SUBMITTED INTO the RECORD by ALfred MALEFATTO, ESQ.
AT The 3-8-2021 SpeciAL meeting

AKELHOMES

March 4, 2021

Hon. Mayor Gregory J. Oravec
City Council
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie, Florida 34984

Re: Applications P20-161, P20-162, and P20-175 / Wilson Grove Access

Dear Mayor Oravec:

I am of the Co-President of Akel Homes ("Akel") and a Manager of ACR Acquisition, LLC, which owns the Wilson Grove property that is a party to the Annexation Agreement that controls the development of properties within the Southwest Annexation area, including the property at issue. This letter is being sent to address Application Numbers P20-161, P20-162, and P20-175 (collectively, the "Riverland Applications") submitted by Riverland/Kennedy II LLC ("Riverland"), which are presently set to come before the City Council at a public hearing on March 8, 2021. As you may know, we opposed the Riverland Applications at the City's Planning and Zoning Board meeting on January 5, 2021, and the Board voted to recommend denial of the applications. For the reasons outlined in this letter, the City Council must either deny the Riverland Applications outright, or table them until various dispositive issues raised in this letter are adequately addressed.

The public hearing should be postponed until after the pending mediation, which may resolve the outstanding issues.

As you are aware, Akel, the City of Port St. Lucie, and Riverland Kennedy (as Riverland Kennedy LLP; Riverland Kennedy II, LLC; and Riverland Kennedy III, LLC, individually and collectively referred to as "Riverland") are currently in litigation to resolve a number of issues related to the Annexation Agreement, including road construction and access to the Wilson Grove property. At the request of the City, the parties entered into mediation, which is ongoing as of the date of this letter. If the City were to approve the Riverland Applications prior to the mediation, it would run the risk that the approvals would be inconsistent with and/or rendered invalid by any agreement reached between the parties. As Riverland's counsel pointed out, in a letter dated January 4, 2021 ("Riverland Letter"), the court has jurisdiction "over the very objection ACR [Akel] raises in connection with Parcel B MPUD and NOPC No. 4." As a purely practical matter, the City should table the Riverland Applications until after the mediation or until the court weighs in on the issues raised by Akel, precisely for the reason raised by Riverland's counsel.

Approval of the subject applications would violate the City's Comprehensive Plan, City Code and constitute a further breach of the Annexation Agreement.

The substantive reasons the Riverland Applications must be denied include the following: (1) the Riverland Applications contain a material misrepresentation with respect to Riverland's compliance with the Annexation Agreement; (2) the Riverland Applications are based on an incomplete traffic analysis that is inconsistent with the Comprehensive Plan of the City of Port St. Lucie ("Comprehensive Plan"), Section 160.02 of Port St. Lucie's City Ordinances, which require an updated Western Annexation Traffic Study to property analyze impacts; and (3) the Riverland Applications improperly seek approval to construct

substantially more units than allowable in Phase 1 without building the first two lanes of the required Phase 1 road network, ; specifically:

-Community Blvd. from Discovery Way to SW Marshall Parkway (E/W 3),
- Community Blvd. from E/W 3 to Paar Dr.,
- Community Blvd. from Paar Dr. to Becker Rd., and
- E/W 3 from Community Blvd. to N/S B.

Most egregiously, Riverland failed to meet its obligation under the Annexation Agreement to construct or fund the construction of Becker Road from east to west across Riverland's property to its boundary with Wilson Grove.

The Riverland Applications materially misrepresent that they are consistent with the Annexation Agreement.

The Riverland Applications should be denied due to the material misrepresentation in Exhibit "B" to the proposed development order. In the attached Exhibit "B," Riverland represents that there has been "substantial compliance with the representations contained in the Application for Development Approval... [which] shall include... Annexation Agreement..." This is simply not true. **Riverland is not in compliance with the Annexation Agreement.** It has received approvals from the City to build thousands of units, but it has not constructed the roads required to support this development as set forth in the Annexation Agreement. The failure of Riverland to construct the roads required by the Annexation Agreement to date and its attempt to have more development approved when it is already in default of its obligations under the prior development orders entered pursuant to the Annexation Agreement demonstrate a clear lack of substantial compliance.

Most significantly, Becker Road West was to be constructed "simultaneously with the acceptance and completion by the Florida Department of Transportation of the Becker Interchange." This construction did not occur. Pursuant to the Annexation Agreement, Akel paid over $21 million to ensure that Wilson Grove would have access to its property along Becker Road; Riverland's default on its obligation to build Becker Road as required under the Annexation Agreement denies Wilson Grove that access..

