

**PREPARED BY AND RETURN TO:**

Thomas J. Wilkes  
GrayRobinson  
301 East Pine Street, Suite 1400  
Orlando, FL 32801  
(407) 843-8880

**AGREEMENT**  
*for*  
**VOLUNTARY ANNEXATION,  
POTABLE-WATER SERVICE,  
and  
FUTURE WASTEWATER SERVICE**

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**Town of Howey-in-the-Hills, Florida**  
*and*  
**Blue Sky Capital Group, LLC**

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**Cedar Creek Project**

***THIS AGREEMENT*** (“Agreement”) is entered into by the **TOWN OF HOWEY-IN-THE-HILLS, FLORIDA**, a municipal corporation organized and operating under the constitution and laws of the State of Florida and its Charter (“**Town**”), and **BLUE SKY CAPITAL GROUP, LLC**, a Florida limited liability company, the address for which is 103 Commerce Street, Suite 103, Lake Mary, Florida 32746 (“**Owner**”).

***PREMISES***

1. The Owner holds fee simple title to the land described in **Exhibit "A"** ("**Property**").
2. The Property is located currently in unincorporated Lake County and is **being** zoned by Lake County for **Single Family Residential** uses.
3. Pursuant to law the Town has enacted an ordinance establishing a water- and wastewater-service area (“**Utility Service Area**”) and authorizing

extension of potable-water and wastewater service beyond the corporate limits of the Town.

4. The Town is willing to allow the extension of its water and wastewater utilities and to supply water and wastewater service to property owners and users outside the Town's current boundaries and within the Utility Service Area, but only if the owners of properties benefitting from the utility services first petition the Town Council for annexation of the benefitting properties to the Town.

5. The Town is ready and willing to extend its boundaries to include the Property, subject to the Owner, on behalf of itself and all its successors in interest, petitioning the Town Council to annex the Property to the Town at such time the Property becomes contiguous to the Town's boundaries and is eligible otherwise under Florida law for annexation.

6. On behalf of itself and all its successors in interest in the Property, the Owner herewith petitions the Town to annex the Property to the Town in return for the Town allowing the extension of its water and wastewater utilities to the Property.

***ACCORDINGLY***, the parties agree as follows:

### **SECTION 1. PREMISES.**

The above premises are true and correct and form a material part of this Agreement.

### **SECTION 2. REPRESENTATION OF OWNERSHIP.**

The Owner represents and warrants to the Town that the Owner holds fee simple title to the Property and has the right legally to enter into this Agreement.

### **SECTION 3. AUTHORITY.**

a. This Agreement is entered into under the authority of the Florida Constitution, including specifically its Article VIII, Section 2(b), the powers conferred upon municipalities by Chapters 163, 166, 171, and 180 of Florida Statutes, and the Town's Charter and Code of Ordinances.

b. The parties expressly stipulate that this Agreement does not constitute a “development agreement” under the Florida Local Government Development Agreement Act, Section 163.3220, *et. seq.*, Florida Statutes, and the provisions of that act do not govern this Agreement.

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**ANNEXATION**

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**SECTION 4. PETITION AND CONSENT TO ANNEXATION.**

a. As consideration for the Town providing and agreeing to provide water and wastewater service to the Property, the Owner herewith petitions the Town Council for the Town under section 171.041 of Florida Statutes (2024) (or its successor legislation), on behalf of both the Owner itself and all the Owner’s successors in interest in the Property, that the Property be annexed to the Town immediately upon the Property becoming contiguous to the Town’s boundary, all in accordance with Florida law and all without further action, petition, consent, or approval of the Owner or its successors in interest.

b. This petition for and consent to annexation of the Property to the Town is irrevocable as long as the Town provides or is willing to provide water or wastewater service, or both, to the Property.

c. The parties expressly agree that (i) under section 171.041 of Florida Statutes (2024) (or a successor statute), this section 3 of this Agreement constitutes the legally complete and sufficient petition by the Owner and its successors for voluntary annexation of the Property to the Town and that (ii) no further consent or petition or approval of any type is or will be needed as a condition to the Town undertaking the annexation. At such time as the Town undertakes the annexation, however, the Owner and all its successors in interest in the Property must execute any and all such certificates, consents, approvals, and other instruments as the Town may reasonably request and as may be necessary or reasonably useful to completion of the annexation.

d. This petition for annexation of the Property is material consideration in return for the Town’s obligations under this Agreement. But for this petition

and consent for annexation of the Property the Town would not be willing to enter into this Agreement.

