

## **DEVELOPER'S AGREEMENT**

### **with Notice of Proximity and Notice to Buyers/Renters (Rev. 11-25-20)**

This Developer's Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Windham Development, Inc., a Michigan corporation authorized to do business in Florida ("Developer"), SSD Land Holdings, LLC, a Limited Liability Company, organized under the laws of the State of Florida ("Owner") and the City of Venice ("City"), a municipal corporation organized under the laws of the State of Florida.

### **RECITALS**

WHEREAS, SSD Land Holdings, LLC is the owner of the Property (defined below) and Developer has a contract to purchase the Property, now known as Murphy Oaks, more particularly described in Exhibit "A" attached hereto (the "Property") and through its agent, seeks to rezone the Property to the Planned Unit Development ("PUD") zoning district; and,

WHEREAS, Developer plans to develop the Property; and,

WHEREAS, for PUD zoned property, Section 86-130(k) requires that all required agreements thereunder and evidence of unified control shall be examined by the city attorney, and no PUD shall be adopted without a certification by the city attorney that such agreements and evidence of unified control meet the requirements of this chapter.

NOW THEREFORE, for and in consideration of the premises and in reliance on the mutual promises, covenants, undertakings, recitals and other matters contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

**1. Land Subject to the Agreement.** The Property subject to this Agreement consists of approximately 39.6 acres and is more particularly described in Exhibit "A" of this Agreement

**2. Development According to Code.** Developer agrees to proceed with the proposed development according to the applicable provisions of the Venice Land Development Code, and the conditions set forth in the approval for the development. Developer agrees the approval includes conditions and development depicted in the Binding Master Plan for Murphy Oaks, dated October 10, 2020 (including all pages attached and conditions described therein) submitted for approval of the PUD zoning (the "Binding Master Plan"), as well as all conditions imposed by the ordinance approving the rezoning.

**3. Development Arising out of a Master Plan.** Developer agrees to provide agreements, contracts, deed restrictions, and sureties, as necessary, acceptable to the City Council for completion of development according to the Binding Master Plan approved at the time of acceptance of the area for PUD zoning and for continuing operation and maintenance of such areas, functions and facilities as are not to be provided, operated or maintained at public expense.

**4. Concurrency.** The Property has been deemed concurrent with regard to all respective categories, except for storm water under the City of Venice Concurrency Management Ordinance and public schools, subject to the terms and conditions contained in this Agreement.

**5. Additional Off-Site Improvements.** In lieu of the “Extraordinary Mitigation Fee Extraction” required by the Section 6(B) of the Pre-Annexation Agreement dated February 12, 2008, Developer will construct certain off-site improvements not otherwise required by the land development code or comprehensive plan (subject to approval by Sarasota County as necessary) to approximately the same value (estimated at \$250,000.00) to include:

- a. Eastbound to southbound right hand turn lane from Edmondson Road to Auburn Road. If construction of the eastbound to southbound right hand turn lane impacts the existing multi-use path on the south side of Edmondson Road, Developer will restore the multi-use path to existing conditions.
- b. Right and left hand turn lanes from Auburn to Edmonson (as depicted). ; Developer will incorporate on-road bicycle lane(s).
- c. The left hand turn lane from Auburn into the project. Installation of the left hand turn lane shall not impede on-road bicycle lane(s) or sidewalks.

Developer will apply to Sarasota County or the City, as necessary, for approval of these improvements prior to, or concurrently with, horizontal construction plan applications for the project, and, subject to timely approval by Sarasota County, as necessary, will be completed prior to the issuance of the first Certificate of Occupancy.

Developer agrees the Property will benefit from these off-site improvements and the City agrees that the Developer’s construction of these off-site improvements is full and adequate compensation for its right to collect the Extraordinary Mitigation Fee under the Pre-Annexation Agreement.

The City, Owner, and Developer agree this Developer’s Agreement is a novation and termination of those provisions of Section 6(B) of the Pre-Annexation Agreement providing for payment of an “Extraordinary Mitigation Fee Extraction” in the amount of \$1,829.00 (adjusted annually) for each equivalent dwelling unit constructed on the Property.

