

DEVELOPER'S AGREEMENT

May **THIS DEVELOPER'S AGREEMENT** ("Agreement") is made this 6th day of May, 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 TBHG, LLC, an active Florida limited liability company, whose address is 200 F St. South, Haines City, Florida 33844 (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): 272828-846000-000010, which totals approximately 13.09 acres (the "Property"); and

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

WHEREAS, the Shores of Lake Dell 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 to necessary to support the potable water needs and/or demands for the Development; and

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

WHEREAS, pursuant to applicable provisions of the Code of Ordinances of the Town of Dundee 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 Town Code, a development order and/or development permit will not be approved for the Development unless a satisfactory concurrency evaluation has been performed in accordance with Section 6.01.00 of the Town Code; 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 to serve the Development; and

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

WHEREAS, 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 November 8, 2022, at a duly notice public meeting of the Town of Dundee Town Commission, the Town Commission passed and approved Town of Dundee Resolution No. 22-52 (the "Resolution") conditionally approving the Certified Subdivision Plan (the "CSP") for the Development; and

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

WHEREAS, upon the passage of the Resolution (see **Exhibit "A"**), the Developer was authorized to proceed with dry-line construction of the potable water lines to service the Project; 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. 42.005 (the "Developer WUP"); and

WHEREAS, the Well provides irrigation water for agricultural uses on 13.0 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 thereto to the Town; and

WHEREAS, Town and Developer agree to enter into a Water Supply Allocation Agreement (the "Allocation Agreement") to facilitate the transfer the 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; and

WHEREAS, on November 8, 2022, the Town of Dundee Town Commission and Developer agreed that, as a condition precedent to its entering into this Agreement, Developer and its successors and permitted assigns indemnify and hold harmless the Town, its elected and appointed officials, employees and agents from any and all damages, claims, and/or other liabilities arising out of the Developer's construction of dry-lines, the Town's inability to provide allocable water capacity for the Development, and any subject covered by this Agreement; and

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

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

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

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

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

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

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

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

SECTION 1. RECITALS. The above-referenced factual recitals (WHEREAS clauses) and referenced exhibits are incorporated herein as true and correct statements which form a factual and material basis for the entry into this Agreement, and the Town Commission of the

Town of Dundee, Florida, hereby adopts the above-referenced factual recitals as the legislative findings supporting the entry into this Agreement between the Town and Developer.

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

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

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

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

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

3.4 “*Developer*” means TBHG, LLC, an active Florida limited liability company authorized to transact business in the State of Florida, and any and all of the successors and permitted assigns of TBHG, LLC.

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 Shores of Lake Dell Subdivision project which are the subject of this Agreement and located on, over, under and across the Property and related to and/or arising out of the Shores of Lake Dell 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 the Certified Subdivision Plan for the *Shores of Lake Dell Subdivision* and Resolution No. 22-52 were approved by the Town Commission at a duly noticed public meeting.

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

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

4.1 Town Obligations.

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

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

4.1.3 The Town, upon entering into a separate Allocation Agreement with the Developer and receiving a credit or increase to the Public Supply Water Use Permit (No. 20005893.012) (the “Town WUP”) from SWFWMD arising out of the transfer of the Well and/or the Developer’s Water Use Permit (No. 42.005) (the “Developer WUP”), shall allocate and assign any increase or credit to the Town’s WUP will be allocated to the Development on a pro-rata basis.

4.2 Developer Obligations.

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

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

4.2.3 If mutually determined by the Town and Developer to be applicable, the Developer (as defined by 3.4 of this Agreement) shall negotiate and enter into a separate Allocation Agreement with the Town; and, by entering into the Allocation Agreement, the Developer shall facilitate the transfer the 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.

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

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

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

SECTION 5. DEVELOPER'S ACKNOWLEDGMENT OF RISK.

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

5.2 The Developer acknowledges, accepts, and assumes the risk(s) arising out of the Developer proceeding with the Development and installation of "dry-lines;" and, by entering into this Agreement, the Town does not guarantee the availability of allocable potable water capacity for the Development.

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

intention to cooperate with each other in effecting the terms of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

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

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

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

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

SECTION 11. APPLICABLE LAW AND VENUE. This Agreement and the rights and obligations of the Town (as defined by 3.2 of this Agreement) and Developer (as defined by 3.4 of this Agreement) shall be governed by Florida law. Venue for any litigation pertaining to or arising out of the subject matter hereof shall be exclusively in the state courts of Polk County, State of Florida, in the 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: TGHG, LLC
3100 Cypress Gardens Rd
Winter Haven FL 33884

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

Tula Hall
135 IV 6th St.
Haines City FL 33844

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

SECTION 13. MISCELLANEOUS PROVISIONS.

