**IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA**

PALM COAST HOLDINGS, INC. and FLORIDA LANDMARK COMMUNITIES, LLC,

Plaintiff,

vs.

CITY OF PALM COAST, a Florida Municipal Corporation

Defendants.
_____/

Case No.: 2025-CA-670
Division: 49

DEFENDANT CITY OF PALM COAST'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

COMES NOW, Defendant, CITY OF PALM COAST, by and through the undersigned counsel and pursuant to Rule 1.140, Florida Rules of Civil Procedure, respectfully moves to dismiss Plaintiffs, PALM COAST HOLDINGS, INC. and FLORIDA LANDMARK COMMUNITIES, LLC (collectively, the "Plaintiffs"), Amended Complaint with prejudice, and in support thereof states as follows:

This case involves claims by the Plaintiffs for breach of contract or, in the alternative, promissory estoppel, concerning the Development Orders governing the Town Center Development of Regional Impact (the "DRI") approved by the City of Palm Coast ("City" or "Defendant"). The Plaintiffs' claims fail to plead a cause of action for which relief may be granted and are barred by the doctrines of sovereign immunity and ultra vires.

BACKGROUND

This dispute arises from a fundamental misunderstanding of the City's governmental, regulatory, and police-power functions in managing land development and public utilities. The Development Orders (DOs) at the center of this case are not bilateral contracts for the provision of

utilities. They are regulatory land use approvals, issued pursuant to Fla. Stat. Chapter 380, and are governed by the City's Comprehensive Plan and its Unified Land Development Code (LDC), all of which explicitly condition development on the future availability of public facility capacity.

The 2003, 2022 and 2024 DRI Development Orders

On July 11, 2003, the City approved the Town Center at Palm Coast Development of Regional Impact Development Order ("2003 DO") (Am. Compl. Ex. A), pursuant to Section § 380.06, Florida Statutes, authorizing approximately 1,557 acres of mixed-use development to be constructed in three phases.

Pursuant to the 2003 DO, the Developer was to construct and dedicate certain public infrastructure and land to mitigate offsite transportation impacts. Am. Compl. Ex. A at 8-11, 44-48. By 2007, the Developer had completed all the requisite improvements and fulfilled its offsite mitigation obligations under the 2003 DO. Am. Compl. ¶ 50.

Importantly, the 2003 DO, which was the controlling instrument when the Developer's $35.5 million in expenditures were made, contained no guarantee of utility capacity for the full buildout. Am. Compl. ¶ 50. To the contrary, the 2003 DO explicitly limited the City's commitment to Phase 1 and stipulated that the future availability of capacity is an explicit condition precedent to any further development.

> Part III, § 6(a) (Water Supply):
> "Sufficient capacity exists to accommodate **Phase 1 development** of the Town Center DRI; **no building permit shall be issued for any subsequent phase** of the Town Center DRI **until sufficient capacity exists** from the water utility to provide potable water meeting the adopted level of service in the City's Comprehensive Plan." Am. Compl. Ex. A at 30.

> Part III, § 7(a) (Wastewater Management):
> "Sufficient capacity exists to accommodate **Phase 1 development**; **no building permits shall be issued for any subsequent phase** of Town Center DRI **until sufficient capacity exists** from the sewer utility to provide wastewater treatment services meeting the adopted level of service of the City's Comprehensive Plan."

Am. Compl. Ex. A at 33.

The Developer, in relying on the 2003 DO, explicitly accepted that its right to develop beyond Phase 1 was conditional and entirely dependent on whether sufficient capacity existed at the time a permit was sought.

In 2022, the City approved the Town Center at Palm Coast 2022 Amended and Restated Development of Regional Impact Development Order ("2022 Amended DO") (Am. Compl. Ex. B), pursuant to Section § 380.06, Florida Statutes. The 2022 Amended DO incorporated and restated verbatim the conditional provisions for water supply and wastewater management under Part III, Sections 6(a) and 7(a), respectively. Am. Compl. Ex. B at 28-30. Further, the 2022 Development Order contains the following provision upon which Plaintiff heavily relies:

> Part II, § 10(b) (Vesting of Development):
> "Because Developer completed the DRI's offsite mitigation obligations, the City hereby agrees that all owners within the current DRI Property are vested for water, sewer, traffic, park, and all other public services **concurrency for the Present Entitlements identified** … herein. Am. Compl. Ex. B at 16.

This language is not a contractual guarantee of physical utility capacity. It is a recitation of the regulatory exemption all DRIs receive under the City's Comprehensive Plan, Policy 2.1.2.1.B.5., which exempts from concurrency, every "Multi-Use Developments of Regional Impact (DRI) as defined in Section 380.06, Florida Statutes."

In 2024, the City approved a second amended and restated development order ("2024 Amended DO") (Am. Compl. Ex. C), pursuant to Section § 380.06, Florida Statutes. The 2024 Amended DO retained the same conditional provisions for utilities and vested capacity language as the 2022 Amended DO. Am. Compl. Ex. C at 16, 27-29.