The Annexation Agreement makes clear that "the development of the Annexation Properties will be consistent with the City's Comprehensive Plan and land development regulations." Section 5 of the Annexation Agreement further provides a schedule of road construction for the parties to the agreement, including Riverland, and **the agreement later provides "breach shall result in the withholding of all further development review and approvals, including but not limited to building permits...."**

Until Riverland complies with the Annexation Agreement and demonstrates that its proposed development complies with the Comprehensive Plan and City Ordinances, the pending Riverland Applications must be denied. And as noted at the outset of this letter, in light of the pending mediation, at a minimum, the City must table the applications.

Riverland's traffic report supporting its applications are flawed and inconsistent with the City's Comprehensive Plan and Code because it does not analyze the impacts to the roadway network across all adjacent DRIs, as required by the Western Annexation Traffic Study ("WATS"), and because it not only improperly relies on trip counts in place of a traffic study, it also incorrectly

relies on age-restricted housing units instead of single family detached units to generate those trip counts, which substantially reduces the PM Peak Trip count, in an attempt to delay or eliminate construction of vital segments of the roadway network.

In sharp contrast to what other developers have been required to submit, the Riverland Applications rely only on a three-page trip generation report prepared by Pinder Troutman rather than a full traffic study. (Compare this to the 477-page traffic study recently submitted by Southern Grove.) The Riverland traffic analysis is inadequate under WATS.

By way of background, WATS is a traffic study that was originally commissioned by former Port St. Lucie City Manager Don Cooper. It was overseen by the Treasure Coast Regional Planning Council, but paid for by the southwest annexation area developers. It has been amended several times and continues to serve as the foundation for traffic analysis in the Southern Grove, Riverland, Wilson Grove, and Western Grove properties. Today, the WATS is used as the basis for demonstrating compliance with the City's Comprehensive Plan and Section 160.02 of the City's Ordinances to ensure that level of service standards and connectivity requirements are met by each development. In 2006, Maria Tejera P.E. (the author of the WATS) wrote:

> "The traffic study assumes all these developments are to occur concurrently in compliance with the phasing presented in the study with the potential for a large amount of interaction among them. The study also relies on land uses allocated to traffic analysis zones as presented in the study as well as access points between traffic analysis zones. It assumes all improvements will be built concurrent with development and buildout of these developments will be in the year 2025. Additional traffic impact is likely to occur if any of these assumptions changes. Therefore, a revised traffic study will need to be prepared."
>
> "The analysis assumes there are connections between traffic analysis zones (TAZ's). These connections reduce traffic to the roadway network. It also assumes specific land uses within each TAZ. These assumptions need to hold true for the analysis to be valid."

The trip generation statement supporting the applications is inadequate to meet the requirements of the City's Code and Comprehensive Plan and with Section 160.02 of Port St. Lucie's City Ordinances, which states that "[t]he Concurrency Management System will provide the necessary regulatory mechanism for evaluating development orders to ensure adequate public facilities and services are available concurrent with development impacts. The adoption of the Port St. Lucie Comprehensive Plan and its various elements established acceptable level of service standards for roads...." The approved City methodology for achieving this is WATS.

The development requested in the Riverland Applications triggers the need for an update to the WATS. Specifically, the Riverland Applications propose: (1) a change in residential allocation from single-family to age restricted; (2) a change in the location of the non-residential use; and (3) a change in the roadway network. These changes trigger the need to update the WATS to allow the City to properly analyze the impact of the proposed developments across all DRIs and the entire road network. If the City only looks at the units and trip thresholds reflected in Riverland's trip generation letter, without evaluating the impacts to other roads, it will make a decision based on incomplete information and may allow changes that disrupt the function of the planned network – leaving the City and its residents with a dysfunctional road network. For example, if WATS has baked into its assumptions that Riverland and

Southern Grove are building roads according to the phasing schedule, and both Riverland and Southern Grove rely on the WATS assumptions, then the Riverland analysis automatically assumes Southern Grove is building certain roads, and Southern Grove assumes Riverland is building certain roads, but in reality, neither of them are building anticipated roads. If the City does not evaluate the underlying assumptions and relies only on trip generation and residential unit analysis, it cannot know whether the traffic analysis is sufficient to serve the needs of its current and future residents.

Riverland's other assumptions also violate WATS. WATS assumes single family detached in its analysis; this differs from the age-restricted analysis Riverland relies on in its trip generation report. Under the original WATS conducted in 2006 and all subsequent WATS prepared by the DRIs (most recently, Southern Grove), the developers are not able to use age-restricted detached to calculate PM Peak trips and utilize such trip counts as justification to delay or eliminate the first two lanes of the road network. This is not allowable under the WATS because the authors of the WATS understood that developers could attempt to justify the delay or elimination of the necessary first two lanes of the road network as a result of age-restricted trip counts being substantially lower than single family detached. In other words, Riverland's analysis is improper because the age-restricted land use lowers the trip generation count, creating a loophole for Riverland to avoid constructing the required road network.