**SECTION 5. UTILITY SERVICE AREA OF TOWN.**

On behalf of itself and all its successors in interest in the Property the Owner acknowledges, agrees, and states its preference that the Town is to be the exclusive provider of water- and wastewater-utility service to the Property. The Owner may not engage in the business of providing water- or wastewater-utility service to the Property and may not contract with any other entity or person to provide water or wastewater service to the Property so long as the Town (or its successor in interest) provides or is willing to provide water- and wastewater-utility service, or either, to the Property.

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**POTABLE-WATER UTILITY SERVICE**  
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**SECTION 6. TOWN TO PROVIDE POTABLE-WATER SERVICE**

a. Upon the terms and conditions in this Agreement, and in accordance with the Town's codes, ordinances, rules, regulations, and technical standards and requirements, the Town shall provide and shall have the exclusive right to provide to the Property potable-water utility service as set forth herein.

b. As between the Town and the Owner, the Owner is entitled to reserve potable-water utility service for up to **105** single-family dwelling units or “Equivalent Residential Units” (“ERU’s”). The Owner’s right to ERU’s of utility capacity will vest only upon the Owner’s payment in full of the Town’s one-time initial capital and connection charges for its potable-water utility system. Upon such payment in full, the Town must set aside and deem reserved for the Owner the water-utility capacities for which payment is made. At its option, the Owner may pay the capital and connection charges for some, not all, of its projected dwelling units, in which case its right to service will then vest for those units for which full payment is made.

c. Vesting of the Owner's right to capacity will occur upon payment in full of the capital and connection charges in effect at the time of the payment. If between the time of such payment and the application by the Owner for a building permit for a dwelling unit the Town increases the amount of its one-time capital and/or connection charges, the building permit will be issued only upon payment of the amount of the increase(s).

## **SECTION 7. DESIGN, CONSTRUCTION, ACCEPTANCE, AND CONVEYANCE OF WATER-UTILITY IMPROVEMENTS**

The Owner's right to connect the Property to the Town's water and wastewater utilities is conditioned on the Owner:

1. Preparing at no cost to the Town the plans and specifications for all lines, pumps, valves, lift stations, and other equipment, facilities, and improvements required for the Town's water and wastewater utilities to serve the Property,
2. Installing and constructing the utility improvements in accordance with plans and specifications approved by the Town,
3. Installing and constructing all such improvements at no cost to the Town, and
4. Conveying all such improvements to the Town by written instrument(s) in form and substance acceptable to the Town Manager.

Upon completion of the improvements the Owner shall apply in writing to the Town Manager for acceptance of the improvements. Upon the Town's acceptance of the improvements:

- a) all warranties and guarantees from contractors and suppliers shall be assigned and delivered by the Owner to the Town, and
- b) All construction guarantees from the Owner to the Town, such as bonds, letters of credit, and other sureties issued in favor of the Town, shall then be released by the Town.

## **SECTION 8. INSTALLATION OF UTILITY IMPROVEMENTS**

The Owner must design, permit, construct, and install, all at no cost to the Town, all potable-water lines, pipes, valves, pumps, and other fittings, equipment, and improvements required both on and off the Property to provide the Property and the future improvements thereon with water service, connecting the Property to the existing Town water-utilities system.

The Town has the right to review, approve and permit, as appropriate, the water-utility improvements necessary for the Owner to connect the Property to the Town's water utility in a manner consistent with the Town's land-development and utility regulations. Upon completion of the water-utility improvements, both on and off the Property, all water-utility improvements on the Property and within Town rights-of-way and utility easements must be conveyed to the Town in form and substance acceptable to the Town Attorney.

All onsite water-utility improvements are to be conveyed or otherwise dedicated to the Town in form and substance approved by the Town Attorney. All connections to existing Town water utilities shall be made at no cost to the Town.