**6. Additional provisions in the declarations and covenants for the subdivision.** Developer will submit deed restrictions for the Property to the City for review prior to the application for final plat approval, as required by Section 86-232(4) of the Land Development Code. The deed restrictions shall include:

- a. A Notice of Proximity for I-75, Fox Lea Farm and the Fox Lea Operations (which also will be recorded in the public records separately), as set forth in Exhibit B. The deed restrictions will require every purchaser, as well as all renters and/or sublessors of every purchaser, to execute an acknowledgement of the Notice of Proximity, and copies of the acknowledgements will be maintained by the homeowners’ association and provided to Fox Lea Farm and the City upon request.
- b. The following restrictions to protect Fox Lea Farm:
  - i. The use of fireworks, as defined in Florida Statutes, are prohibited. [Note- this is already prohibited by Florida Statutes].

ii. The launching or operation of drones or radio-controlled aircraft from the Property which fly over Fox Lea Farm is prohibited, unless permission is received in writing from Fox Lea Farm. [Note – local regulation of such activities is currently preempted by statute].

iii. The burning of trash or yard waste, and other outdoor burning such as bonfires, is prohibited, but this prohibition shall not apply to outdoor barbeques for cooking, outdoor propane heaters, or small fire pits/fire tables. [Note – burning trash or yard waste is a violation of Section 54-116 of the Sarasota County Code which applies within the municipal boundaries of the City].

## **7. Failure to Comply with the Requirements**

a. The parties shall have all rights available by law and equity to enforce this Agreement.

b. Notice of failure to comply with the requirements of this Agreement, or for any other purpose, shall be sent in writing via U.S. Mail, postage prepaid to:

Developer at:

Windham Development, Inc.,  
c/o Herbert Lawson  
36400 Woodward Ave. Suite 205  
Bloomfield Hills, Michigan 48304

Owner at:

SSD Land Holdings, LLC  
9320 13<sup>th</sup> Avenue Circle NW  
Bradenton, FL 34209  
Attn: Dr. Greg Berryman

City at:

City of Venice  
ATTN: City Manager  
401 W. Venice Avenue  
Venice, Florida 34285

c. The parties hereto recognize and agree that this Developer's Agreement shall bind the City, Windham Development, Inc., its successors and assigns, and SSD Land Holdings, LLC, its successors and assigns.

d. The parties agree that suits or actions at law arising from the provisions, performance, or breach of this Agreement shall initially be brought, for State Court jurisdiction, in Sarasota County, Florida, South County Division, and for Federal Court jurisdiction, in the U.S. District Court for the Middle District of Florida, and no other jurisdictions. This Agreement shall be constructed and interpreted under the laws of the State of Florida.

e. By execution of this Agreement, the parties certify that they have authority to make the representations and agreements contained herein.

f. This Agreement shall be constructed as written by all parties and shall not be construed more strictly against any party.

g. This Agreement, and any amendment to this Agreement, may be executed in counterparts.

**8. Duration of Agreement.** This Agreement shall be effective upon execution by the last party to this Agreement and shall continue in force until the completion of the development referenced herein, except that the obligations of the Developer under Section 6 shall be considered a land development regulation or condition, and shall remain in force in perpetuity.

**9. Amendment of Agreement.** This Agreement may only be amended in writing by mutual consent of the parties or their successors in interest.

**10. Successors and Assigns.** This Agreement shall inure to the benefit of and be obligatory upon the parties hereto and their respective successors and assigns. The terms of Sections 5 and 6 shall be a covenant running with the land, binding on the Property and enforceable by the City.

**IN WITNESS WHEREOF, each of the** City, Owner, and Developer have executed this Agreement, to be effective on the on the date first above written.

[Agreement Ends, Execution to follow]

**Execution by Windham Development, Inc.**

Witness:

Windham Development, Inc.,  
a Michigan company authorized  
to do business in the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_, for Windham  
Development, Inc., for and on behalf of whom this instrument was executed, , who is \_\_\_\_  
personally known to me or \_\_\_\_ produced \_\_\_\_\_ as  
identification.

