

**EXHIBIT A**

**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

INSTR # 2024211464  
BK 13264 Pgs 0031-0044 PG(s)14  
09/12/2024 01:27:34 PM  
STACY M. BUTTERFIELD,  
CLERK OF COURT POLK COUNTY  
RECORDING FEES 120.50

**ORDINANCE NO. 24-09**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, ENACTING THE PENDING ORDINANCE DOCTRINE AND ESTABLISHING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR ANNEXATIONS, REZONINGS, BUILDING PERMITS, PLANNED DEVELOPMENTS, MASTER PLANNED COMMUNITIES, DEVELOPMENT ORDER(S), AND DEVELOPMENT PERMIT(S); PROVIDING EXEMPTIONS; PROVIDING FOR VESTED RIGHTS AND PROCEDURES; PROVIDING FOR THE INCORPORATION OF FACTUAL RECITALS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR CODIFICATION; PROVIDING BUSINESS IMPACT ESTIMATE; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, pursuant to Section 2(b), Article VIII of the Florida Constitution and Chapter 166, Florida Statutes, the Town is vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, including the general exercise of any power for municipal purposes; and

**WHEREAS**, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, pursuant to Section 6.01.07.04 of the Town of Dundee Land Development Code (LDC), the Town is the sole provider of water utility service(s) within its Chapter 180, Florida Statutes, Utility Service Area (the "USA") and all new development is required to connect to the Town of Dundee Water System; and

**WHEREAS**, the Town of Dundee continues to experience substantial residential growth in a short time causing the addition of new residential annexations, land use modifications, rezonings, major Planned Unit Development (PUD) amendments, master planned communities, and conditional uses for residential development(s) over one (1) acre resulting in significant increased demand for Town-provided potable water; and

**WHEREAS**, Sections 163.3161 through 163.3215, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act, empowers

and mandates the Town of Dundee, Florida, to plan for future development and growth and to adopt and amend comprehensive plans, or elements, or portions thereof, to guide the future growth and development of the Town; and

**WHEREAS**, on March 12, 2024, at a duly noticed public meeting, the Town Commission of the Town of Dundee (the "Town Commission") approved RFQ 24-01 for municipal planning and revisioning services (the "RFQ"); and

**WHEREAS**, the RFQ authorized qualified consultants, pursuant to the *Master Continuing Professional Consulting Agreement For Professional Planning and Visioning Services* entered into between the Town and consultant(s), to assist the Town with amending its 2030 Comprehensive Plan, updating the Town of Dundee Land Development Code to implement any adopted comprehensive plan amendments, and assist the Town with planning for the impacts of unprecedented growth and new residential development(s); and

**WHEREAS**, due to the historically high number of proposed and/or approved new residential development projects within the boundaries of the Town, the Town is at and/or has exceeded its maximum allocable daily potable water capacity allowed under the Town's current consumptive water use permits (WUPs) issued by the Southwest Florida Water Management District (SWFWMD); and

**WHEREAS**, on August 23, 2022, at a duly noticed public meeting of the 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**, pursuant to the Interconnect Agreement and subject to availability, in order for the Town to meet its existing need for potable water, the City of Winter Haven agreed to provide **0.5 MGD** of potable water to the Town during the term of the Interconnect Agreement; and

**WHEREAS**, in accordance with the Interconnect Agreement, the Town engaged the Chastain-Skillman, Inc. engineering firm to prepare conceptual construction plans (the "Concept Plans") for the design and construction of the interconnect facilities which included, but were not limited to, the Town of Dundee Potable Water Main Interconnect Layout and Construction Plans for the Town of Dundee Potable Water Interconnect; and

**WHEREAS**, on September 27, 2023, the Town engaged CHA Consulting, Inc. ("CHA") for engineering services to evaluate the capacity of the high service pump station at the Town's Riner Water Treatment Plant for purposes of constructing the potable water interconnect with the City of Winter Haven and perform a comprehensive evaluation of the Town's water distribution network related to the Town's Riner Water Treatment Plant in order to identify and plan for improvements necessitated by and/or through concurrency management, substandard infrastructure, and new growth within the corporate limits of

the Town; and

**WHEREAS**, on February 27, 2024, at a duly noticed public meeting, the Town Commission passed and adopted Resolution No. 24-02 accepting and approving the CHA Memorandum Riner Water Treatment Plant Capacity Evaluation, dated January 9, 2024; and

**WHEREAS**, on June 25, 2024, at a duly noticed public meeting, the Town Commission considered and approved the *Interlocal Agreement For Potable Water and Wastewater Utility Services* for a proposed mobile home development (Cypress Creek Village Phase V) within the Town's municipal limits (the "Interlocal Agreement") between the Town and City of Winter Haven, Florida; and

**WHEREAS**, on the effective date of the Interlocal Agreement, the Town did not have sufficient allocable potable water capacity to provide the necessary potable water utility service(s) for the *Cypress Creek Village Phase V* development; and

**WHEREAS**, pursuant to the Interlocal Agreement, in order to ensure that utility facilities and service(s) needed to support the *Cypress Creek Village Phase V* development located within the Town's corporate limits are available, the City of Winter Haven agreed to provide extra-jurisdictional utility services for the *Cypress Creek Village Phase V* development; and

**WHEREAS**, SWFWMD regulates, through the issuance of a WUP, the amount of water the Town is permitted to provide to users of the Town's potable water supply; and

**WHEREAS**, the Town of Dundee has applied for an expansion of its public supply WUP and that application is under review by SWFWMD; and

**WHEREAS**, beginning in or about September 2022, the Town has processed and approved certain application(s) for development order(s) and/or development permit(s) which include, but are not limited to, conditional Certified Subdivision Plan (CSP) approvals for residential development(s); and

**WHEREAS**, pursuant to Section 54-9 of the Code of Ordinances of the Town of Dundee (the "Code") and Section 6.01.07.03 of the LDC, a *Concurrency Developer's Agreement* has been required as a condition of approval for any CSP in order to provide, at a minimum, as follows: (1) detail the Town's inability to currently provide allocable potable water capacity; (2) detail the necessary expansion of the Town's potable water treatment facilities in order to serve the proposed development; and (3) detail the terms and conditions under which the Town will provide potable water utility service(s); and

