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July 7, 2023

Mr. Kevin Freeman
Planning Department
City of Fort Pierce
Planning Director
100 N. US Hwy 1
Fort Pierce, FL 34950
kfreeman@cityoffortpierce.com

RE: Applications by Gator Trace on the Greens, LLC for Site Plan and Final Plat Approval for two (2) Parcels in the Gator Trace Planned Unit Development (2435-311-0001-000-4, 2345-243-001-000-6)

Dear Mr. Freeman:

I represent Gator Trace I, LLC, Gator Trace II, LLC and Gator Trace III, LLC the collective owners of approximately 17.6 acres of vacant land in the Gator Trace Planned Unit Development ("Gator Trace PUD"). The Gator Trace PUD is a golf course community originally granted master plan approval on May 21, 1984 by the Fort Pierce City Commission for a total of 678 units; 90 single family and 588 multi-family on a total of 225.47 acres resulting in a gross density of 3 developed units per acre.

On or about April 3, 2007 the City Commission of the City of Fort Pierce (the "City") approved the Final Development Plan submitted for the Gator Trace PUD on behalf of Symphony Builders at Gator Trace LLC ("Symphony Builders"). The Final Development Plan provided for the development of 67 units on the 6.94 acres currently owned by Gator Trace Greens, LLC and 264 units on the approximately 17.6 acres currently owned by my clients. At the time the City approved Symphony Builders Final Development Plan the City entered into a Developer's Agreement with Symphony Builders, a copy of which is attached to this letter.

The purpose of this letter is to notify the City of my clients' objection to the above referenced applications by Gator Trace Greens, LLC to construct 83 units on the 6.94 acre parcels owned by the applicant.

The construction of the 83 units is inconsistent with the Final Development Plan approved by the City in 2007 for the Gator Trace PUD. The purpose of a planned unit

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development zone is to provide comprehensive development incorporating open space for public use. It is designed to achieve a desirable environment through flexible and diversified land development standards in an overall plan. When the City approved the Final Plan for the Gator Trace PUD in 2007 it allocated the remaining developable units within the Gator Trace PUD, to specific locations, to wit: 67 units for the 6.94 acre parcels owned by the applicant and 264 units for the 17.6 acres owned by my clients. The City cannot reallocate the location of developable units within a planned unit development without the express consent of the property owners who are impacted by the reallocation of the location of approved units within the planned unit development. To do so without the impacted property owners' consent would be an unlawful taking.

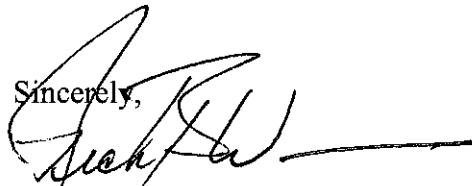
Please also be advised that to the extent the City does permit the applicant to develop its property, regardless of the number of units authorized, the City is obligated to enforce the Developer's Agreement that was entered into by the City and my clients' and the applicants' predecessor in interest, Symphony Builders. The Developer's Agreement expressly states:

This agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto, and shall run with title to the property and be binding upon the successor and the assigns of the developer and upon any person, firm, corporation or entity who or which may become the successor in interest to the property.

Please be advised that my clients' predecessor in interest, HST Development Partners, LLC was required to comply with the Developer's Agreement in 2014 and 2015, when it completed the development of the property that is now known as the Linkside at Gator Trace Condominium, located within the Gator Trace PUD. Certainly, the City will also require the applicant to comply with the Developer's Agreement should the City grant Gator Trace on the Greens, LLC applications to develop its property.

Thank you for your consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard B. Warren", followed by a horizontal line extending to the right.

Richard B. Warren, Esq.

Enclosure
Cc: Mr. Steve Tarr

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT (the "Agreement") is entered into this ^{26th} day of March, 2006, by Lewis Moscovitch, President of Symphony Builders at Gator Trace, Inc. and managing member of Symphony Builders at Gator Trace, LLC (henceforth referred to as the "Developer"), whose mailing address is 4400 West Sample Road, Suite 118, Coconut Creek, FL 33073, and the **CITY OF FORT PIERCE**, a political subdivision of the State of Florida (hereafter referred to as the "City"), whose mailing address is City Hall, 100 North U.S. 1, Fort Pierce, FL 34950.

WITNESSTH:

WHEREAS, the Developer, through Symphony Builders at Gator Trace, LLC, is the owner in fee simple title to certain real property located in Fort Pierce, St. Lucie County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (Phases I and II to be identified hereafter collectively as the "Property"); and

WHEREAS, the Developer intends to develop the property in two phases, each being a development phase with a separate site plan within an existing PUD, Phase I to consist of 67 two-story townhouse units and Phase II to consist of 264 four-story building units, said project to be known as Gator Trace (the "project"); 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 found and determined to be consistent with the general purpose, goals, objectives and standards of the City of Fort Pierce Comprehensive Plan in the City of Fort Pierce land development code; and

WHEREAS, the City Commission of the City of Fort Pierce approved site plans for the project at its regularly scheduled meeting of December 19, 2005, subject to the matters contained and set forth herein.

