

**SETTLEMENT AGREEMENT
AND FULL AND FINAL RELEASE OF CLAIMS**

Comes now: (1) **SIERRA LAKE HOLDING, INC.**, a Georgia corporation (“**SLH**”); and (2) **FORSYTH COUNTY, GEORGIA**, by and through its governing authority, the Forsyth County Board of Commissioners (collectively, the “**County**”), with **SLH**, and the **County** referred to collectively as the “**Parties**” and each as a “**Party**” and, based upon the exchange of good and adequate consideration flowing through and between the Parties, the receipt and sufficiency of which are acknowledged by the signatures set forth below, the Parties do hereby enter into the following Settlement Agreement and Full and Final Release of Claims (this “**Agreement**”) for the purpose of resolving disputed issues and claims between them, as of the date (the “**Effective Date**”) the last of the Parties hereto signs the same.

FACTS

(1) The present matter pertains to a 39.44+/- acre parcel of land in unincorporated Forsyth County and identified as Forsyth County Tax Parcel Number (“**TPN**”) 190 014 and a portion of TPN 190 216 (the “**Subject Property**”), which Subject Property is more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this and every reference thereto.

(2) The Subject Property is part of a larger, gated single-family residential neighborhood known as Sierra Lake subdivision (the “**Subdivision**”), which fronts on GA SR 369/Matt Highway.

(3) In 2004, in the zoning action styled as ZA # 2878, and, in 2005, in the zoning action styled as ZA #3065, the County rezoned the property comprising the Subdivision (137 +/- acres) to the Res3 zoning district with conditions.

Deleted: 137+/- acres

(4) The Subdivision includes that property which is identified in this Agreement as the Subject Property.

(5) The Resolution for ZA # 2878 contained a zoning condition that provided: “[t]he development shall be limited to no more than 339 lots” and included a conceptual plat showing such a lot yield. (See e.g., Real Estate Records of the Clerk of the Superior Court of Forsyth County, Georgia (the “**Records**”) at PB 180, PG 2 and PB 194, PG 32).

(6) Also in 2004, contemporaneous with the rezoning, SLH’s predecessor in interest purchased 84,750 gallons per day (“**gpd**”) of sewer capacity from the City of Cumming (“**Cumming**”), 58,750 gpd of which was eventually assigned to SLH as part of SLH’s acquisition of the Subject Property out of FDIC receivership. (Records at DB 3684, PG 320 (City of Cumming to Vickery); DB 4112, PG 540 (Vickery to H&H); DB 5689, PG 255 (H&H to Crescent Bank); DB 8389, PG 223 (FDIC to Sierra Lake)), as a predecessor in interest of SLH sold back to Cumming 26,000 gpd of sewer capacity. (Records at DB 4775, PG 717) (H&H to City of Cumming).

(7) Cumming calculates residential sewer capacity reservation charges based on imputed usage of 250 gpd per dwelling unit, meaning that 58,750 gpd of sewer capacity could serve 235 dwelling units in the Subdivision (with the original 84,750 gpd of sewer capacity intended to serve 339 dwelling units).

(8) In 2007, H&H tendered road construction plans for Phases I and II of the Subdivision, which were approved by the County (RC070018).

(9) Pursuant to that road construction permit, roads and infrastructure for Phases I and II were installed.

(10) Phase I and Phase II of the Subdivision were developed with 139 lots and a minimum lot size of 9,000 square feet. Final plats for those phases were recorded in 2018 & 2021 and identified as Forsyth County Final Plats 180009 and 200027 (Records at PB 180, PG 1 & PB 194, PG 32).

(11) Both Final Plats 180009 and 200027 reflect minimum lot sizes of 9,000 square feet.

(12) The Subject Property (39.44 +/- acres) is intended to be the third and final phase (“**Phase III**”) of the Subdivision.

(13) SLH retains reserved sewer capacity of 24,000 gpd for up to 96 dwelling units.

(14) The construction plans for Phase III, which are attached hereto as **Exhibit “B”** (the “**Construction Plans**”) and the associated, pending road construction permit application (Road Construction Application Number RC210024) (the “**Road Construction Application**”) contemplate 88 additional lots in the Subdivision, which, if completed, brings the total lot yield for Phases I, II, and III to 227 lots.