FDEP Oversight and Consent Orders

The City's infrastructure decisions are currently subject to binding regulatory requirements

imposed by the Florida Department of Environmental Protection ("FDEP"), including permitting constraints, effluent limitations, and ongoing compliance obligations for its wastewater system. In May 2020, FDEP issued a Consent Order establishing a framework for the City to maintain compliance with these environmental protection standards (the "2020 Consent Order"). *See* Am. Am. Compl. Ex. F. The 2020 Consent Order reflected FDEP's determination that the City's wastewater system required corrective measures to ensure continued compliance with state water quality standards and permit conditions.

More recently, in December 2024, FDEP issued an updated Consent Order requiring the City to complete comprehensive infrastructure improvements and achieve full regulatory compliance by December 28, 2028 (the "2024 Consent Order"). *See* Am. Compl. Ex. E. This Consent Order imposes binding obligations on the City and specifies a remediation timeline within which the City must bring its wastewater infrastructure into full regulatory compliance. The City cannot bypass these regulatory requirements, and any utility planning or capacity allocation decisions must be made consistently with the City's legal duty to comply with the FDEP Consent orders and permit conditions. *See* Am. Compl. Ex. E at 14-21; Fla. Stat. § 403.161(1)(b).

FACTUAL ALLEGATIONS

Plaintiffs' core legal theory is that the 2003 DO, 2022 Amended DO and 2024 Amended DO (hereinafter, "DOs") are not regulatory approvals, but rather "valid and enforceable contracts" or, in the alternative, contain actionable promises inducing reliance. Am. Compl. ¶¶ 80, 99. To support this characterization, the Complaint refers to the DOs as "negotiated agreements" and frames their approval as something "[t]he City negotiated, approved, and entered into … with [Plaintiff]." Am. Compl. ¶¶ 14, 18, 41, 48, 51. When describing the statutory scheme for DRI development orders, Plaintiffs conclusively state that "[b]reach of those negotiated agreements,

such as Plaintiffs' DOs, is analyzed under contract law, as they take on the attributes of a bilateral contract…" Am. Compl. ¶ 18. Notably, Plaintiff fails to cite any authorities supporting this view. The characterization of DOs as contracts, or as containing actionable promises, serves as the foundation for all three counts of the Complaint.

Plaintiffs argue that the City "guaranteed potable water and wastewater capacity" to them through the DOs, which they allege contain a "contractual guarantee by the City that Plaintiffs would be able to actually develop the entitlements promised to them." Complaint ¶¶ 77, 81, 91. Plaintiffs assert this "guarantee" was explicitly reaffirmed and memorialized by the "Vesting of Development" provision under Section 10(b), Part II of the 2022 and 2024 Amended DOs. Am. Compl. ¶¶ 51-52; Am. Compl. Ex. B at 15, Ex. C at 15 ("…all owners within the current DRI Property are vested for water, sewer, traffic, park, and all other public services concurrency").

The breach alleged by Plaintiffs is not based on any specific permit denial or formal rejection of service by the City. Instead, Plaintiffs claim that several unnamed prospective purchasers of property within the DRI canceled sales contracts during the due diligence phase. Am. Compl. ¶ 67. Plaintiffs claim this was due to the prospective purchasers' "learning that the City would not guarantee potable water availability and wastewater capacity for development within the [DRI]." Am. Compl. ¶ 67. In Plaintiffs view, this alleged "refusal" to guarantee unspecified, hypothetical capacity to a third party constitutes a "repudiation of [the City's] contractual obligations under the DOs." Am. Compl. ¶ 68.

Plaintiffs allege that "upon information and belief, the City will not issue Certificates of Occupancy for any development associated with Plaintiffs' remaining vested entitlements," and conclude that "it is undisputed that Plaintiffs are left with nearly worthless land." Am. Compl. ¶¶ 7, 70.

To support their "breach" theory, Plaintiffs cite the 2024 and 2020 FDEP Consent Orders (Am. Compl. Ex. E and F, respectively) as suggestive of the systemic utility capacity failures. Am. Compl. ¶ 62-64. Plaintiffs also reference two Interlocal Subaward Agreements with Flagler County. The first, dated February 7, 2022, involved extending water and wastewater lines to eligible barrier island developments, for which Flagler County received up to 5.1 million in federal funding. Am. Compl. Ex. G. The second, dated September 7, 2023, was for the design, engineering and construction of the North Sewer Line Extension Project, for which Flagler County received $8 million in DEP grant funding. Am. Compl. Ex. H. Despite the plain language of both Interlocal Subaward Agreements, which clearly direct funds to Flagler County and explicitly restrict their use, Plaintiffs argue that the City's involvement in these infrastructure projects demonstrates "bad faith" by "diverting capacity" to other projects "without first reserving capacity for the Town Center DRI," —a reservation that is not provided for in any of the DOs. Am. Compl. ¶ 76.

In Count II, pled in the alternative, Plaintiffs concede there may not be an express contract and instead allege a claim for promissory estoppel. Here, they assert that the City, in the 2003 DO, "promised to the developer ... the right to complete the development" of all entitlements associated with full build-out of the DRI, "including the availability of sufficient potable water and wastewater capacity." Am. Compl. ¶ 95. Plaintiffs cite the DO provision, which states that "sufficient [potable water/wastewater] capacity exists to accommodate Phase 1 development" as the crucial promise they allegedly relied on, detrimentally. Am. Compl. Ex. A at 30, 33. The City should have reasonably expected this "promise" in the 2003 DO to induce reliance, Plaintiffs argue, "because the City had both a statutory duty to comply with the terms of the 2003 DO," as amended and restated. Am. Compl. ¶ 99. To remedy the alleged detrimental reliance by Plaintiffs and avoid injustice, Plaintiffs maintain that "[t]he City must be required to provide the potable

water and wastewater capacity" or be held liable for Plaintiffs' reliance damages and lost profits. Am. Compl. ¶ 101. As for reliance damages, Plaintiffs allege that the Developer and Community Development District expended more than $35.5 million on public infrastructure improvements, purportedly in detrimental reliance. ¶ 98.

