



## **CITY OF AVON PARK**

Highlands County, Florida

**110 East Main Street**

**Avon Park, Florida 33825**

May 19, 2015

Avon Park City Council  
110 East Main Street  
Avon Park, Florida 33825

Dear Council Members:

Pursuant to City Ordinance No. 874, you are hereby notified of a Special Meeting of the City Council on Tuesday, May 26, 2015, at 6:00 p.m., in the City Council Chambers located at 123 East Pine Street, Avon Park, Florida. If you are unable to attend, please contact me at 452-4403.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julian Deleon", is written over a horizontal line.

Julian Deleon  
City Manager



**CITY OF AVON PARK**  
Highlands County, Florida

**CITY COUNCIL SPECIAL MEETING  
CITY COUNCIL CHAMBERS  
123 E. Pine St., Avon Park, FL  
TUESDAY, May 26, 2015  
6:00 PM**

- A. OPENING**
1. Invocation
  2. Pledge of Allegiance
  3. Roll Call
- B. CITIZENS/OUTSIDE AGENCIES**
- C. CONSENT AGENDA:**
7. Approve Regular Minutes, May 11, 2015
- D. COMMITTEE REPORTS/ ATTY UPDATES/ ANNOUNCEMENTS/  
PRESENTATIONS:**
9. Ag-Flying services contract update
  10. Gaster Road update
  11. CDBG Grant- Southside CRA district
- E. ADMINISTRATIVE:**
12. Approval of TRIM Budget Calendar for FY 2015/2016
  13. **Ordinance 16-15 First Reading**  
City initiated text amendment to the Land Development Code: to permit certain new uses in the C-4 zoning district by special approval.

14. Scarborough Property Purchase Agreement

**G. CITIZENS PARTICIPATION**

**H. ADJOURN**

Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.

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**CITY COUNCIL REGULAR MEETING MINUTES**  
**Council Chambers – 123 E. Pine St., Avon Park, FL**  
**May 11, 2015**  
**6:00 PM**

**Members Present:** Deputy Mayor Brenda Giles, Councilman Parke Sutherland Councilman Terry Heston, Councilman Garrett Anderson.

**Members Absent:** Mayor Sharon Schuler (excused)

**Others Present:** City Manager Julian Deleon, and Administrative Services Director/City Clerk Maria Sutherland, Attorney Gerald T. Buhr, Members of Press and Audience.

Deputy Mayor Brenda Giles called the meeting to order at 6:00 P.M. The invocation was given and the Pledge of Allegiance was recited. The roll was called and a quorum was present.

**CITIZENS/OUTSIDE AGENCIES:**

**PROCLAMATION/LUNG WEEK**

City Clerk Maria Sutherland read into the record the title of the Proclamation Second Full Week of May is Women's Lung Hearh Week.

**Motion** made by Councilman Terry Heston, Seconded by Councilman Parke Sutherland, to approve the Proclamation as read. Motion passed unanimously.

**AVON PARK HOUSING AUTHORITY – PILOT PROGRAM:**

Larry Shoeman and Cameron Barnard presented the Payment of \$8,446.46 in lieu of taxes "Pilot Payment to the City.

**CONSENT AGENDA:** City Manager, Julian Deleon, noted the items on the consent agenda.

**Approve Regular Minutes April 27, 2015.**

**Motion** made by Councilman Terry Heston, Seconded by Councilman Parke Sutherland, to approve minutes of April 27, 2015, as presented. Motion passed unanimously.

**FIRE ASSESSMENT UPDATE:**

Erick Van Malssen approached the podium to inform the Council on the draft fire assessment.

**AG FLYING SERVICES CONTRACT UP DATE:**

Mr. Jerry Wise approached the podium and addressed the Council. He stated that he was able to procure insurance as requested per the contract. Mr. Wise asked that the pollution component of the lease be

removed from the lease agreement as a requirement. Mr. Wise also stated his attorney wanted itemized invoices that were paid for the cleanup.

**RESOLUTION 15-11: FUEL FARM SUPPLEMENTAL AGREEMENT WITH D.O.T.**

Attorney Gerald Buhr read the title of Resolution 15-11 into the record.

**Motion** made by Councilman Parke Sutherland, Seconded by Councilman Garrett Anderson to approve Resolution 15-11 as read. Motion passed unanimously.

**TERMITE TREATMENT FOR DEPOT MUSEUM BUILDING:**

**Motion** made by Councilman Parke Sutherland, Seconded by Councilman Terry Heston to approve the contract with Arrow Environment Services in the amount of \$2,016.00 plus a \$241.00 for annual treatment. Motion passed 3 to 1 with Councilman Parke Sutherland abstaining.

**FEMA PROJECT / HMGP1561-093-R/ AGREEMENT 07HM-6@-07-38-02-062.**

Discussion of relocation of fill/dirt from airport drainage project.

City Clerk Maria Sutherland gave an overview of the FEMA Drainage Project and alternatives to the relocation of fill dirt. Alternatives were to haul fill to public work site or leave fill as originally designed in project. Hauling it elsewhere would be too expensive. Currently, the Public Works site is closest and is already used as a staging area for fill. Council did not object to the public works site and no one from the audience objected either.

**SWFWMD BMPs LAKE VERONA EXTENSION**

Agreement no 12C00000080-A

**Motion** made by Councilman Parke Sutherland, Seconded by Councilman Terry Heston to enter into the agreement with SWFWMD. Motion passed unanimously.

**BRICKELL BUILDING; ARCHITECT EVALUATION/AUTHORIZATION:**

Paid for from infrastructure fund.

Motion made by Councilman Parke Sutherland, Seconded by Deputy Mayor Brenda Giles to approve use of infrastructure funds of \$9800.00 with Collman & Karsky Architects Inc. Motion passed 3 to 1 with Councilman Garrett Anderson voting no.

**ORDINANCE 15-15 NATURAL GAS FRANCHISE AGREEMENT:**

This item was pulled from the agenda.

**MAINTENANCE OF CITY SPORT PARKS:**

City Manager Julian Deleon provided detailed information on outsourcing maintenance of fields.

**AIRPORT LEASE:**

PJ Aircraft Services and K-Kasley Aircraft Services.

**Motion** made by Councilman Garrett Anderson, Seconded by Councilman Terry Heston to approve airport lease as presented. Motion passed unanimously.

**CITIZENS PARTICIPATION:**

Chris Miller, owner of Sebring Ridge Utilities approached the podium to voice his concerns to the Council regarding the sales of his utility.

Meeting adjourned at 7:33 PM

Attest

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Maria Sutherland, City Clerk

Sharon Schuler, Mayor

## **Maria Sutherland**

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**From:** Julian Deleon  
**Sent:** Monday, May 18, 2015 4:37 PM  
**To:** Bonnie Barwick; Maria Sutherland  
**Cc:** Terry Heston; Parke Sutherland; Sharon Schuler; Brenda Giles; Garrett Anderson  
**Subject:** Agenda--> Approval of TRIM Budget Calendar for FY 2015/2016  
**Attachments:** trim-2015-dor-review.xls

Maria—Please add to the agenda with this email as an explanation.

### **Approval of TRIM Budget Calendar for FY 2015/2016**

**Background:** As we prepare for next year's budget process, attached you will find the critical dates. Staff is proposing a workshop, during a regular City Council meeting, on Monday night July 13<sup>th</sup> to review revenues and expenses on a per department basis. We do not see the need to do this on a Saturday or Sunday morning, where very little public attendance took place. We would like to start this planned budget workshop meeting on July 13<sup>th</sup> at 5PM.

Since the budget workshop is not normally attended by the City Attorney, the Council should determine whether to excuse or require his attendance to the workshop. Staff is not projecting having anything of relevance on the agenda, with the exception of budget discussions.

