability, damages, injuries, liens (including mechanic's liens and materialman's liens), costs, expenses, including attorneys' and paralegals' fees and cost (at trial and appellate levels and in any bankruptcy or administrative proceedings), or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which McCARTY RANCH or any of its heirs, successors or assigns now has or which may arise in the future on account of or in any way related to CITY'S (or its consultants, experts, contractors, employees, or agents) investigation of the land. Notwithstanding anything to the contrary in this Agreement, the indemnities provided by the CITY hereunder will not extend or apply to any claims, damages, suits, actions, expenses, losses, liabilities, liens, expenses and costs caused by or resulting from the negligence or willful misconduct of McCARTY RANCH, or its respective officers, directors, partners, shareholders, members, managers, employees, agents representatives, affiliates and any other person or entity acting for or on behalf of McCARTY RANCH. This indemnification shall survive the Closing or the earlier termination of this Agreement.

12. SURVEY. The CITY may, at its sole cost and expense and during the Inspection Period, have the MR PROPERTY surveyed. CITY shall deliver written notice to the McCARTY RANCH, no later than fifteen (15) days after the Effective Date, of any encroachments on the subject realty, encroachments by the realty's improvements on other lands, or deed restrictions or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and the obligations of the Parties will be determined in accordance with Paragraph "7" above. McCARTY RANCH shall have ten (10) days from the receipt of such notice to elect

to cure the encroachment or violation, and if after said period that Party shall not have elected to cure the defects, the CITY shall have the same options with regard to title defects as set forth in Paragraph "7" above.

13. PERMITS. If required by CITY in its sole discretion, McCARTY RANCH shall as part of Closing transfer and assign to CITY, pursuant to a quit-claim deed, assignment, or other type of form and content that is acceptable to the governmental agency that issued the permit(s), any and all right, title and interest, if any, that McCARTY RANCH may have in any and all permits issued by the South Florida Water Management District, Florida Department of Environmental Protection, Florida Department of Transportation, Army Corps of Engineers, or any other governmental agency, for and/or relating to the mining, excavation, or harvesting of the raw materials, minerals, and all other natural resources located on, under, within, and upon the MR PROPERTY, if any.

14. RIGHT TO ENTER THE PROPERTY. The Parties agree that from the Effective Date of this Agreement through the date of Closing, the CITY, its officers, agents, or employees, shall have at all reasonable times, the right to enter the MR PROPERTY for all lawful purposes, including investigations, examinations and testing of the subject property and any resources and improvements upon said real estate, in connection with the transaction(s) contemplated under this Agreement.

15. LOSS. All risk of loss to the MR PROPERTY shall be borne by McCARTY RANCH until transfer of title.

16. TENANCIES. McCARTY RANCH hereby agrees that any existing and current lease(s) or other agreement(s) concerning the MR PROPERTY, including but not limited to (i) the Lease made and entered into on March 10, 2010, by and between Bay Hill Holding, LLC, a Florida limited liability company, and Triangle Cattle & Equipment, Inc., and (ii) the Lease Agreement made on May 12, 2010, by and between Bay Hill Holdings, LLC, and Triangle Tomato Company, a Florida corporation, shall be assigned to, and assumed by the CITY following the Closing. McCARTY RANCH will not, without CITY'S prior written consent, renew or amend any existing lease or enter into any new lease or rental agreement without CITY'S consent, which consent shall be in the sole and absolute discretion of the CITY. At Closing, McCARTY RANCH agrees to inform any and all of the lessees, tenants, or occupants of the MR PROPERTY that should they desire to continue using the lands that are to be conveyed to CITY, then said persons may be required to enter into a lease or license agreement with the CITY, if applicable. There shall be no prorations for rent collected by McCARTY RANCH prior to Closing.

17. BROKERS. Any and all real estate fees or commissions claimed due, pursuant to this transaction and/or conveyance of the MR PROPERTY to any real estate broker or agent shall be paid by the Party with whom any such broker or agent has a brokerage agreement. McCARTY RANCH shall hold the CITY harmless from and against any and all claims, liability, cost, expense, damages, judgments and causes of action, including reasonable attorney's fees, based on real estate commissions claimed due pursuant to this transaction to any real estate broker or real estate agent with whom McCARTY RANCH may have an agreement concerning the subject properties. The CITY shall hold McCARTY RANCH harmless from and against any and all claims, liability, cost, expense, damages, judgments and causes of action, including reasonable attorney's fees, based on real estate commissions claimed due pursuant to this transaction to any real estate broker or real estate agent with whom the CITY may have an agreement concerning the subject properties. The indemnities provided in this paragraph shall survive Closing or any earlier termination of this Agreement.

18. EXPENSES. The CITY shall be responsible for the costs of any title insurance fees and obtaining an Owner's Policy on the MR PROPERTY. McCARTY RANCH shall be responsible for recording of the deed(s) and other documents required to be recorded in order to convey fee title to the MR PROPERTY to the CITY, and McCARTY RANCH'S legal expenses, if any. The CITY and McCARTY RANCH agree that CITY shall be responsible for the payment of fifty percent (50%) of all Florida Documentary Stamp Taxes on the Special Warranty Deed(s).