**WHEREAS**, the *Concurrency Developer's Agreement(s)* also clearly and unequivocally identifies that the Town does not presently have the necessary utility infrastructure, utility facilities, and/or allocable potable water capacity to serve the

proposed residential development and, for the purpose of providing a basis upon which a final plat may be considered for approval by the Town Commission, the conditional CSP approval will not be considered complete until the Town has the ability to provide allocable potable water capacity; and

**WHEREAS**, the Town has conditionally approved a CSP for approximately twelve (12) applicants and, in certain instances, entered into a Water Supply Allocation Agreement for the transfer of capacity associated with applicable agricultural wells associated with such proposed residential developments; and

**WHEREAS**, the purpose of this Ordinance is to place a temporary moratorium on accepting and processing applications for residential development orders and development permits for real property consisting of more than one (1) acre located within the corporate limits of the Town of Dundee, Florida; and

**WHEREAS**, the Town Commission hereby finds that the temporary moratorium imposed by this Ordinance is being imposed for a reasonable duration which is intended to give the Town a reasonable period of time to construct the interconnect and receive **0.5 MGD** of potable water from the City of Winter Haven, apply for and obtain the proper and necessary increases to the Town's public supply WUP including, but not limited to, the transfer of allocated capacity of certain agricultural wells and perhaps others not yet identified, and adopt and implement necessary amendments and/or revisions to various aspects of the 2030 Comprehensive Plan and LDC in order to accommodate the unprecedented residential growth and development within the corporate limits of the Town; and

**WHEREAS**, the Town Commission of the Town of Dundee, Florida, hereby finds that the expected impacts of the unprecedented residential growth and development on public facilities and infrastructure necessary to serve such new residential development and maintain required levels of service may negatively affect the public health, safety, and welfare of the Town; and

**WHEREAS**, on August 26, 2024, pursuant to the requirements in Chapter 163 of the Florida Statutes, the Town's Planning & Zoning Board, sitting as the Town's Local Planning Agency at a duly advertised and noticed public meeting, conducted a public hearing on this Ordinance and, after considering all such comments and/or matters considered at said public hearing, voted to recommend approval of this Ordinance to the Town Commission; and

**WHEREAS**, the Town Commission of the Town of Dundee, Florida, hereby finds that this Ordinance advances an important government purpose by preventing the demand for Town-provided potable water service to exceed the current allowable daily withdrawal limits authorized in its WUPs; and

**WHEREAS**, to the extent that this Ordinance is determined to substantially affect

the use of land located within the corporate limits of the Town under Florida common law, the Town Commission of the Town of Dundee, Florida, specifically finds that the Town issued all necessary or required statutory notices, held and duly convened all necessary or required public hearings, and complied with all necessary or required formalities for the adoption of an ordinance seeking to involuntarily zone or rezone property pursuant to the rule established in *Sanibel v. Buntrock*, 409 So. 2d 1073 (Fla. 2d DCA 1981) and Section 166.041(3)(c), Florida Statutes; and

**WHEREAS**, the Town Commission of the Town of Dundee, Florida, finds that the approval and adoption of this Ordinance No. 24-09 is intended to enhance the present advantages that exist within the corporate limits of the Town of Dundee, Florida; is consistent with the public interest and preserves, enhances, and encourages the most appropriate use of land; and this Ordinance No. 24-09 is intended to promote, protect, and improve the public health, safety, and general welfare of the citizens and residents of the Town of Dundee, Florida.

**NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE TOWN OF DUNDEE, FLORIDA:**

**Section 1. Incorporation of Factual 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 adoption of this Ordinance, and the Town Commission of the Town of Dundee, Florida, hereby adopts the above-referenced factual recitals as the legislative findings supporting the adoption of this Ordinance.

**Section 2. Authority.**

This Ordinance is enacted pursuant to Chapter 163 of the Florida Statutes and the Town's home rule authority pursuant to the Municipal Home Rule Powers Act (F.S. Chapter 166) and Article VIII, §2 of the Florida Constitution.

**Section 3. Enactment of Pending Ordinance Doctrine.**

From and after the effective date of this Ordinance, no development permit and/or development order shall be issued where an amendment to the Land Development Code of the Town of Dundee, Florida, is pending before the Town Commission, which amendment, if adopted, would make illegal the use authorized by the development permit and/or development order.

From and after the effective date of this Ordinance, a valid and current local development order shall be required prior to the issuance of any building permit to authorize development or a change of use. No development or change of use shall be made or continued without a lawful building permit; and no development permit shall be

issued where an amendment to the Land Development Code, Town of Dundee, Florida, is pending before the Town Commission or Planning and Zoning Board, which amendment, if adopted, would make nonconforming the development authorized by the development order and/or development permit.

Subject to applicable Florida law, an amendment to the Land Development Code, Town of Dundee, Florida, shall be considered "pending" within the meaning of this rule so long as there is active and documented efforts on the part of the Town which, in the normal course of municipal action, culminates in the requisite amendment to the Land Development Code; and, at a minimum, the Town Commission or Town Planning and Zoning Board must be aware of and have documented such efforts.

#### **Section 4. Temporary Moratorium.**

- (a) **Purpose.** The purpose of this temporary moratorium is to provide a reasonable period of time for the Town to construct a potable water interconnect, in accordance with the *Interlocal Agreement For The Interconnection of Potable Water Between The City of Winter Haven, Florida, and The Town of Dundee, Florida*, and receive up to **0.5 MGD** of potable water from the City of Winter Haven; apply to SWFWMD for the transfer of potable water capacity from applicable agricultural wells including but not limited to those identified in Section 5 ( e) of this Ordinance and obtain the proper and necessary increases to the Town's public supply WUP; and, pursuant to Section 163.3184, *Florida Statutes*, and applicable Florida law, adopt and implement necessary amendments and/or revisions to various aspects of the 2030 Comprehensive Plan and LDC in order to accommodate the unprecedented residential growth and development within the corporate limits of the Town.
- (b) **Moratorium.** Beginning on the effective date of this Ordinance, the moratorium shall continue for twelve (12) consecutive months.

The moratorium shall be imposed on the Town's consideration of applications for annexation(s), permit applications, planned developments, master planned communities, rezonings, special exceptions, and residential development permits and/or development orders as defined in §380.031, *Florida Statutes* (2024) (collectively hereinafter referred to as the "Applications"); and, during the pendency of the moratorium, the Town of Dundee shall not accept, review, or process any of the Applications.