Count III of Plaintiffs' Amended Complaint introduces a new theory seeking to restrain the City's legislative authority over future annexations. Plaintiffs allege that the City has engaged in, or is considering, annexations of additional properties into the municipal boundaries that could ultimately compete for the same limited potable water and wastewater utility capacity referenced in the Town Center DRI Development Orders. Am. Compl. ¶¶ 102–106. According to Plaintiffs, these contemplated annexations jeopardize Plaintiffs' so-called "vested" rights to utility service. Plaintiffs claim to "have a clear legal right to prevent the City" from future annexations, whether presently contemplated or not. Am. Compl. ¶ 104

Plaintiffs seek prospective injunctive relief aimed at preventing the City from approving or effectuating annexations that might negatively affect their interests. Am. Compl. ¶ 105. Plaintiffs contend that unless the Court intervenes to block future annexations, they will suffer irreparable harm in the form of further diminished prospects for completing buildout of their DRI entitlements due to the finite utility capacity available under current and anticipated state-imposed infrastructure restrictions. Am. Compl. ¶ 106.

Standard of Review

A motion to dismiss is designed to test the legal sufficiency of the complaint, not to determine factual issues. *The Florida Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). While the court must accept the factual allegations as true, mere conclusions are insufficient. *Maiden v. Carter*, 234 So. 2d 168 (Fla. 1st DCA 1970); *Poirier v. Villages Senior Hous. I OPCO, LLC,* 395

So. 3d 640 (Fla. 5th DCA 2024).

When reviewing a motion to dismiss, the trial court is limited to considering the four corners of the complaint along with the attachments incorporated into the complaint. *Swerdlin v. Florida Mun. Ins. Tr.*, 162 So. 3d 96, 97 (Fla. 4th DCA 2014); Where the elements of a cause of action are not pled in the complaint, they may not be inferred by the context of the allegations. *Sanderson v. Eckerd Corp.*, 780 So. 2d 930 (Fla. 5th DCA 2001). Crucially, exhibits attached to the complaint are controlling, where the allegations of the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control. *See, e.g., Ginsberg v. Lennar Florida Holdings, Inc.*, 645 So. 2d 490 (Fla. 3d DCA 1994)

ARGUMENT AND SUPPORTING MEMORANDUM OF LAW

I. Count I Fails to State a Claim and is Barred by Sovereign Immunity

To establish a claim for breach of contract under Florida law, a plaintiff must allege the existence of a contract, breach of that contract, damages resulting from the breach, and the plaintiff's performance of its obligations thereunder or a legal excuse for nonperformance. *Abbott Laboratories, Inc. v. General Elec. Capital*, 765 So. 2d 737, 740 (Fla. 5th DCA 2000); *Schiffman v. Schiffman*, 47 So. 3d 925, 927 (Fla. 3d DCA 2010). The Complaint fails to state a cause of action for breach of contract because the 2003 DO, 2022 Amended DO and 2024 Amended DO are regulatory approvals, not bilateral contracts between the City and Plaintiffs. Furthermore, to maintain a cause of action for breach of contract against a municipality in Florida, a plaintiff must clear the hurdle of sovereign immunity by pleading the existence of a valid, express written contract authorized by law. Plaintiffs have failed to do so. Instead, they have attached regulatory DRI DOs to their Amended Complaint and labeled them as "contracts." Florida law firmly rejects the characterization of police powers as commercial contracts.

A. The Development Orders are Regulatory Approvals, Not Bilateral Contracts

The foundation of Plaintiffs' Count I is the assertion that the 2003 DRI Development Order, as amended in 2022 and 2024, constitutes a "valid and enforceable contract." Am. Compl. ¶ 80. Florida Law is clear: a development order is a regulatory approval, not a contract. *See* § 163.3164(15), Fla. Stat. (defining development order as an order granting, denying, or conditioning a development permit); *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 843–44 (Fla. 2001) (development approvals are quasi-judicial acts); *See also, Park of Commerce Assocs. v. City of Delray Beach*, 636 So. 2d 12, 15–16 (Fla. 1994).

DRI Development Orders issued under § 380.06, Florida Statutes, are exercises of police power, not contractual instruments. The statute itself characterizes development orders as *land development regulations*, governmental regulatory acts distinct from private bilateral agreements. Fla. Stat. § 380.06(4)(c) ("the development order constitutes a land development regulation applicable to the property") (emphasis added). Consistent with the statutory scheme, Chapter 380 defines a "development order" as "any order granting, denying, or granting with conditions an application for a development permit." Fla. Stat. § 380.031(3). A "development permit" includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." Fla. Stat. § 380.031(4). None of these provisions authorizes a municipality to enter a private contract guaranteeing future utility capacity; they authorize the issuance of regulatory approvals that remain constrained by the comprehensive plan and the City's police powers. *See Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1000-02 (Fla. 2d DCA 1993) (describing land-use development orders, including DRI approvals, as quasi-judicial decisions, applying regulatory standards to specific facts).