## **SECTION 9. APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS.**

The engineering design and plans and specifications of all water-utility improvements to be transferred to and owned and operated by the Town are subject to prior approval by the Town Manager. The Owner's registered engineer of record shall incorporate all applicable standards and specifications of the Town into the engineering design, plans, and specifications for the water-utility improvements. The Town shall provide reasonable assistance to the Owner's engineers as would be customary for a utility provider in a comparable design and construction of utility improvements. All construction plans and specifications must be approved by the Town before construction is commenced. The Owner must obtain all federal, state, county, town and other permits required for construction, acceptance and operation of the improvements.

## **SECTION 10. ACCESS TO CONSTRUCTION; APPROVAL OF WORK AND MATERIALS.**

From time to time the Town may inspect the construction and installation of the water-utility improvements to ensure compliance with the approved plans and specifications and shall retain the power of final approval of all work and

materials. In connection with its inspections the Town does not accept and shall not be assigned liability of any type or nature.

**SECTION 11. TESTING DURING AND AFTER CONSTRUCTION.**

The Owner must require its registered engineer to supervise construction and to certify, under seal, to the Town Manager that the systems are installed in accordance with the approved design plans and specifications. The Owner shall conduct at no expense to the Town all tests required by the Town to verify the improvements are constructed in accordance with the approved engineering plans and specifications and all other Town requirements.

**SECTION 12. CONVEYANCE OF EASEMENTS AND IMPROVEMENTS.**

The Owner shall grant to the Town, at no expense to the Town, adequate transferable easements for all water-utility improvements and related appurtenances as may be deemed necessary by the Town Manager and all in form and substance acceptable to the Town Attorney.

**SECTION 13. INSTRUMENTS OF CONVEYANCE OF UTILITY IMPROVEMENTS.**

Upon completion of construction and installation and acceptance by the Town of the water-utility improvements, the Owner must transfer to the Town title to all the improvements in form and substance approved by the Town Attorney. The Owner shall provide to the Town a copy of the recorded plat, a bill of sale or bills of sale for the improvements as approved by the Town Attorney, easement grants as approved by the Town Attorney, and other evidences of conveyance required by the Town Manager and as approved by the Town Attorney. Mortgagees, if any, holding prior liens on any part of the Property shall be required to release such liens, subordinate their positions, join in a conveyance, grant or dedication, or give to the Town assurance by way of a “non-disturbance agreement” in form and substance acceptable to the Town Attorney that, in the event of foreclosure, the mortgagee will recognize the utility ownership and easement rights of the Town.

**SECTION 14. ADDITIONAL DOCUMENTS TO BE PROVIDED BY OWNER.**

In addition to the documents of title to the utility improvements, the Owner must provide to the Town Manager the following documents prior to the Town’s acceptance of the improvements, all as approved by the Town Attorney:

- i. as-built drawings of utility improvements, (one hard copy signed and sealed, and one PDF) furnished one week prior to final inspection;
- ii. certification by the Owner's engineer's of costs (schedule of values) for on-site and off-site construction and installation;
- iii. letters of acceptance from the appropriate regulatory agency or agencies for the systems;
- iv. certification by the design engineer that the system was constructed as designed; and
- v. related right-of-way use permits and other permits and licenses obtained from applicable government agencies.

All such documents must be under the seal of an engineer registered in Florida, as required by the Town Manager.

#### **SECTION 15. CONNECTIONS SUBJECT TO RATES AND FEES.**

All connections to the Town's water and wastewater utilities shall be subject to the continuing operating rules and regulations of the Town, including without limitation the periodic payment of water and wastewater charges and fees, as provided in the Town's rate schedules, and payment of all deposits, meter charges and other fees, rates and charges, including development fees. The rates charged by the Town for water and wastewater service shall be in accordance with its rate schedules, which are subject to change from time-to-time.