Julian Deleon  
City Manager of Avon Park  
**Corporate Limits located within Highlands County District 1 & 2**  
110 E. Main Street  
Avon Park, FL 33825  
[www.avonpark.cc](http://www.avonpark.cc)  
Office: 863-452-4403  
Fax: 863-452-4413  
Cell: 863-443-4884

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**FY 2015/2016 BUDGET (TRIM) CALENDAR - PROPOSED/TENTATIVE  
CITY OF AVON PARK**

	<b>DATE</b>	<b>FUNCTION</b>
	Monday, June 08, 2015	City Council Meeting, Adoption of Preliminary Initial Fire Assessment Resolution
	Tuesday, June 16, 2015	Mailing of individual notices, City staff advertisement of Fire Assessment rate in Newspaper
1	Wednesday, July 01, 2015	Property Appraiser certifies form DR-420
2	Thursday, July 02, 2015	
3	Friday, July 03, 2015	
4	Saturday, July 04, 2015	
5	Sunday, July 05, 2015	
6	Monday, July 06, 2015	City Holiday observing July 4th
7	Tuesday, July 07, 2015	
8	Wednesday, July 08, 2015	
9	Thursday, July 09, 2015	
10	Friday, July 10, 2015	
11	Saturday, July 11, 2015	
12	Sunday, July 12, 2015	
13	Monday, July 13, 2015	<b>COUNCIL MEETING, * Public Hearing on Fire Assessment, Final Fire Assessment Resolution, * CITY BUDGET WORKSHOP</b>
14	Tuesday, July 14, 2015	
15	Wednesday, July 15, 2015	
16	Thursday, July 16, 2015	
17	Friday, July 17, 2015	
18	Saturday, July 18, 2015	
19	Sunday, July 19, 2015	
20	Monday, July 20, 2015	
21	Tuesday, July 21, 2015	
22	Wednesday, July 22, 2015	
23	Thursday, July 23, 2015	
24	Friday, July 24, 2015	
25	Saturday, July 25, 2015	
26	Sunday, July 26, 2015	
27	Monday, July 27, 2015	
28	Tuesday, July 28, 2015	<b>COUNCIL MEETING, SET PRELIMINARY MILLAGE RATE.</b>
29	Wednesday, July 29, 2015	
30	Thursday, July 30, 2015	
31	Friday, July 31, 2015	
32	Saturday, August 01, 2015	
33	Sunday, August 02, 2015	
34	Monday, August 03, 2015	
35	Tuesday, August 04, 2015	<b>Due Date for day=35, after tax certification by P.A. (July1), last day to provide PA with DR-420, DR-420 TIF</b>
36	Wednesday, August 05, 2015	
37	Thursday, August 06, 2015	
38	Friday, August 07, 2015	
39	Saturday, August 08, 2015	
40	Sunday, August 09, 2015	
41	Monday, August 10, 2015	
42	Tuesday, August 11, 2015	
43	Wednesday, August 12, 2015	
44	Thursday, August 13, 2015	
45	Friday, August 14, 2015	
46	Saturday, August 15, 2015	
47	Sunday, August 16, 2015	
48	Monday, August 17, 2015	
49	Tuesday, August 18, 2015	
50	Wednesday, August 19, 2015	
51	Thursday, August 20, 2015	
52	Friday, August 21, 2015	
53	Saturday, August 22, 2015	
54	Sunday, August 23, 2015	
55	Monday, August 24, 2015	<b>Within 55 days the P.A. mails out tax notices to property owners</b>
56	Tuesday, August 25, 2015	
57	Wednesday, August 26, 2015	
58	Thursday, August 27, 2015	
59	Friday, August 28, 2015	
60	Saturday, August 29, 2015	
61	Sunday, August 30, 2015	
62	Monday, August 31, 2015	
63	Tuesday, September 01, 2015	
64	Wednesday, September 02, 2015	
65	Thursday, September 03, 2015	<b>1st day that we can legally hold public hearing on tentative Budget meetings, and proposed millage rate. (65 - 80 Days)</b>
66	Friday, September 04, 2015	(This tentative hearing is published on the PA TRIM notice that is mailed out by the PA.)
67	Saturday, September 05, 2015	(Within 15 days of the tentative hearing, the taxing authority must advertise final millage and budget summary ad.)
68	Sunday, September 06, 2015	(Final public hearing within 2 to 5 days after the above hearing advertisement to adopt final millage and budget.)
69	Monday, September 07, 2015	(Within 3-days after final hearing and adoption of resolution/ord, this is forward to PA and DOR.)
70	Tuesday, September 08, 2015	<b>(Within 30 days of final hearing each authority gets DOR and PA completed DR-422</b>
	Wednesday, September 09, 2015	
71	Thursday, September 10, 2015	
72	Friday, September 11, 2015	Notify Tax Collector on Fire Assessment Roll.
73	Saturday, September 12, 2015	

74	Sunday, September 13, 2015		
75	Monday, September 14, 2015		<b>COUNCIL MEETING: OFFICIAL PUBLIC HEARING ON TENTATIVE BUDGET, and TENTATIVE MILLAGE )</b>
76	Tuesday, September 15, 2015		
77	Wednesday, September 16, 2015		
78	Thursday, September 17, 2015		
79	Friday, September 18, 2015		
80	Saturday, September 19, 2015		
81	Sunday, September 20, 2015		
82	Monday, September 21, 2015		
83	Tuesday, September 22, 2015		
84	Wednesday, September 23, 2015		
85	Thursday, September 24, 2015		
86	Friday, September 25, 2015		<b>Newspaper Advertisement in local paper BUDGET Hearing</b>
87	Saturday, September 26, 2015		
88	Sunday, September 27, 2015		
89	Monday, September 28, 2015		<b>COUNCIL MEETING. PUBLIC HEARING TO ADOPT FINAL BUDGET (2-5 DAYS AFTER AD)</b>
90	Tuesday, September 29, 2015		Forward resolution adopting final millage rate to Property Appraiser and Tax Collector.
91	Wednesday, September 30, 2015		<b>(Within 30 days of final hearing each authority gets DOR and PA completed DR-422</b>
92	Thursday, October 01, 2015		

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**TEXT AMENDMENT**  
TO THE CITY OF AVON PARK  
LAND DEVELOPMENT CODE

**ORDINANCE NO. 16-15**

**OVERVIEW REPORT**  
MAY 26, 2015

**TO:** CITY OF AVON PARK CITY COUNCIL

**SUBJECT:** **ORDINANCE NO. 16-15:**  
**City-initiated text amendment to the City of Avon Park Land Development Code to permit certain new uses in the C-4 zoning district by special approval, specifically adding *Auto/Vehicle sales, new or used (auto, truck, boat, RVs), dealerships w/ sales & service; Car Wash and Auto Detailing; and Plant nursery.***

**AGENDA & HEARING DATES:**

May 12, 2015:	Planning & Zoning Board Meeting (Public Hearing)
<b>May 26, 2015:</b>	<b>City Council Meeting (First Reading, Public Hearing)</b>
June 8, 2015:	City Council Meeting (Second Reading, Adoption Hearing)

**PLANNING AND ZONING BOARD ACTION:**

On Tuesday, May 12, 2015, the Planning and Zoning Board voted unanimously in favor of forwarding the proposed text amendment to the City Council with a recommendation of approval.

**CITY COUNCIL MOTION OPTIONS:**

1. I move the City Council **approve the First Reading of Ordinance No. 16-15**
2. I move the City Council **approve with changes the First Reading of Ordinance No. 16-15**

**ATTACHMENTS:**

- Ordinance No. 16-15

**ORDINANCE NO. 16-15**

**AN ORDINANCE OF THE CITY OF AVON PARK, FLORIDA, AMENDING THE AVON PARK LAND DEVELOPMENT CODE; AMENDING ARTICLE 2, TABLE 2.04.01(A), TABLE OF LAND USES TO ALLOW WITH A CONDITIONAL USE PERMIT, AUTO/VEHICLE SALES, NEW OR USED (AUTO, TRUCK, BOAT, RVs), DEALERSHIPS WITH SALES AND SERVICE, CAR WASH AND AUTO DETAILING, AND PLANT NURSERY IN THE C-4 DOWNTOWN COMMERCIAL ZONING DISTRICT; AND AMENDING ARTICLE 3, SECTION 3.09.00 DEVELOPMENT STANDARDS FOR CONDITONAL USES ADDING STANDARDS FOR AUTO/VEHICLE SALES, NEW OR USED (AUTO, TRUCK, BOAT, RVs), DEALERSHIPS WITH SALES AND SERVICE, CAR WASH AND AUTO DETAILING, AND PLANT NURSERY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 163.3167(c), Florida Statutes, empowers the City to adopt land development regulations to guide the growth and development of the City; and

**WHEREAS**, pursuant to Section 166.041(3)(c)(2), Florida Statutes, the City Council of the City of Avon Park has held meetings and hearings regarding the proposed amendments to the Unified Land Development Code, with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including supporting documents; and

**WHEREAS**, in exercise of its authority, the City Council of the City of Avon Park has determined it necessary to adopt these amendments, which are shown in Exhibit "A", attached hereto and made a part hereof, to encourage the most appropriate use of land consistent with public interest; and,

**NOW, THEREFORE**, be it enacted by the City Council of the City of Avon Park, Florida:

**Section 1.** Article 2, Table 2.04.01(A) and Article 3, Section 3.09.00 are hereby amended as shown in Exhibit "A".

**Section 2.** **Severability:** If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

**Section 3.** **Effective Date:** This ordinance shall take effect immediately upon adoption at second reading.

This Ordinance shall be codified in the Code of Ordinances of the City of Avon Park, Florida. A certified copy of this enacting ordinance shall be located in the Office of the City Clerk of Avon Park. The City Clerk shall also make copies available to the public for a reasonable publication charge.