The City's Comprehensive Plan and LDC mirror the statutory framework, underscoring that development orders do not provide contractual guarantees. Per Policy 1.3.2.3. of the City's Comprehensive Plan, "all development orders shall be issued or conditioned upon the availability of public services and facilities necessary to support the proposed development." Under the LDC, "[t]he issuance of a development order does not authorize the disturbance of any part of the subject property involved. A development order only authorizes the filing of an application for another development order or a building permit." LDC § 2.05.06.

Florida's statutory scheme explicitly differentiates between regulatory orders issued under the state's land use acts, such as DRI DOs, and truly contractual "development agreements" authorized by the Florida Local Government Development Agreement Act, Sections 163.3220-.3243, Florida Statutes. This Act was passed specifically because traditional development orders do not provide contractual guarantees, and developers sought a mechanism to provide greater certainty. The Act authorizes local governments to enter binding contracts with developers to secure infrastructure in exchange for vesting, provided strict procedural requirements are met. The City's Land Development Code (LDC) recognizes this distinction, providing separate procedures for regulatory DRI DOs and contractual Development Agreements, as outlined in Section 2.14, "Development Agreements." DRI development orders, on the other hand, are classified as "Tier 3 Development Orders" under the LDC, subject to quasi-judicial review and approval. Table 2-1, LDC.

The First District Court of Appeal addressed this distinction in *Osborne v. Walton County*, when determining whether the notice requirements for a § 163.3225 "development agreement" applied to an amendment of a § 380.06 DRI Development Order. 410 So. 3d 37 (Fla. 1st DCA 2025). The court stated:

> "Section 380.06, Florida Statutes, provides the statutory scheme under which DRIs are categorized, evaluated, approved, and amended... The process outlined in section 380.06 is distinct and materially different that those processes for entering into 'development agreements' found in section 163.3225, Florida Statutes. In fact, nowhere in section 380.06, Florida Statutes, is the term 'development agreement' used." *Osborne*, 410 So. 3d at 43.

Plaintiffs, or their predecessor, chose to pursue the regulatory path and obtained regulatory approval through the 2003 DO and subsequent amendments. As such, Plaintiffs cannot now claim that their regulatory approval is suddenly a contract entitling them to contractual remedies that were never bargained for.

Plaintiffs allege that their predecessor, the original DRI Developer, "negotiated a guarantee," that the City "promised" development rights, and that the 2003 DO "take on the attributes of a bilateral contract." Am. Compl. ¶ 2, 8, 18. Despite Plaintiffs' characterization, the inclusion of negotiated provisions into a development order does not transform it into a bilateral contract. "Development orders are often the product of negotiations between a developer and a municipality." *Pres. Palm Beach Political Action Comm. v. Town of Palm Beach*, 50 So. 3d 1176, 1179 (Fla. 4th DCA 2010). The Third District in *Wallberg v. Metropolitan Dade County*, 296 So. 2d 509 (Fla. 3d DCA 1974) confirmed that the presence of mutual conditions in a development order merely creates regulatory compliance requirements, not contractual consideration. There, Miami-Dade County initiated a building moratorium and downzoning of the appellant's property in response to a planned large residential development. *Id.* At 510. The property owner agreed to a density reduction and additional open space, and, on the basis of these proffers, the county commission agreed to preserve the existing zoning on the parcel. *Id.* The Third District upheld the county's decision against a challenge that the county's receipt of proffered conditions from the developer constituted contract zoning. *Id.* At 511. The court reasoned that self-imposed conditions or promises made by developers on the development application do not constitute contractual

obligations or trigger the prohibition against contract zoning set forth in *Hartnett,* so long as the local government's action is not unreasonable and does not ignore the public interest. *Id.*

B. The DOs Are Expressly Conditional

Even if one could construe the DOs as agreements, their text defeats any notion of an unconditional promise or "contractual guarantee" by the City. Am. Compl. ¶¶ 68, 76, 80. Where the allegations of a complaint are contradicted by the exhibits thereto, the plain meaning of the exhibits control. *See Ginsberg v. Lennar Florida Holdings, Inc.*, 645 So. 2d 490 (Fla. 3d DCA 1994). The original 2003 DO, under which Plaintiffs' predecessor undertook the alleged $35.5 million in infrastructure improvements, explicitly made any development beyond Phase 1 contingent on the future availability of adequate water and sewer capacity. Specifically, the 2003 DO and subsequent amendments state that "no building permit shall be issued for any subsequent phase…until sufficient capacity exists" in the City's potable water and sewer systems to meet the required level of service. Am. Compl. Ex. A at 30, 33; Am. Compl. Ex. B at 28, 30; Am. Compl. Ex. C at 28, 30.

