

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Frederick J. Murphy, Jr., Esquire  
Boswell & Dunlap, LLP  
Post Office Drawer 30  
245 South Central Avenue (33830)  
Bartow, Florida 33831  
Telephone (863) 533-7117

**CONCURRENCY DEVELOPER'S AGREEMENT**

**THIS CONCURRENCY DEVELOPER'S AGREEMENT** ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"), and **LEGACY HILL OF DUNDEE, LLC**, a Florida limited liability corporation, whose address is 4900 Dundee Road, Winter Haven, Florida 33884 (the "Developer").

**FACTUAL RECITALS**

**WHEREAS**, Town is a Florida municipal corporation vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and

**WHEREAS**, Town is vested with governmental, corporate and proprietary powers to enable municipal governments to conduct and perform municipal functions and render municipal services, including the exercise of any power for municipal purposes; and

**WHEREAS**, the Developer is the fee simple owner of the land(s) identified by the Polk County Property Appraiser as Parcel Identification Numbers:

272835-000000-041060  
272835-000000-041070  
272835-000000-042010  
272835-000000-042020  
272835-000000-042040  
272835-000000-042060  
272835-000000-044050  
272902-000000-031010  
272902-000000-031040  
272902-000000-033010  
272902-000000-033020  
272902-000000-031030

which totals approximately 152.77+/- acres (the "Property"); and

**WHEREAS**, the Legacy Hill Subdivision (the "Development") which is located within the municipal boundaries of the Town is proposed to be developed on the Property; and

**WHEREAS**, Developer and Town acknowledge and agree that, pursuant to Section 7.02.08 of the Town of Dundee Land Development Code (the "LDC"), the Development is a residential development built in phases; and

**WHEREAS**, the Public Supply Water Use Permit for the Town (the "Town WUP"), Water Use Permit No. 20005893.013, authorizes the withdrawal of 917,500 gallons per day; and

**WHEREAS**, pursuant to the Town WUP, the Town does not have the permitted capacity to necessary to support the potable water needs and/or demands for the Development; and

**WHEREAS**, Town and Developer acknowledge and agree that the Town is currently unable to provide allocable water capacity for the Development; and

**WHEREAS**, pursuant to applicable provisions of the Code of Ordinances of the Town of Dundee (the “Code”) and the LDC (collectively the “Town Code”), the Town and Developer acknowledge and agree that the facilities and services needed to support the Development are not currently available; and

**WHEREAS**, Town and Developer acknowledge and agree that, pursuant to Section 7.02.03 of the LDC and applicable provisions of the Town Code, a development order and/or development permit will not be approved for the Development unless a satisfactory concurrency evaluation has been performed in accordance with Section 6.01.00 of the LDC; and

**WHEREAS**, pursuant to Section 54-9 of the Code and applicable provisions of the Town Code, the Town may require a developer/owner to enter into a developer’s agreement which sets forth in detail the terms and conditions under which the Town will provide utility service to the subject real property; and

**WHEREAS**, pursuant to Section 54-9 of the Code and Section 6.01.07.03 of the LDC, a developer’s agreement may be required prior to approval(s) in order to provide for the necessary expansion of the Town’s water treatment facilities to serve the Development; and

**WHEREAS**, pursuant to Section 6.01.07.03 of the LDC, the Town and Developer acknowledge and agree that any Town approval(s) will not create a reservation of potable water plant or network capacity, or a commitment to provide service; and

**WHEREAS**, on October 4, 2023, pursuant to Section 7.01.07 of the Town of Dundee Land Development Code (LDC), received an application for conditional approval of the Certified Subdivision Plan for the *Woodland Ranch Estates Phase III Subdivision* (the “CSP”); and

**WHEREAS**, on \_\_\_\_\_, the Town Commission of the Town of Dundee, at a duly noticed public meeting, adopted Resolution No. \_\_\_\_\_ (the “Resolution”) conditionally approving the CSP; and

**WHEREAS**, a copy of the Resolution, as amended, is attached hereto as **Exhibit “A”** and made a part hereof by reference; and