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

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

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

13.4 **Calculation of Time.** The calculation of the number of days that have passed during any time period prescribed shall be based on Calendar Days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall

commence on the day immediately following the Effective Date (as defined by 3.12 of this Agreement). For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in Calendar Days. In the event any time period or deadline identified in this Agreement expires and/or falls on a Saturday, Sunday or recognized holiday, said expiration and/or deadline shall be automatically tolled until 5:00 pm on the next available Business Day which the Town is open for business to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. TERMINATION AND REMEDIES.

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

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

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

SECTION 18. JURY TRIAL. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED THEREUNDER, THE PERFORMANCE THEREOF, OR THE RELATIONSHIP CREATED THEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THE AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

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

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

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

- (a) ***Scrutinized Companies.*** Section 287.135 of the Florida Statutes states that a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with the TOWN for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the *Scrutinized Companies that Boycott Israel List*, created pursuant to Section 215.4725 of the Florida Statutes or is engaged in a boycott of Israel; or for One Million Dollars (\$1,000,000.00) or more if, at the time of bidding on submitting a proposal for, or entering into or renewing a contract, the company is on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to Section 215.473 of the Florida Statutes, or is engaged in business operations in Cuba or Syria. By executing and/or entering into the Agreements, DEVELOPER certifies that it does not and did not at any time since the submission of a response to the TOWN'S initial solicitation participate in a boycott of Israel; that it is not on the *Scrutinized Companies that Boycott Israel List*, *Scrutinized Companies with Activities in Sudan List*, or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*; and that it does not engage in business operations in Cuba or Syria. DEVELOPER understands that a false certification may subject it to civil penalties, attorneys' fees and costs pursuant to Section 287.135 of the Florida Statutes and that the TOWN may terminate the Agreements at the TOWN'S option if the DEVELOPER is found to have submitted a false certification.
- (b) ***Public Entity Crimes; Convicted Vendor List.*** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal and/or bid on a contract to provide any goods or services to a public entity, may not submit a proposal and/or bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, vendor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By executing the Agreements, DEVELOPER certifies that it is not on the convicted vendor list.
- (c) ***Drug-Free Workplace.*** By executing the Agreement(s), DEVELOPER certifies that it has a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102 of the Florida Statutes.

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

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

The rest of this page left intentionally blank; signatures follow

Executed by the parties on the date shown adjacent thereto:

Developer:

**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 Swain, 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

Town of Dundee:

TOWN OF DUNDEE

By: _____
Sam Pennant, Town Mayor

ATTEST:

Trevor Douthat, Town Clerk

APPROVED AS TO FORM:

Frederick J. Murphy, Jr., Town Attorney

EXHIBIT A

Resolution 22-52
Shores of Lake Dell Certified Subdivision Plan (CSP)
Page 1

RESOLUTION NO. 22-52

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, APPROVING THE CERTIFIED SUBDIVISION PLAN (CSP) WITH CERTAIN CONDITIONS FOR THE SHORES OF LAKE DELL SUBDIVISION; MAKING FINDINGS; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTION(S) RELATED TO ENTERING INTO A DEVELOPER'S AGREEMENT ON BEHALF OF THE TOWN OF DUNDEE WITH REGARD TO THE CONDITIONAL APPROVAL OF THE CSP FOR THE SHORES OF LAKE DELL; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the proposed Shores of Lake Dell Subdivision (the "Subdivision") is to occur on approximately 13.09 +/- acres which are located at the northeast corner of the intersection of Bay Street and Lemon Avenue (0 Old Highway 542, Dundee), in Dundee, Florida, further identified as Polk County Property Appraiser's Parcel Identification Number 272828-846000-000010, (collectively referred to as the "Property"); and

WHEREAS, the location map for the Property is attached hereto as **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, on November 08, 2022, pursuant to Section 7.01.07 of the Town of Dundee Land Development Code ("LDC"), JSK Consulting, INC (the "Applicant") submitted a Certified Subdivision Plan (the "CSP") for the Subdivision; and

WHEREAS, the CSP is attached hereto as **Exhibit "B"** and incorporated herein by reference; and

