

SPACE FOR RECORDING:

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, FL 33831

WATER SUPPLY ALLOCATION AGREEMENT

THIS **WATER SUPPLY ALLOCATION AGREEMENT** (the "Agreement") is made and entered into this **8th day of November 2022**, by and between **TBHG**, an **LLC**, whose address is **3100 Cypress Gardens Road, Winter Haven, Florida 33884** (the "OWNER"), and the **TOWN OF DUNDEE, FLORIDA**, a municipal corporation created under the laws of the State of Florida ("TOWN").

RECITALS

1. TOWN owns and operates a central water supply system and provides central water service throughout its exclusive service area.
2. OWNER owns property ("Property") upon which it currently owns and operates well(s) through which groundwater is supplied for agricultural or other uses on the Property. The Property is described in **Exhibit "A"** attached to and incorporated in this Agreement.
3. OWNER proposes to develop the Property which contemplates a conversion of land uses from agricultural or other uses to urban uses.
4. These urban uses will require the extension and delivery of domestic potable water service to the Property.
5. OWNER desires the extension of domestic potable water service to the Property.
6. TOWN is ready, willing, and able to extend such service subject to later execution of an agreement regarding the TOWN's provision of water and wastewater services for the Property as well as other development matters associated with the Property and further subject to transfer of OWNER's water allocation associated with the well(s) located on the Property
7. OWNER is willing to agree to such water allocation.
8. The parties agree and acknowledge that each of them is authorized and empowered to enter into this Agreement.

ACCORDINGLY, in consideration of the above-referenced Recitals, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

SECTION 1. **RECITALS**. The above-referenced Recitals (WHEREAS clauses) are true and correct and form a material part of this Agreement.

SECTION 2. **WATER ALLOCATION TRANSFER**. The OWNER hereby consents and agrees to transfer and transfers the water allocation (whether surface water, groundwater, or both) allocated by the Southwest Florida Water Management District ("SWFWMD") under consumptive use/water use permit no. **42.005**, (and any other unpermitted water allocation associated with any wells on the Property) to the TOWN. The permitting quantity for the well(s) is currently **13,400 gallons per day** ("GPD"). OWNER further agrees to transfer said permit to TOWN if necessary to effectuate the transfer of the water allocation to the TOWN and execute any documents and/or take any and all other actions determined necessary by the TOWN in order to effectuate the water allocation transfer of the well(s) and permit(s) to the TOWN as contemplated herein. Provided further that OWNER shall be responsible for any costs and/or actions required by SWFWMD and/or any agencies with jurisdiction in order to effectuate the water allocation transfer of the well(s) and permit(s) to the TOWN as contemplated herein. This transfer shall become effective upon the effective date of this Agreement.

SECTION 3. **RECORDING**. OWNER agrees that TOWN may record this Agreement in the Public Records of Polk County, Florida.

SECTION 4. **EFFECTIVE DATE**. The Effective Date of this Agreement shall be the date on which the TOWN's governing body approves this Agreement.

SECTION 5. **COVENANT RUNNING WITH THE LAND**. OWNER agrees that its transfer of water allocation is a covenant running with the Property and shall be binding on future owners of the Property.

SECTION 6. **WATER SERVICE**. Upon execution of an agreement regarding the TOWN's provision of water and wastewater services, the TOWN shall provide water service to the OWNER, its successors or assigns for use on the Property.

SECTION 7. **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 severable.

SECTION 8. **GOVERNING LAW AND VENUE**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that the exclusive venue for 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 hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be exclusively in the state courts of competent jurisdiction in Polk County, Florida.

SECTION 9. **AUTHORITY TO EXECUTE AGREEMENT**. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he or she has the full power and authority to bind the entity for which that person is signing.

SECTION 10. **CAPACITY**. No specific reservation of water or wastewater capacity is granted by TOWN under this Agreement EXCEPT as specifically stated herein.

SECTION 11. **ARMS LENGTH TRANSACTION**. Both parties have contributed to the preparation, drafting and negotiation of this Agreement and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

SECTION 12. **AMENDMENT AND ASSIGNMENT**. This Agreement may not be amended and/or assigned, unless evidenced in writing and executed by the parties hereto and approved by the TOWN's governing body.

SECTION 13. **PUBLIC RECORDS**. Pursuant to Florida law, if the OWNER is a "contractor" as defined in § 119.0701(1)(a), Florida Statutes, OWNER must comply with Florida's public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the TOWN to perform the services herein.
- (b) Provide the public with access to public records on the same terms and conditions that the TOWN would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the TOWN all public records in possession of the OWNER upon termination of the Agreement and destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the TOWN in a format that is compatible with the TOWN's information technology systems.

IF THE OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, LITA O'NEILL, AT 863-438-8330, EXT. 258, LONEILL@TOWNOFDUNDEE.COM, 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.

IN WITNESS WHEREOF, the parties hereto have hereunder executed this Agreement on the date and year first above written.

ATTEST:

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

Lita O'Neill
Town Clerk

Samuel Pennant
Mayor

Approved as to form and correctness:

Frederick J. Murphy, Jr.
Town Attorney

STATE OF FLORIDA
COUNTY OF POLK

Before me, by means of physical presence or online notarization, the undersigned authority, this day personally appeared **SAMUEL PENNANT**, as Mayor of the Town of Dundee, Florida, a Florida municipal corporation, to me well known and known to me to be the individual described in and/or produced _____ as identification and who executed the forgoing instrument, and was authorized on behalf of said Town of Dundee, Florida, a Florida municipal corporation, to execute same, and he severally acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal this _____ day of _____, 2024.

My Commission expires:

Notary Public in and for the State of Florida at Large

Executed by the parties on the date shown adjacent thereto:

Developer

**DUNDEE FREDERICK, LLC,
A Florida limited liability company**

By: 
_____ Managing Member


_____ Witness


_____ Witness

5/6/2024
_____ 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 MAY, 2024, by Andrew Swartz, as MANAGING MEMBER on its behalf, who is personally known to me or who has produced _____ as identification.





Notary Public, State of Florida
Printed Name: DANNA L CHENIER
My commission expires: 5-7-2027

EXHIBIT "A"

LEGAL DESCRIPTION & DEPICTION OF PROPERTY