\_\_\_\_\_  
Notary Public State of Florida  
Typed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

**Execution by SSD Land Holdings, LLC**

Witness:

SSD Land Holdings, LLC,  
A Florida Limited Liability Company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. Greg Berryman  
As its Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by Dr. Greg Berryman as Manager for SSD Land Holdings, LLC, for and on behalf of whom this  
instrument was executed, who is \_\_\_\_ personally known to me or \_\_\_\_ produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public State of Florida  
Typed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

**Execution by City of Venice**

This Agreement is approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

City of Venice

By: \_\_\_\_\_  
Ron Feinsod, Mayor

ATTEST

\_\_\_\_\_  
Lori Stelzer, MMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Kelly M. Fernandez, City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION**

ALL THAT PART OF TRACTS 226, 227, 228, 230, 231 AND 232, NORTH VENICE FARMS, AS RECORDED IN PLAT BOOK, PAGE 203, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA, LYING AND BEING IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 19 EAST, SARASOTA COUNTY, FLORIDA AND BEING MORE PRACTICALLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 19 EAST, SARASOTA COUNTY, FLORIDA; THENCE SOUTH 00 DEGREES 22 MINUTES 05 SECONDS WEST, ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 60.00 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 34 SECONDS EAST, A DISTANCE 33.00 FEET TO THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF NORTH AUBAN ROAD AND THE SOUTHERLY RIGHT OF WAY LINE OF BORDER ROAD, AS NOW ESTABLISHED, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE OF BORDER ROAD THE FOLLOWING THREE COURSES, SOUTH 89 DEGREES 53 MINUTE S 34 SECONDS EAST, A DISTANCE OF 348.70 FEET; THENCE SOUTH 77 DEGREES 47 MINUTES 53 SECONDS EAST, A DISTANCE OF 286.36 FEET; THENCE SOUTH 89 DEGREES 53 MINUTES 34 SECONDS EAST, A DISTANCE OF 383.11 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 75, ALSO KNOWN AS STATE ROAD 93, AS NOW ESTABLISHED; THENCE SOUTH 40 DEGREES 53 MINUTES 29 SECONDS EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 952.06 FEET TO THE NORTHERLY CORNER OF OFFICIAL RECORDS INSTRUMENT NUMBER 2008036086, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA; THENCE SOUTH 00 DEGREES 09 MINUTES 58 SECONDS EAST, ALONG THE WEST LINE OF SAID OFFICIAL RECORDS INSTRUMENT NUMBER 2008036086, A DISTANCE OF 453.46 FEET TO THE SOUTH LINE OF SAID TRACTS 230, 231 AND 232; THENCE NORTH 89 DEGREES 51 MINUTES 57 SECONDS WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1644.18 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 230; THENCE NORTH 00 DEGREES 22 MINUTES 05 SECONDS EAST, ALONG THE WEST LINE OF TRACTS 230 AND 226, A DISTANCE OF 1231.24 FEET TO THE POINT OF BEGINNING. CONTAINING 39.63 ACRES, MORE OR LESS.



**Exhibit B**  
**Notice of Proximity**  
**Interstate 75 and Adjacent Property Owner Use and Operations**

The purpose of this Notice is to provide buyers in the Murphy Oaks development with knowledge of the impacts from Interstate 75, which is adjacent to the development, and of the established use and operations existing on the property immediately adjacent to the development's southern border, currently known as "Fox Lea Farm."

By signing this Notice, buyers acknowledge the location of Interstate 75 adjacent to the development, and that continuous noise from Interstate 75 will be present and may be heard outside or inside homes in the development.

By signing this Notice, buyers acknowledge the extent of the use and operations existing on Fox Lea Farm, as described in detail below (*See*, "Description"). Buyers understand that said Description is illustrative in nature and does not intend to limit or prescribe the uses and operation set forth therein. In addition, buyers further acknowledge that said use and operations may increase in intensity and duration at any time in the future. Should said use and operations have increased by the time of buyers' signature, this Notice and Description herein shall be deemed inclusive of all such increases. Buyers' signature hereto shall affirm their knowledge, as well as the knowledge of any renters and/or sublessors, and residents of or visitors to buyers' home and premises of the entire Murphy Oaks development. Buyers shall provide all renters and/or sublessors with a copy of this Notice and require all renters and/or sublessors to sign the same as part of their rental agreement.

Description:

Located at the address of 800 North Auburn Road, Venice, FL 34292, Fox Lea Farm, Inc., owns and operates the business established on the property ("Fox Lea Farm"). Fox Lea Farm is immediately adjacent to the southern border of the Murphy Oaks development. Fox Lea Drive is the entrance and exit to Fox Lea Farm; it is the dirt road running along the shared border between Murphy Oaks and Fox Lea Farm.