**WHEREAS**, upon the passage of the Resolution (see **Exhibit “A”**), the Developer was authorized to proceed with construction of the potable water lines to service the Project; and

**WHEREAS**, the Developer acknowledges and agrees that, upon completion of the potable water line construction and other required improvements for the Development, the Town may not be able to provide allocable water capacity for the Development; and

**WHEREAS**, Developer acknowledges, represents, and agrees that it accepts any and all of the risk(s) related to proceeding with the Development; and

**WHEREAS**, Town acknowledges and agrees that the Developer holds fee simple title to agricultural wells and/or has the legally authority to convey title to the agricultural wells and any capacity arising out of the agricultural wells (the “Wells”); and

**WHEREAS**, Developer offered and agreed to cooperate with the Town and SWFWMD in transferring the Wells and any capacity related thereto to the Town; and

**WHEREAS**, Town and Developer agree to enter into a Water Supply Allocation Agreement (the "Allocation Agreement") to facilitate the transfer the Wells, in accordance with the rules, regulations and requirements set forth by the SWFWMD, and any pro-rata share of the capacity attributable to the Well to the Town; and

**WHEREAS**, Town and Developer acknowledge and agree that, upon receiving a credit or increase to the Town's WUP from SWFWMD arising out of the transfer of the Wells and/or closing of the Wells, any increase or credit to the Town's WUP will be allocated to the Developer, or its successor(s)-in-interest and/or assigns, on a pro-rata basis for use only within the Town's Chapter 180 Utility Service Area; and

**WHEREAS**, on \_\_\_\_\_, the Town of Dundee Town Commission and Developer agreed that, as a condition precedent to its entering into this Agreement, Developer and its successors and permitted assigns indemnify and hold harmless the Town, its elected and appointed officials, employees and agents from any and all damages, claims, and/or other liabilities arising out of the Developer's construction of dry-lines, the Town's inability to provide allocable water capacity for the Development, and any subject covered by this Agreement; and

**WHEREAS**, Developer and its successors and assigns agree to indemnify and hold the Town, its elected and appointed officials, employees and agents harmless of and from any and all costs, expenses, damages, liability and claims (including reasonable attorneys' fees and costs) related to and/or arising out of this Agreement and the transfer of the Wells to the Town; and

**WHEREAS**, Developer acknowledges and agrees that any provision(s) set forth in this Agreement holding the Town, its elected and appointed officials, employees and agents harmless is intended to be as broad and inclusive as is permitted by the laws of the State of Florida; and

**WHEREAS**, Developer acknowledges, represents, and agrees that the Town's willingness to enter into this Agreement shall not be construed by the Developer and/or its successors and assigns as a waiver by the Town of applicable law; and

**WHEREAS**, Developer acknowledges, represents, and agrees that this Agreement is intended to and shall constitute a covenant running with the Property; and

**WHEREAS**, the parties acknowledge, represent and agree that the Town and Developer are not partners and/or joint venturers; and

**WHEREAS**, the parties agree that this Agreement shall be liberally construed in favor of the Town; and

**WHEREAS**, Town and Developer represent and agree that good and valuable consideration has been received by the parties for entering into this Agreement, and the Town and Developer acknowledge the sufficiency of the consideration received; and

**WHEREAS**, The Town Commission of the Town of Dundee finds that this Agreement between the Town and Developer to be in the best interests of the public health, safety, and general welfare of the citizens and residents of the Town of Dundee; and

**WHEREAS**, this Agreement is entered into pursuant to general and home rule powers of the Town and is not a Development Agreement pursuant to Chapter 163 of Florida Statutes.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**SECTION 1. RECITALS.** The above-referenced factual recitals (WHEREAS clauses) and referenced exhibits are incorporated herein as true and correct statements which form a factual and material basis for the entry into this Agreement, and the Town Commission of the Town of Dundee, Florida, hereby adopts the above-referenced factual recitals as the legislative findings supporting the entry into this Agreement between the Town and Developer.