WHEREAS, on August 19, 2021, at a duly notice public meeting of the Town Commission of the Town of Dundee, the Town Commission approved a credit for 7.43 +/- acres of privately owned recreation space for the Subdivision; and

WHEREAS, the CSP includes 41 single-family lots and 7.43 +/- acres of recreational land to be owned and maintained by a Home Owner's Association; and

WHEREAS, pursuant to Section 7.01.07 of the LDC, the purpose of the certified subdivision plan is to allow Town staff to perform a technical review of all proposed site improvements; and

WHEREAS, pursuant to the technical review performed by the Town and/or Town's consultants, the CSP has not satisfied the general requirements set forth by Section 7.01.07 of the LDC; and

WHEREAS, pursuant to Section 7.01.07 of the LDC, the certified subdivision plan forms the basis upon which a final plat will be prepared and consists complete working drawings and design specifications; and

WHEREAS, the Applicant has substantially complied with all the requirements set forth in Section 7.01.07 of the LDC regarding the preparation the CSP for the Subdivision; and

WHEREAS, pursuant to Section 7.02.03 of the LDC and applicable provision of the Code of Ordinances of the Town of Dundee, a development order and/or development permit will not be approved by the Town for a development unless a satisfactory concurrency evaluation is performed in accordance with Section 6.01.00 of the LDC; and

WHEREAS, on the effective date of this Resolution, the Town of Dundee is not able to provide allocable water capacity for the Subdivision; and

WHEREAS, pursuant to Section 54-9 of the Code and Section 6.01.07.03 of the LDC, a developer's agreement is required as a condition of approval for the CSP; and

WHEREAS, pursuant to Section 6.01.07.03 of the LDC and applicable Florida law, this Resolution does not create a reservation of capacity in the Town water plant or network capacity, or a commitment to provide such service to the Subdivision; and

WHEREAS, the Applicant requests that the Town Commission of the Town of Dundee conditionally approve the CSP for the Subdivision subject to the terms and conditions set forth by this Resolution; and Town Commission's approval for construction of streets, drainage facilities, and/or other subdivision improvements prior to final platting in accordance with applicable Town of Dundee Land Development Code and the conditions set forth by this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

1. The above factual recitals (WHEREAS clauses) are hereby adopted by the Town Commission of the Town of Dundee as the legislative findings and form a factual and material basis for this Resolution.
2. The Shores of Lake Dell Certified Subdivision Plan (the "CSP") is attached hereto as **Exhibit "B"** and incorporated herein by reference. The Crystal Lake Preserve Subdivision (the "Subdivision") is located at the northeast corner of the intersection of Bay Street and Lemon Avenue (0 Old Highway 542, Dundee), in Dundee, Florida, further identified as Polk County Property Appraiser's Parcel Identification Number 272828-846000-000010, (collectively referred to as the "Property").

3. The Property is depicted by the location map which is attached hereto as **Exhibit "A"** and incorporated herein by reference.
4. The Town Commission of the Town of Dundee having reviewed the CSP and having been otherwise fully advised in the premises hereby conditionally approves the CSP for construction of utility systems and other required infrastructure in accordance with Section 7.01.07 of the Town of Dundee Land Development Code and the conditions set forth in this Resolution, as follows:
 - a. No building permits for any structures will be issued until all required infrastructure systems and improvements required by the Town of Dundee Land Development Code, Code of Ordinances, this Resolution, and applicable Florida law are fully operational and have been accepted by the Town and/or appropriate entity with jurisdiction.
 - b. 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 developer's agreement is required as a condition of approval for the CSP in order to provide, at a minimum, as follows: (1) detail the Town's inability to currently provide allocable water capacity for the Subdivision; (2) detail the necessary expansion of the Town's water treatment facilities to serve the Subdivision; and (3) detail the terms and conditions under which the Town will provide potable water utility service for the Subdivision.
 - c. Pursuant to Section 7.01.07 of the LDC and applicable provisions of the Code and LDC, the technical review comments which include but are not limited to, the comments included where as composite Exhibit C (the "Comments") provided by the Town's consultants related to the CSP and Subdivision shall be satisfied and accepted by the Town and/or Town's consultants.
 - d. Copies of the Comments are attached hereto as **Composite Exhibit "C"** and incorporated herein by reference.
 - e. Unless the Town has performed a satisfactory concurrency evaluation related to the Town's ability to provide allocable potable water capacity for the Subdivision, the CSP shall not be considered complete for the purpose of providing a basis upon which a final plat may be considered for approval by the Town Commission of the Town of Dundee.
5. In the event the Town has performed a satisfactory concurrency evaluation related to the Town's ability to provide allocable potable water capacity for the Subdivision, the construction of the required infrastructure systems and/or

improvements for the Subdivision shall also be complete and accepted by the Town prior to Final Subdivision Plat approval.