ORDINANCE NO. 16-15

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**INTRODUCED AND PASSED** on First Reading at the regular meeting of the Avon Park City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015

**PASSED AND DULY ADOPTED**, on second reading at the meeting of the Avon Park City Council duly assembled on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF AVON PARK, FLORIDA**

\_\_\_\_\_  
**Sharon Schuler, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Maria Sutherland, City Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Gerald T. Buhr, City Attorney**

**Motion made by** \_\_\_\_\_ **seconded by** \_\_\_\_\_.

**The vote was** \_\_\_\_ **for** \_\_\_\_ **against with** \_\_\_\_ **abstentions and** \_\_\_\_ **absent**

**ORDINANCE NO. 16-15**

**EXHIBIT "A"**

**City of Avon Park Unified Land Development Code  
Amendments to Article 2 and Article 3**

*Article 2 is hereby amended by revising **Table 2.04.01(A), Table of Land Uses** to read as shown below. Text that is underlined is text to be added. Text that is ~~strikeout~~ is text to be removed.*

**2.04.01 Zoning District Summary Tables**

- P = Permitted Use
- D = Site Development Plan required, use is permitted upon approval of a site development plan
- S = Special Exception Use, Board action required
- C = Conditional Use, Board action required, City Council action required
- \* = Supplemental Development Standards apply (see Section 3.11.00)

Table 2.04.01(A), Table of Land Uses

Category/Use	R-1AA	R-1A	R-1	R-2	R-3	C-1	C-2	C-3	C-4	I-1	I-2	PI	PR	PC	PUD
<b>Automotive/Vehicle Sales, Parts, Repairs</b>															
Auto/Vehicle sales, new or used (auto, truck, boat, RVs); dealerships w/ sales & service							P		<u>C</u>						P
Car Wash and Auto Detailing*							D		<u>C</u>						
<b>Retail Commercial, Outdoor Storage and Display Permitted</b>															
Plant nursery							P		<u>C</u>	P	P	P			P

*Article 3, Section 3.08.09, is hereby amended by amending language to read as shown below. Text that is underlined is text to be added. Text that is ~~strikeout~~ is text to be removed.*

**3.09.00 Development Standards for Conditional Uses**

**3.09.04 Auto/Vehicle sales, new or used (auto, truck, boat, RVs), dealerships w/ sales & service**

- (A) Conditional Use approval in the C-4 zoning district is limited to those properties located between U.S. Highway 27 and the CSX railroad line lying west of North Museum Avenue.
- (B) Conditional Uses shall be reviewed on a periodic basis to ensure that any conditions imposed are being met.
- (C) Lighting: All lights shall be shielded to focus and direct light onto the sales/service area, and away from adjacent property, but may be of sufficient intensity to discourage vandalism and theft. See Section 3.06.00, Performance Standards, for applicable glare and lighting standards.
- (D) Landscaping: Canopy and buffer yards shall be provided in accordance with the standards of Section 3.07.00. A waiver of the canopy requirement may be established as part of the conditional approval, for areas exclusively used for the display of motor vehicles for sale.
- (E) Fencing: Where a property line abuts and is contiguous to any residential land use classification, a six-foot masonry, wood or metal fence (not including chain link fences), or wall in addition to required buffer yards shall be constructed along, or within ten (10) feet, of the property line.

**3.09.05 Car Wash and Auto Detailing**

- (A) Conditional Use approval in the C-4 zoning district is limited to those properties located between U.S. Highway 27 and the CSX railroad line lying west of North Museum Avenue.
- (B) Supplemental Development Standards for Car Wash and Auto Detailing uses shall apply in accordance with the standards of Section 3.11.01.
- (C) Conditional Uses shall be reviewed on a periodic basis to ensure that any conditions imposed are being met.

**3.09.06 Plant Nursery**

- (A) Conditional Use approval in the C-4 zoning district is limited to those properties located between U.S. Highway 27 and the CSX railroad line lying west of North Museum Avenue.
- (B) Conditional Uses shall be reviewed on a periodic basis to ensure that any conditions imposed are being met.

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**AGREEMENT OF PURCHASE AND SALE OF LAND**

THIS AGREEMENT OF PURCHASE AND SALE OF LAND (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **SCARBOROUGH INVESTMENTS, INC.**, a Florida corporation, whose business address is 1952 COUNTY ROAD 29, LAKE PLACID, FLORIDA 33852 ("Seller") and the CITY OF AVON PARK, a Florida municipal corporation, with principal offices at 110 East Main Street, Avon Park, FL 33825, ("Purchaser").

**ARTICLE I.**

**Sale and Purchase**

**Section 1.1. Purchase.** For and in consideration of the Purchase Price and the mutual promises, covenants, representations, warranties, and agreements contained in this Agreement, Seller shall sell and convey, and Purchaser shall purchase, in fee simple all of that property, and improvements thereon, located in Highlands County, Florida, and described in Exhibit A, attached hereto and incorporated herein by reference, along with all rights, titles, and interests appurtenant thereto (the "Property").

**Section 1.2. The Purchase Price and the Deposit.**

(a) The Purchase Price to be paid by Purchaser to Seller for the Property shall be One Million, One Hundred and Twenty-Five Thousand and 00/100 Dollars (\$1,125,000.00) ("Purchase Price"), subject to prorations and adjustments described in Article VI, below.

(b) A first deposit (the "Initial Deposit") in the amount of Twelve Thousand and 00/100 Dollars (\$12,000.00) shall be paid to a non-interest-bearing trust account of the law firm of Swaine & Harris, P.A. (the "Escrow Agent") within ten (10) calendar days after the execution of this Agreement by the parties and receipt of an executed copy by Purchaser. Except as otherwise provided in Sections 4.2 (Historic Status), 5.2 (Title Inspection, Survey), and 7.2 (Seller's Default), below, such Initial Deposit shall be retained by Seller if on or before the expiration of the Feasibility Period (defined below), Purchaser provides written notice to Seller that the Purchaser has determined, in its sole unfettered discretion, not to go forward with the purchase of the Property, and in such case, this Agreement shall terminate, and be of no further force and effect.

(c) If Purchaser does not elect to terminate this Agreement before the expiration of the Feasibility Period, this Agreement shall continue in full force and effect and Purchaser shall pay an additional One Hundred Thousand and 00/100 Dollars (\$100,000.00) to the Escrow Agent within ten (10) calendar days after the end of the Feasibility Period for a total of One-Hundred and Twelve Thousand and 00/100 Dollars (\$112,000.00) to be held in a non-interest-bearing trust account by the Escrow Agent. Such One-Hundred and Twelve Thousand and 00/100 Dollars (\$112,000.00) sum to be held by the Escrow Agent is referred to hereinafter as the "Deposit".

(d) The remaining One Million and Thirteen Thousand and 00/100 Dollars (\$1,013,000.00) of the Purchase Price shall be paid at Closing (defined below),

Deleted: ¶

ARTICLE II.

**Representations and Warranties of Seller**

Seller, based upon the due inquiry of individuals familiar with the Property and/or beneficiaries of Seller as to matters addressed in this Article, represents and warrants to Purchaser:

**Section 2.1. Legal Status.** Seller is a duly formed and validly existing corporation, existing under the laws of the State of Florida. Seller and the signatory on behalf of Seller have all legal right and power to execute this Agreement, and to carry out its terms and conditions, and Seller has taken all requisite actions for the execution of this Agreement and the consummation of Seller's transactions contemplated by this Agreement.

**Section 2.2. No Withholding Requirement.** Seller is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), the transaction contemplated hereby does not constitute a disposition of a U.S. real property interest by a foreign person, and at Closing, no person, including without limitation Purchaser and its counsel and the Title Company (defined below), shall be subject to the withholding requirements of section 1445 of the Code. At Closing, Seller shall deliver to Purchaser and the Title Company an affidavit stating, under the penalties of perjury, Seller's U.S. taxpayer identification number and that Seller is not a foreign person, it being understood and agreed by Seller that Purchaser may be required to file said affidavit with the Secretary of the Treasury pursuant to applicable regulations.