(15) The County asserts that (a) the Unified Development Code of Forsyth County, Georgia (the “**UDC**”), as currently enacted and codified at Appendix A to The Code of Forsyth County, Georgia (the “**Code**”), requires, in the Res3 zoning district, a minimum lot size of 14,750 square feet (with a minimum average of 18,500 sq. ft. per lot) for properties, such as the Subject Property, that are connected to a sanitary sewer system; and (b) therefore, Phase III cannot be developed with a minimum lot size of 9,000 square feet as contemplated by the Construction Plans and the associated Road Construction Application.

(16) SLH claims that it has vested rights to develop Phase III (a) with a minimum lot size of 9,000 square feet; and/or (b) consistent with the Construction Plans and the Road Construction Application.

(17) The County denies that SLH has vested rights.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PREFATORY REMARKS

(1) In light of the above disputes and the potential for litigation, to include the protracted nature of the differences between the Parties, the Parties seek to compromise and forever resolve the issues between them. In agreeing to compromise, none of the Parties are acknowledging or agreeing that their respective positions that form the basis for the various disputes are inaccurate or undermined; rather, with full confidence in their respective positions, the Parties merely seek to fashion a mutually acceptable compromise and end the existing dispute and likely future litigation between them.

(2) In compromising this dispute, the Parties acknowledge that the method of resolution may require that the Forsyth County Board of Commissioners (the “**BOC**”) make a zoning decision, as that term is described in the Zoning Procedures Law (O.C.G.A. § 36-66-1, *et seq.*). There exists case authority that even resolution of disputed claims, to the extent such resolution may involve instituting land use accommodations on property, requires adherence to the Zoning Procedures Law. Buckner v. Douglas County, 273 Ga. App. 765 (Ga. 2005).

(3) Moreover, the Parties are likewise aware that contract zoning is impermissible in Georgia. As such, Forsyth County is precluded from contractually agreeing that it will zone a property to a particular designation. The Parties hereto acknowledge and respect that rule of law.

(4) As such, the compromise terms below are intended as establishing those performance standards of zoning *which*, if approved by the BOC in the full and unconstrained exercise of its legislative discretion, will result in the full and complete compromise of all claims between the Parties related to the Subject Property, and any future claims that the SLH may seek to assert against the County (to include the employees, agents, and elected officials of same), with respect to the Subject Property and that arise from, are related to, or are similar to those asserted herein. Notwithstanding the foregoing, SLH and its respective successors and assigns, specifically reserve the right to challenge via administrative appeal and/or through litigation, any and all future amendments to the Code and/or the UDC, and/or any decision of the County and/or the BOC with respect to the Subject Property.

(5) Should the BOC decline to approve and execute this Agreement, following a public hearing conducted in accord with the Zoning Procedures Law, it shall not constitute a breach of this Agreement, and shall merely result in this Agreement becoming a nullity and otherwise leave the Parties in the same position as existed prior to the BOC considering this Agreement.

TERMS

The compromise terms regarding the Subject Property are as follows:

(1) The Parties acknowledge, agree, warrant, and covenant to each other that the substance of the foregoing sections under the headings “FACTS” and “PERFUNCTORY REMARKS” are true and correct to the best of each and every Parties’ knowledge.

(2) The Subject Property has been and shall remain zoned Res3 in accord with ZA2878 and ZA3065.

(3) The conditions of ZA2878 and ZA3065 remain in full force and effect.

(4) Those versions of the UDC and all other Forsyth County Codes in existence as of the date that the Construction Plans and Road Construction Application were tendered to the County shall be controlling, except for the following modification thereto, and to the extent any one or more of the following conflicts with the UDC and/or any other Forsyth County Codes, this Agreement shall control and constitute variances, waivers, exemptions, and a covenant by the County not to enforce against the Subject Property or any portion(s) thereof or lots therein, the following:

- a. The minimum lot size for any lot within the Subject Property shall be nine thousand square feet (9,000 sq. ft.);
- b. The minimum Lot Width (as that term is defined in the UDC) for any lot within the Subject Property shall be sixty (60) feet;
- c. ~~The maximum Building Height (as that term is defined in the UDC) of any and every Building (as that term is defined in the UDC) within the Subject Property shall be thirty-five (35) feet; and~~
- d. The Subject Property shall be exempt from Section 18-12.1 of the UDC and Section 34-34(c)(20) of the Code both regarding undisturbed area.