19. DEFAULT. If McCARTY RANCH defaults under this Agreement, then the CITY may waive the default and proceed with Closing without adjustment to the agreed upon Purchase Price, in which event any and all claims with respect to such default shall be deemed extinguished, or any Party may seek specific performance. In the event that CITY elects to seek specific performance (a) such action must be filed and served on McCARTY RANCH within 30 days of the applicable default and (b) CITY must file a verified complaint which alleges that CITY has the financial ability to perform under this Agreement and attaches to the complaint evidence of CITY'S financial ability to perform at the time of the alleged default. If the CITY defaults under this Agreement, then McCARTY RANCH may terminate the Agreement, in which event this Agreement shall be deemed null and void and of no further force and effect except for any obligations which specifically survive Closing or earlier termination of this Agreement. In no event shall any Party be liable for any damages (actual, special, consequential, punitive, or otherwise) for any default under this Agreement. However, a defaulting Party that incurs costs and/or expenses as a result of actions required to comply with an order by a court granting specific performance as a remedy shall not be deemed damages. IN NO EVENT SHALL McCARTY RANCH, ITS RESPECTIVE DIRECT OR INDIRECT PARTNERS, MEMBERS, MANAGERS, SHAREHOLDERS, OWNERS OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY, BEYOND ITS INTEREST IN THE MR PROPERTY, FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE MR PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

20. LITIGATION. In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the other Party upon final court judgment, including appellate proceedings.

21. SUCCESSORS IN INTEREST. This Agreement will inure to the benefit of and be binding upon, and is intended solely for the benefit of the Parties hereto, and their respective heirs, personal representatives, successors, and assigns, and no third party shall have any rights, privileges or other beneficial interests herein or hereunder.

22. GOVERNING LAW. This Agreement is governed by and will be construed in accordance with the laws of the State of Florida. In the event of any legal or equitable action arising under this Agreement, the venue of such action shall lie exclusively within the state courts in and for St. Lucie County.

23. INVALID PROVISIONS. In the event any term or provision of this Agreement is held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions will not be affected thereby, but will be valid and remain in full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

24. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile and/or email transmission copy of this Agreement and any signatures thereon shall be considered for all purposes as originals.

25. RECORDING. This Agreement or notice thereof may be recorded by the CITY in the minutes of the Clerk of the City Council for Port St. Lucie, St. Lucie County, Florida, but may not be recorded in the Official Public Records of the Clerk of the Court of St. Lucie County, Florida.

26. ASSIGNMENT. Neither this Agreement nor any interest therein shall be assigned by CITY or McCARTY RANCH without the express written consent of all Parties.

27. NOTICES. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the Party giving such notice) hand delivered by messenger or courier service, or by United States Mail with postage prepaid, and shall be directed to:

<b>FOR CITY:</b>	<b>FOR McCARTY RANCH:</b>
CITY OF PORT ST. LUCIE 121 SW Port St. Lucie Boulevard Port St. Lucie, FL 34984 Attn: City Attorney	McCARTY RANCH 780 NW 42 <sup>nd</sup> Avenue, Suite 300 Miami, FL 33126 Attn: Carlos Sandino
<u>With a copy to:</u> CITY OF PORT ST. LUCIE 121 S.W. Port St. Lucie Boulevard Port St. Lucie, FL 34984 Attn: City Manager	<u>With a copy to:</u> CARLTON FIELDS, P.A. Miami Tower 100 S.E. Second Street, Ste 4200 Miami, FL 33131 Attn: Jay Steinman, Esq.

Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery or (ii) on the date mailed, postage prepaid.

28. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the Parties hereto as it pertains to the subject matter contained herein and shall supersede and take precedence over any and all prior and contemporaneous agreements and understandings between the Parties hereto.

29. JURY WAIVER. IN ANY CIVIL ACTION, COUNTERCLAIM OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, AND ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, TRIAL WILL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

30. EFFECTIVENESS. The effectiveness of this Agreement is contingent upon and subject to approval by the City Council of the City of Port St. Lucie, as well as public hearing, if applicable. However, the Effective Date of this Agreement shall be the date the last party signed this Agreement.

IN WITNESS WHEREOF, the CITY and McCARTY RANCH have caused this Agreement to be duly executed on behalf of their respective entities as of the day and year above written.

**[SIGNATURES ON NEXT PAGE]**

CITY:

ATTEST:

CITY OF PORT ST. LUCIE, a Florida  
municipal corporation

By: \_\_\_\_\_  
Karen A. Phillips  
City Clerk

By: \_\_\_\_\_  
Gregory J. Oravec  
City Manager

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Roger G. Orr  
City Attorney

STATE OF FLORIDA        )  
  ) ss  
COUNTY OF ST. LUCIE    )

I HEREBY CERTIFY, that on this \_\_\_ day of November, 2012, before me, an officer duly authorized to administer oaths and take acknowledgments, Gregory J. Oravec, as City Manager of the City of Port St. Lucie, a Florida municipal corporation, and authorized to act on behalf of the City of Port St. Lucie, personally known to me or proven by producing the following identification \_\_\_\_\_ to be the person who executed the foregoing instrument freely and voluntarily for the purposes therein expressed.

NOTARY SEAL/STAMP

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Name of Notary Public

**[SIGNATURES CONTINUE ON NEXT PAGE]**

McCARTY RANCH:

McCARTY RANCH REPH LLC,  
a Florida limited liability company

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY, that on this \_\_\_ day of November, 2012, before me, an officer duly authorized to administer oaths and take acknowledgments, \_\_\_\_\_, as \_\_\_\_\_ of McCarty Ranch Reph LLC, a Florida limited liability company, and authorized to act on behalf of the company, personally known to me or proven by producing the following identification \_\_\_\_\_ to be the person who executed the foregoing instrument freely and voluntarily for the purposes therein expressed.

NOTARY SEAL/STAMP

\_\_\_\_\_  
Signature of Notary Public  
\_\_\_\_\_  
Print Name of Notary Public

Document comparison by Workshare Professional on Thursday, October 18, 2012  
 5:54:28 PM

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Rendering set	standard

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Moved cell	
Split/Merged cell	
Padding cell	

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