

**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 **29th day of August, 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 **GLK Real Estate, LLC** (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 Number(s): 272823-000000-034010, 272823-000000-034020, 272823-000000-034030 & 272823-000000-032020, which totals approximately **49.24** acres (the "Property"); and

WHEREAS, the Developer is pursuing residential development of the Property; and

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

WHEREAS, the Public Supply Water Use Permit for the Town (the "Town WUP"), Water Use Permit No. 20005893.012, authorizes the withdrawal of 917,500 gallons per day; and

WHEREAS, pursuant to the Town WUP, the Town does not have the permitted capacity 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 and Town of Dundee Land Development Code, the Town and Developer acknowledge and agree that the facilities and services needed to support the Development are not available; and

WHEREAS, Town and Developer acknowledge and agree that, pursuant to Section 7.02.03 of the LDC, 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 of Ordinances of the Town of Dundee (the "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, or otherwise increase the permitted capacity of the Town WUP, 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, except as otherwise provided herein; and

WHEREAS, Town and Developer acknowledge and agree that, on August 23, 2022, at a duly noticed public meeting of the Town of Dundee Town Commission, the Town Commission considered and approved the Interlocal Agreement For The Interconnection of Potable Water Between The City of Winter Haven, Florida, And The Town of Dundee, Florida (the "Interconnect Agreement"); and

WHEREAS, on _____, at a duly noticed public meeting of the Town of Dundee Town Commission, the Town Commission will consider Resolution No. _____ conditionally approving the Certified Subdivision Plan (the "CSP") for the Development; and

WHEREAS, pursuant to the CSP, if approved by the Town of Dundee Town Commission, the Developer may proceed with dry-line construction of the potable water lines for the Development; and

WHEREAS, the Developer acknowledges and agrees that, upon completion of the dry- 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 an agricultural well (the "Well"); and

WHEREAS, the Well has been issued a water use permit granted by the Southwest Florida Water Management District ("SWFWMD"), Water Use Permit No. 7039 (the "Developer WUP"); and

WHEREAS, the Well provides irrigation water for agricultural uses on 49.24 acres of real property which includes, but is not limited to, the Property; and

WHEREAS, Developer offered and agreed to cooperate with the Town and SWFWMD in transferring the Well and any capacity related to the Developer WUP to the Town; and

WHEREAS, Town and Developer agree to enter into a Water Supply Allocation Agreement (the "Allocation Agreement") to facilitate the transfer of the Well, 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 Developer WUP and/or closing of the Well, any increase or credit to the Town's WUP will be allocated to the

Development on a pro-rata basis in a form and manner acceptable to the Town and Developer; 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 permitted 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, the Allocation Agreement, and the transfer of the Well 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 it relates to the terms of this Agreement and 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 permitted 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.

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 foregoing recitals are incorporated herein by the parties as true and correct statements which form the factual and material basis for 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 utility facilities and services related to potable water 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 GLK REAL ESTATE, LLC, a Florida limited liability corporation, whose address is 346 East Central Avenue, Winter Haven, FL 33880, 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 Alford Ridge Subdivision project which is the subject of this Agreement and located on, over, under and across the Property and related to and/or arising out of the Alford Ridge Subdivision Subdivision.

3.12 "Effective Date" means, for purposes of calculating time periods and the commencement of the term of this Agreement, the date on which this Agreement is 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 The Town shall enter into a Water Supply Allocation Agreement (the "Allocation Agreement") with the Developer (as defined by 3.4 of this Agreement). A copy of the Allocation Agreement is attached hereto as Exhibit "A" and made a part hereof by reference.

4.1.3 The Town, upon receiving a credit or increase to the Public Supply Water Use Permit (No. 20005893.012) (the "Town WUP") from SWFWMD arising out of the transfer of the Well and or the Developer's Water Use Permit (**No. 7039**), (the "Developer WUP"), shall allocate and assign any increase or credit to the Town's WUP to the Development on a pro-rata basis in a form and manner acceptable to the Town and Developer.

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 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).

4.2.4 Developer (as defined by 3.4 of this Agreement) shall enter into the Allocation Agreement (see attached Exhibit "A") with the Town; and, by entering into the Allocation Agreement, the Developer shall facilitate the transfer of the Well, 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.

4.2.5 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 permitting and/or construction of "dry-lines," the Town's concurrency deficiency related to allocable potable water, the Town's inability to issue or approve development orders and/or development permits without allocable potable water capacity, and the terms and conditions set forth by this Agreement. 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.

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

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

SECTIONS. 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 potable water utility 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 10th 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: GLK Real Estate, LLC

346 East Central Avenue
Winter Haven, FL 33880

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

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. The Developer may not assign its rights, duties, and obligations under this Agreement in whole or in part without the Town's written consent as approved by the Town Commission which consent may not be unreasonably withheld, delayed, or conditioned.

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 if Developer does not transfer the records to the Town.

14.4 Upon completion of the Agreement, 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 Developer transfers all public records to the Town upon completion of the Agreement, Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer keeps and maintains public records upon completion of the Agreement, 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.

14.5 If Developer does not comply with a public records request, Town shall enforce the Agreement which may include immediate termination of Agreement.

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 AT 863-438-8330, EXT. 258,
LOneill@townofdundee.com, 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.**

14.6 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.

16.3 In no event shall the Town be liable to the Developer for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature, including loss of profit, whether foreseeable or not, arising out of or resulting from the nonperformance or breach of this agreement by the Town whether based in contract, common law, warranty, tort, strict liability, contribution, indemnity or otherwise.

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. 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:

**GLK Real Estate, LLC
A Florida limited liability company**


By: Lauren Schwenc, Managing Member

Lindsey E Roden
Witness

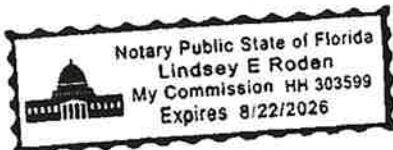
Jessica DeHaven
Witness

9/6/23
Date

**STATE OF FLORIDA
COUNTY OF Polk**

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 6th day of Sept, 2023 by Lauren Schwenc as Manager, on its behalf, who is personally known to me or who has produced _____ as identification.

Lindsey E Roden
Notary Public, State of Florida



Town of Dundee:

TOWN OF DUNDEE

By: _____
Sam Pennant, Town Mayor

ATTEST:

Lita O'Neill, Town Clerk

APPROVED AS TO FORM:

Frederick J. Murphy, Jr., Town Attorney