INFRASTRUCTURE IMPROVEMENT AGREEMENT
"Performance and Payment Bond or Equivalent"
March 2, 2025

1. AGREEMENT

Pursuant to Section 16.12 of the City of Brevard Unified Development Ordinance and G.S. 160D-702(a) and 160D-804, this Infrastructure Improvement Agreement (the "Agreement") is made by and between the City of Brevard (the "City") and Chill-Lee Corporation dba Dolly's Dairy Bar (the "Developer"). The purpose of this Agreement is to establish the performance guarantee for the deferred completion of or variance from required site improvements, to include complying with Chapter 10.7 Off-street parking area design and construction standards.

2. PERFORMANCE GUARANTEE

The Developer agrees to provide a performance guarantee to ensure the completion of the required parking lot construction as depicted on the approved site plan and permit application number: Z-25-043. The performance guarantee has been provided in one of the following forms:

Check one that applies:

A surety bond issued by a company authorized to do business in North Carolina.

A letter of credit issued by a financial institution licensed to do business in North Carolina.

An alternative form of guarantee that provides equivalent security to a surety bond or letter of credit and is valid in North Carolina.

The base cost of the guarantee shall be the full (100%) estimated cost of construction of the required improvements being deferred, as certified by a licensed design professional (architect or engineer).

3. PERFORMANCE GUARANTEE PROVISIONS

No person other than the City of Brevard, the Developer, or the entity issuing or providing the performance guarantee shall have any rights under or to the performance guarantee or its proceeds.

The performance guarantee shall be released or returned in writing by the City of Brevard upon the satisfactory completion of the specified work, as acknowledged by the City of Brevard, or by the granting of a variance by the Board of Adjustment, eliminating or reducing the requirement for complying with Chapter 10.7 of the UDO off-street parking area design and construction standards.

In the event of default, as defined in Chapter 19 of the Unified Development Ordinance, the Developer shall pay all or any portion of the bond, cash account, or funds represented by a letter of credit to the City of Brevard up to the amount specified in this Agreement. The surety or bank issuing the letter of credit shall comply with the City's demand for payment. The City, at its discretion, may use the funds to complete the specified work and shall return any unspent funds to the Developer upon completion of the work.

4. SPECIFIED WORK

The Developer agrees obtain a variance from Chapter 10.7 of the UDO or complete the following specified work within the time provided:

Construction of an off-street hard surface parking area approximately 6,000 sq ft in area as illustrated on the site plan provided by the developer and attached to permit number Z-25-043 which shall comply with Chapter 10.7 of the City of Brevard UDO. For the purpose of this agreement, the parking area shall be defined as any public or private open area or facility used for parking automobiles and other vehicles serving primary use or uses and the vehicular use area from the proposed private sidewalk at the front of the building to the future curb cuts provided by NCDOT as part of their highway improvement project, R-5799.

The City shall hold a performance guarantee in the amount of $18,500.00for the work described as estimated by a qualified engineer or architect licensed to practice in the State of North Carolina. The City shall have the right to draw on the guaranteed funds and enter the adjoining property, if necessary, to construct the parking lot in compliance with Chapter 10.7 of the UDO if the Developer does not obtain a variance from Chapter 10.7 of the UDO or complete the work by March 28, 2027. The City Manager may extend this deadline in their discretion by one year or less. Any extension

5. BINDING EFFECT

The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, legatees, successors, assigns, and any other transferee. If the terms of this Agreement are correctly understood, please sign and date below.

6. SIGNATURES

Developer

By: _____
Name: Jean P. Lee
Title: President
Date: 03/13/2025

CITY OF BREVARD

By: Wilson B. Hooper
Name: Wilson B. Hooper
Title: City Manager
Date: 3/14/25

7. NOTARIZATION

STATE OF NORTH CAROLINA
COUNTY OF Buncombe.

I, Zackary Thompson, a Notary Public, do hereby certify that JEAN P. LEE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 13 day of March, 2025.

Signature of Notary Public: Zackary Thompson
Printed Name of Notary Public: Zackary Thompson
My Commission Expires: 12/03/2029

ZACKARY THOMPSON
NOTARY PUBLIC
BUNCOMBE COUNTY NC
MY COMMISSION EXP:12/03/2029

STATE OF NORTH CAROLINA
COUNTY OF Transylvania.

I, Denise Hodsdon, a Notary Public of said State and County, do hereby certify that WILSON B. HOOPER personally appeared before me this day and acknowledged that he is the City Manager for the City of Brevard, a North Carolina municipal corporation, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by him as its City Manager.

WITNESS my hand and Notarial Seal, this the 14th day of March 2025.

Signature of Notary Public: Denise Hodsdon
Printed Name of Notary Public: Denise Hodsdon
My Commission Expires: 10/6/2029

DENISE HODSDON NOTARY PUBLIC BUNCOMBE COUNTY, NC