Fox Lea Farm is a privately-owned, nationally-recognized horse show facility, which has been in operation since the early 1980's. The nature of Fox Lea Farm's business operations include, but are not limited to, the following activities:

- Hosting a variety of large-scale horse shows, which attract national and international competitors.
- Equestrian activities, such as training, teaching, and holding horse-riding camps.
- Hosting fundraisers and other events that may use vendors, bands, videos, and various attractions.

- Boarding, grooming, maintaining, and providing temporary housing for horses and other animals.
- Maintaining the grounds, competition rinks, and various equipment, structures and facilities thereon.
- Maintaining offices for the business operation and all activities related thereto.
- Providing R.V. space and other accommodations for grooms, owners, riders and other associated individuals.

Fox Lea Farm operates year-round, during the weekdays and weekends, early morning through late night if not into the next day. Its operations can be characterized as twenty-four (24) hours a day, seven (7) days a week.

Fox Lea Farm's horse shows alone cover an average of forty-two (42) weeks per calendar year. Shows range from three (3) days to seven (7) days, which does not account for preparation, clean-up and maintenance. Fox Lea Farm has plan to expand its operations to include all fifty two (52) weeks of the calendar year.

The variety of activities occurring on Fox Lea Farm produce impacts such as noise, light, dust, smells and traffic. As Fox Lea Farm's business operations evolve and grow, existing impacts will increase, and many new and additional impacts may also occur.

At a minimum, operations involve use of loud speakers, stadium lights, scoreboards, music, as well as various video and audio attractions. Large horse-trailers, RVs, and trucks drive up and down Fox Lea Drive, all which kick up enormous amounts of dust that scatters at great distances. In addition to routine traffic from employees, grounds and stable keepers, visitors, vendors and riders, Fox Lea Farm's shows and events attract hundreds of spectators and competitors per show/event day, all who enter and exit via Fox Lea Drive. Inherent to the keeping of livestock and large animals, Fox Lea Farm's operations produce unpleasant smells. Unique to its equestrian activities, Fox Lea Farm requires use of a massive amount of water, much of which is applied to its grounds daily.

#### Protecting the Safety of Riders and Horses

Fox Lea Farm's operations require the utmost attention to and prioritization of rider and animal safety. Equestrian activities are extremely sensitive to their surroundings. Consequently, Fox Lea Farm goes to great lengths to ensure and maintain the safety of all persons, animals and activities on its property. Changed or unfamiliar sounds, sights, smells or conditions can severely jeopardize the safety of horses, riders and others in the matter of an instant. Therefore, all persons in the Murphy Oaks development are hereby on notice that their actions could cause personal injury and/or economic damage to Fox Lea Farm, animals and persons on the Fox Lea Farm property, and the Declaration of Restrictions and Covenants for Murphy Oaks contains specific prohibitions on outdoor burning, fireworks, outdoor amplified

music and improper use of drones to prevent harm or damage to Fox Lea Farm, its riders and patrons.

WHEREFORE, I, as buyer of property in the Murphy Oaks development, located at the address listed below, do hereby acknowledge my review and understanding of this Notice. I understand that this document is intended to be binding and may be used in a court of law. I further acknowledge that by my signature, knowledge and understanding of this Notice shall extend to all other renters, sublessors, residents, visitors and guests to said property.

IN WITNESS WHEREOF, I have set my hand and seal on this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
**Buyer Signature**

\_\_\_\_\_  
**Buyer Signature**

\_\_\_\_\_  
**Buyer Name (PRINT)**

\_\_\_\_\_  
**Buyer Name (PRINT)**

\_\_\_\_\_, VENICE, FLORIDA 34292  
**Buyer Street Address**

Witnesses:

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Name**

WHEREFORE, I, as a renter or sublessor of property in the Murphy Oaks development, located at the address listed below, do hereby acknowledge my review and understanding of this Notice. I understand that this document is intended to be binding and may be used in a court of law. I further acknowledge that by my signature, knowledge and understanding of this Notice shall extend to all other renters, sublessors, residents, visitors and guests to said property.

IN WITNESS WHEREOF, I have set my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**Renter/Sublessor Signature**

\_\_\_\_\_  
**Renter/Sublessor Signature**

\_\_\_\_\_  
**Renter/Sublessor Name (PRINT)**

\_\_\_\_\_  
**Renter/Sublessor Name (PRINT)**

\_\_\_\_\_, VENICE, FLORIDA 34292  
**Renter/Sublessor Street Address**

Witnesses:

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Witness Signature**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Name**