Deleted: <#>The maximum lot coverage (as that term is used in the UDC) for any lot within the Subject Property shall be forty-six percent (46%);¶

(5) Except as otherwise set forth herein, no requests for variance shall be submitted or granted with respect to the Subject Property. This provision shall not prohibit an individual lot owner from seeking a variance in the future with regard to a specific structure or other improvement to be constructed on the lot.

(6) Within five (5) calendar days of the Effective Date, the County shall approve the Road Construction Application and release the Construction Plans stamped approved to SLH, subject to their compliance with the terms and conditions of this Agreement.

ADDITIONAL TERMS

(1) **Running With the Land; Expiration:** The terms and conditions of this Agreement shall run with title to the Subject Property and inure to the benefit of SLH, its successors, successors in title, assigns, and the like; provided, however, that, (a) the Parties agree that the BOC's approval of this Agreement shall be deemed (among other things) the equivalent of the grant of a zoning or zoning condition amendment, as those terms are employed within Section 8-3.4(F) of UDC; and (b) therefore, in accordance with that provision of the UDC, if within eighteen (18) months after the Effective Date hereof, land disturbance on the Subject Property in accordance with the Construction Plans has not commenced, this Agreement shall terminate and be of no further force and effect.

(2) **Complete Release and Compromise Following Final Ratification plus 31 Days:** In the event that the BOC approves and executes this Agreement, following a ZPL-compliant

public hearing, and assuming there is no legal challenge to such approval within thirty (30) days thereafter, then this Settlement Agreement shall be considered having been fully and completely consummated, and all claims, demands, arguments, positions, and assertions of liability or related legal arguments (as to vesting or otherwise) set forth herein, and any such similar or related claims that have been or could have been asserted by the SLH and its respective successors or assigns against the County (and its employees, agents, and elected officers) shall automatically be deemed compromised, and fully and finally resolved on the thirty-first (31st) day after the BOC approved and executes this Agreement.

(3) **Fees and Costs:** All Parties are to bear their own attorneys' fees, costs, and expenses.

(4) **Representations of the Parties:** The Parties hereby represent and warrant that their respective representations and warranties comprise material inducements to entry into this Agreement, and therefore each Party to the other Party hereby affirm that they are fully authorized to make such representations. Each Party further affirms to the other Party its authority to execute, deliver, and perform its respective obligations hereunder without any further approval.

(5) **Agreement as Evidence:** The Parties acknowledge and agree that this Agreement, the recitals and exhibits hereto, and any document, instrument, or record incorporated herein by reference may be tendered, admitted, and considered as evidence by any trier of fact, court, arbitrator, or the like, and the Parties hereby waive and covenant not to assert any objection to the admission or consideration of any of the same, unless this Agreement is not executed by both Parties in which event it shall be construed to be an inadmissible settlement discussion between the Parties.

(6) **Counterparts:** This Agreement may be executed in any number of physical or electronic counterparts, each of which shall be deemed to be an original and all of which together shall comprise but one single Agreement.

(7) **Applicable Law; Venue:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. Any action brought to enforce or interpret this Agreement shall be brought in the Superior Court of Forsyth County, Georgia, which shall be the proper forum for any dispute arising hereunder, and in no other court.

(8) **Severability:** If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of final court order, present or future laws, or any rule or regulation of any governmental body or entity (excluding only those of the County), then the remaining parts of this Agreement shall not be affected.

(9) **Entire Agreement:** This Agreement represents the entire and only agreement of the Parties regarding the subject matter hereof and supersedes all prior and written agreements, contracts, and understandings of the Parties regarding the subject matter hereof. The Parties acknowledge that they have had the opportunity to obtain independent advice of lawyers of their own selection and acknowledge that they have entered into this Agreement freely and voluntarily,

believing it to be in their best interest. Neither Party has made any representations upon which either Party has relied that are not contained in this Agreement.