No Applications (including applications that may have been submitted prior to July 23, 2024) for properties subject to the moratorium established herein may be processed by Town staff until the expiration and/or termination of this moratorium, unless provided for by this Ordinance.

The Applications for properties subject to the moratorium established herein

received by the Town on or before July 23, 2024, will be held in abeyance until the conclusion of the moratorium, unless provided for by this Ordinance.

- (c) **Expiration and/or Termination.** Subject to the *extension* provision(s) provided for below, the moratorium imposed by this Ordinance shall terminate upon the earliest of two (2) occurrences, as follows: (1) one (1) calendar year at 11:59 P.M. on the 365<sup>th</sup> day after the effective date of this Ordinance; or (2) a date before **September 9, 2025**, if provided for by Ordinance of the Town Commission of the Town of Dundee, Florida.
- (d) **Extension.** The provisions of this Ordinance may be extended once by ordinance for a period of not more than twelve (12) additional months, upon a finding by the Town Commission following a public hearing/public comment that good cause exists and an extension would be in the best interests of the citizens and residents of the Town of Dundee, Florida.

**Section 5. Exemptions.** Exemptions from this Ordinance are, as follows:

(a) Subject to Sections 7.02.03 and 6.01.00 of the LDC, upon confirmation that a satisfactory concurrency evaluation has been performed, the moratorium imposed by this Ordinance shall not apply to any development permit and/or development order, as the terms are defined in §380.031, Florida Statutes (2024), on and/or for real property consisting of one (1) acre or less.

(b) The moratorium shall not include building permits that are issued by the Town for interior remodeling, maintenance, repair(s), reroofing, and/or health and safety improvements on lawfully existing structures.

(c) The moratorium shall not apply to building permits for the demolition and/or replacement of lawfully existing structures which pose a life, health, and safety hazard, so long as the structure, once replaced, complies with all applicable provision(s) of the Town's LDC, Code of Ordinances, and 2030 Comprehensive Plan. For purposes of this exception, any application(s) for local building permit(s) for the replacement of a lawfully existing structure shall include a written certification from a professional engineer registered and licensed in the State of Florida as being necessary to correct and/or remedy the structural deficiencies which pose a threat to the life, health, safety and general welfare of the public.

(d) Upon written confirmation from Town staff that, pursuant to Sections 7.02.03 and 6.01.00 of the LDC, a satisfactory concurrency evaluation has been performed, the following residential developments are specifically and conditionally exempt from this Ordinance, as follows:

- (i) *Seasons at Bella Vista;*
- (ii) *Crystal Lake Preserve;*
- (iii) *Landings at Lake Mabel Loop;*

- (iv) *Reserve at Dundee Lakes (up to limit of 306 ERCs);*
- (v) *Seasons at Hilltop;*
- (vi) *Shores at Lake Dell;*
- (vii) *Sol Vista; and*
- (viii) *Cypress Creek Village Phase V.*

(e) Upon written confirmation from Town staff that, pursuant to Florida law and applicable provision(s) of the LDC, the Town has received a credit and/or increase to its public supply WUP from SWFWMD arising out of the transfer of agricultural wells pursuant to and/or in accordance with a Concurrency Developer's Agreement and/or Water Supply Allocation Agreement, the transferor thereof shall be specifically and conditionally exempt and only to the extent of such credit and/or increase actually credited to the Town's public supply WUP. For purposes of this exemption, the potable water capacity credited to or causing an increase in the Town's public supply WUP by SWFWMD for each agricultural well transferred pursuant to a Concurrency Developer's Agreement and/or Water Supply Allocation Agreement shall, to the extent of such credit and/or increase provided, be specifically and conditionally exempt from this Ordinance and reserved for certain residential development(s) which include, but are not limited to, the following:

- (i) *Woodland Ranch Phase(s) 1, 2 & 3;*
- (ii) *Alford Ridge;*
- (iii) *Reserve at Dundee Lakes (Remaining Phases);*
- (iv) *Landings at Lake Trask Phases 1 & 2;*
- (v) *Legacy Hills Phases 1 & 2;*
- (vi) *Valencia Ridge Reserve;*
- (vii) *Weiberg West Development;*
- (viii) *Estes Planned Unit Development; and*
- (ix) *Vista Del Lago Phase 4.*

(f) The moratorium imposed by this Ordinance shall not apply to any vested right and/or vested status as provided for by this Ordinance.

(g) The moratorium shall not apply to the Town's acceptance of a petition for the establishment of a Community Development District (CDD), which is a local unit of special-purpose government, created pursuant to chapter 190, Florida Statutes. In the event a petition for the establishment of a CDD includes any other matter(s) which are the subject of the moratorium, this exception shall not prevent the abeyance of the subject petition until the termination of the moratorium.

(h) The moratorium imposed by this Ordinance shall not apply to any development in the General Retail Commercial (CC), Highway Commercial (CH), and Service Commercial (CS) Zoning Districts within the Town and all such developments shall be otherwise subject to applicable laws, Code of Ordinances, LDC's and/or other applicable rules and regulations for such development.

(i) The Town Commission may authorize exception(s) to the moratorium imposed by this Ordinance when it finds, based upon competent substantial evidence presented at a duly noticed public meeting, that the deferral of action and/or issuance on an application for a development order and/or development permit for the duration of the moratorium imposes an extraordinary hardship. For purposes of requesting a hardship exception, the owner shall request a determination in the same form and manner provided for in **Section 6** of this Ordinance.

In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Commission shall consider all competent substantial evidence and relevant testimony which includes, but is not limited to, the following:

- (i) Prior to July 23, 2024 (date established by pending ordinance doctrine), the extent to which the owner had received permit(s) and/or approvals from the Town.
- (ii) Prior to July 23, 2024, whether the owner had entered into any contractual commitments in reliance upon the permit(s) and/or approval(s) issued by the Town.
- (iii) Prior to July 23, 2024, whether the owner has made a substantial made a substantial expenditure in *good faith* reliance upon the permit(s) and/or approval(s) issued by the Town.
- (iv) Prior to July 23, 2024, in *good faith* reliance upon the permit(s) and/or approval(s) issued by the Town, the owner has incurred financial obligation(s) to a lending institution which cannot be met unless the subject development proceeds (i.e., owner exhausted all available alternatives).
- (v) Whether the moratorium exposes the owner to substantial monetary liability to third-parties, results in the owner's inability to earn a reasonable investment-backed expectation on and/or for the subject real property.