6. In the event the construction of the required infrastructure systems and/or improvements for the Subdivision are not complete and accepted by the Town, Final Subdivision Plat approval for the Subdivision shall be conditioned upon the following: (a) a developer's agreement or development agreement shall be approved by the Town Commission, executed by the parties, and recorded in the public records in and for Polk County, Florida; and (b) when approved by the Town, the applicant shall provide the Town with *adequate performance security* and *adequate defect security* pursuant to the terms and provisions of a developer's agreement or development agreement.

For purposes of this Resolution, "*adequate performance security*" and "*adequate defect security*" shall mean, at a minimum, as follows:

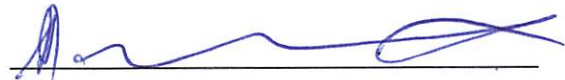
- (a) *Adequate performance security* shall be satisfactory in form to the Town Attorney and the Town Engineer and the Town's planning staff and be in an amount equal to one hundred and twenty-five (125%) percent of the developer's contract for the work that remains uncompleted and not accepted at the time of final plat or final site development plan approval, as certified in writing by the engineer of record, subject to the approval by the Town's planning staff and the Town Engineer. No more than fifty percent (50%) of the value of the total required improvements for each phase of the Development shall be considered for bonding and/or letter of credit given hereunder. Subject to the terms of the applicable agreement, the performance security shall be released by the Town when all private improvements are installed, inspected and approved and when all public improvements are installed, inspected and accepted. When providing a bond for performance security, the bonding company shall have a B+ or better rating in accordance with "Best Bond Book." In the case of a letter of credit, provisions for drawdowns from the letter of credit as improvements are completed and accepted shall accompany the surety. The letter of credit shall have a duration of twenty-four (24) months; and
- (b) *Adequate defect security* shall warrant and guarantee the materials and workmanship of all infrastructure and infrastructure improvements within the Subdivision that are dedicated to the public, including streets, curb and gutter, sidewalks, potable water distribution system, sanitary sewer collection and transmission system, reclaimed water system and stormwater management system. This guarantee shall be for an amount equal to ten (10) percent (%) of the actual construction costs of improvements and/or other adequate written assurances which are set forth in an applicable developer's agreement or development agreement for the purpose of correcting any construction, design or material defects or failures within public rights-of-way or easements in the development or required off-site improvements. The

form and manner of execution of such securities shall be subject to the approval of the Town Attorney. The effective period for such security shall be one (1) year and thirty (30) days following the Town's acceptance of the installed improvements. Upon default, the Town may exercise its rights under the security instrument, upon ten (10) days' written notice by certified mail to the parties to the instrument or as otherwise set forth in an applicable agreement.

7. The Town Commission of the Town of Dundee authorizes the Town Manager to take all necessary further actions related to entering into a Developer's Agreement with the Applicant and/or Applicant's authorized designee with regard to the terms and conditions set forth by this Resolution and the Town's conditional approval of the Shores of lake Dell Certified Subdivision Plan.
8. The provisions of this Resolution are severable. If any word, sentence, clause, phrase or provision of this Resolution for any reason is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then all remaining provisions or portions of this Resolution shall remain in full force and effect.
9. The correction of typographical and/or scrivener's errors in this Resolution which do not affect the intent of this Resolution may be authorized by the Town Manager or her/his designee, without need of consideration by the Town Commission, by filing a corrected or recodified copy of same with the Town Clerk.
10. This Resolution shall take effect immediately upon passage.

INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, this 8th day of November, 2022.