**SECTION 2. PURPOSE.** The purpose of this Agreement is to acknowledge and memorialize that as of the Effective Date (as defined in 3.12 of this Agreement) of this Agreement, the Town (as defined in 3.2 of this Agreement) performed a concurrency evaluation and determined that it does not have the necessary public facilities and services needed to support the Development (as defined in 3.11 of this Agreement). This Agreement shall therefore establish the respective rights and obligations of the Town, Developer, and any successors-in-interest to the Town and Developer concerning the Development (as defined in 3.11 of this Agreement) and concurrency approval for same.

**SECTION 3. DEFINITIONS.** Term(s) used in this Agreement and/or any exhibits incorporated herein and made a part hereof shall possess the meanings, interpretations and/or definitions assigned herein, provided however, that where one (1) of the following listed terms is used in this Agreement, such term(s) shall possess the corresponding meaning, as follows:

3.1 “*Applicable Law*” means the Town of Dundee Charter, Town of Dundee Code of Ordinances, Town of Dundee Land Development Code, and any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of the United States of America, State of Florida, Polk County, Town of Dundee, and any and all other public authority which may be applicable.

3.2 “*Town*” means the Town of Dundee, Florida.

3.3 “*Dundee Representative*” means the Town Manager, or her/his designated appointee, who is authorized to act on behalf of the Town in the administration of this Agreement. The Dundee Representative does not have the authority to waive or modify any condition or term of this Agreement.

3.4 “*Developer*” means LEGACY HILL OF DUNDEE, LLC, a Florida limited liability corporation, whose address is 4900 Dundee Road, Winter Haven, Florida 33884, and any and all of the successors and permitted assigns.

3.5 “*Developer Representative*” any agent, employee and/or person with either apparent authority to act on behalf of Developer or the written authorization of Developer to act on its behalf in the administration of this Agreement. The Developer Representative does not have the authority to waive or modify any condition or term of this Agreement.

3.6 “*Town Code*” means the Town of Dundee Code of Ordinances and Town of Dundee Land Development Code.

3.7 “*Day(s)*” means calendar day unless specifically stated otherwise.

3.8 “*Calendar Day(s)*” means all days in a 365-day calendar year.

3.9 “*Business Day(s)*” means each calendar day which is not a Saturday, Sunday or a recognized holiday by the Town of Dundee, Florida.

3.10 “*Town Commission*” means the duly elected Town of Dundee Town Commission and/or governing body of the Town of Dundee.

3.11 “*Development*” means the design, construction, paving, maintenance and improvements performed by the Developer for the *Legacy Hill Subdivision* project which are the subject of this Agreement and located on, over, under and across the Property.

3.12 “*Effective Date*” means, for purposes of calculating time periods and the commencement of the term of this Agreement, the date on which the Certified Subdivision Plan for the *Legacy Hill Subdivision* and Resolution No. \_\_\_\_\_ were approved by the Town Commission at a duly noticed public meeting.

3.13 “*Term*” means the duration of this Agreement which shall commence on the Effective Date and shall expire and/or terminate in accordance with the provisions set forth in **SECTION 16** of this Agreement.

**SECTION 4. OBLIGATIONS.** The parties’ obligations pursuant to this Agreement are stated below:

**4.1 Town Obligations.**

4.1.1 Pursuant to the Town Code (as defined by 3.6 of this Agreement) and Applicable Law (as defined by 3.1 of this Agreement), the Development (as defined by 3.11 of this Agreement) shall be subject to development review by the Town; and, in accordance with the development regulations set forth by the Town Code and Applicable Law, upon the payment of the applicable and required fee(s) by or on behalf of the Developer, the Town agrees to review any and all requests for a development order and/or development or construction permit.

4.1.2 To the extent applicable, the Town shall negotiate and enter into a separate Water Supply Allocation Agreement (the “Allocation Agreement”) with the Developer (as defined by 3.4 of this Agreement).

4.1.3 The Town, upon entering into a separate Allocation Agreement with the Developer and receiving a credit or increase to the Public Supply Water Use Permit (No. 20005893.013) (the “Town WUP”) from SWFWMD arising out of the transfer of the Wells, shall allocate and assign any increase or credit to the Town’s WUP to the Developer on a pro-rata basis.

