

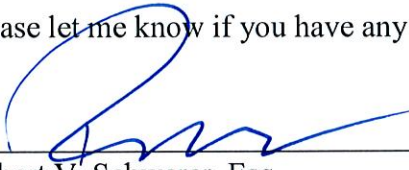
CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

M E M O R A N D U M

TO: Rebecca Grohall, Planning Manager
FROM: Robert V. Schwerer, City Attorney
SUBJECT: Carriage Pointe Subdivision – Developer’s Agreement
DATE: August 29, 2014

Please find attached the Development Agreement for the Carriage Pointe project which is approved as to form and correctness by this office. We understand the Developer’s counsel is also in agreement with the document.

Please let me know if you have any questions.



Robert V. Schwerer, Esq.
City Attorney

/mlp

Attachment

cc: Robert J. Bradshaw, City Manager
John R. Andrews, City Engineer
Sandra Ramseth, Senior Planner
Karen Emerson, Assistant City Attorney

This Instrument Prepared By:
W. LEE DOBBINS, ESQ.
Dean Mead Minton & Zwemer
1903 S. 25th Street
Suite 200
Fort Pierce FL 34947
(772) 464 - 7700

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 15th day of September, 2014 (the "Effective Date"), by PIERCE 131, LLC, a Florida limited liability company (henceforth referred to as the "Developer"), whose mailing address is 12 Salt Creek Lane, Suite 200, Hinsdale, IL 60521, and the CITY OF FORT PIERCE, a Florida municipal corporation (hereafter referred to as the "City"), whose mailing address is City Hall, 100 North U.S. 1, Fort Pierce, FL 34950.

WITNESSETH:

WHEREAS, the Developer is the owner in fee simple title to certain real property located in Fort Pierce, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereafter referred to as the "Property"); and

WHEREAS, a previous owner of the Property obtained final site plan approval from the St. Lucie County Board of County Commissioners on December 21, 2004, pursuant to County Resolution 04-228, for a residential development on the Property, then known as Ten Mile Estates and now known as Carriage Pointe (the "Project"); and

WHEREAS, the City Commission of the City of Fort Pierce approved the annexation of the Project into the City on December 31, 2004, pursuant to City Ordinance No. K-308; and

WHEREAS, the City has determined that entering into this Agreement with respect to the development of the Property is in the best interest of the citizens of the City of Fort Pierce; and

WHEREAS, the City and the Developer desire to set forth certain terms, conditions and agreements with respect to the development of the Project upon the Property; and

WHEREAS, the proposed Project is consistent with the general purpose, goals, objectives and standards of the City of Fort Pierce Comprehensive Plan and the City of Fort Pierce land development code; and

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between the City and the

Developer, the receipt and sufficiency of such is hereby acknowledged, Developer agrees and covenants as follows:

1. **Recitals.** The above recitals are true and correct, and are incorporated herein by reference.

2. **Consideration and Conditions.** In further consideration of the forgoing and of the terms and covenants set forth herein, the parties hereto agree that final plat approval for the Project by the City Commission of the City of Fort Pierce, is and shall be specifically conditioned upon the following:

a. **Landscaping.** Prior to recording of the plat for the Project, the Developer shall provide the City with a letter of credit (in accordance with Paragraph 3 hereinbelow) to secure the Developer's obligation to complete the installation of all landscaping within the Project (the "Landscaping"). The Developer shall complete the installation of all landscaping at the entrance to the Project before the issuance of the first certificate of occupancy (C.O.) issued for the Project, but no later than two (2) years after the Effective Date of this Agreement. The Developer shall complete the installation of all remaining common area Landscaping (excluding Street Trees) no later than two (2) years after the Effective Date of this Agreement. As each home is built within the Project, the Developer shall install the street trees in front of each home ("Street Trees"), and no home shall be issued a C.O. unless the required Street Trees have been installed in front of it.