TOWN OF DUNDEE



Mayor – Sam Pennant

ATTEST:


Town Clerk – Jenn Garcia

Approved as to form:

Resolution 22-52
Shores of Lake Dell Certified Subdivision Plan (CSP)
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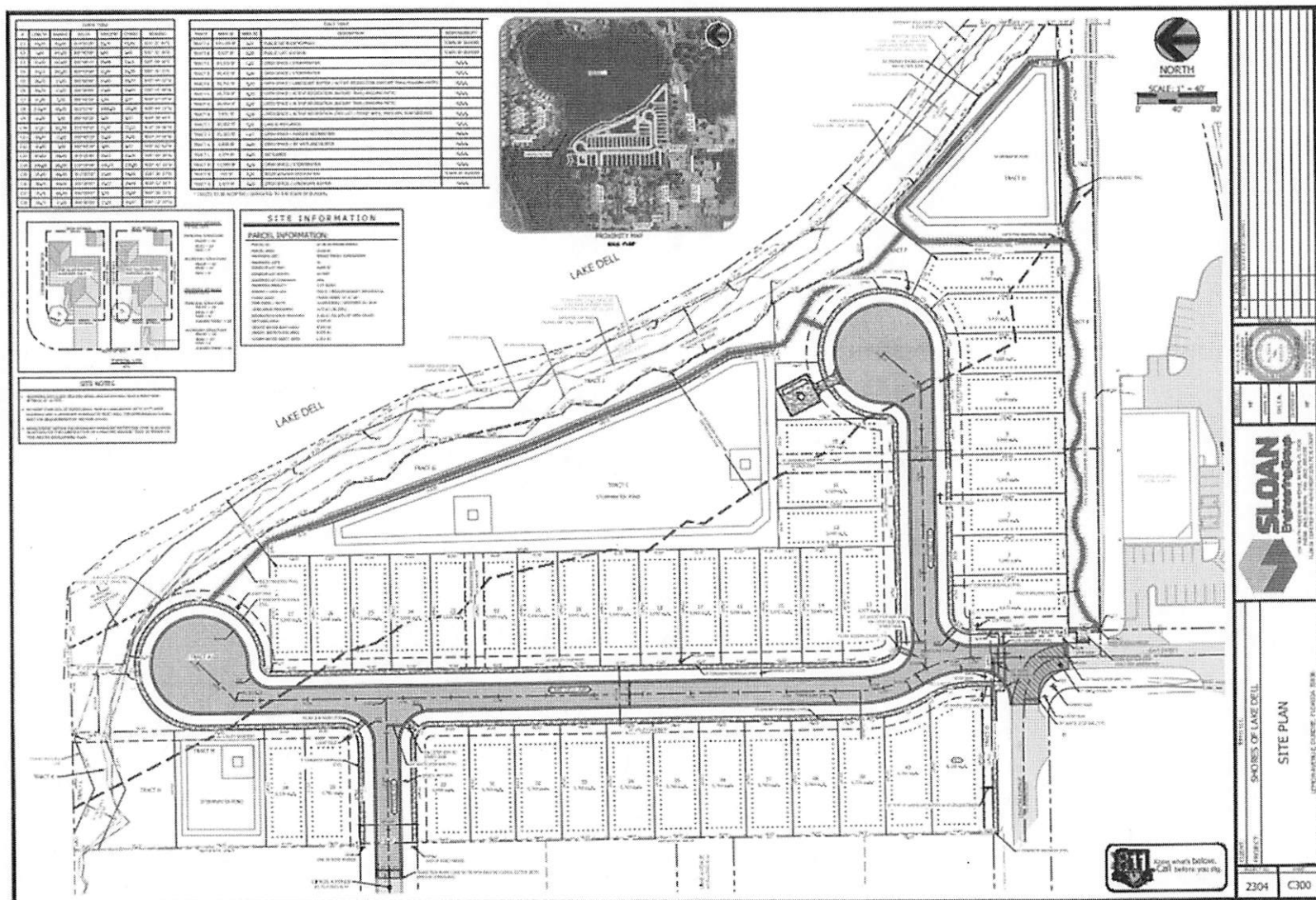


Town Attorney - Frederick J. Murphy, Jr.

RESOLUTION 22-52 EXHIBIT A LOCATION MAP



**RESOLUTION 22-52 EXHIBIT B
CERTIFIED SUBDIVISION PLAN**



RESOLUTION 22-52 EXHIBIT C
ORDINANCE 21-19 EXHIBIT D

ORDINANCE NO. 21-19
Page 8

Ordinance 21-19
Exhibit "D"
Shores of Lake Dell PUD Special Conditions

1. The Master Development Plan includes potential impacts to the secondary shoreline protection zone. If at the time of subdivision plan review, the project includes impacts in the secondary shoreline protection zone, the applicant will complete a mitigation plan consistent with Section 5.04.06, which may include the enhancement of Lake Dell's shoreline.