**Section 2.3. No Contemporaneous Agreements.** Seller has not and will not after the execution of this Agreement and during the term and pendency of this Agreement, contract with others for the sale or lease of the Property, grant any easement or in any way encumber the Property or title thereto. Seller retains all rights to contract for the management, harvesting, and sale of all citrus crops prior to Closing, and subsequent to Closing for only so long as Purchaser leases such rights to Seller in Purchaser's sole discretion, and such agreements will not be prohibited by this clause.

**Section 2.4. Compliance with Other Instruments, etc.** Neither the entering into this Agreement, nor the consummation of the transaction contemplated in this Agreement, shall constitute, or result in, a violation or breach by Seller of any contract or other instrument to which it is a party, or to which it is subject, or by which it or any of its assets may be bound.

**Section 2.5. No Default.** Seller has received no written notice or other record of any default or breach by Seller under any of the covenants, conditions, restrictions, rights-of-way, or easements affecting the Property and no such default or breach now exists.

**Section 2.6. Mechanics' Liens.** No work has been performed or is in progress at, and no materials have been furnished to, the Property which though not presently the subject of a lien might give rise to mechanics', materialmen's or other liens against Seller's interest in the Property or any improvements later erected on the Property.

**Comment [A1]:** My clients do not accept this change. My clients are providing an owner's title insurance policy to consummate this transaction. Any and all issues with title, if any, will be addressed (and if so decided, waived) in attaining the insurance policy.

**Deleted:** (i) Seller has insurable title to the Property, subject only to those exceptions expressly permitted by Section 5.1 of this Agreement.

**Section 2.7. Compliance with Laws, etc.** Neither the entering into this Agreement nor the consummation of the transaction contemplated shall constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or shall result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending against Seller or the Property which would: (i) prevent the transaction contemplated by this Agreement, (ii) adversely affect the title to the Property, (iii) question the validity or enforceability of the transaction contemplated by this Agreement, or (iv) question the validity or enforceability of any action taken pursuant to this Agreement in any court, or before, or by, any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality. No approval, consent, order or authorization of, or designation, registration or filing (other than for recording purposes) with any governmental authority is required in connection with the due and valid execution and delivery of this Agreement and compliance with the provisions and the consummation of the transaction contemplated in this Agreement.

**Section 2.8. Violations.** To the best of Seller's knowledge, information, and belief, there are no violations of, and Seller has received no notice or other record of any violations of, any federal, state or local laws, ordinances, orders, regulations, and requirements affecting the Property.

**Section 2.9. Binding Commitments.** Seller has not made and shall not make any commitments or representations to any governmental authorities, any adjoining or surrounding property owners, any civic association, any utility, or any other person or entity that would in any manner be binding upon Purchaser or the Property.

**Section 2.10. General Condition of Property.** The Property is currently unimproved, free of any and all leases, tenancies or claims of occupancy of any kind. To the best of Seller's knowledge, information, and belief, no cemeteries, graveyards or other facilities for the interment of human or animal remains are located on any part of the Property.

**Section 2.11. Special Assessments.** No portion of the Property is subject to or is affected by any special assessment for improvements completed prior to the effective date of this Agreement, whether or not there is presently a lien on the Property, and to the best of Seller's knowledge, information, and belief, no such assessment has been proposed.

**Section 2.12. Hazardous Materials and Endangered Species.** To the best of Seller's knowledge, information, and belief, after reasonable inquiry, there is no asbestos, radon, PCB's, fluorocarbons, oil and other petroleum products, flammable explosives, radioactive materials, or other Hazardous Substances (defined below) on, in, under or about the Property. Seller has not used, generated, stored, transported, manufactured, treated, released or disposed of any Hazardous Substances on, in, under, or about the Property.

To the best of Seller's knowledge, information, and belief, there are not presently, and there have never been, any storage tanks on, in or about the Property. Seller has no actual knowledge that the Property is in violation of any Environmental Laws as defined herein, and to the best of Seller's knowledge, information, and belief, the Property is not currently under investigation by any such agency.

To the best of Seller's knowledge, information, and belief, there are no Endangered Species (defined below) on the Property, and to the best of Seller's knowledge, information, and belief, there are no man-made conditions on or affecting the Property for which a valid building permit could not be applied for and obtained by the necessary governmental authorities.

With respect to the terms "Hazardous Substances," "Environmental Laws," and "Endangered Species," they shall have the following meanings and definitions:

(i) Hazardous Substances: means substances defined as a "hazardous substance" or "toxic substance" in the Environmental Laws in effect on the date any representation or warranty is made pursuant to this Agreement and any other substances considered hazardous, toxic or otherwise harmful pursuant to any other applicable laws or regulations relating to pollution or protection of human health or the environment.

(ii) Environmental Laws: shall include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Clean air Act, 42 U.S.C. 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2602, et. seq.; the Safe Drinking Water Act, 42 U.S.C. 300f, et. seq.; the Florida Air and Water Pollution Control Act, Chapter 403, *Florida Statutes*; and any other federal, state, or local statute, regulation, or ordinance, relating to the protection of human health or the environment in effect as of the date of execution of this Agreement, as any of the preceding may be amended from time to time.

(iii) Endangered Species: means those species of flora and fauna and their critical habitats defined as endangered or threatened by the Endangered Species Act of 1973 (16 U.S.C. Section 1531. et seq.), as amended or by any other federal, state or local law, ordinance, rule or regulation.

All statements made "as to the best of Seller's knowledge" are not a guarantee or warranty as to the statements being made. Purchaser will conduct its own environmental study and will rely upon that analysis in deciding whether to purchase the Property.

The use of approved chemicals as directed on the instructions for farming purposes and in accordance with all applicable Environmental Laws and with best management practices shall not be considered hazardous substances. Seller agrees to fully cooperate with Purchaser's environmental consultants performing due diligence on the Property, and shall divulge any and all chemicals used on the Property, where related to farming or not. This shall include an identification of any locations known to Seller after reasonable inquiry, associated with any buried equipment or other refuse (including without limitation, drums, smudge pots, etc.,) or cattle dipping locations.

**Section 2.13. Operation until Closing.** Between the effective date and Closing, Seller shall operate the Property only in accordance with law. This Agreement will in no way affect or restrict any and all uses that Seller may currently lawfully operate on the Property.

**Section 2.14. Full Disclosure.** Seller knows of no materially adverse fact affecting or threatening to affect the Property which has not been disclosed to Purchaser in this Agreement.

**Section 2.15. Litigation.** There are no actions, suits, proceedings or investigations pending or threatened, against Seller or the Property affecting any portion of the Property, including, but not limited to, condemnation actions.

**Section 2.16. Parties in Possession.** There are no tenants or parties other than Seller in possession or with a right to possession of any portion of the Property.

**Section 2.17. Completeness of Representations.** No representation or warranty made by Seller in this Agreement intentionally contains any untrue statement of a material fact or intentionally omits to state any material fact necessary to make the statements contained not false or misleading.

Upon knowledge by Seller of any untruth or inaccuracy in any representation or warranty made by Seller or of any change in facts which are the subject of any representation or warranty made by Seller, Seller shall send notice to Purchaser of the nature of any such matter promptly.

If Purchaser discovers during the course of its study of the Property that any representation or warranty of Seller was untrue or inaccurate when made by Seller, Purchaser shall send Seller notice of any such matter promptly. Seller shall have the opportunity to cure the cause of such untruth or inaccuracy within thirty (30) days after either (i) Seller's knowledge of such untruth or inaccuracy; or (ii) Seller's receipt of notice from Purchaser describing such untruth or inaccuracy, during which time Seller shall exercise due diligence and good faith in endeavoring to cure the cause of such untruth or inaccuracy or to determine the validity of Purchaser's discovery.

**Section 2.18. Deliveries at Closing.** Seller shall deliver at Closing all documents and instruments required by this Agreement and perform all acts necessary or appropriate for the consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement.

### **ARTICLE III.**

#### **Survival of Representations and Warranties**

**Section 3.1. Survival and Merger.** The representations and warranties set forth in Article II of this Agreement shall be deemed to have been made again on and as of the date of Closing and the execution, delivery, and recordation of the instrument of conveyance as described in Section 5.1 hereof, shall survive Closing for a period of one year and shall not be merged following Closing. Seller agrees to indemnify and hold Purchaser harmless from any claims, liabilities, damages or expenses, including without limitation, reasonable attorneys' fees and costs, through appeals, which Purchaser may incur by reason of any material breach of Seller's representations and warranties. Further, Purchaser shall have the right to exercise any and all legal and equitable rights and remedies, to recover for any losses, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and costs, through appeals), for any breach of Seller's representations and warranties.