## 4.2 Developer Obligations.

4.2.1 Pursuant to the Town Code and Applicable Law (as defined by 3.1 of this Agreement), the Developer (as defined by 3.4 of this Agreement) shall apply for and obtain any and all required development orders, development permits and/or development approvals for the Development (as defined by 3.11 of this Agreement).

4.2.2 Pursuant to Section(s) 54-5 and 6.01.07.04 of the Town Code, any new development or improvement located on any parcel of land within the municipal boundaries of the Town or within the Town's water and wastewater service area, shall be required to connect to the Town's water and wastewater system at the time of development.

4.2.3 If mutually determined by the Town and Developer to be applicable, the Developer (as defined by 3.4 of this Agreement) shall negotiate and enter into a separate Allocation Agreement with the Town; and, by entering into the Allocation Agreement, the Developer shall facilitate the transfer the Wells, in accordance with the rules, regulations and requirements set forth by the SWFWMD, and any pro-rata share of the capacity attributable to the Wells to the Town in accordance with the terms and conditions of the Allocation Agreement.

4.2.4 Developer (as defined by 3.4 of this Agreement) releases, acquits and forever discharges the Town, its elected and appointed officials, employees, and agents of and from any and all known or unknown claims, causes of action, suits, debts, dues, sums of money, damages, judgments, and demands whatsoever, in law or in equity, which Developer ever had, now has or hereinafter can, shall or may have against the Town, its elected and appointed officials, employees, and agents by reason of any matter, cause or thing, from the beginning of the world until the date on which this Agreement is terminated and/or expires, which are specifically arising out of the Development. This Release includes, but is not limited to, any case, lien, suit and/or cause of action, including reasonable attorney's fees both trial and appellate, and all other claims Developer ever had, now has or hereinafter can, shall or may have against the Town, its elected and appointed officials, employees, and agents whether arising out of tort, contract, equity, constitution, statute, or other theory of recovery, and whether for compensatory, punitive damages, or for equitable relief which Developer now has, or which may hereafter accrue or otherwise be acquired on account of or in any way growing out of, or which is the subject of the provisions set forth by this Agreement and specifically arising out of the Development.

4.2.5 This Agreement shall be binding on Developer, its successors in interest, and permitted assigns.

4.2.6 The obligations of the Developer shall survive the termination of this Agreement.

## **SECTION 5. DEVELOPER'S ACKNOWLEDGMENT OF RISK.**

5.1 The Developer acknowledges that as of the Effective Date (as defined by 3.12 of this Agreement) the facilities and services needed to support the Development (as defined by 3.11 of this Agreement) are not available concurrently with the impacts of the Development.

5.2 The Developer acknowledges, accepts, and assumes the risk(s) arising out of the Developer proceeding with the Development and installation of "dry-lines;" and, by

entering into this Agreement, the Town does not guarantee the availability of allocable potable water capacity for the Development.

**SECTION 6. FURTHER ASSURANCES.** Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

**SECTION 7. BINDING EFFECT.** Except as may be otherwise set forth herein, the terms and provisions of this Agreement shall bind and inure to the benefit of the parties and applicable successors, representatives, heirs, permitted assigns, employees, officers, directors, superintendents, administrators, shareholders and agents. As such, the parties agree that this Agreement shall be binding upon and inure to any and all successors-in-interest to the parties hereto. The parties further acknowledge and agree that, in the event this Agreement omits and/or does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Development (as defined by 3.11 of this Agreement), such omission shall not relieve the parties hereto or any successor-in-interest of the obligation to comply with Applicable Law (as defined by 3.1 of this Agreement).

**SECTION 8. MERGER.** This Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein. This Agreement supersedes all prior agreements and development orders pertaining to the subjects covered and/or described herein.

**SECTION 9. NO EFFECT ON CODE VIOLATIONS; NO CONTRACT ZONING.** This Agreement shall not be interpreted to condone, authorize or permit any violation of the Town Code or Applicable Law (as defined by 3.1 of this Agreement). Further, this Agreement shall not be construed as the Town's authorization or acceptance of the status of the present existing structures or uses on the Property, nor shall it be construed as an attempt to contractually zone the Property.