b. **Amenities.** The approved site plan for the Project includes community amenities consisting of a pool, cabana and playground (collectively referred to herein as the "Amenities"). Prior to recording of the plat for the Project, the Developer shall provide the City with a letter of credit to secure the Developer's obligation to complete the installation of the Amenities. The Developer shall complete the installation of all Amenities no later than two (2) years after the Effective Date of this Agreement.

c. **Sidewalks.** Prior to recording of the plat for the Project, the Developer shall provide the City with a letter of credit to secure the Developer's obligation to complete the installation of all sidewalks along the roads within the Project (the "Sidewalks"). As each home is built within the Project, the Developer shall install the Sidewalks in front of each home, and no home shall be issued a C.O. unless the required Sidewalks have been installed in front of it.

d. **Infrastructure Improvements.** Prior to recording of the plat for the Project, the Developer shall provide the City with a letter of credit to secure the Developer's obligation to complete the installation of all infrastructure improvements within the Project (the "Infrastructure Improvements"). The letter of credit shall be in an amount sufficient to secure the Developer's obligation to complete the installation of the Landscaping, Amenities, Sidewalks and any other

Infrastructure Improvements, as set forth in the engineer's cost estimate attached hereto as **Exhibit "B"**. The Developer shall complete the installation of all Infrastructure Improvements (which shall not include Sidewalks and Street Trees), no later than two (2) years after the Effective Date of this Agreement.

3. **Surety.** The Surety provided by Developer to the City to secure Developer's obligation to construct improvements as set forth in Paragraph 2 above, shall be an irrevocable letter of credit in an amount equal to 150% of the estimated cost of constructing the improvements, as set forth in **Exhibit "B"**, and in a form with conditions as approved by the City Attorney. After completion of the construction of the Amenities, the amount of the letter of credit may be reduced at Developer's request to an amount equal to 150% of the cost to complete the installation of all then remaining uncompleted Landscaping, Sidewalks and other Infrastructure Improvements, as determined by an engineer's certified cost estimate and approved by the City Engineer. Upon representation by Developer that the required improvements are completed, a final inspection shall be made by the City. Upon satisfactory completion of all the required improvements, the City shall release the Letter of Credit. In the event Developer fails to timely complete the required improvements, the City shall be entitled to draw, utilize and apply to its account the security provided by the Developer for the purposes as herein described. In the event Developer fails to timely make or complete the improvements, and the City chooses to make or complete the required improvements, Developer grants the City and/or its designated agent(s) right of entry in order to complete the improvements, and Developer hereby agrees to indemnify and hold harmless the City, its employees, officers and agent(s) from an against any claims related to such entry. In no event shall the City have any obligation to complete the improvements.

4. **Notices.** Any notice, demand, consent, approval or other document or instrument required or permitted to be given to any party to this Agreement shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, to the following address (or such other address as any party may designate from time to time in writing):

City:

City Manager
100 North U.S. 1
Fort Pierce, FL 34950

With a copy to:

City Attorney
100 North U.S. 1
Fort Pierce, FL 34950

Developer:

Pierce 131, LLC
Attn: Peter Brennan
12 Salt Creek Lane
Suite 200
Hinsdale, IL 60521

With a copy to:

Dean, Mead, Minton & Zwemer
Attn: Lee Dobbins, Esq.
1903 S 25th Street, Suite 200
Fort Pierce, FL 34947

This forgoing is not intended to require that notice of the approval or denial of development permits be given as provided for in this provision.

5. **Headings.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

6. **Counterparts.** This Agreement may be executed in any number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

7. **Governing Law.** This Agreement and the construction and the enforcement thereof shall be interpreted under the laws of the State of Florida. The parties hereto agree without reservation of any rights under federal or state law, that in any litigation arising under this Agreement, the parties hereto waive the right to trial before a jury and all such litigation shall be litigated only in a non-jury hearing in the State Courts of Florida, St. Lucie County.