Further, the Complaint mischaracterizes the "vesting" language in the 2022 and 2024 Amended DOs. The DO provision cited by Plaintiffs as creating a "contractual guarantee" states that, "the City hereby agrees that all owners within the current DRI Property are vested for water, sewer, traffic, park, and all other public services concurrency for the Present Entitlements identified herein." Am. Compl. Ex. B at 16; Am. Compl. Ex. C at 16. However, vesting for concurrency does not equate to an absolute, unconditional guarantee that the City will supply utilities under all circumstances. The legal effect of vesting is that the developer's right to develop up to the approved densities/intensities is protected from later changes in concurrency requirements or level-of-service standards. *See* Policy 10.2.1.1, 2050 Comprehensive Plan; LDC

§ 14.02; *Bay Point Club, Inc. v. Bay County*, 890 So. 2d 256 (Fla. 1st DCA 2004) (development rights obtained through a previously approved DRI are not lost by subsequent changes in the law, but it does not create entitlement to greater rights than those originally obtained). The DOs explicitly address vesting for land use entitlements under Section 8, Part II: "The Town Center DRI, as approved in this order, shall not be subject to downzoning or reduction of land uses before … unless Developer consents to such change…" Am. Compl. Ex A at 12; Am. Compl. Ex. B at 13; Am. Compl. Ex. C at 13. Similarly, by vesting concurrency, the City essentially promised it would not deny permits solely based on new stricter standards or quotas – but it did not (and could not) guarantee that infrastructure capacity would materialize out of thin air if regional conditions changed.

Read in context and in harmony with Chapter 163 and the City's Comprehensive Plan, the 2022 and 2024 Amended DOs vested Plaintiffs the right to connect to City utilities without additional concurrency hurdles, but do not promise that the City will always have, reserve, or construct actual utility capacity for Plaintiffs irrespective of system-wide constraints. Am. Compl. Ex. B at 16; Am. Compl. Ex. C at 16. Most critically, the City's LDC directly addresses the scope of vesting for concurrency: "Vested status does not guarantee the availability of water or sewer capacity." LDC § 7.05.02.

Thus, despite Plaintiffs being vested for concurrency under the 2022 and 2024 Amended DOs, the City provided no guarantee of physical capacity and cannot be compelled, by contract or estoppel, to provide capacity outside the pathways and limits imposed by Chapter 163, the Comprehensive Plan, Land Development Code and FDEP permit requirements. *See* Am. Compl. Ex. E, F. The "contract" Plaintiffs seek to enforce does not provide the unconditional contractual guarantee they allege. The DOs are conditional, phased approvals that anticipate future capacity

constraints and explicitly place the risk of timing on the developer, tying development to the actual availability of public facilities.

C. If the DOs Were Contracts, They Are Ultra Vires and Void

Even if the Development Orders could be construed as containing a binding promise, under Florida law, contracts that exceed a municipality's authority are void as ultra vires. *Town of Indian River Shores v. Coll*, 378 So. 2d 53, 55 (Fla. 4th DCA 1979) ("If a contract is ultra vires, no liability accrues to the municipality, absent some special estoppel"). Moreover, "[o]ne who contracts with a municipality is bound to know the limitations of the City's contracting authority." *Id.*

A fundamental principle, which the Complaint deliberately obscures, is that municipalities cannot contract away the exercise of their police powers. A city's authority to regulate land use derives from the state legislature's delegation of police power, held in trust for the public benefit. The Florida Supreme Court held that municipalities lack authority to enter private contracts conditioning zoning or limiting their land use regulatory authority, and that "such collateral agreements have been held void" because "[a]ny contrary rule would condone a violation of the long established principle that a municipality cannot contract away the exercise of its police powers." *Hartnett v. Austin*, 93 So. 2d 86, 89 (Fla. 1956). The Court emphasized that if each property were regulated based on contractual variables, "the whole scheme and objective of community planning and zoning would collapse." *Id.* Similarly, in *Chung v. Sarasota County*, 686 So. 2d 1358 (Fla. 2d DCA 1996), the Second District rejected a settlement agreement obligating the county to rezone the appellant's property. The court found that the County entering into an agreement obligating it to rezone property, "the County contracted away the exercise of its police power, which constituted an ultra vires act." This principle extends to DRI development orders, which are governed by statute and operate as regulatory approvals of large-scale master-planned

developments.

The ultra vires doctrine applies where a municipality acts beyond its prescribed powers or in violation of statutory or constitutional limitations. *Edwards v. Town of Lantana*, 77 So. 2d 245 (Fla. 1955); *Corona Properties of Florida, Inc. v. Monroe County*, 485 So. 2d 1314 (Fla. 3d DCA 1986). As the Plaintiffs acknowledge, the City is subject to the 2024 FDEP Consent Order (Am. Compl. Ex. E) for, inter alia, "Repeated exceedance of the City's state permit capping the volume of wastewater flowing into the treatment plant" and numerous "effluent violations" and "untreated sewage" spills. Am. Compl. ¶ 62. The City is also subject to a 2020 FDEP Consent Order (Am. Compl. Ex. F) for "exceeding the permitted wastewater flow capacity 14 times in 2017-18." Complaint ¶ 63.

The City, as a public utility operator, has a non-discretionary police power duty to manage its system in accordance with state environmental law and its binding FDEP Consent Orders. The City cannot, by contract, commit to provide wastewater service in excess of its permitted capacity. Such a commitment would be a violation of the FDEP consent order permit conditions and Chapter 43, Florida Statutes. The City's Land Development Code acknowledges this limitation: "Wastewater service will be available only after all permit conditions of the Florida Department of Environmental Protection are complied with[.]" LDC § 9.07.04.A. (emphasis added). Thus, any purported contractual commitment to provide service in violation of FDEP permits would be void as ultra vires.