NOW, THEREFORE, in consideration of the premises contained here and other good and valuable consideration exchanged by and between the City and the Developer, the receipt and sufficiency of such is hereby acknowledged, the parties hereto stipulate and agree as follows:

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

2. **Permitting and Permit Review.** As provided herein, the parties recognize and agree that certain provisions of this agreement may require the City, its departments, agencies and/or boards acting in their several administrative capacities, to consider and apply applicable provisions in the City codes, plans or regulations, as well as to consider or implement other governmental actions relating to this agreement. All such considerations and actions shall be undertaken in accordance with established requirements of State Statutes and City Ordinances, including notice and hearing requirements where applicable, in the exercise of the City's jurisdiction under police power. Nothing in this agreement is intended to limit or restrict the powers or responsibilities of the City in acting upon and applying the City's Comprehensive Plan or Code of Ordinances. The parties fully recognize and agree that any proceedings incidental thereto shall be conducted openly, fully, freely and fairly in

accordance with law in both substantive and procedural due process to be accorded the applicant and any member of the public. Nothing contained in this agreement shall entitle the developer to compel the City to take any actions, save and except to timely and fairly apply due process to such applications for permit approval as may flow from this agreement.

3. **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:

Lewis Moscovitch, President
Symphony Builders at Gator Trace Inc.
Managing Member of Symphony Builders at Gator Trace, LLC
4400 West Sample Road, Suite 118
Coconut Creek, FL 33073

With a copy to:

Larry Rothenberg, P.A.
815 Coral Ridge Drive
Coral Springs, FL 33071

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.

4. **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.

5. **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.

6. **Governing Law.** This agreement shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation between the parties related to this agreement shall be in St. Lucie County, Florida.

7. **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 developer of the necessity of complying with the law governing permitting requirements, conditions, terms or restrictions.

8. **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. It is a complete recitation of the terms of the agreement existing between the parties and may not be varied, added to or detracted from by any offer of other oral or written statements.

9. **Covenants Running with the Land.** This agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto, and shall run with title to the property and be binding upon the successor and the assigns of the developer and upon any person, firm, corporation or entity who or which may become the successor in interest to the property.

10. **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.

11. **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 under the State or Federal constitution or other laws relating to a party's non-performance under this agreement.

12. **Waiver of Jury Trial.** By the execution hereof, the Developer and the City knowingly voluntarily and intentionally agree that neither party shall seek a jury trial in any lawsuit, proceeding, counterclaim or any other litigation procedure rising from or based upon this agreement.

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

14. **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 the 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.

15. **Consideration and Conditions.** In further consideration over and above the forgoing, the parties agree that site plan approvals heretofore by the City Commission or henceforth is and shall be specifically conditioned upon the following:

(i) The "Developer" shall procure a right-of-way permit from St. Lucie County before obtaining a building permit for any of the buildings included within the project. The right-of-way permit to be obtained from the County will be for the purpose of permitting the Developer to construct a new road in an existing County right-of-way which will intersect with South Market Street, head East over the existing drainage ditch, by installation of a permanent culvert, and then South into the Gator Trace project at the Northwest corner; and

(ii) South Market Street will serve as the sole construction entrance for Phase I and Phase II of the project;

(iii) The developer will on or before 12/18/08 build a 5-foot wide asphalt sidewalk along its frontage on Gator Trace Boulevard. Such asphalt sidewalk will be replaced by the developer with a concrete sidewalk prior to issuance of

the final certificate of occupancy for Gator Trace Project, in the event the Gator Trace Boulevard extension has not been started by a third party.

(iv) Developer shall provide a bond in the amount of \$20,720.00 on or before the issuance of the first certificate of occupancy, in order to secure its responsibility in this regard. At such time as the developer constructs the concrete sidewalk or the concrete sidewalk is built by a third party, the bond amount will be immediately reimbursed to the developer at the address referenced above;

(v) Install a four-way stop in place of a roundabout otherwise shown on the developer's plans and application;

(vi) The developer will pay, the Commission indicated "up front" the sum of \$15,000.00 on or before the issuance of the first building permit as its fair share of the cost of signalization at Weatherbee Road and U.S. 1, said pro rata contributions to be held in trust by the City to be applied toward the cost of such signalization;

(vii) The new throughway intercepting with South Market Street, described in Section 15(i) above, will be constructed in accordance with the requirements of St. Lucie County, though will also be landscaped and the Developer shall provide elevations and drawings of the street entrance into the Gator Trace Community, to be approved by the City;

(viii) The Developer represents that the revised site plans for Phase I and Phase II were reviewed by both the school board of St. Lucie County, of Florida, and the St. Lucie Fire District. The Developer warrants that the

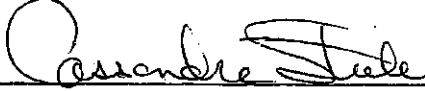
school board will not be needing or adding a bus stop in consequence of the Development and that the St. Lucie County Fire Department has approved the final development plan.

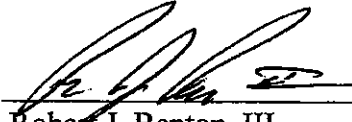
IN WITNESS WHEREOF, the Developer and the City have caused this agreement to be dully executed by their respective authorized representatives on the day and year set forth below.

ATTEST:

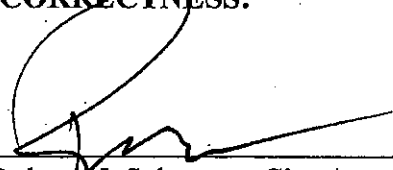
CITY:

CITY OF FORT PIERCE, FLORIDA



Cassandra Steele, City Clerk

By: 
Robert J. Benton, III 4-2-07
Mayor, City of Fort Pierce

**APPROVED AS TO FORM
AND CORRECTNESS:**

By: 
Robert V. Schwerer, City Attorney

DEVELOPER:

By: 
Lewis Moscovitch, President,
Symphony Builders at Gator Trace, Inc.
Managing Member of Symphony
Builders at Gator Trace, LLC