#### ARTICLE IV.

##### Conditions Precedent

In addition to any other provisions of this Agreement relating to covenants and conditions of Closing, the obligations of Purchaser are expressly conditioned upon the following:

**Section 4.1. Documents and Feasibility Period.** Within ten (10) days after the effective date, Seller shall deliver to Purchaser's attorney copies of all documents or materials in Seller's possession or control regarding the Property including, without limitation, soil tests, environmental assessments, any previous survey of the Property, analyses and engineering studies and data, and title documents (except for documents containing confidential or proprietary information relating to Seller) which documents and materials are hereinafter collectively referred to as the "Seller's Submission".

Purchaser will have until November 10, 2015 (the "Feasibility Period") to conduct such due diligence reviews and inspections of the Property, including without limitation, economic, feasibility, environmental and engineering studies, physical inspections and tests, community research, and any other studies, tests or inspections that Purchaser deems necessary or prudent in Purchaser's sole, unfettered discretion, to determine the suitability of the Property for the Intended Use (defined below). During the Feasibility Period, Purchaser may also apply for all zoning changes and regulatory permits required for Purchaser's Intended Use. If during the Feasibility Period, Purchaser determines in its sole, unfettered discretion, that the transaction contemplated hereby would not be in the best interest of Purchaser, Purchaser may terminate this Agreement by written notice to Seller and Seller may retain Purchaser's Initial Deposit of \$12,000.00 as consideration for holding the Property for Purchaser.

Purchaser will indemnify and hold Seller harmless for losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability to any person arising from the conduct of the Purchaser as a result of the Purchaser's due diligence reviews and inspections of the Property. Purchaser will not engage in any activity during its due diligence reviews and inspections of the Property that could result in a construction lien being filed against the Property without Seller's prior written consent. If this transaction for the Property does not close, Purchaser will, at Purchaser's expense, (i) repair all damages to the Property resulting from Purchaser's due diligence reviews and inspections of the Property and reasonably return the Property to its current condition and (ii) release to Seller all reports and other work generated as a result of Purchaser's due diligence reviews and inspections of the Property. Notwithstanding the foregoing, Purchaser shall not be deemed or construed to waive any privilege, immunity or other protection available to Purchaser under the doctrine of sovereign immunity or the limitations of liability contained in Section 768.28, Florida Statutes. Likewise, any claim brought against Purchaser under this Article shall comply with the procedural requirements and pre-suit conditions contained in Section 768.28, Florida Statutes.

The term "Intended Use" shall refer to a treated effluent wastewater rapid infiltration pond or other wastewater disposal facilities such as rapid infiltration basins, subsurface percolation, or any combination of these facilities and any related appurtenances.

Purchaser may, at its expense, proceed with such necessary applications to obtain permission for the Intended Use following the execution and delivery of this Agreement and reasonable inspections, engineering and hydrogeological analyses, and studies, in order to ascertain regulatory verification and approval of the suitability of the Property for the Intended Use.

Seller shall cooperate with and assist Purchaser by permitting applications and other documents to be filed, and by executing such applications, plats, permits, easements, covenants, restrictions, approvals, consents, and other instruments and documents as are necessary or desirable in the pursuit of the Intended Use. Seller shall not be responsible for any fees, including, without limitation, any legal or consulting fees, nor for any other expenses incurred by Purchaser relating to Seller's cooperation with Purchaser.

Seller authorizes Purchaser and Purchaser's agents to enter the Property during the term of this Agreement to perform Purchaser's due diligence and other reviews, surveys, etc., and to make all inquiries of appropriate governmental authorities with respect to the Property, as Purchaser, in its good faith, reasonable judgment, deems necessary, with at least three (3) days' notice to Seller.

**Section 4.2. Historic Status.** On the effective date and on the day of Closing, there shall not be threatened or pending any designation or application for designation or other proceeding with any federal, state or local governmental institution whereby the Property would be declared a historic district or site so as in any way to restrict, impede or subject construction of the Intended Use to additional review or regulation by any federal, state or local governmental institution. In the event of the existence of any such threatened or pending designation, application or proceeding, Purchaser shall have the right to terminate this Agreement and have all Deposits paid under Section 1.2, including the Initial Deposit, returned.

**Section 4.3. Seller's Use During Feasibility Period.** Seller may use the Property during the Feasibility Period as it has used it in the past for all agricultural purposes in accordance with all appropriate best management practices under federal and state laws and rules.

## ARTICLE V.

### Covenants and Conditions of Closing

The obligations of the parties shall be subject to the fulfillment of the following covenants and conditions on or prior to Closing, and the parties agree to fulfill such covenants and conditions:

**Section 5.1. Instrument of Conveyance.** Seller shall execute and deliver to Purchaser a special warranty deed, as shall be required to convey to Purchaser, its assigns, designee or nominee, good and marketable title to the Property, free from all liens and encumbrances except:

- a. Taxes for the year of Closing, which shall be prorated between the Parties based on the Closing date.
- b. Zoning and ordinances; and
- c. Matters of record set forth in Schedule B-2 of the title commitment that are accepted by

**Comment [A2]:** My clients have decided that if the Parties would like to enter into a lessee/lessor relationship after the closing, both Parties can do so, if they wish. There is no need to include it in this contract.

**Deleted:** except in the event that Seller continues to use the Property beyond Closing, either by lease or by this Agreement, in which case Seller shall pay all taxes through Closing and continue to pay such taxes through and including the last day on which Seller uses the Property; and

- d. the Purchaser, pursuant to Section 5.2, below; and
- d. Easements for public utilities visible or of record which do not interfere with Purchaser's Intended Use of the Property; and
- e. Encroachments revealed by the survey conducted by Purchaser that are accepted by Purchaser, pursuant to Section 5.2, below.

The instrument of conveyance shall be in form and substance satisfactory to Purchaser, in proper form for recording. Purchaser's satisfaction of the form and substance of the instrument of conveyance shall not be unreasonably withheld.

Drafts of the instrument of conveyance and any other documentation to be delivered by Seller at Closing shall be delivered to Purchaser for review not later than fifteen (15) calendar days prior to the date of Closing.

**Section 5.2. Title Inspection, Survey.** Within twenty (20) days of execution of this Agreement, Seller shall obtain at its own cost, from the title company of its selection duly licensed in Florida, (the "Title Company") a commitment to issue a title policy covering the Property (the "Title Commitment") and provide such Title Commitment to Purchaser. Purchaser shall have the right to object to any exceptions listed in the Title Commitment, and not otherwise excepted herein, by giving written notice to Seller within fourteen (14) calendar days after Seller delivers the Title Commitment to Purchaser.

If Purchaser provides written notice of objection to any exception(s) listed in the Title Commitment as provided for in this Section, Seller, in Seller's sole and absolute discretion, shall elect, within five (5) business days after receipt of such written notice by Purchaser, either to (i) endeavor to cure or remove any one or more of such title objections, or (ii) terminate this Agreement, by providing notice to Purchaser to that effect within such five (5) day period.

If Seller elects to cure or remove any exception, it shall have a reasonable time, not to exceed ninety (90) days, to cure or remove the exception as an exception to title.

Failure to provide notice to Purchaser of Seller's election, as described above, shall be deemed to constitute Seller's election to terminate this Agreement.

For three (3) business days following written notice to Purchaser of Seller's actual or deemed election to terminate this Agreement, Purchaser shall have the right to waive any one or more of such title exceptions that Seller has not elected to cure or remove, thereby rescinding Seller's election to terminate this Agreement on such grounds and agreeing to take title to the Property subject to such title exceptions. Purchaser shall not be deemed to have exercised the right to waive any one or more title exception(s) unless evidenced in writing and signed by an authorized representative of Purchaser.

In the event that Seller fails to cure or remove any exception that it has agreed to cure or remove within the ninety (90) day period, Purchaser shall have the option, in Purchaser's sole and absolute discretion, either to (a) terminate this Agreement, in which case, all Deposits paid under Section 1.2, including the

**Comment [A3]:** This should be replaced with the RFR as discussed.

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Any encroachments which have been

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**Comment [A4]:** It is my understanding that the property has already been surveyed. If this is the case, your clients should enter into the contract with this knowledge. Therefore, all encroachments shown by the survey should be acceptable to your clients. My clients do not agree on allowing your clients a second opportunity to object to encroachments revealed on a survey. If the property has not been surveyed, please disregard.

**Comment [A5]:** Since Swaine & Harris will be conducting the closing, it appears as if these requirements are requirements between my client and the insurer...not between my client and your client. If my client provides to yours an acceptable owners title policy, then my clients' obligation should be met.