#### **SECTION 16. OWNER TO OBTAIN PERMITS.**

The Owner shall obtain, at ~~not~~ **no** cost to the Town, all governmental approvals, inspections, certificates, licenses and permits necessary for the design, routing, construction, connection and use of the water utilities to be installed under this Agreement. The Town shall render assistance to the Owner in obtaining these approvals, licenses and permits if and as requested and as would be customary practice for a utility provider.

#### **SECTION 17. SERVICING OTHER PROPERTIES.**

The Town reserves the right to service other properties through the water-utility improvements constructed, installed and conveyed by the Owner. Nothing in this Agreement prohibits the Town from extending its water or wastewater utilities to any other area, properties, or customers. If the Town requests that the Owner



increase the size or capacity of water- or wastewater-utility improvements to be installed by Owner under this Agreement in order to serve other properties, the Town shall reimburse Owner the increased cost incurred resulting from the increase in capacity of such improvements.

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**WASTEWATER UTILITY SERVICE**

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**Non Applicable at this time**  
[ *to be added* ]

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**MISCELLANEOUS PROVISIONS**

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**SECTION 18. DEFAULT BY OWNER.** The Owner’s failure or refusal to carry out a provision of this Agreement relieves the Town of its obligation to provide water or wastewater service, or both, to the Property.

**SECTION 19. APPLICATION FOR SERVICE.** Neither the Owner nor any successor owner or occupant (consumer) of the Property may connect a dwelling unit or other improvement to the Town’s utilities until application has been made to the Town by an appropriate party and approval for such connection has been granted. Connections shall occur only in a manner approved by the Town.

**SECTION 20. RELOCATION OF UTILITY IMPROVEMENTS.** Relocation of utility improvements required for the Owner's convenience or necessity shall be undertaken only at the Owner's expense, provided such relocation can be accomplished without adverse impact on any other part of the utility improvements or other consumers.

**SECTION 21. DISPUTES.**

a. In the event that the Town or the Owner bring an action to enforce this Agreement by court proceedings or otherwise, the parties shall bear their own attorney fees at all levels. Venue for litigation of all disputes must be in the Circuit Court for the Fifth Judicial Circuit of Florida, in Lake County, Florida.

b. In disputes involving compliance with this Agreement, each party shall have all equitable remedies allowed under Florida law, including (but not limited to) declaratory judgment, injunctive relief without necessity of showing irreparable harm, and specific performance. Neither party shall be liable to the other for, and each party releases the other from, liability resulting in direct, indirect, incidental, special, consequential, and punitive damages arising out to the performance of or default under this Agreement, whether based on contract, warranty, or any other legal theory.

c. The Owner shall defend, indemnify, and hold harmless the Town and its officers and employees from all liens, claims, demands, costs (including attorneys' fees and costs), expenses, damages, losses, and causes of action for damages ("Losses") because of injury to persons or damage to or loss of property arising from or related to the design, construction, or installation of the utility improvements under this Agreement or otherwise caused by the acts or omissions of the Owner or its officers, managers, employees, agents, contractors or subcontractors, vendors, suppliers or other person acting under its request, control, or direction, and from defect in the design or installation of the utility improvements under this Agreement, except to the extent such Losses are caused by the gross negligence or willful misconduct of the Town or its officers or employees.

d. No failure or delay on the part of either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of either party of any right, power, or privilege hereunder operate as a waiver of any other right, power, or privilege hereunder, not will any single or partial

exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

e. This section will survive the expiration or earlier termination of this Agreement.

**SECTION 22. ASSIGNMENT.**

This Agreement may not be assigned by the Owner without the prior written consent of the Town, which shall not be unreasonably withheld.

**SECTION 24. NOTICE; PROPER FORM.**

A notice to be given shall be in writing and shall be sent by certified mail, return receipt requested, to the party being noticed at the following addresses:

AS TO TOWN : Town of Howey-in-the-Hills, Florida  
101 N. Palm Avenue  
Howey-in-the-Hills, FL 34737  
Attn: Town Manager

COPY TO: Thomas J. Wilkes, Town Attorney  
301 East Pine Street, Suite 1400  
Orlando, FL 32801

AS TO OWNER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 25. TIME OF THE ESSENCE.**

Time is hereby made of the essence of this Agreement in all respects.