**Section 6. Vested Rights and Quasi-Judicial Review Procedures.**

- (a) Owner(s) of real property located within the corporate limits of the Town or an authorized agent of the owner(s) may request a vested rights determination by paying an application fee, provided hereunder, and filing a technically complete application with the Town's Chief Administrative Officer or designee.
- (b) The application form shall, at a minimum, contain the following information:

- (i) The name and address of the applicant(s), who must be the owner(s) of the subject parcel(s) or real property, or an agent expressly authorized to apply on behalf of the owner(s).
- (ii) A legal description, current tax parcel identification number and survey or a sketch of the real property that is the subject of the application.
- (iii) The name and address of each owner of the parcel(s) or real property.
- (iv) Any approved site plan, approved Certified Subdivision Plan, or plat that is applicable to the real property.
- (v) Identify with particularity with specific reference to any ordinance, resolution, or other action of the Town of Dundee or failure to act by the Town of Dundee, any statute or other general law, upon which the applicant relied and which the applicant believes supports the applicant's position that a development order and/or development permit should be issued during the moratorium.
- (vi) A statement of fact that the applicant intends to prove or demonstrate, in support of the application that a vested right exists which warrants the issuance of a development order and/or development permit during the moratorium.

The application shall fully articulate the legal basis for being issued a development order and/or development permit notwithstanding the moratorium.

- (c) The applicant shall provide a sworn statement, executed by all owners of the real property at issue or an authorized agent averring that all factual information set forth in the application is true and accurate.
- (d) The Town's Chief Administrative Officer or designee shall screen each application to determine whether the application is technically complete, as set forth herein. No screening shall take place until an applicant has paid an application processing fee of \$760.81.

The sufficiency determination shall be made within fourteen (14) calendar days after receipt of the application. If not technically complete, the application shall be returned to the applicant with written notification identifying the deficiencies in the application and the applicant shall be granted fourteen (14) additional calendar days to complete a technically sufficient application. If a response is not submitted to the Town's Chief Administrative Officer or designee within the time specified in this subsection, the application shall be deemed abandoned.

- (e) Upon the Town's Chief Administrative Officer or designee's acceptance of a technically complete application, for which the application fee has been submitted and paid, the Town Commission shall review the application, hold a public hearing, and make a final determination within forty-five (45) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property at issue has a vested right and/or vested status and therefore should be issued a development order and/or development permit for new residential development notwithstanding this moratorium.
- (f) Within seven (7) calendar days after making a final determination of vested rights status, the Town Commission shall provide the applicant with a written order, notifying the applicant of the determination of vested rights status. Notwithstanding the moratorium, if the Town Commission determines that a vested right and/or vested status exists, and all other applicable provisions of the Code of Ordinances, LDC, and 2030 Comprehensive Plan have been met, then a development order and/or development permit for the new residential development shall issue and the applicant shall have the right to rely upon such written notification that the real property is vested. The Town Commission's written notification shall be final and not subject to further appeal to the Town, revocation, or modification.
- (g) The public hearing on the application for vested rights shall be a quasi-judicial hearing before the Town Commission. The applicant shall present all the applicant's evidence in support of the application. The technical Florida Rules of Evidence shall not apply to the hearing, but basic notions of due process will be observed, and all testimony of witnesses shall be given under oath.
- (h) The Town Commission's decision to grant vested rights status shall be based on common law criteria for vested rights determinations which includes, but shall not be limited to, the following:
  - 1. Evidence that warrants a finding that this Ordinance has denied the owner(s) of beneficial use of the subject property in violation of State and Federal Constitutions; or
  - 2. Owner has relied in good faith upon the act or omission of the Town;
  - 3. Owner has made a substantial change in position or incurred extensive obligations and expenses; and
  - 4. Owner(s) change in position results in a highly inequitable and unjust deprivation of the right(s) that the owner acquired.
- (i) The Town Commission's decision to grant vested rights status shall be final.

- (j) Any property expressly exempt from this moratorium, as set forth in Section 5(b)-(c) is presumptively vested for purposes of this Ordinance and shall not be required to file an application under this Section.

**Section 7. Conflicts.** All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect, provided however, that nothing herein shall be interpreted so as to repeal any existing ordinance or resolution relating to means of securing compliance with the 2030 Comprehensive Plan of the Town of Dundee, unless such repeal is explicitly set forth herein.

**Section 8. Severability.** The provisions of this Ordinance are severable. If any section, subsection, sentence, clause, phrase of this Ordinance, or the application thereof shall be held invalid, unenforceable, or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby. The Town Commission of the Town of Dundee hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared invalid, unenforceable, or unconstitutional, or unenforceable. If any word, sentence, clause, phrase, or provision of this Ordinance for any reason is declared by any court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, then all remaining provisions and portions of this Ordinance shall remain in full force and effect. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Dundee, Florida, by and through its Town Commission, hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

**Section 9. Administrative Correction of Scrivener's Errors and Codification.** It is the intention of the Town Commission that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to, "section", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the Code of Ordinances of the Town of Dundee is accomplished, sections of this Ordinance may be re-numbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the Town Manager or designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

**Section 10. Codification.** It is the intention of the Town Commission of the Town of Dundee that Section 3 of this Ordinance incorporated herein shall become and be made a part of the Code of Ordinances, Town of Dundee, Florida.

**Section 11. Business Impact Estimate.**

On October 1, 2023, Senate Bill 170 ("SB 170"), *Chapter 2023-309, Laws of Florida*, was enacted amending Section 166.041, Florida Statutes, requiring a local government to prepare a *business impact estimate* before the enactment of an ordinance. Section 166.041(4)(c)1, as amended, provided that municipal ordinances enacted to implement Part II of Chapter 163, Florida Statutes, were not subject to the *business impact estimate* requirement.

On October 1, 2024, Senate Bill 1628 ("SB 1628"), as codified under *Chapter 2024-145, Laws of Florida*, becomes effective and further amends Section 166.041, Fla. Stat. (2023), by creating express exclusion(s) for *development orders* and *development permits*, as defined by Section 163.3164, Florida Statutes (2023).