**Deleted:** Seller shall deliver, at Closing, (i) an affidavit with respect to the Property in form sufficient to eliminate any standard exceptions to Buyer's final policy of title insurance; and (ii) a certificate and affidavit of non-foreign status; and (iii) a resolution of authority (or comparable resolution duly passed by the board of directors of Seller) and an incumbency certificate to evidence Seller's capacity and authority to consummate Closing, and to identify the person(s) duly authorized and empowered to execute the Closing documents on behalf of Seller, as well as certified copies of Seller's articles of incorporation and bylaws, including all amendments thereto; and, in all instances regardless of Seller's organizational structure, all other documents reasonably requested by the Title Company (defined below) or Purchaser; and (iv) any and all other documents necessary to effect Closing, including, but not limited to a Closing statement setting forth the charges, adjustments and credits to each party.

Initial Deposit, shall be returned to Purchaser, or (b) proceed to Closing without reduction in Purchaser Price (except that any unpaid and unsatisfied liens, judgments, and unsatisfied mortgages, together with any interest and penalties, existing at Closing may be paid by Purchaser at Closing out of Seller's sale proceeds).

From and after the effective date, Seller shall not (i) grant any mortgage, deed of trust, or other financial lien secured by the Property, unless it will be discharged at the Closing; or (ii) place any easement, covenant, lease, restriction or other encumbrance upon the Property, without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed.

At Closing, an owner's policy of title insurance or irrevocable commitment to issue the same will be delivered to Purchaser, with liability in the amount of the Purchase Price issued by the Title Company, at Seller's cost, insuring that fee title to the Property vests in Purchaser subject only to the permitted exceptions provided for in Section 5.1, above.

Within thirty (30) days of receipt of the Title Commitment, Purchaser will obtain a survey (the "Survey") of the Property. Purchaser shall have the right to object to any encroachments revealed by the Survey, and not otherwise excepted herein, by giving written notice to Seller within fourteen (14) calendar days after receipt of the Survey and any such encroachments shall be treated in the same manner as title exceptions as provided for in this Section 5.2.

Seller will deliver the Property to the Purchaser at Closing in its present "as is" condition, with conditions resulting from Purchaser's inspections and casualty damage, if any, excepted. Seller will not engage in or permit any activity that would materially alter the Property's condition without Purchaser's prior written consent.

**Section 5.3. Risk of Loss.** The risk of loss or damage to the Property shall be retained by Seller until the date of Closing, at which time the risk of loss or damage to the Property shall shift to Purchaser.

**Section 5.4. Original Documents.** At Closing, Seller shall deliver to Purchaser all original documents pertaining to the Property which Seller has in its possession or control, if any exist. If none exist, then Seller shall deliver to Purchaser a statement to that effect.

**Section 5.5. Satisfaction of Liens.** Prior to Closing, any and all mortgages, deeds of trust, or liens, of any type whatsoever, with respect to the Property, or as to which it may be subject, and any *lis pendens* that may have been filed, shall have been satisfied or otherwise released of record by Seller, or provision satisfactory to Purchaser shall have been made by Seller for its full and complete release.

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**Comment [A6]:** It is my understanding that the property has already been surveyed. If this is the case, your clients should enter into the contract with this knowledge. Therefore, all encroachments shown by the survey should be acceptable to your clients. My clients do not agree on allowing your clients a second opportunity to object to encroachments revealed on a survey. If the property has not been surveyed, please disregard.

**Comment [A7]:** This section will be replaced with the RFR as discussed.

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The Purchaser shall take title to the Property subject to the Restrictive Covenants described

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**Deleted:** Exhibit B, attached hereto and incorporated herein. At Closing, the Purchaser shall execute and deliver the Restrictive Covenants, with exhibits, in the form attached hereto and incorporated herein as Exhibit B, evidencing the Purchaser's joinder, as purchaser of the Property, to the Deed Restrictions. Seller, at its sole cost, may record the executed Deed Restrictions. This Paragraph shall survive the Closing.

ARTICLE VI.

Closing

**Section 6.1. Closing.** The Closing Date will be on or before December 29, 2015, ("Closing") unless either party has previously notified the other of termination as permitted by the terms of this Agreement.

The remainder of the Purchase Price (the Purchase Price less the Deposit already paid by Purchaser) shall be paid by Purchaser to Seller by wire transfer at Closing.

Closing will take place at the office of Swaine & Harris, P.A., and may be conducted by mail or electronic means.

**Section 6.2. Apportionment.** Ad valorem and other taxes for the year of Closing shall be prorated between the parties, based on the Closing date.

Any special assessments applicable to the Property, whether payable in a lump sum, in installments or otherwise, and any rollback or similar taxes, shall be paid by Seller, provided such assessments or taxes are due and payable for the period prior to Closing, even if not actually payable until after Closing.

Seller shall pay Seller's attorneys' fees, the premium for an owner's title insurance policy, state transfer tax (documentary stamp taxes), and any county transfer tax.

Recording fees and other filing or similar fees shall be paid by Purchaser. Purchaser shall pay all costs associated with any financing obtained by Purchaser and Purchaser's attorneys' fees.

All notary fees and other Closing costs not specifically provided for herein shall be split equally between Purchaser and Seller.

**Section 6.3. Possession.** Seller shall surrender possession of the Property to Purchaser at Closing.

**Section 6.4. Waiver.** Purchaser reserves the right to waive, in whole or in part, any provision that is solely for the benefit of Purchaser. Seller reserves the right to waive, in whole or in part, any provision that is solely for the benefit of Seller. A waiver of any right will not constitute a continuing waiver of that right.

**Comment [A8]:** My clients have decided that if the Parties would like to enter into a lessee/lessor relationship after the closing, both Parties can do so, if they wish. There is no need to include it in this contract.

**Deleted:** except in the event that Seller continues to use the Property beyond Closing, either by lease or by this Agreement, in which case Seller shall pay its pro rata share of the real estate taxes for the Property; however, Purchaser shall be responsible for its portion of the through Closing and continue to pay such taxes through and including the last day on which Seller uses the Property.

**Comment [A9]:** Could you please explain this provision?

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**Comment [A10]:** My clients have decided that if the Parties would like to enter into a lessee/lessor relationship after the closing, both Parties can do so, if they wish. There is no need to include it in this contract.

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ARTICLE VII.

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**Default and Termination**

**Section 7.1. Purchaser's Default.** If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions that constitute a default by Purchaser under this Agreement, Seller shall be entitled to:

- (i) waive any such breach and proceed to Closing, or
- (ii) terminate this Agreement and retain all deposits paid under Paragraph 1.2, herein, or
- (iv) to exercise any other legal and equitable rights or remedies available to it to recover costs and expenses associated with the performance of this Agreement.

**Section 7.2. Seller's Default.** If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions that constitute a default by Seller under this Agreement, Purchaser shall be entitled to:

- (i) waive any such breach and proceed to Closing, or
- (ii) terminate this Agreement and receive a refund of all deposits paid under Paragraph 1.2 (b), herein, including the Initial Deposit, or
- (iii) seek specific performance of this Agreement, except with respect to the clearance of title exceptions where Seller elects not to do so, which shall be treated as provided in Section 5.2, or
- (iv) exercise any other legal and equitable rights or remedies available to it to recover costs and expenses associated with the performance of this Agreement.

**Section 7.3. Notice of Default.** No default or failure by Purchaser or Seller with regard to any act required by either party shall result in the termination or limitation of any right of, or availability of any remedy in favor of, Purchaser or Seller unless or until the other party shall have notified, by written notice, the defaulting party of such failure or default and the defaulting party shall have failed to remedy such failure or cure such default within fifteen (15) days after receipt of such notice.

If a dispute arises between the parties to the transaction as to the disposition of the Deposit, the party holding the Deposit shall (i) hold the Deposit until the party receives a disposition of Deposit agreement signed by Seller and Purchaser authorizing the disposition of the funds, or (ii) hold the Deposit until such time as one of the parties to this Agreement files suit and the court in which the suit is filed orders the disbursement of these funds, or (iii) may pay the Deposit into the court by filing an action of interpleader.

ARTICLE VIII.

**Broker's Fees, Attorneys' Fees & Post-Closing Use of Property by Seller**

**Section 8.1. Broker's Fees & Attorneys' Fees.** Buyer and Seller both represent and warrant to the other that neither has dealt with any real estate broker, agent or finder in connection with the transaction described in this Agreement. Each party further warrants to the other that any broker fee or commission due to any broker which it employs shall be that party's own sole responsibility, and the party not retaining that broker shall not be responsible for any portion of the other party's broker fee or commission and shall be indemnified and held harmless by the other party from any such broker fee or commission. Each party shall pay its own attorneys' fees in connection with any transaction contemplated by this Agreement.