**SECTION 10. TOWN'S POLICE POWERS.** The Developer (as defined by 3.4 of this Agreement) acknowledges and understands that the Town (as defined by 3.2 of this Agreement) is prohibited from engaging in "Contract Zoning" or the bartering away of its legislative prerogative. While the Town will cooperate with Developer as set forth herein, this Agreement does not constitute an approval that would require the exercise of Town's legislative and/or quasi-judicial authority. Provided further, nothing in this Agreement shall serve to affect or limit Town's police powers in the exercise of zoning decisions or other governmental action associated with the Development or any development order associated therewith. As such, this Agreement shall not be construed as a basis for (1) granting or assuring or indicating or (2) refusing to grant or preventing any future grant of land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the Property.

**SECTION 11. APPLICABLE LAW AND VENUE.** This Agreement and the rights and obligations of the Town (as defined by 3.2 of this Agreement) and Developer (as defined by 3.4 of this Agreement) shall be governed by Florida law. Venue for any litigation pertaining to or

arising out of the subject matter hereof shall be exclusively in the state courts of Polk County, State of Florida, in the 10<sup>th</sup> Judicial Circuit.

**SECTION 12. NOTICES.** All notices, demands, requests, consents, approvals, and other communications (collectively referred to as the “Notice”), required or permitted to be given hereunder shall be in writing and sent by either: (i) registered or certified mail, postage prepaid, return receipt requested; or, (ii) special delivery service (e.g. Federal Express, DHL, UPS, etc.); addressed to the party to be so notified as follows:

TOWN: TOWN OF DUNDEE  
Attn: Tandra Davis, Town Manager  
PO Box 1000  
105 Center Street  
Dundee, FL 33838-1000  
Attention: Town Manager

With a copy to (*which shall not constitute notice*):

Frederick J. Murphy, Jr.  
Town Attorney, Town of Dundee  
PO Drawer 30  
245 South Central Avenue  
Bartow, FL 33830

DEVELOPER: Legacy Hill of Dundee, LLC  
Attn: Harold R. Baxter  
4900 Dundee Road  
Winter Haven, Florida 33884

With a copy to (*which shall not constitute notice*):

Peterson & Myers, P.A.  
Attn: John B. (Bart) Allen  
P.O. Box 24628  
Lakeland, FL 33802

Notice shall be effective upon delivery to the above addresses. Either party may notify the other that a new person has been designated by it to receive notice(s), or that the address for the delivery of such notice(s) has been changed, provided that, until such time as the other party receives such notice in the manner provided for herein, any notice addressed to the previously-designated person and/or delivered to the previously-designated address or facsimile number shall be effective.

**SECTION 13. MISCELLANEOUS PROVISIONS.**

13.1 **Exhibits.** All exhibits annexed hereto are incorporated by reference and made a part of the Agreement.

13.2 **Headings.** The heading(s) preceding the several section(s), paragraph(s) and article(s) hereof are solely for convenience of reference and shall not constitute a part of this Agreement, or affect its meaning, construction or effect.



13.3 **Gender Neutral.** For purposes of this Agreement, any and all gender specific references, classifications and/or language shall be interpreted to be gender neutral.

13.4 **Calculation of Time.** The calculation of the number of days that have passed during any time period prescribed shall be based on Calendar Days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date (as defined by 3.12 of this Agreement). For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in Calendar Days. In the event any time period or deadline identified in this Agreement expires and/or falls on a Saturday, Sunday or recognized holiday, said expiration and/or deadline shall be automatically tolled until 5:00 pm on the next available Business Day which the Town is open for business to the public.

13.5 **Neutral Interpretation.** Any controversy over the construction of this Agreement shall be decided neutrally and without regard to events of authorship or negotiation.

13.6 **Modification.** This Agreement shall not be modified in any way, unless such modification is in the form of a written amendment properly executed by the parties hereto and approved by the Town's governing body. No oral modifications will be effective or binding on either the Town or Developer regardless of whether the person(s) attempting to make such modifications appeared to have the authority to make such modification. Moreover, in the event state or federal law(s) are enacted after the execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, the parties agree to modify and/or amend this Agreement, to the extent necessary, in order for the parties to perform the obligations set forth herein.