In this instance, this Ordinance is enacted and is necessary to implement the issuance of *development orders* and/or *development permits* (as defined by §163.3164, Florida Statutes). As such, pursuant to applicable Florida law, this Ordinance is exempt and does not require a business impact estimate

**Section 12. Effective Date.** This Ordinance shall take effect immediately upon its adoption.

**INTRODUCED AND PASSED**, on First Reading and public hearing with a quorum present and voting, by the Town Commission of the Town of Dundee, Florida, this 29<sup>th</sup> day of August, 2024.

**PASSED AND DULY ADOPTED**, on Second Reading and public hearing with a quorum present and voting, by the Town Commission of the Town of Dundee, Florida, this 10<sup>th</sup> day of September, 2024.

**TOWN OF DUNDEE**

  
MAYOR – Sam Pennant

Attest:

  
TOWN CLERK – Lita O'Neill

Approved as to Form:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

TOWN ATTORNEY, ~~Frederick J. Murphy, Jr.~~



EXHIBIT B



February 10, 2025

**Via E-Mail: [BCarter@TownofDundee.com](mailto:BCarter@TownofDundee.com)**

Brenda Carter, Development Services Coordinator  
Town of Dundee  
124 Dundee Road  
Dundee, FL 33838

**RE: Request for Hardship Exemption under Ordinance No. 24-09  
Caldwell Ridge Subdivision**

Dear Ms. Carter,

Please accept this application packet as a formal request for a hardship exception under Section 5 of Ordinance No. 24-09 for the Caldwell Ridge single-family home subdivision within the Town of Dundee. Due to the imposed moratorium, the project faces extreme hardship, including significant financial and contractual challenges that necessitate the approval of this request.

Please note that the applicant is reserving their right to submit a vested rights determination under Section 6 of Ordinance No. 24-09 should this application for a hardship exemption be denied.

We kindly request to present our case at the next scheduled public hearing and are available to provide any additional information required to facilitate your review. Thank you for considering this request and we appreciate your attention to this matter.

Sincerely,

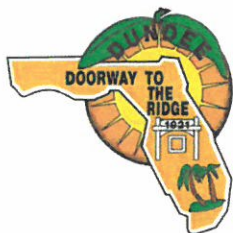
**RAYSOR Ventures, LLC**

Michael D. Raysor, P.E.

Principal

[mdr@raysor-transportation.com](mailto:mdr@raysor-transportation.com)

cc: Jessica Icerman, Esq., Stearns Weaver Miller, P.A.



# Town of Dundee

## DEVELOPMENT SERVICES – HARDSHIP APPLICATION

◆ 124 Dundee Road ◆ PO Box 1000 ◆ Dundee, Florida 33838 ◆ (863) 438-8330 ◆ Fax (863) 438-8339

Project Review Name: Caldwell Ridge Subdivision  
Parcel ID Numbers: 27-28-24-000000-[013010 & 013020]  
Site Address or General Location: Southwest corner of Lake Hatchineha Road & Caldwell Drive  
Present Use of Property: Vacant - Ag Row Crops Total Acreage: 24-Ac +/-  
Legal Description of the Property: See Attached Legal Description Document

### Property Owner

Name: Raysor Ventures, LLC  
Mailing Address: 19046 Bruce B. Downs Blvd, Ste. 308 State: Tampa, FL Zip: 33647  
Home/Mobile Phone: (813) 625-1699 Email Address: mdr@raysor-transportation.com

### Applicant / Agent:

Name: Raysor Ventures, LLC  
Mailing Address: 19046 Bruce B. Downs Blvd, Ste. 308  
City: Tampa State: FL Zip: 33647  
Home/Mobile Number: N/A Office Number: (813) 625-1699  
Email Address: mdr@raysor-transportation.com  
Agent is: Owner ☒ Agent/Representative ☐ Purchaser ☐ Lessee ☐

### Please submit a narrative with your hardship application.

Date Application accepted by Town of Dundee: \_\_\_\_\_

Name of Development: \_\_\_\_\_

Application Fee Amount Paid: \_\_\_\_\_ Date: \_\_\_\_\_

### **Please submit your application to:**

Brenda Carter, Development Services Coordinator  
Town of Dundee  
124 Dundee Road  
Dundee FL 33838  
BCarter@TownofDundee.com



**Disclaimer:** According to Florida Public Records Law, email correspondence to and from the Town of Dundee, including email addresses and other personal information, is public record and must be made available to the public and media upon request, unless otherwise exempt by the Public Records Law. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Narrative for Hardship Exemption Application  
Caldwell Ridge Subdivision  
February 10, 2025

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### Project Overview

The proposed Caldwell Ridge Subdivision consists of 81 single-family detached homes (the “**Project**”) and is located on approximately 24 acres at the southwest corner of Lake Hatchineha Road and Caldwell Drive (“**Property**”). The Property is owned by Raysor Ventures, LLC (“**Applicant**”). The Applicant obtained all approvals and is responsible for all expenditures noted herein.

### Extraordinary Hardship Criteria

As described in Section 5 of Ordinance No. 24-09, the Town Commission reviews all competent substantial evidence and relevant testimony, which includes, but is not limited to, the following (Applicant responses included inline):

- (i) ***Prior to July 23, 2024 (date established by pending ordinance doctrine), the extent to which the owner had received permit(s) and/or approvals from the Town.***

The Project has been ongoing since February 2023 when the applicant applied for annexation into the Town. Since then, the Project has received numerous approvals prior to July 23, 2024, including:

- May 9, 2023: Annexation of the Property
- October 10, 2023: Comprehensive Plan Amendment
- January 23, 2024: Rezoning allowing for development of the Project

Prior to July 23, 2024, the Applicant submitted its Concept Plan Review. The Applicant received comments from Town staff on May 7, 2024. Thereafter, the Applicant resubmitted to the Town on July 3, 2024 to address the first round of comments. It was not until August 9, 2024, that the Applicant was informed by Town staff via e-mail that the Town was under a development moratorium and that the review of the Project would be paused indefinitely.