**SECTION 26. COMPLETE AGREEMENT.**

This Agreement constitutes the entire agreement of the parties and expressly supersedes all negotiations, previous agreements or representations, whether verbal or written. This Agreement may not be amended except by a writing executed by

both parties hereto in a manner equal in dignity to the execution of this Agreement and with such writing approved by vote of the Town Council. Documents for the implementation of this Agreement, including all permits, engineering design and construction contracts, and plans and specifications for the utility facilities as and when approved and filed with the Town are hereby incorporated herein by reference.

#### **SECTION 27. BINDING EFFECT.**

This Agreement may be recorded by the Town at the Town's expense, in the Public Records of Polk County, Florida. This Agreement shall inure to the benefit of and be binding upon the successors to the parties in interest in the Property and shall constitute a covenant running with the Property. By acceptance of a conveyance, grant, devise, lease, mortgage, or other interest in the Property each grantee, devisee, lessee, mortgagee, and other successor in interest to the Owner, and all parties claiming by, through, or under each such person or entity, agree to be bound by all provisions of this Agreement.

#### **SECTION 28. DISCLAIMER OF THIRD PARTY BENEFICIARIES.**

This Agreement is for the sole benefit of the parties hereto, and no right of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement either express or implied is intended or shall be construed to confer upon or give any person, corporation or governmental entity other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

#### **SECTION 29. REIMBURSEMENT OF TOWN EXPENDITURES.**

The parties expressly agree that this Agreement is entered into by the parties at the request and for the benefit of the Owner in the pursuit of its development business. The Town has incurred and will incur substantial expenses that, but for its accommodation of the Owner's business interests, the Town would not incur. To avoid those expenses in effect being paid by the general body of Town taxpayers, the Owner must reimburse the Town for all its expenses incurred directly in the drafting, negotiation, and administration of this Agreement, including its review of engineering plans and specifications and its inspection of construction and

installation of utility improvements hereunder. The reimbursement shall be paid by the Owner no later than 30 days after its receipt of an invoice from the Town, showing reasonable itemization of the expenses incurred by the Town and receipts verifying the expenses.

*[ SIGNATURE PAGES FOLLOW ]*

WHEREFORE, the parties set their hand and seal as of the dates shown below:

**BLUE SKY CAPITAL GROUP, LLC**

by: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Print: \_\_\_\_\_  
Witness: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Witness: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF FLORIDA        )  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of Blue Sky Capital Group, LLC, and they acknowledged executing the same freely and voluntarily and they are personally known to me or provided the following for identification \_\_\_\_\_. Sworn and subscribed before me, by said persons by means of { } physical presence or { } online notarization on the \_\_\_ day of \_\_\_\_\_, 2024, the said persons did take an oath and were first duly sworn by me, on oath, said persons, further, deposing and saying that they have read the foregoing and that the statements and allegations contained herein are true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_ day of \_\_\_\_\_, 2024.

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_

**TOWN OF HOWEY-IN-THE-HILLS,  
FLORIDA**

by: its Town Council

by: \_\_\_\_\_  
Hon. Martha MacFarlane, Mayor

**ATTEST:**

\_\_\_\_\_  
John Brock, Town Clerk

**APPROVED AS TO FORM AND LEGALITY:**  
(for the use and reliance of the Town only)

\_\_\_\_\_  
Thomas J. Wilkes, Town Attorney

**ACKNOWLEDGMENT**

**STATE OF FLORIDA     )**  
**COUNTY OF LAKE        )**

**I HEREBY CERTIFY** that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Martha MacFarlane, as Mayor of the Town of Howey-in-the-Hills, Florida, and she acknowledged executing the same freely and voluntarily. She is personally known to me.

Sworn and subscribed before me, by said persons by means of { } physical presence or { } online notarization on the \_\_ day of \_\_\_\_\_, 2024, the said persons did take an oath and were first duly sworn by me, on oath, said persons, further, deposing and saying that they have read the foregoing and that the statements and allegations contained herein are true and correct.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_ day of \_\_\_\_\_, 2024.

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_

**EXHIBIT A**  
**THE PROPERTY**

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*[ insert legal description ]*



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