

GEMCO, Inc. (CB-C024118)

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August 23, 2010

Richard Adkins
Field Engineer
City of Leesburg
PO Box 490630
Leesburg, Florida 34749-0630

Re: Executed Request to Terminate Developers Agreement
Fruitland Estates – Phase I
Lake County, Florida

Dear Mr. Adkins:

Thank you for allowing us the option to terminate the Developers Agreement, terminate our \$60,076.00 Utility Security Bond and refund us our \$67,322.00 payment to the City of Leesburg less the amount of work provided by the City (\$20,608.90) for a total refund of \$46,713.10.

Attached are two copies of the agreement and Exhibit A, Expenditures for Fruitland Estates – Phase I, signed by Mary L. Demetree, Manager of Fruitland Park, LLC.

Please return one signed copy of the fully executed agreement for my file. What is the anticipated date of funding of the \$46,713.10?

I appreciate your help in this matter.

Sincerely,

Jim Bartoe, PE
Jim Bartoe, P.E.

Cc: James Berry and Chris Harrison, Demetree Builders and , Randy Rush, Esq.

Please Note: Florida has a very broad public records law. Most written communications to or from government officials regarding government business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

**AGREEMENT TO TERMINATE
DEVELOPER'S AGREEMENT AND BOND**

THIS AGREEMENT is made on the ____ day of _____, 2010, between **THE CITY OF LEEBURG, FLORIDA**, hereafter referred to as "City," and **FRUITLAND PARK, LLC**, hereafter referred to as "Developer,"

WITNESSETH:

That on or about November 5, 2007, Developer entered into a "Developer's Agreement" (hereafter referred to as the "Agreement") with the City, pertaining to allocation of expenses for installation of electrical utility infrastructure in connection with a project Developer at that time intended to pursue, known as "Fruitland Estates – Phase I" (hereafter referred to as the "Project"). In connection with the Agreement, and in compliance with the City's Code of Ordinances, Developer obtained a Utility Security Bond in the penal sum of \$60,076.00, and placed with the City a cash deposit in the amount of \$67,322.00, both to secure payment of the cost of certain work to be done at the Project by the City to provide utility service. Developer has now elected not to proceed at this time with construction of the Project and has requested to cancel the Agreement and receive a return of its bond and cash deposit. The City agrees to Developer's request but only under the terms and conditions set forth in this document.

NOW THEREFORE, for and in consideration of the assent by the City to Developer's request to cancel the Agreement, terminate the bond and return the cash deposit, and other good and valuable considerations, the parties agree as stated below:

1. Effective upon approval of this document by the Leesburg City Commission, in a public meeting at which this document has been placed on the agenda for consideration, Developer and the City agree that the Agreement stands canceled and henceforth shall be null and void, neither party having any obligation to the other under the Agreement except as specifically set forth in this document.

2. The City hereby releases the bond and absolves Developer as principal, and Western Surety Company as surety, from any further liability or obligation under the bond #929435518 dated January 14, 2008, and upon full performance by Developer of all obligations imposed on it by this document, the City will deliver the original of the bond to the Developer.

3. The City shall also release to the Developer so much of the cash deposit as remains after reimbursement to the City of all of its costs and expenses incurred or paid to date in connection with the Project, which are itemized on Exhibit "A" attached to this document. Developer agrees that the amounts shown are reasonable and may be withheld by the City from the cash deposit before refund of the balance to Developer. Anything to the contrary set forth in this Agreement notwithstanding, in the event that Developer shall in the future desire to obtain electrical service from the City and shall submit the same layout for the electrical system and the lots, then in such event City shall credit against the amounts which would otherwise be payable to the City in connection with the installation of such electrical service system the amount deducted from the cash deposit pursuant hereto, or \$20,608.90.

4. Except as provided in the immediately preceding paragraph, this Agreement terminates all duties and obligations of the parties to one another with respect to the Project. If Developer or a successor of Developer later decides to proceed with the construction of the Project and again approaches the City about utility service, the City shall be free to condition that service and construction of any related infrastructure on its then current codes and policies, without regard to whatever arrangements were contained in the Agreement, and to impose such requirements as its then current codes and policies allow. Other than as set forth in the immediately preceding paragraph, the City shall not be obligated to observe or abide by any terms or conditions of the Agreement in any future dealings regarding utility service to the Project.

5. This document sets forth the entire understanding of the parties with regard to its subject matter. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this document and to have been extinguished except to the extent specifically set forth herein. This document may not be amended orally, by implication, by waiver or estoppels, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This document shall be construed in accordance with the laws of Florida and shall be construed evenly as between the parties regardless of which party is most responsible for its drafting or content. Venue for any action or proceeding arising out of this document shall be in Lake County, Florida. This document shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this document in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth herein.

6. In the event of any litigation arising under this document, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs in addition to any other relief obtained, whether at trial, on appeal, in any proceedings to collect or enforce a judgment, and in any proceedings in bankruptcy or insolvency. The City does not waive its sovereign immunity by entering into this document, over and above the statutory waiver set forth in §768.28, Fla. Stat. (2009).

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to set their hands and seals to this document.

THE CITY OF LEESBURG, FLORIDA

BY: _____
DAVID KNOWLES, Mayor

ATTEST: _____
BETTY RICHARDSON, City Clerk

APPROVED AS TO FORM AND CONTENT:

CITY ATTORNEY

WITNESSES:

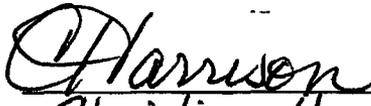
FRUITLAND PARK, LLC



JAMES E. BERRY JR.
(Type or print name of witness)

BY: 

MARY L. DEMETREE,
Manager



Christine Harrison
(Type or print name of witness)