- (ii) ***Prior to July 23, 2024, whether the owner had entered into any contractual commitments in reliance upon the permit(s) and/or approval(s) issued by the Town.***

In good faith reliance on the above noted approvals, specifically the approval of the rezoning, the Applicant purchased the Property. The Property deed is dated July 22, 2024 (**Attachment #1**), which is prior to the date established by the pending ordinance doctrine. Had the Applicant known of the pending moratorium, the applicant would have renegotiated the sale contract or backed out of the deal entirely.

- (iii) ***Prior to July 23, 2024, whether the owner has made a substantial expenditure in good faith reliance upon the permit(s) and/or approval(s) issued by the Town.***

In good faith reliance on the above noted approvals, specifically the approval of the rezoning, the Applicant made substantial expenditures prior to July 23, 2024, including purchasing the Property for \$1,225,000 and over \$100,000 for professional services, including planning, engineering, surveying, geotechnical engineering, and environmental consultants.

- (iv) *Prior to July 23, 2024, in good faith reliance upon the permit(s) and/or approval(s) issued by the Town, the owner has incurred financial obligation(s) to a lending institution which cannot be met unless the subject development proceeds (i.e., owner exhausted all available alternatives).*

In good faith reliance on the above noted approvals, specifically the approval of the rezoning, the Applicant sought and obtained a private investor. The private investor signed an investor agreement on April 18, 2024, and committed \$1,105,000 toward the Project with expectations for a return on the investment within a certain timeframe. Unless the Project proceeds, the obligations made to the private investor cannot be met. See **Attachment #2** for contract pertaining to financial commitments.

- (v) *Whether the moratorium exposes the owner to substantial monetary liability to third-parties, results in the owner's inability to earn a reasonable investment-backed expectation on and/or for the subject real property.*

The moratorium exposes the Applicant to substantial monetary liability to a third-party investor. The moratorium also results in the Applicant's inability to earn a reasonable investment-backed expectation, specifically the development of the Project and the sale of lots. The moratorium will delay the Applicant's ability to obtain any returns on their investment for at least one year, and possibly two years if the moratorium extension clause is exercised. The delay also results in carrying costs for the Property while it sits idle, such as payment of property taxes and insurance. Without question, the moratorium will expose the Applicant to substantial monetary liabilities and significantly decrease the return on investment.

#### **Request for Relief**

In light of the above, the Applicant respectfully requests the Town Commission to grant a hardship exemption for the Project under the extraordinary hardship provisions of Ordinance No. 24-09. We kindly request to present our case at the next scheduled public hearing and are available to provide any additional information required to facilitate your review. Thank you for considering this request and we appreciate your attention to this matter.

Please find enclosed supporting documentation, including evidence of financial commitments, contracts, and project plans.

# ATTACHMENT 1

Prepared by and return to:

Ammie Elmore  
Ridge Security Title, Inc  
1012 5th Street Southeast  
Winter Haven, FL 33880  
863-419-8485  
File No R22-310  
Sales Price \$1,225,000.00  
Parcel Identification No 27-28-24-000000-013010

INSTR # 2024168951  
BK 13199 Pgs 2262-2263 PG(s)2  
07/23/2024 08:16:05 AM  
STACY M. BUTTERFIELD,  
CLERK OF COURT POLK COUNTY  
RECORDING FEES 18.50  
DEED DOC 8,575.00

[Space Above This Line For Recording Data]

## WARRANTY DEED

(STATUTORY FORM – SECTION 689.02, F.S.)

This indenture made the 22nd day of July, 2024 between W & G Groves LLC, a Florida Limited Liability Company, whose post office address is P.O. Box 130, Dundee, FL 33838, of the County of Florida, Grantor, to Rayson Ventures, LLC, a Florida Limited Liability Company, whose post office address is 19046 Bruce B Downs Boulevard, Suite 308, Tampa, FL 33647, of the County of Hillsborough, Florida, Grantee:

Witnesseth, that said Grantor, for and in consideration of the sum of TEN DOLLARS (U.S.\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Polk, Florida, to-wit:

The East 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 24, Township 28 South, Range 27 East, LESS road right of way for State Road S-542; AND the East 1/4 of the West 1/2 of the Northwest 1/4 of the Northeast 1/4 of said Section 24, LESS road right of way for State Road S-542; AND the North 31 feet of the West 1/4 of the East 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 24; AND the North 31 feet of the East 1/4 of the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 24, Township 28 South, Range 27 East, all of said property being located in Polk County, Florida.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Subject to taxes for 2024 and subsequent years, not yet due and payable; covenants, restrictions, easements, reservations and limitations of record, if any.

TO HAVE AND TO HOLD the same in fee simple forever.

And Grantor hereby covenant with the Grantee that the Grantor is lawfully seized of said land in fee simple, that Grantor have good right and lawful authority to sell and convey said land and that the Grantor hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Warranty Deed

File No.: R22-310

Page 1 of 2

# ATTACHMENT 1

In Witness Whereof, Grantor have hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

W & G Groves LLC, a Florida Limited Liability Company

By: Bradley D. Weihrach  
Bradley D. Weihrach, Manager

By: Matthew E. Green  
Matthew E. Green, Manager

Ammie Elmore  
WITNESS  
PRINT NAME: Ammie Elmore

Kayla Sharick  
WITNESS  
PRINT NAME: Kayla Sharick

1012 5th St. SE  
Winter Haven, FL 33880  
WITNESS 1 ADDRESS

1012 5th St. SE  
Winter Haven, FL 33880  
WITNESS 2 ADDRESS

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 22nd day of July, 2024 by Bradley D. Weihrach and Matthew E. Green, Managers of W & G Groves LLC, a FL Limited Liability Company, on behalf of the Limited Liability Company.