13.7 **Construction.** The parties acknowledge that the Agreement has been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreement shall be interpreted in strict accordance with the terms, covenants and conditions set forth herein.

13.8 **Successors and Assigns.** All covenants, agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.

13.9 **Disclaimer of Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Town (as defined by 3.2 of this Agreement) and Developer (as defined by 3.4 of this Agreement) and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third-party.

13.10 **Authorization.** The parties represent and warrant to one another that all the necessary action(s) to execute this Agreement have occurred and that the parties possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

13.11 **Representations and Warranties.** Each party signing this Agreement represents and warrants that he/she/it has read, understands and acknowledges any and all of the terms, covenants, conditions and requirements set forth herein.

13.12 **Compliance with Applicable Law.** The Developer (as defined by 3.4 of this Agreement) shall comply with Applicable Law (as defined by 3.1 of this Agreement) in performing the obligations and requirements set forth by the Agreement.

13.13 **Severability.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.

13.14 **No Waiver.** Failure of the Town to enforce any right hereunder shall not be deemed a waiver of such right. The inaction or failure of the Town to address and/or remedy any breach of the covenants, conditions, and/or provisions of this Agreement shall not constitute a waiver of such Town's rights hereunder with respect to such action, non-action, and/or default. No covenant, condition or provision of this Agreement can be waived, except with the written consent of both the Town and Developer. Any such waiver, in one instance, shall not constitute a waiver of a subsequent default or for any other past, present or future default, unless the waiver expressly and specifically states and/or identifies such default.

13.15. **Time is of the Essence.** Time is of the essence for all of the provisions, conditions, and terms of this Agreement.

**SECTION 14. PUBLIC RECORDS.** The Developer covenants and agrees to:

14.1 Keep and maintain public records required by the Town to perform in accordance with the terms of this Agreement.

14.2 Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.

14.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement and/or any amendment(s) issued hereunder if the Developer does not transfer the records to the Town.

14.4 Upon completion of the Agreement and/or any amendment(s) issued hereunder, transfer, at no cost, to the Town all public records in possession of the Developer or keep and maintain public records required by the Town to perform the service. If the Developer transfers all public records to the public agency upon completion of the Agreement and/or any amendment(s) issued hereunder, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the Agreement and/or any Amendment(s) issued hereunder, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

**IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, AT 863-438-8330, EXT. 238, [TDouthat@townofdundee.com](mailto:TDouthat@townofdundee.com), 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.**

If the Developer does not comply with a public records request, the Town shall enforce the Agreement and/or any amendment(s) issued hereunder which may include immediate termination of Agreement and/or any amendment(s) issued hereunder. **This Section shall survive the termination of this Agreement.**

**SECTION 15. NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to act as a waiver of the Town's sovereign immunity and/or limits of liability as set forth in section 768.28, Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This provision shall survive the termination of this Agreement.

**SECTION 16. TERMINATION AND REMEDIES.**

16.1 This Agreement shall remain in effect until the completion of the Development (as defined by 3.11 of this Agreement); and, on or before the effective date of the termination of this Agreement, the Development (as defined by 3.11 of this Agreement) and/or any improvements which are the subject of this Agreement shall be required to be in compliance with the conditions and technical requirements set forth by this Agreement and the Town Code (as defined by 3.6 of this Agreement). In the event the Development (as defined by 3.11 of this Agreement) and/or any improvements which are the subject of this Agreement are not in compliance with the conditions and technical requirements set forth by this Agreement and the Town Code, the Town may, at its option, seek any remedy available at law or in equity and/or perform the necessary work and thereafter render an invoice for services to Developer for reimbursement.

16.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**SECTION 17. ENFORCEMENT COSTS.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs and expenses incident to bankruptcy and/or appeals), incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled.