**Section 8.3. Immunity** Notwithstanding anything else contained in this Agreement including, but not limited to, any provisions for indemnification, Purchaser shall not be deemed or construed to waive any privilege, immunity or other protection available to Purchaser under the doctrine of sovereign immunity or the limitations of liability contained in Section 768.28, Florida Statutes. Likewise, any claim brought against Purchaser under this Article shall comply with the procedural requirements and pre-suit conditions contained in Section 768.28, Florida Statutes.

ARTICLE IX.

**General Provisions**

**Section 9.1. Modifications and Waivers.** No modification, waiver, amendment, discharge or change of this Agreement, except as otherwise provided, shall be valid unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment, discharge or change is sought. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged.

**Section 9.2. Litigation Expenses.** If either party is required or elects to take legal or equitable action against the other to enforce the non-defaulting party's rights under this Agreement, or to require performance by the defaulting party of its obligations under this Agreement, then the losing party shall be liable to the prevailing party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in such action, including such fees and costs through appeals, which fees and costs shall be paid immediately upon judgment by the court thereon becoming final. A party is deemed to have prevailed if it obtains a judgment in its favor which substantially provides for the relief contemplated either in its complaint or responsive pleading.

**Section 9.3. Successors and Assigns.** All terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective legal representatives, successors, and assigns.

**Comment [A11]:** My clients have decided that if the Parties would like to enter into a lessee/lessor relationship after the closing, both Parties can do so, if they wish. There is no need to include it in this contract.

**Deleted: Section 8.2. Post-Closing Use of Property by Seller.** Purchaser anticipates that development of the Intended Use could take one to two years. Seller has expressed a desire to continue with the agricultural uses it now enjoys until such time as the Purchaser requires use of the Property to commence construction of the Intended Use. Inif, prior to Closing, the parties, in their individual unbridled discretion, are able to come to an agreement for the event that terms on which Seller may lease the parties so wish, Property back from Purchaser after Closing, then they shall have executed execute a lease reflecting such agreed terms (the "Lease attached ") and shall attach such Lease hereto as Exhibit C. Notwithstanding execution of B at Closing. Except as provided for in the Lease attached hereto as Exhibit C, after Closing, Seller has, if consummated, Seller shall have no further right of entry or use of the right Property after Closing without Purchaser's specific, written permission. The Lease, if consummated, shall include, at a minimum, the following terms (i) Seller shall have the ability, at its sole expense, to continue caretaking and to harvest the citrus grove located on the Property through and including the date that the 2015-2016 fruit crop harvest is complete, or until 28 February 2016, whichever is sooner. Until such time, the, (ii) Seller shall retain the proceeds of the 2015-2016 fruit crop and Purchaser shall have no claim to same, (iii) Purchaser shall not engage in any activity on the Property which would impair Seller's ability to caretake and harvest the citrus grove located on the Property. Seller shall retain during the proceedsterm of the 2015-2016 fruit crop and Lease, but the parties shall cooperate in good faith to establish the times, manner, and areas where Purchaser shall have no claim to same. This may reasonably commence work on improvements to the Property to construct the Intended Use, (iv) Seller shall pay the Property taxes for the period of Seller's caretaking and harvest as provided in Section shall survive Closing. 6.2 herein, (v) Seller will indemnify and hold the Purchaser harmless for losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability to any person arising from the conduct of Seller in caretaking and harvesting the citrus grove after Closing. After Closing,, (vi) Seller will shall not engage in any activity that could result in a construction lien being filed against the Property without the Purchaser's prior written consent, and if a lien, of any nature, is filed against the Property during the term of the Lease, Seller shall indemnify and hold Purchaser harmless from such lien and shall have such lien removed from the Property, via payment or transfer to a bond, within fifteen (15) days of written demand by Purch ... [1]

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**Section 9.4. Governing Law.** This Agreement will be performed in the State of Florida and will be construed and enforced in accordance with the governing laws of Florida.

**Section 9.5. Notices.** Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement:

A. shall be in writing to the respective addresses of each party stated in the preface of this Agreement or to such other address as the party may designate in writing to the other party, and

B. shall be deemed to have been provided on the earlier of:

(1) forty-eight (48) hours after having been sent as certified or registered mail in the United States mail, postage prepaid, return receipt requested;

(2) the next business day after having been deposited (in time for delivery by such service on such business day) with Fed Ex or another courier service; or

(3) if such party's receipt is acknowledged in writing as having been given by hand or other actual delivery, including delivery by electronic mail message, to such party.

**Section 9.6. Exhibits.** All exhibits and schedules attached are incorporated by reference into this Agreement.

**Section 9.7. Severability.** If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.

**Section 9.8. Construction.** Each party and its counsel has reviewed and revised (or requested revisions of) this Agreement, and the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be applicable in the construction and interpretation of this Agreement. The parties acknowledge that all of the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel if so desired, is acting to protect its own interests.

**Section 9.9. Time Periods.** Any time period which expires on, or any date which occurs on, a Saturday, Sunday or legal United States holiday, shall be deemed to be postponed to the next business day. The first day of any time period which runs "from" or "after" a given day shall be deemed to occur on the day after that given day. All days unless otherwise so stated, are to be calendar days.

**Section 9.10. Captions.** The captions of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any term.

**Section 9.11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 9.12. Offer and Acceptance; Effective Date.** This Agreement has been executed first by Purchaser and shall be deemed a continuing offer of Purchaser to purchase the Property from Seller for fifteen (15) business days after the date of Purchaser's execution. The date that Seller executes this Agreement and so notifies Purchaser shall be the effective date.

**Section 9.13. Authority to Execute this Agreement.** Each individual executing this Agreement on behalf of the party for whom he or she is executing this Agreement hereby warrants and represents that he or she has full, actual, and apparent authority to bind the party to the terms and conditions of this Agreement.

**Section 9.14. Venue.** Purchaser and Seller agree that any suit, action, or other legal proceeding arising out of or relating to this Agreement may be brought in a court of record of the State of Florida in Highlands County or in the United States District Court with jurisdiction, except that the parties waive the right to federal jurisdiction by diversity. Seller and Purchaser hereby waive their rights to trial by jury and consent to any action arising pursuant hereto to be heard by bench trial.

**Section 9.15. Annexation**

Seller owns certain additional real property (the "Annexation Property") located in the vicinity of the Property for which Annexation Property Seller wishes to obtain utility services from Purchaser for the purposes of development of the Annexation Property. Purchaser is willing to provide such services, at the prevailing fees and charges for such connections at the time of connection, on certain terms and conditions, as more particularly described in the annexation agreement (the "Annexation Agreement"), attached hereto and incorporated herein as Exhibit C. Upon the Closing of the sale contemplated by this Agreement, Seller and Purchaser shall execute and deliver the Annexation Agreement, which shall be recorded in the Public Records of Highlands County, Florida. This Section shall survive the Closing.

**IN WITNESS WHEREOF**, each party listed below has executed this Agreement on the day and year written below his/her signature.

**SELLER:**  
Scarborough Investments, Inc., a Florida corporation

\_\_\_\_\_  
Printed name: \_\_\_\_\_

By: \_\_\_\_\_  
Bobby Scarborough, President

\_\_\_\_\_  
Printed name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF HIGHLANDS

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, an officer duly qualified to take acknowledgments, personally appeared Bobby Scarborough, as President of Scarborough Investments, Inc., a Florida corporation, to me known \_\_\_\_\_ or who produced \_\_\_\_\_ as identification and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESSETH my hand and official seal in the state and county named above.

Notary Public, State of Florida  
Signature: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**PURCHASER:**

**CITY OF AVON PARK, FLORIDA a Florida municipal  
corporation**

Attested by: \_\_\_\_\_  
Maria Sutherland, Interim City Clerk

By: \_\_\_\_\_  
Sharon Schuler, Mayor

APPROVED AS TO FORM AND CONTENT

\_\_\_\_\_  
Gerald T. Buhr, City Attorney

**EXHIBIT A**

**Legal Description of the Property Being Sold/Purchased**

[INSERT LEGAL DESCRIPTION]

**Exhibit B**  
**LEASE**

**EXHIBIT C**

**ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 2015, by and between SCARBOROUGH INVESTMENTS INC., whose business address is 1952 COUNTY ROAD 29, LAKE PLACID, FLORIDA 33852 and its successors and assigns (hereinafter referred to as "Owner"), and the CITY OF AVON PARK, a municipal corporation whose business address is 110 EAST MAIN STREET, AVON PARK, FLORIDA 33825, and its successors and assigns (hereinafter referred to as "City").