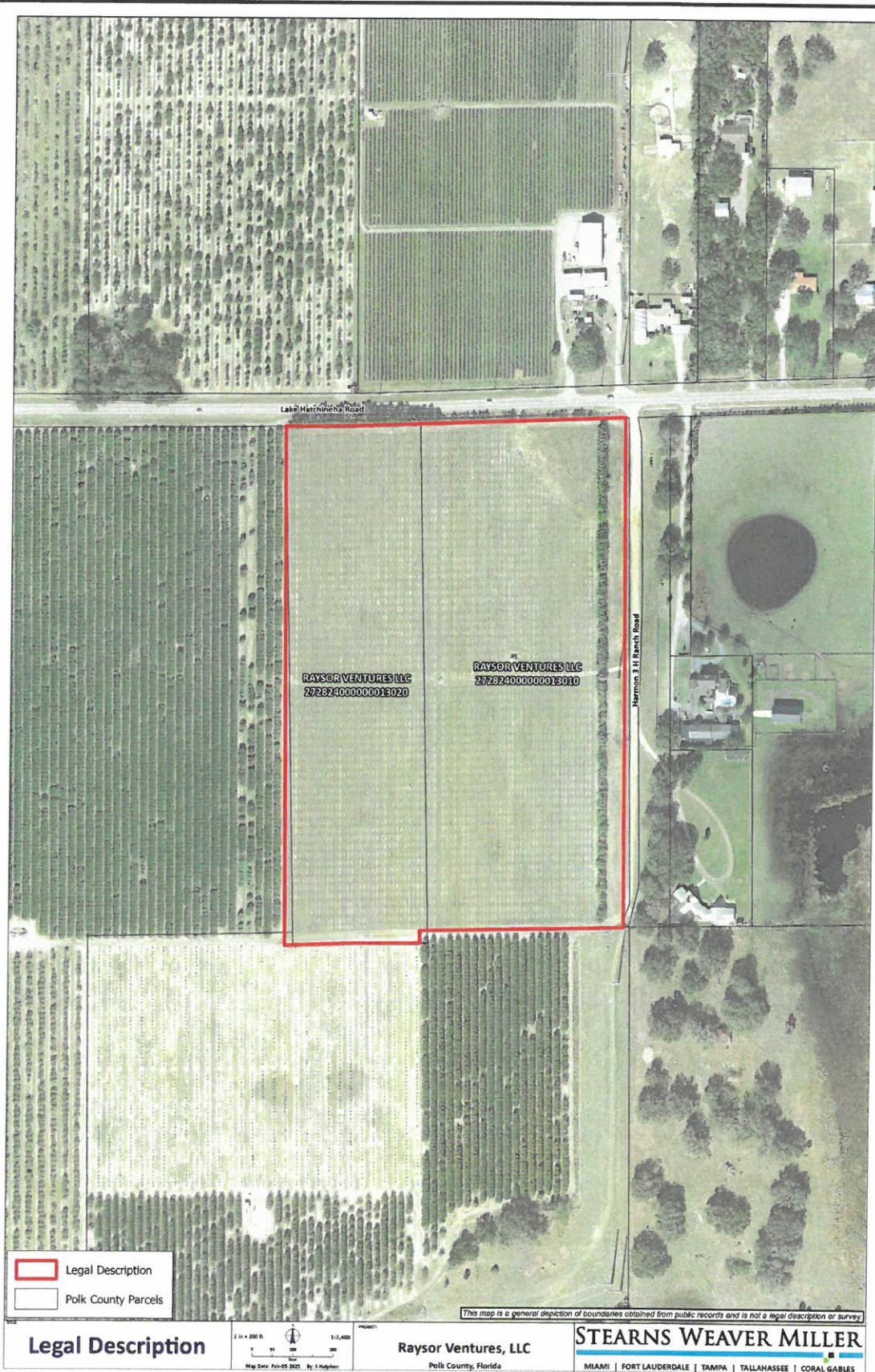
Ammie Elmore  
Signature of Notary Public  
Print, Type/Stamp Name of Notary

Personally known: \_\_\_\_\_  
OR Produced Identification: ☒

Type of Identification Produced: Drivers License



# ATTACHMENT 1



# ATTACHMENT 2



## CALDWELL RIDGE SINGLE-FAMILY RESIDENTIAL SUBDIVISION INVESTOR AGREEMENT

THIS AGREEMENT is made and entered into this 18 day of APRIL, 2024 by and between **RAYSOR VENTURES, LLC**, hereinafter referred to as "RV", and [REDACTED] hereinafter referred to as "INVESTOR", in association with the development of the **CALDWELL RIDGE SINGLE-FAMILY RESIDENTIAL SUBDIVISION**, hereinafter referred to as the "PROJECT".

### 1.0 DEFINITIONS

- A. **PROJECT:** PROJECT is defined as a Single-Family Residential Subdivision located within the jurisdictional limits of the Town of Dundee, Florida, consisting of approximately 80 single-family "SHOVEL READY" residential lots on, and including, the PROPERTY.
- B. **PROPERTY:** PROPERTY is defined as POLK COUNTY Parcel Numbers 272824000000013010 and 272824000000013020, which combine for a total area of approximately 24 acres; located at the southwest corner of the intersection of Lake Hatchineha Road (CR 542) and Caldwell Drive, Haines City, Florida 33844.
- C. **SHOVEL READY:** SHOVEL READY is defined as residential lots with the appropriate and necessary (1) Comprehensive Plan Future Land Use and Zoning Category entitlements, (2) approved engineering plans, and (3) site development permits, including (a) Subdivision Plans, (b) Water Management District Environmental Resource Permitting, and (c) FDEP Water & Wastewater Permits; as needed to construct the PROJECT. The definition of SHOVEL READY does not include site clearing, site development, infrastructure construction, lot grading, or any other physical disturbance of, or improvement to, the PROPERTY.

### 2.0 PROJECT SUMMARY

- A. **ENTITLEMENTS:** The PROPERTY has been approved for entitlement by the Town of Dundee, as follows:
- (1) **Annexation** – The PROPERTY was approved for annexation into the Town of Dundee (from unincorporated Polk County) by the Town of Dundee Town Council on May 9, 2023.
  - (2) **Comprehensive Plan Future Land Use** – The PROPERTY was approved for an amendment to the Comprehensive Plan Future Land Use Map for the PROPERTY from Polk County Agricultural Residential (A/RR) to Town of Dundee Low Density Residential (LDR) by the Town of Dundee Town Council on October 10, 2023.
  - (3) **Zoning** – The PROPERTY was approved for an amendment to the Zoning Map for the PROPERTY from undesignated (Polk County) to Town of Dundee Moderate Density Single-Family Residential (RSF3) by the Town of Dundee Town Council on January 23, 2024. The RSF3 zoning district allows for a maximum density of 5.0 units per acre with minimum lot dimensions of 55' wide x 110' deep.
- B. **PERMITTING:** The PROJECT is currently undergoing the Town of Dundee Subdivision Review process, which is a four (4) step process, summarized as follows:
- (1) **Concept Plan Review**
  - (2) **Preliminary Subdivision Plan Review**
  - (3) **Certified Subdivision Plan Review** – Upon approval of the Certified Subdivision Plan, site development construction may commence.
  - (4) **Final Subdivision Plat** – Upon recording of the Final Subdivision Plat, issuance of building permits may commence.