If Riverland utilized the proper assumption of single family detached, the 3275 would generate 3023 PM Peak Trips in comparison to the 929 trips calculated under age restricted. Riverland's deliberate abandonment of the WATS was intentional in order to utilize age restricted to further delay and eliminate the necessary first two lanes of the road network. For example, given that Riverland's erroneous traffic analysis determined that 3275 age restricted units creates 929 PM Peak Trips, since the entire Riverland DRI is entitled for 11,700 units, Riverland will attempt to treat all as age restricted to continue to reduce the PM Peak Trips, thus justifying the delay or elimination of the necessary roads. It would take all 11,700 units as age restricted for Riverland to hit 3,300 PM Peak Trips giving Riverland the basis to delay the entire Phase 1 road network for twenty years and to eliminate the required Phase 2, 3 and 4 roads. This is the exact reason why the WATS did not allow for age restricted as an assumption as it greatly affects the timing of the construction of the first two lanes of the road network.

It is also important to consider the sole reason Riverland did not update the WATS. If Riverland had updated the WATS as required even with the incorrect assumption of age-restricted detached, the results would still require the immediate construction of the roads that Riverland is delaying or eliminating in its proposed Applications. The first two lanes of the road network are needed whether there is one trip or ten thousand trips – this is one of the fundamental principles of the WATS. The City has fought hard for the required initial two lanes to complete the road network and accepting this new methodology proposed by Riverland would create a new standard that would allow Riverland to continue to delay required roads and leave the City and the other DRIs with a broken and inadequate road network.

Furthermore, Riverland's failure to submit an updated traffic analysis conforming to the standards set by the WATS is a violation of Riverland's DRI Conditions of Approval. For reasons unknown, City Staff has not required Riverland to submit an updated WATS analysis even when it has required it of other DRI developers. For example, as a part of recent applications submitted by Southern Grove, the City required a WATS study prepared by traffic engineer Shaun MacKenzie, which came in at **477 pages in length** and contains detailed assumptions used to determine the traffic impacts across all DRIs as a result of Southern Grove's proposed changes. Riverland's insufficient and nonconforming traffic justification letter is a paltry **3 pages in length** and speaks only to trip generation.

The Riverland Applications improperly seek approval to construct substantially more units than are allowed in Phase 1 without building the first two lanes of the required Phase 1 road network, leaving the City liable for completing those obligations.

Phase 1 of the Riverland DRI allows 2500 residential units. As of today, Riverland is approved to build up to 2450 residential units. The pending Riverland Applications seek approval to construct up to 3275 residential units while sidestepping construction of the first two lands of the Phase 1 road network. As seen in the attached pages from the current Riverland Development Order, "[n]o building permits shall be issued for development that... exceeds the number of residential units identified in Table 2..." Table 2 of that same order explains which roads are necessary to serve the proposed development as follows:

- Two lanes of Community Boulevard from Discovery Way to E/W3 by 700 units,
- Two lanes of Community Blvd. from E/W 3 to Paar Dr. by 2000 units,
- Two lanes of Community Blvd. from Paar Dr. to Becker Rd. by 2500 units, and
- Two lanes of E/W 3 from Community Boulevard to N/S B, by 2500 units.

Note that the 700 unit requirement that triggers the Community Blvd from Discovery to E/W 3 has already been exceeded, and in addition to the road above, the Annexation Agreement requires Riverland pay for the cost of constructing a two-lane section of Becker road through its property.

Riverland argues that the total net external PM Peak Hour Trip threshold has not been triggered, and therefore, DRI condition 19 does not yet apply. That distracts from the issue. First, DRI Condition 19 – whether triggered by residential units or by trip thresholds – is based on certain underlying assumptions in the WATS regarding the available road network, but as a result of Riverland's own actions, those assumptions are no longer correct because many of those roads have not been constructed. Second, Riverland cannot use PM Peak Hour Trips calculated using age-restricted detached units in lieu of single family detached units as doing so would be a clear violation of WATS.

