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Mr. Richard Berrios, Esq.
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121 SW Port St. Lucie Blvd
Port St. Lucie, FL 34984-5042
Via email: rberrios@cityofpsl.com

VIA EMAIL TRANSMITTAL

Re: **Riverland/Kennedy Parcel E MPUD**

Dear Mr. Berrios,

Our firm has been retained by Riverland/Kennedy II, LLC (GL) to represent its interests related to the referenced MPUD. We were in attendance at the City Council's first reading of the MPUD approval on May 28, 2024. At that hearing, which was operated as a quasi-judicial proceeding, there was a robust discussion by the members of the City Council regarding GL's responsibilities under the executed DRI Development Order to enhance the existing City roadway network in the area surrounding the development. Specifically, there was a question raised as to whether the existing Development Order mandates an "age-restricted" trip generation analysis to be utilized in determining the various triggers requiring GL to construct the improvements to the existing two-lane road network.

To this end, we have analyzed the Development Order, the City's Comprehensive Plan, and the City's Land Development Code, and are of the opinion that the age-restricted analysis is clearly the required method for determining the road improvement triggers. To begin, it is axiomatic that a validly-executed development order is to be treated as an enforceable contract, and the rights and responsibilities contained within the development order are binding on all parties. *See Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So. 3d 1176, 1179 (Fla. 4th DCA 2010).

The Riverland/Kennedy Development Order contains several provisions that mandate an age-restricted trip analysis for its road triggers. Condition 17 requires GL to prepare a trip generation analysis utilizing the "latest available Institute of Transportation Engineers Trip Generation report as well as land uses included in the application for development approval." In accordance with this condition, GL submitted a formal trip generation analysis utilizing the ITE land use code for the proposed Riverland/Kennedy use. Using anything other than the age-restricted category would be in conflict with the ITE manual, and thus in violation of the Development Order.

Condition 18 of the Development Order includes a chart labeled "Table 2, Riverland/Kennedy DRI Road Improvements." Table 2 contains the specific threshold of expected trips that triggers each phase of GL's road improvement responsibilities. Table 2 also contains a notation that provides for a claw back of the age-restricted trip generation analysis if the Riverland/Kennedy communities do not comply with the Development Order's definition of an age-restricted

community. Nowhere in Table 2, and nowhere in the notations on Table 2, is there any distinction between the trip generation analysis for the area's two-lane network and its four-lane network. In fact, there is no distinction anywhere in the entire Development Order between the two- and four-lane road networks. Reading such a distinction into the Development Order functionally moots the entirety of Table 2's claw back language. Moreover, attempting to create such a distinction, in contradiction of the plain language of the Development Order, is improper and not supported by law.

In addition to the plain text of the Development Order, the City's own Land Development Code also mandates the utilization of the age-restricted trip generation analysis. Section 160.80(C)(2)(a)(3) requires an expected trip generation analysis to be based on the "proposed land use by project phase." Moreover, the same Land Development Code provision contains a clause identical to the language of the Development Order that requires the trip generation analysis to utilize the ITE Trip Generation Manual. As discussed above, the ITE Manual mandates the application of an age-restricted analysis for age-restricted land uses.

As the City Council will be sitting as a quasi-judicial capacity at the second reading of the Riverland/Kennedy Parcel E MPUD approval hearing, it is important that its decision be based solely on the competent substantial evidence entered into the record of the proceeding. To that end, as you know, it is inappropriate for the Council to consider other DRI development orders in its decision making. To the extent that such information is discussed the explicit language in the Riverland/Kennedy Development Order is the only relevant evidence that should be considered. Furthermore, utilizing the age-restricted analysis is consistent with the previous interpretations of the City on the already approved uses in Riverland/Kennedy Parcels A, B, C, and D.

It is requested that you include this letter in the Official City File on this application. Should you wish to discuss this matter prior to the June 10, 2024 hearing, please contact me at your convenience.

Respectfully,

**BARTLETT LOEB HINDS
THOMPSON & ANGELOS**

By: */s/ Cynthia G. Angelos*
Cynthia G. Angelos