D. No Material Breach Alleged

Even if Plaintiffs were able to establish the existence of a valid, written contract, Plaintiffs have failed to plead ultimate facts to establish a breach by the City of any contractual obligations. *See Abbott Laboratories, Inc.*, 765 So. 2d at 740. Plaintiffs' theory of breach rests entirely on the

doctrine of anticipatory repudiation, yet the facts alleged do not support it. Am. Compl. ¶¶ 87-88. "Breach by anticipatory repudiation occurs when there is absolute repudiation by one of the parties before its performance is due under the contract, which may be evidenced by words or voluntary acts, but the refusal must be distinct, unequivocal, and absolute." *Mori v. Matsushita Elec. Corp. of America*, 380 So. 2d 461 (Fla. 3d DCA 1980); *24 Hr Air Service, Inc. v. Hosanna Community Baptist Church, Inc.*, 322 So. 3d 709 (Fla. 3d DCA 2021). Plaintiffs allege only that "prospective purchasers" of their property "learned that the City would not guarantee potable water availability and wastewater capacity," and that, based on this purported understanding, those prospective purchasers declined to purchase the property. Am. Compl. ¶ 67.

Even if taken as true, Plaintiffs' allegation does not plead who at the City supposedly made such a statement, whether the speaker had any authority to bind the City, what precisely was said, or in what context. See Am. Compl. ¶¶ 67, 87–88. A plaintiff cannot transform hearsay, rumor, or a third-party understanding into an "absolute repudiation" by the municipality. See *Mori*, 380 So. 2d at 463 (no anticipatory breach where alleged refusal was not "distinct, unequivocal, and absolute").

Critically, Plaintiffs do not allege any official City action, resolution, ordinance, permit denial, or correspondence that refused to provide service or otherwise repudiated any supposed "contractual obligation" under the DO. *See* Am. Compl. ¶ 68. They identify no permit application that was submitted and denied, or capacity reservation that was revoked. Instead, the alleged breach is entirely derivative of what unnamed prospective purchasers "learned" or believed. Am. Compl. ¶ 67. That is not an allegation of a clear, unequivocal refusal by the City to perform, and it falls well short of pleading an anticipatory repudiation as a matter of law. *24 Hr Air Service*, 322 So. 3d at 713.

Furthermore, the chain of causation here is broken by the intervening decisions of third-party buyers. Those buyers walked away based on their risk assessment of the utility situation. This is a business risk, not a direct result of a breach by the City. Additionally, because the land remains with Plaintiffs and the capacity issues are slated for resolution by 2028, the "loss" is merely a delay, not a permanent destruction of value. Damages based on the "diminution in value" of land due to temporary regulatory moratoria are generally not recoverable absent a takings claim, which is not pled here. For these reasons, even if the Court were to regard the Development Orders as contracts, Count I fails to state a claim for breach and must be dismissed.

E. Alleged Damages are Inherently Speculative

The Complaint also fails to allege that Plaintiff suffered any legally cognizable damages. Damages recoverable by a party injured by a breach of contract are those that naturally flow from the breach and can reasonably be said to have been contemplated by the parties at the time the contract was entered into. *Mnemonics, Inc. v. Max Davis Associates, Inc.*, 808 So. 2d 1278, 1280 (Fla. 5th DCA 2002). However, a successful plaintiff "is not entitled to be placed, because of that breach, in a position better than that which he would have occupied had the contract been performed." *Lindon v. Dalton Hotel Corp.*, 49 So.3d 299, 305 (Fla. 5th DCA 2010). Speculative, remote, or contingent losses are not recoverable. *Grossman Holdings Ltd. v. Hourihan*, 414 So. 2d 1037, 1039–40 (Fla. 1982) (damages are measured to place plaintiff in the position as if the contract were performed, not to award remote or conjectural losses) (emphasis added). Plaintiffs do not plead any concrete damages tied to an actual denial of service, as opposed to buyers' risk-based business preferences.

Plaintiffs' claims for reliance damages, lost profits, lost sales and decline in property value are wholly speculative and unrecoverable given the facts alleged. Am. Compl. ¶ 89. Florida courts

routinely reject damages that depend on speculative future transactions or subjective expectations about how third parties might act in response to government policy. See, e.g., *Leonardi v. City of Hollywood*, 715 So. 2d 1007, 1009–10 (Fla. 4th DCA 1998) (lost-wage damages unavailable where plaintiff could not establish enforceable right to continued employment). Florida Rule of Civil Procedure 1.120(g) requires special or consequential damages to be "specifically pled." *See also, JP Morgan Chase Bank Nat'l Ass'n v. Colletti Inv., LLC*, 199 So. 3d 395, 398 (Fla. 4th DCA 2016) (failure to specifically plead special damages bars recovery).