Under the Annexation Agreement, the various DRI Development Orders, and WATS, Becker Road, E/W 3, and Paar were intended to connect Riverland to the Wilson Grove property. The pending applications seek to delete these connections and allow Riverland to funnel the trips associated with the additional units through access roads built by Southern Grove; all while leaving road systems that have been determined to be integral for the people of Port St. Lucie unconstructed. The pending applications seek to continue delaying construction of these connections and allow Riverland to funnel the trips associated with the additional units through access roads built by Southern Grove, all while leaving road systems that have been determined to be integral for the people of Port St. Lucie unconstructed. The City has failed to enforce the construction of Community Blvd to E/W 3 triggered at 700 units, and approval of the Riverland Applications would allow Riverland to continue to delay the remaining Phase 1 roads, which should be triggered at 2500 units.

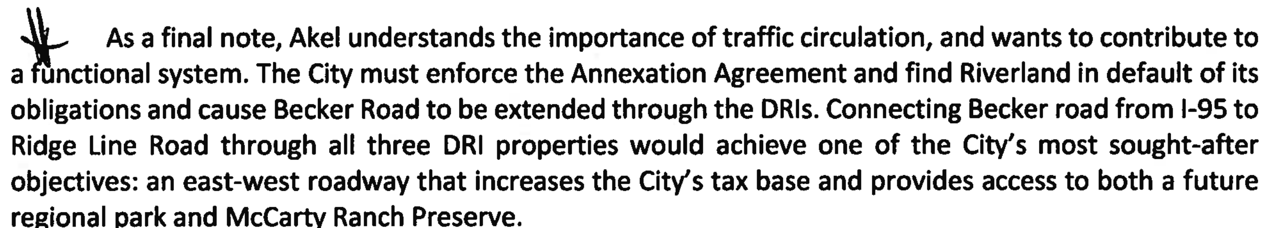
The fact that Riverland is avoiding constructing previously promised roads, should be as important to the City as it is to Wilson Grove.

Approving the subject applications would amount to the City's approval of Riverland's continued **intentional and strategic land-locking of Wilson Grove** because the subject applications allow Riverland to avoid constructing roads that were intended to provide access to Wilson Grove. The City's involvement in the approval of this breach by Riverland would be especially egregious because, despite the fact that Wilson Grove has yet to construct a single unit on its property, it has paid the City more than $20 million

since the date the Annexation Agreement was executed (July 19, 2004), towards planning and construction of roads within the City, in exchange for the City ensuring compliance with the Annexation Agreement for access to its property. The failure of Riverland to construct segments of E/W3 and Becker Road have an adverse impact on all Wilson Groves' future phases of development. The City's acceptance of the funds paid in good faith by Wilson Grove without requiring construction or funding of the necessary roads by Riverland amounts to an unlawful taking and creates a liability for the City, who, pursuant to Section 163.3180, Florida Statutes, will be required to ensure the appropriate road network is in place.

As I advised Jesus Merejo, the Acting City Manager, in a letter dated July 7, 2020, under Section 5 of the Annexation Agreement, it is the City's obligation to ensure the timely construction of these and other roads. Failure to require Riverland to live up to its obligations under the Annexation Agreement will not only compromise the City's obligations, but will also set a concerning precedent moving forward.

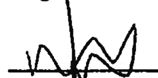
The Riverland Letter suggests that Akel can simply build the road and seek reimbursement as an appropriate remedy to Riverland's breach. That is a mischaracterization of the requirements of the Annexation Agreement. In order for Akel to elect this course, Riverland will first need to be found in default of the contract – otherwise, Akel has no right to reimbursement and arguably no right to build the subject roads. Further, there is no guarantee Akel could ever collect. To reiterate, Akel has paid its share – over $21 million dollars-worth – and has seen no return for this payment.



As a final note, Akel understands the importance of traffic circulation, and wants to contribute to a functional system. The City must enforce the Annexation Agreement and find Riverland in default of its obligations and cause Becker Road to be extended through the DRIs. Connecting Becker road from I-95 to Ridge Line Road through all three DRI properties would achieve one of the City's most sought-after objectives: an east-west roadway that increases the City's tax base and provides access to both a future regional park and McCarty Ranch Preserve.

As demonstrated above, the Riverland Applications must be denied as inconsistent with the City's Comprehensive Plan, Code and Annexation Agreement. At a minimum, the applications should be tabled in order to allow the City and the affected developers to try to resolve the matters at issue during mediation. If the City Council elects to ignore these objections to the current Riverland Applications and approve them, at a minimum it must include a condition of approval requiring Riverland to immediately construct the noted roads up to the standards required under the Annexation Agreement, their Development Order, the Comprehensive Plan and City Ordinances, including all roads providing access to Wilson Grove. Although such a requirement will not be enough to satisfy Riverland's express obligations under the Annexation Agreement, for which I and all applicable Akel entities reserve the right to pursue any and all available remedies, it would mitigate the immediate harm caused by the City's approval of the Riverland Applications.

Regards,



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