(10) **Interpretation:** For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders and neuter. Headings of Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Sections to which they refer. This Agreement has been negotiated and approved by the Parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty herein will not be construed against either of the Parties by reason of the authorship of any of the provisions of this Agreement.

(11) **Parties in Interest; Successors and Assigns:** Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, successor in title, assigns, or the like.

(12) **Application of General Law:** This Agreement is entered into in Georgia and will be construed and interpreted in accordance with Georgia law.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto, by and through their respective duly authorized and appointed representatives have set their hand and seal as of the Effective Date.

SIERRA LAKE HOLDING, INC., a Georgia corporation:

By: _____ (seal)

Name: _____

Its: _____

Date: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

COUNTY:

FORSYTH COUNTY, GEORGIA

By: _____ (seal)

Alfred John, Chairman
Board of Commissioners

[SEAL]

Date: _____

ATTEST:

Clerk, Board of Commissioners

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

All that tract or parcel of land lying and being in Land Lots 614, 615, and 682 of the 3rd District, 1st Section, Forsyth County, Georgia, and being more particularly described as follows:

To find THE TRUE POINT OF BEGINNING, begin at a 1" rod found, said rod being located at the intersection of Land Lots 682, 683, 686, and 687; THENCE traveling westerly along the common line of Land Lots 682 and 687, North 89 degrees 52 minutes 35 seconds West a distance of 366.25 feet to a rebar set, said rebar being THE TRUE POINT OF BEGINNING;

THENCE North 89 degrees 52 minutes 35 seconds West a distance of 1614.99 feet to a 1/2" rebar found;

THENCE North 00 degrees 31 minutes 33 seconds East a distance of 1254.45 feet to a 3/4" open top pipe found disturbed;

THENCE North 89 degrees 40 minutes 58 seconds East a distance of 89.89 feet to a 1/2" rebar found;

THENCE North 00 degrees 13 minutes 02 seconds East a distance of 366.57 feet to a rebar set;

THENCE South 89 degrees 46 minutes 58 seconds East a distance of 25.00 feet to a point;

THENCE South 60 degrees 46 minutes 50 seconds East a distance of 305.52 feet to a point;

THENCE South 68 degrees 59 minutes 11 seconds East a distance of 136.30 feet to a point;

THENCE South 76 degrees 33 minutes 53 seconds East a distance of 100.00 feet to a point;

THENCE South 75 degrees 50 minutes 55 seconds East a distance of 100.01 feet to a point;

THENCE South 69 degrees 20 minutes 50 seconds East a distance of 63.46 feet to a point;

THENCE South 33 degrees 16 minutes 33 seconds East a distance of 93.98 feet to a point;

THENCE South 26 degrees 32 minutes 55 seconds East a distance of 121.68 feet to a point;

THENCE South 38 degrees 32 minutes 04 seconds East a distance of 54.19 feet to a point;

THENCE South 41 degrees 55 minutes 07 seconds East a distance of 96.58 feet to a point;

THENCE South 32 degrees 51 minutes 51 seconds East a distance of 51.33 feet to a point;

THENCE South 52 degrees 45 minutes 16 seconds East a distance of 137.90 feet to a point;

THENCE South 58 degrees 54 minutes 57 seconds East a distance of 103.94 feet to a point;

THENCE South 55 degrees 00 minutes 03 seconds East a distance of 53.28 feet to a point;

THENCE South 02 degrees 44 minutes 57 seconds East a distance of 86.20 feet to a point;

THENCE South 01 degrees 17 minutes 55 seconds East a distance of 101.14 feet to a point;

THENCE South 12 degrees 11 minutes 46 seconds East a distance of 141.79 feet to a point;
THENCE South 33 degrees 29 minutes 08 seconds East a distance of 136.32 feet to a point;
THENCE South 41 degrees 33 minutes 21 seconds East a distance of 89.04 feet to a point;
THENCE South 22 degrees 51 minutes 33 seconds East a distance of 100.12 feet to a point;
THENCE South 32 degrees 19 minutes 38 seconds East a distance of 291.00 feet to a rebar set,
said rebar being THE TRUE POINT OF BEGINNING.

The above described tract contains 39.45 acres.

EXHIBIT "B"

[CONSTRUCTION PLANS BEGIN ON FOLLOWING PAGE]