# ATTACHMENT 2

CALDWELL RIDGE SINGLEFAMILY RESIDENTIAL SUBDIVISION  
INVESTOR AGREEMENT  
APRIL 8, 2024  
PAGE 2 OF 3



## 3.0 INVESTMENT DETAILS

- A. RV is currently under contract to purchase the PROPERTY.
- (1) The Purchase Price for the PROPERTY is \$1,225,000.
  - (2) An initial escrow deposit has been made in the amount of \$100,000; of which \$25,000 is non-refundable.
  - (3) Additional escrow deposits in the amount of \$10,000 per month began on March 9<sup>th</sup>, 2024 and will continue monthly until closing on the property between RV and the PROPERTY seller. These deposits are non-refundable but are applicable to the Purchase Price of the PROPERTY.
  - (4) As of the date of this Agreement, the REMAINING BALANCE of the Purchase Price is \$1,105,000.
- B. RV is seeking an INVESTMENT from INVESTOR totaling the REMAINING BALANCE for the purpose of closing on the property between RV and the PROPERTY seller.
- C. Within 30-days of the Conclusion of the PROJECT, INVESTOR shall be compensated as follows:
- (1) Reimbursement of full INVESTMENT amount; plus
  - (2) Payment equal to [REDACTED] resulting from sale of the PROJECT.
- D. Conclusion of the PROJECT is defined as the sale of the PROJECT to a third-party developer and/or home builder upon approval of the Certified Subdivision Plan (referenced as 2.B.(3) herein) and successfully obtaining all site development permits associated therewith.
- E. NET PROFIT is defined as the amount of the sale to the third-party developer and/or home builder (Sales Price), minus real estate & related fees, and minus the cumulative contributions by RV, as defined herein.
- F. RV has, and will continue to, contribute to the development of the PROJECT, including both monetarily and with engineering work product. All contributions will be tracked throughout the development process to determine a final cumulative contribution at the Conclusion of the PROJECT (Project Expenses). Specific contributions subject to inclusion in the cumulative contribution will include, but not be limited to, the items listed below; where the value of certain contributions that are currently known are listed below, and the value of certain contributions that are unknown at this time are listed below as to be determined (TBD). Other contributions subject to inclusion in the cumulative contribution, in addition to those listed below, will include ordinary and regular items associated with property development, such as permit fees, platting fees, environmental fees, and other similar development expenses.

(1) Purchase Price for PROPERTY:	\$ 1,225,000.00
(2) Surveying Services:	\$ [REDACTED]
(3) Geotechnical Engineering Services:	\$ [REDACTED]
(4) Environmental Consulting Services:	\$ [REDACTED]
(5) Planning Services:	\$ [REDACTED]
(6) Landscape Architecture Services:	\$ [REDACTED]
(7) Traffic Engineering Services:	\$ [REDACTED]
(8) Civil Engineering Services:	\$ [REDACTED]
(9) Platting Services:	TBD
(10) Application Fees:	TBD

## ATTACHMENT 2

CALDWELL RIDGE SINGLE FAMILY RESIDENTIAL SUBDIVISION  
INVESTOR AGREEMENT  
APRIL 8, 2024  
PAGE 3 OF 3



- G. At the Conclusion of the PROJECT, RV shall provide INVESTOR with a statement detailing the calculation of the NET PROFIT, which will identify the Sale Price for the PROJECT and Project Expenses, including supporting documentation.
- H. At any time throughout the duration of this Agreement, at the request of INVESTOR, RV shall provide a to-date disclosure of all Project Expenses.
- I. In the event that RV and INVESTOR agree that Conclusion of the PROJECT as defined herein is not feasible, an alternative disposition of the PROJECT will be determined by RV and INVESTOR; where the cash value associated with the alternative disposition of the PROJECT will first be paid to INVESTOR up to the INVESTMENT amount, with any cash value greater than the INVESTMENT amount paid to INVESTOR at the same percentage which would have otherwise resulted from the sale of the PROJECT to a third-party developer and/or home builder.
- J. This Agreement does not preclude INVESTOR from electing to continue in the development of the PROJECT past the state of SHOVEL READY, subject to agreement by both parties as would be fulfilled through an amendment to this Agreement.

Subject to the conditions stated herein, INVESTOR hereby agrees to provide a cash INVESTMENT in the full amount of the REMAINING BALANCE to fund closing on the PROPERTY, in the amount of \$1,105,000.

The INVESTMENT amount shall be paid by INVESTOR in accordance with either (A) or (B) as stated below.

- (A) INVESTOR shall pay the full INVESTMENT amount of \$1,105,000 via wire transfer to the escrow agent for the PROPERTY seller prior to May 8, 2024.

OR

- (B) INVESTOR shall pay partial INVESTMENT amounts of \$10,000 per month to RAYSOR VENTURES, until such time that the balance of the full INVESTMENT amount is paid via wire transfer to the escrow agent for the PROPERTY seller, where each \$10,000 payment shall be made prior to the 8<sup>th</sup> of each month, beginning with May 8, 2024. A maximum of four (4) partial payments shall be allowed under this Agreement, where these payments shall be non-refundable in the event that INVESTOR does not make the payment for the balance of the full INVESTMENT prior to August 8, 2024.

The escrow agent for the PROPERTY seller is identified as Ridge Security Title, 1012 5<sup>th</sup> Street SE, Winter Haven, Florida 33880.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth beneath their respective signatures.

RAYSOR VENTURES, LLC  
19046 Bruce B. Downs Boulevard, #308  
Tampa, Florida 33647

SIGNED: Michael D. Raysor  
NAME: Michael D. Raysor  
TITLE: President  
DATE: April 8, 2024

SIGNED: [Redacted Signature]  
NAME: [Redacted Name]  
TITLE: PRESIDENT  
DATE: 4/18/2024