Here, Plaintiffs' alleged injury springs from prospective purchasers' own concerns about future capacity—not from any final City action denying service. Am. Compl. ¶¶ 66–67. Lost profits and diminution in value are consequential damages that must satisfy foreseeability requirements and cannot be speculative. *Hardwick Properties, Inc. v. Newbern*, 711 So. 2d 35, 40 (Fla. 1st DCA 1998) (Consequential damages stem from losses incurred by the non-breaching party in its dealings with third parties, which are a proximate result of the breach and reasonably foreseeable by the breaching party at the time of contracting). The causal connection between the alleged breach and damages is attenuated as the City's purported refusal to guarantee capacity to prospective buyers did not directly harm Plaintiffs.

Additionally, because the land remains with Plaintiffs and the capacity issues are slated for resolution by 2028, the "loss" is merely a delay, not a permanent destruction of value. Damages based on the "diminution in value" of land due to temporary regulatory moratoria are generally not recoverable absent a takings claim, which Plaintiffs have not pled. *See Tahoe–Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002); *Bradfordville Phipps Limited Partnership v. Leon County*, 804 So.2d 464 (Fla. 1st DCA 2001), review denied, 829 So.2d 916 (Fla.2002)

F. Sovereign Immunity Bars Breach of Contract Claim

Sovereign immunity protects cities from suits for discretionary governmental acts within their core police powers, including permit approvals or denials. *City of Pembroke Pines v. Corr. Corp. of Am., Inc.*, 274 So. 3d 1105 (Fla. 4th DCA 2019); See also, *Paedae v. Escambia Cty.*, 709 So.2d 575, 578 (Fla. 1st DCA 1998) (county's interpretation of its comprehensive plan and refusal to issue a permit based on that interpretation is a governmental function which is protected by sovereign immunity); *City of Cape Coral v. Landahl, Brown & Weed Assocs., Inc.*, 470 So.2d 25, 27 (Fla. 2d DCA 1985) (no cause of action exists for the manner in which a municipality exercises its governmental function of issuing or refusing to issue permits, thus those actions are immune from an action for damages).

Waivers of sovereign immunity must be strictly construed in favor of the State. *Tampa-Hillsborough Cty. Expressway Auth. v. K.E. Morris Alignment Serv.*, 444 So. 2d 926, 928 (Fla. 1983); *Univ. of Fla. Bd. of Trs. v. Andrew*, 961 So. 2d 375, 376 (Fla. 1st DCA 2007). Indeed, waivers of sovereign immunity in Florida "must be clear and unequivocal." *Spangler v. Fla. State Turnpike Auth.*, 106 So. 2d 421, 424 (Fla. 1958); *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459, 471 (Fla. 2005). Under Florida law, such waivers will not be reached as a product of inference or implication. *Spangler*, 106 So. 2d at 424.

In *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 2d 4 (Fla. 1984), the Florida Supreme Court recognized a limited waiver of sovereign immunity for breach of express, written contracts authorized by law. This decision was a limited waiver, intended to allow vendors to sue the state when the state acts as a market participant. *Id.* Immunity is not waived for claims based on regulatory actions, implied contracts, or quasi-contract theories. *See County of Brevard v. Miorelli Eng'g, Inc.*, 703 So. 2d 1049, 1051 (Fla. 1997). As previously established, the DRI

DOs are regulatory approvals, not express written contracts. Because no waiver applies, Count I is barred by sovereign immunity and should be dismissed with prejudice.

II. Count II is Barred by Sovereign Immunity and the Lack of an Actionable Promise

A. Plaintiffs' Estoppel Claim is Unequivocally Barred by Sovereign Immunity

Florida courts have unequivocally held that promissory estoppel cannot be used to circumvent sovereign immunity. A municipality is generally not liable for equitable claims based on alleged promises, especially where monetary damages are sought. The Fourth DCA's decision in *City of Pembroke Pines v. Corrections Corp. of America*, 274 So. 3d 1105 (Fla. 4th DCA 2019) is directly applicable. In that case, a developer (CCA) sued a city for, among other things, promissory estoppel after the city refused to provide water/sewer service to a planned facility. The appellate court reversed the trial court and ordered dismissal of the promissory estoppel count on sovereign immunity grounds. The court stated that claims "for declaratory relief, promissory estoppel, tortious interference..., which request economic damages" are barred by sovereign immunity. Because there is no written contract waiving immunity, the City is immuned from Plaintiffs' claim for promissory estoppel. Count II is an improper attempt to plead in equity what is barred in law and is accordingly barred by sovereign immunity.

B. "No "Clear and Definite" Promise

Promissory estoppel is an extraordinary remedy, available only under exceptional circumstances. *Dep't of Revenue v. Anderson*, 403 So. 2d 397 (Fla. 1981)."To bring a claim for promissory estoppel, a plaintiff must establish (1) a clear and unambiguous promise; (2) Reasonable reliance on that promise; (4) That reliance was foreseeable and induced by the promisor; and (4) Injustice can be avoided only by enforcing the promise.

The Florida Supreme Court in *W.R. Townsend Contracting, Inc. v. Jensen Civil*

Construction, Inc., 728 So. 2d 297, 300 (Fla. 1st DCA 1999) established the requisite standard for promissory in Florida: "A promise must be definite as to terms and time... Evidence must be clear and convincing... Truthful statements about present intention regarding future acts cannot form the basis for estoppel." The promise alleged by Plaintiffs fails this standard. The Development Orders do not contain a clear and unambiguous promise to provide unlimited utility capacity. To the contrary, they contain express conditional language stating that permits will not be issued "until sufficient capacity exists." The "vesting" language Plaintiffs rely upon is not a promise of physical capacity; it is a regulatory exemption from concurrency review procedures. The DO provision acknowledging that Plaintiffs are vesting for concurrency is neither "sufficiently definitive" as to quantity, duration, nor timing. *See Id.* At 924.