**PURPOSE & INTENT**

1. Owner is desirous of developing Owner's property described in **Exhibit 1 to the Annexation Agreement**, attached hereto and incorporated herein (hereinafter referred to as the "Property") someday in the future and obtaining utility service from the City when the Property is developed.
2. City is willing to provide such water and wastewater service, at the applicable rate, and in exchange requires that the annexation of the Property be performed as soon as legally possible.

Owner and the City therefore agree as follows:

**PURPOSE & INTENT AND EXHIBITS PART OF AGREEMENT**

The above recitations are true and correct, are hereby incorporated herein by reference, and form a material part of this Agreement. All exhibits to this Agreement and statements therein are hereby deemed a part of this Agreement.

1. Agreements between the Parties as to Annexation. Owner agrees and hereby petitions to voluntarily annex the Property within the City. City agrees to annex the Property.
2. Agreements as to Extension of Water and Wastewater Service. The City agrees to perform or contract for all professional engineering and other services necessary for design, permitting, and construction of the utility mains extensions shown in **Exhibit 2 to the Annexation Agreement** and described as follows:
  - i. A water main of 8" in diameter and 3,980 feet in length, aligned along Davis Citrus Road or along easements provided by the adjacent property owners.
  - ii. A wastewater main of 6" in diameter and 3,900 feet in length, aligned along

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**Comment [A12]:** How long should it reasonably take for annexation?

**Deleted:** If the City is not legally able to annex the Property within 180 days of the date of this Agreement, the Parties agree that this Agreement shall become null, void, and of no further binding effect

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Davis Citrus Road or along easements provided by the adjacent property owners.

3. Commencement of City Duties. The City's obligation to perform its duties regarding the utility project referred to in Paragraph 2, above, will be initiated upon annexation, and completed within a 24 month period, subject to receipt of any required regulatory approvals.

4. No Authorization of Development, Capacity or Other Requirements. This Agreement is related solely to the annexation of the Property and to the City extending mains at its own expense for use in the area of the Property in exchange for the annexation. This Agreement does not provide any promise that the City will reserve capacity at its treatment plants. Nor does the City promise that there will be sufficient capacity in such mains to serve any future project the Owner desires to build. The arrangements for capacity reservation, along with many other City requirements and promises by the Owner and the City, must be provided in a Utility Service Agreement drafted in accordance with City ordinances, resolutions, rules and regulations, and executed by both Parties when the Owner desires to proceed with its development of the Property.

5. Florida's Right to Farm Act. The City recognizes that the Owner wishes to continue its agricultural use of the Property even after annexation into the City, until such time as the Owner chooses to commence development of the Property for a more intense use. Although some agricultural use practices could, under some circumstances violate City Codes, the City recognizes and shall comply with Florida's Right to Farm Act, section 823.15, *Florida Statutes*, and except for the authority to regulate and the limitations provided in Section 487.051 (2), *Florida Statutes*, and Section 823.14(6), *Florida Statutes*, shall not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to Section 193.461, *Florida Statutes*, where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120, *Florida Statutes*, as part of a statewide or regional program.

6. Laws of Florida to Govern / Venue. This Agreement shall be governed by the laws of the State of Florida, and the proper venue shall be state court in Highlands County, Florida. The parties agree to waive any right to jury trial.

7. Waiver; Remedies. No failure or delay on the part of either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of either party of any right, power, or privilege hereunder operate as a waiver of any other right, power, or privilege hereunder, nor will any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

8. Document is the Result of Mutual Draftsmanship. The terms and conditions in this Agreement are the product of mutual draftsmanship by both Parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it

shall not be construed against any of the parties because of authorship. The Parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

9. Prior Agreements; Amendments. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Owner and the City, made with respect to the matters herein contained, and when duly executed constitutes the entire Agreement between Owner and the City. No additions, alterations or variations of the terms of this Agreement shall be valid nor provisions of this Agreement be deemed waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

10. Conflict With Laws. In the event of a conflict between provisions in this Agreement and the provisions in any federal or state law, or any City ordinance, resolution, rules and regulations or code, the parties shall first attempt to read the provisions in reasonable harmony, and if no agreement can be reached, the provision of federal law, then state law, then City ordinance (Code), resolution, rules & regulations shall prevail over the provisions in the Agreement, in that order, however, the City shall pass no future ordinance that will invalidate this Agreement or eliminate the City's duties under this Agreement.

11. Agreement Recorded as Covenant on the Property. A copy of this Agreement shall be duly recorded in the county records by the City as a covenant binding the Owner of the Property and any subsequent purchasers of the Property, and the benefits and burdens of this Agreement shall become a covenant, running, touching, building and concerning the title to the Property, and all parts and parcels thereof.

12. Attorney Fees. In the event of any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover actual and reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in litigation at the trial level, or upon appeal.

13. Successors. This agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, heirs, and assigns.

{Signature Pages to Follow }

**IN WITNESS WHEREOF**, Owner and the City have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

Signed, sealed and delivered before these witnesses:

**Scarborough Investments, Inc.**

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
By: Bobby Scarborough, President

\_\_\_\_\_  
(Printed)

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Printed)

**STATE OF FLORIDA  
COUNTY OF HIGHLANDS**

**SWORN TO AND SUBSCRIBED** freely and voluntarily for the purposes therein expressed before me by Bobby Scarborough, as the President of Scarborough Investments, Inc., a Florida corporation, and who executed the foregoing, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. He is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Notary Public: \_\_\_\_\_

My Council Expires: \_\_\_\_\_

[SEAL]

**CITY OF AVON PARK, FLORIDA,**

ATTEST: \_\_\_\_\_  
Maria Sutherland, City Clerk

By: \_\_\_\_\_  
Sharon Schuler, Mayor

APPROVED AS  
TO FORM: \_\_\_\_\_  
Gerald T. Buhr, City Attorney

**STATE OF FLORIDA  
COUNTY OF HIGHLANDS**

**SWORN TO AND SUBSCRIBED** freely and voluntarily for the purposes therein expressed before me by \_\_\_\_\_, as the Mayor of the City of Avon Park, Florida, and who executed the foregoing, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Notary Public: \_\_\_\_\_

My Council Expires: \_\_\_\_\_

**Exhibit 1**  
**PROPERTY BEING ANNEXED**

**Section 8.2. Post-Closing Use of Property by Seller.** Purchaser anticipates that development of the Intended Use could take one to two years. Seller has expressed a desire to continue with the agricultural uses it now enjoys until such time as the Purchaser requires use of the Property to commence construction of the Intended Use. Inlf, prior to Closing, the parties, in their individual unbridled discretion, are able to come to an agreement for the event thatterms on which Seller may lease the parties so wish,Property back from Purchaser after Closing, then they shall have executed execute a lease reflecting such agreed terms (the "Lease attached ") and shall attach such Lease hereto as Exhibit C. Notwithstanding execution of B at Closing. Except as provided for in the Lease attached hereto as Exhibit C, after Closing, Seller has, if consummated, Seller shall have no further right of entry or use of the rightProperty after Closing without Purchaser's specific, written permission. The Lease, if consummated, shall include, at a minimum, the following terms (i) Seller shall have the ability, at its sole expense, to continue caretaking and to harvest the citrus grove located on the Property through and including the date that the 2015-2016 fruit crop harvest is complete, or until 28 February 2016, whichever is sooner. Until such time, the, (ii) Seller shall retain the proceeds of the 2015-2016 fruit crop and Purchaser shall have no claim to same, (iii) Purchaser shall not engage in any activity on the Property which would impair Seller's ability to caretake and harvest the citrus grove located on the Property. Seller shall retain during the proceedsterm of the 2015-2016 fruit crop and Lease, but the parties shall cooperate in good faith to establish the times, manner, and areas where Purchaser shall have no claim to same. Thismay reasonably commence work on improvements to the Property to construct the Intended Use, (iv) Seller shall pay the Property taxes for the period of Seller's caretaking and harvest as provided in Section shall survive Closing. 6.2 herein, (v) Seller will indemnify and hold the Purchaser harmless for losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability to any person arising from the conduct of Seller in caretaking and harvesting the citrus grove after Closing. After Closing,, (vi) Seller willshall not engage in any activity that could result in a construction lien being filed against the Property without the Purchaser's prior written consent. and if a lien, of any nature, is filed against the Property during the term of the Lease, Seller shall indemnify and hold Purchaser harmless from such lien and shall have such lien removed from the Property, via payment or transfer to a bond, within fifteen (15) days of written demand by Purchaser, and (vii) during the entire term of the Lease, Seller shall maintain insurance for the Property, in such types and amounts reasonably demanded by Purchaser, which shall name Purchaser as an additional insured. This Section shall survive Closing.