8. **Binding Effect.** This Agreement shall be deemed to be a covenant running with the land and shall be binding upon the heirs, legal representatives, successors and assigns of the Developer and any person, firm, corporation or entity who or which may become the successor in interest to the Property. No subsequent transfer of the Property or any assignment of interest therein shall relieve or discharge the Developer from any term, condition, obligation, or duties set out in this Agreement.

9. **Laws, Ordinances and Codes.** The Developer shall comply with all federal, state and local, laws, codes, ordinances and regulations governing the permitting and construction of the Project.

10. **Covenant with Respect to Engineer's Certification.** The Developer hereby covenants and warrants that to the best of the Developer's knowledge and belief, the engineer's cost estimate, attached hereto and made a part hereof as **Exhibit "B"**, is an accurate and complete estimate of the cost to complete the installation of all uncompleted subdivision improvements the Developer is required to install in the Project pursuant to this Agreement.

11. **Permits, Conditions, Terms or Restrictions.** The failure of this Agreement to address a particular permit, condition, term or restriction existing at the time of execution of this Agreement shall not relieve the Developer of the necessity of complying with the law governing permitting requirements, conditions, terms or restrictions.

12. **Amendments.** This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by the parties, or their successors in the interest.

13. **Further Documentation.** The parties hereto agree that at any time following a request therefore by another party, each shall execute and deliver to the other party such other documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of any party hereunder and the consummation of the transactions contemplated hereby.

14. **Remedies.** The City and the Developer shall have the right to enforce the terms and conditions of this Agreement by an action for specific performance. However, nothing in this Agreement shall be construed to limit the right of either the Developer or the City to pursue any and all remedies available at law or in equity to enforce this agreement.

15. **Entire Agreement.** This Agreement constitutes the complete and entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements, arrangements or understandings, whether oral or written, between the parties relating hereto.

16. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties to this Agreement and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, express or implied, is intended nor shall be construed to confer upon nor give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns.

IN WITNESS WHEREOF, the Developer and the City have caused this Agreement to be duly executed by their respective authorized representatives on the day and year set forth above.

ATTEST:

CITY:

CITY OF FORT PIERCE, FLORIDA

Linda W. Cox, City Clerk

By: _____
Linda Hudson
Mayor, City of Fort Pierce

APPROVED AS TO FORM AND CORRECTNESS:

By:  _____
Robert V. Schwerer, City Attorney

DEVELOPER:

PIERCE 131, LLC, a Florida limited liability company

By: _____
Peter Brennan, Managing Member

EXHIBIT "A"

PARCEL 1:

THAT PART: OF THE EAST 1/2 OF SECTION 30, TOWNSHIP 35 SOUTH, RANGE 40 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PART OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 LYING SOUTHERLY OF CANAL #71 (TEN MILE CREEK) AND WESTERLY OF SELVITZ ROAD; AND THE NORTH 1/2 OF THE SOUTHEAST 1/4 LYING WESTERLY OF SELVITZ ROAD AND RALLS ROAD AND SOUTHERLY OF CANAL #71 AND ALSO THE NORTH 50 FEET OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 LESS RALLS ROAD;

PARCEL 2:

A PARCEL OF LAND LYING IN SECTION 30, TOWNSHIP 35 SOUTH, RANGE 40 EAST, ST. LUCIE COUNTY, FLORIDA, ALSO REFERRED TO AS A PORTION OF RALLS ROAD, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTH LINE OF THE SOUTH 1/2 OF THE NE 1/4 OF SAID SECTION 30 WITH THE WEST RIGHT OF WAY LINE OF SELVITZ ROAD; THENCE SOUTH 34°09'42" WEST, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 38.49 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 458.00 FEET; THENCE SOUTHERLY THROUGH A CENTRAL ANGLE OF 34°37'11", CONTINUING ALONG SAID WEST RIGHT OF WAY LINE AN ARC DISTANCE OF 276.74 FEET TO THE NORTH RIGHT OF WAY LINE OF RALLS ROAD AND A NON-TANGENT INTERSECTION WITH A CURVE CONCAVE TO THE SOUTH, A RADIAL FROM SAID POINT BEARS SOUTH 10°51'18" EAST AND HAVING A RADIUS OF 277.47 FEET; THENCE SOUTHWESTERLY, ALONG SAID NORTH RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 45°04'40", AN ARC DISTANCE OF 218.30 FEET TO A POINT OF TANGENCY AND THE POINT OF BEGINNING. THENCE SOUTH 34°04'03" WEST, A DISTANCE OF 955.03 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 377.28 FEET; THENCE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 50°40'05", AN ARC DISTANCE OF 333.64 FEET TO A NON-TANGENT INTERSECTION; THENCE SOUTH 00°44'30" WEST, A DISTANCE OF 51.42 FEET; THENCE SOUTH 89°41'05" WEST, A DISTANCE OF 1329.36 FEET TO THE WEST LINE OF THE NORTH 1/2 OF THE SE 1/4 OF SAID SECTION 30; THENCE SOUTH: 00°11'03" WEST, ALONG SAID WEST LINE, A DISTANCE OF 20.17 FEET; THENCE NORTH 89°30'02" EAST, A DISTANCE OF 1299.37 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 443.28 FEET; THENCE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 55°25'59", AN ARC DISTANCE OF 428.87 FEET TO A POINT OF TANGENCY; THENCE NORTH 34°04'03" EAST, A DISTANCE OF 955.03 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RALLS ROAD; THENCE NORTH 55°55'57" WEST, A DISTANCE OF 66.00 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF RALLS ROAD AND THE POINT OF BEGINNING.



SCHNARS ENGINEERING CORPORATION

949A Clint Moore Road - Boca Raton, Florida 33487 Tel: (561) 241-6455 Fax: (561) 241-5182

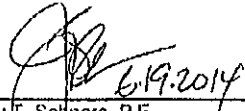
Permit No. _____ Schnars Job No.: 12193 Prepared by: Jeff Schnars, P.E.
 Control No.: _____ Date: 18-Jun-14 Developer: Pierce 131, LLC

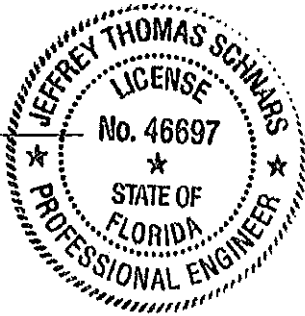
Carriage Point Estates

Fort Pierce, Florida

Engineer's Cost Estimate of Remaining Required Improvements Per City Code Sec 18-12

DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL
I. Remaining Required Improvements				
Remove and replace valley gutter	20	LF	\$25.00	\$500.00
Asphalt 3/4" Type S-III	12,753	SY	\$6.00	\$76,518.00
Concrete sidewalk	42,155	SF	\$3.00	\$126,465.00
Detectable Warning	12	EA	\$350.00	\$4,200.00
Stop sign and street signs	5	EA	\$500.00	\$2,500.00
Thermoplastic pavement markings	1	LS	\$2,000.00	\$2,000.00
Adjust drainage manhole	1	EA	\$250.00	\$250.00
Set Survey Lot Corners	1	LS	\$8,500.00	\$8,500.00
Set Survey Permanent Control Points	1	LS	\$2,500.00	\$2,500.00
Temporary Parking lot removal. Seed and mulch.	1	LS	\$2,500.00	\$2,500.00
Common Area Landscaping and Irrigation	1	LS	\$111,025.00	\$111,025.00
Cabana and Pool Amenity	1	LS	\$181,757.65	\$181,757.65
TOTAL				\$518,715.65
SURETY AMOUNT (150%)				\$778,073.48


 Jeffrey F. Schnars, P.E.
 President
 Civil Engineer
 Florida Registration No. 46697
 For the Firm
 Certification of Authorization No. 6640



- Notes:
1. Common Area Landscape and Irrigation price provided by Dixie Landscape - see attached budget proposal
 2. Cabana and Pool Amenity price provided by Owner - see attached budget breakdown