**SECTION 18. JURY TRIAL.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS

CONTEMPLATED THEREUNDER, THE PERFORMANCE THEREOF, OR THE RELATIONSHIP CREATED THEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THE AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

**SECTION 19. DUTY TO COOPERATE IN GOOD FAITH.** The parties acknowledge and agree that it is in their best interests and the best interests of the public that this Agreement be performed in strict accordance with the terms, covenants and conditions contained herein; and the parties shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

**SECTION 20. COUNTERPARTS.** This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constitute one Agreement.

**SECTION 21. STATE LAW COMPLIANCE.** The following provisions are included to comply with Florida State Statutes:

- (a) ***Scrutinized Companies.*** Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the TOWN for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the *Scrutinized Companies that Boycott Israel List*, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. By executing and/or entering into the Agreements, DEVELOPER certifies that it does not and did not at any time since the submission of a response to the TOWN'S initial solicitation participate in a boycott of Israel; that it is not on the *Scrutinized Companies that Boycott Israel List*, *Scrutinized Companies with Activities in Sudan List*, or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*; and that it does not engage in business operations in Cuba or Syria. DEVELOPER understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the TOWN may terminate the Agreements at the TOWN'S option if the DEVELOPER is found to have submitted a false certification.
- (b) ***Public Entity Crimes; Convicted Vendor List.*** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal and/or bid on a contract to provide any goods or services to a public entity, may not submit a proposal and/or bid on a contract with a public

entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, vendor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By executing the Agreements, DEVELOPER certifies that it is not on the convicted vendor list.

- (c) ***Drug-Free Workplace.*** By executing the Agreement(s), DEVELOPER certifies that it has a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102 of the Florida Statutes.
- (d) ***E-Verify.*** By entering into the Agreement(s), DEVELOPER becomes obligated to comply with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the DEVELOPER and any subcontractor hired by the DEVELOPER. If the DEVELOPER enters into a contract with a subcontractor, the subcontractor must provide the DEVELOPER with an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of the Agreement(s), or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) Calendar Days after the date of termination. If the Agreement(s) are terminated for a violation of the statute by the DEVELOPER, the DEVELOPER may not be awarded a public contract for a period of one (1) year after the date of termination.
- (e) ***No Consideration of Social, Political, and Ideological Interests.*** DEVELOPER acknowledges receipt of notice from the TOWN of the provisions of Section 287.05701 of the Florida Statutes which prohibits local governments from giving preference to a prospective vendor and/or contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor. DEVELOPER affirms and agrees that the TOWN did not request any documentation about, or give any consideration to, the DEVELOPER'S social, political, or ideological interests in negotiating, awarding, and/or entering into the Agreement(s).
- (f) ***Contracting with Foreign Entities.*** By executing the Agreement(s), DEVELOPER certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, DEVELOPER certifies that no government of a Foreign Country of Concern has a "controlling interest" in DEVELOPER as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the DEVELOPER organized under the laws of a Foreign Country of Concern, nor does the DEVELOPER have its principal place of business located in a Foreign Country of Concern. If the Agreement(s) permit the DEVELOPER to access the personal identifying information of any individual, DEVELOPER agrees to notify the TOWN

in advance of any contemplated transaction that would cause DEVELOPER to be disqualified from such access under Section 287.138 of the Florida Statutes. DEVELOPER agrees to furnish the TOWN with an affidavit signed by an officer or representative of the DEVELOPER under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

**SECTION 22. RECORDATION.** This Agreement shall constitute a covenant running with the Property and be recorded in the Public Records of Polk County, Florida.

*The rest of this page left intentionally blank; signatures follow*

Executed by the parties on the date shown adjacent thereto:

**Developer:**

**LEGACY HILL OF DUNDEE, LLC,  
a Florida limited liability company**

By: \_\_\_\_\_  
Harold R. Baxter, Managing Member

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

**STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_, on its behalf, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**TOWN OF DUNDEE, FLORIDA, a  
Florida municipal corporation**

**ATTEST:**

\_\_\_\_\_  
Samuel Pennant, Mayor

\_\_\_\_\_  
Lita O'Neill, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick J. Murphy, Jr., Town Attorney