III. Count III Fails to State a Claim for Injunctive Relief

To obtain an injunction, a plaintiff must establish a "clear legal right" to the relief sought. *City of Jacksonville v. Naegele Outdoor Adver. Co.,* 659 So. 2d 1046 (Fla. 1st DCA 1995). Plaintiffs have identified no statute, ordinance, or other legal entitlement that would justify enjoining the City's legislative powers and authority. On the contrary, the relief demanded would violate fundamental separation of powers principles and bypass the exclusive procedures set by Florida law for challenging annexations. Accordingly, Count III must be dismissed.

A. Florida Courts Refuse to Enjoin Legislative Acts

Annexation is a legislative act, accomplished by ordinance. *County of Volusia v. City of Deltona*, 925 So. 2d 340 (Fla. 5th DCA 2006). Municipal legislative acts enjoy a presumption of validity. *Panama City Beach Community Redevelopment Agency v. State*, 831 So. 2d 662 (Fla. 2002) ("An ordinance enacted within the legislative power of a municipality is presumed to be valid"). Florida courts are extremely reluctant to enjoin the exercise of legislative power. "The

power of a court of equity to restrain a municipality from passing an ordinance... is a jurisdiction which is exercised with extreme caution." *City of West Palm Beach v. Grimmett*, 156 So. 2d 116 (Fla. 1963). *City of Auburndale v. Adams Packing Association*, 171 So. 2d 161 (Fla. 1965) is dispositive:

> "Annexation, being exclusively a legislative function, cannot, in accordance with the concept of divided powers expressed in Article II, Florida Constitution, be delegated to, or exercised by, a non-legislative body such as the judiciary. ... A statute that leaves to the discretion of a court the determination of the conditions or circumstances on which the change of municipal boundaries will be permitted... violates the constitutional provision separating the powers of government."

B. No Clear Legal Right to Relief Sought

"Plaintiffs assert they have a "vested right" to utility capacity and that the City should be restricted from diverting any capacity to hypothetical future annexed property. Am. Compl. ¶ 105. As discussed above, Plaintiffs have no contractual or statutory right to exclusive utility capacity. Plaintiff's property is vested for concurrency purposes, but that is not a guarantee of service ahead of others. *See* LDC § 7.05.02(E) ("Vested status does not guarantee the availability of water or sewer capacity"). Municipal annexation is governed by Chapter 171, Florida Statutes, which provides the exclusive method for property owners or individuals to challenge municipal annexations. Pursuant to §171.081, Fla. Stat.,

> "Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari." Fla. Stat. § 171.081.

Rather than challenge a specific annexation by the City through a petition for certiorari, Plaintiffs seek to enjoin the City's legislative authority to annex by claiming an exclusive or preferential right to utility infrastructure. There is no legal precedent for such a right. Because

Plaintiffs can claim no clear legal right to bar annexations, Count III must be dismissed.

C. Speculative and Indirect Harm

To justify the grant of an injunction, a plaintiff must show irreparable harm that will occur if relief is not granted. Plaintiffs claim they will suffer irreparable harm "because endless annexations will prolong into the distant future the injustice suffered by Plaintiffs. Am. Compl. ¶106. "Florida courts have held that injunctions cannot be based on conjectural injuries. *See American Circuit Riders v. Metropolitan Dade County*, 659 So. 2d 212 (Fla. 3d DCA 1995) (denying injunction where alleged future harm was not clear and certain). Here, Plaintiffs' claim that the City retaining legislative authority to annex "will prolong into the distant future the injustice" is inherently speculative, uncertain and indirect. *See Lutsky v. Schoenwetter*, 172 So. 3d 534 (Fla. 3d DCA 2015) (Injunctive relief is not available...when the right to the injunction is premised on a speculative, future event"). Additionally, Plaintiffs claim solely economic harm by alleging the potential future diversion of capacity, which would delay development. Economic harm is not irreparable injury. *B.G.H. Ins. Syndicate, Inc. v. Presidential Fire & Cas. Co.*, 549 So. 2d 197 (Fla. 3d DCA 1989).

IV. CONCLUSION

Each of Plaintiffs' counts is legally insufficient. Count I is barred by the non-contractual function of the DOs and by sovereign immunity. Count II is likewise barred and fails to allege the necessary elements of promissory estoppel. Count III asserts no viable cause of action and seeks relief beyond the Court's authority.

WHEREFORE, Defendant, City of Palm Coast, respectfully requests this Court enter an order dismissing the Complaint with prejudice and grant such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Florida Rules of Civil Procedure, Rule 1.202, that a conferral prior to the filing of this Motion is not required.

CERTIFICATE OF SERVICE

I certify that, in compliance with Fla. R. Gen. Prac. & Jud. Admin. 2.516, the foregoing document has been filed with the Florida Courts E-Filing Portal System on this 26th day of November 2025. Accordingly, a copy of the foregoing is being served on this day to the attorneys or interested parties identified in the e-Portal Electronic Service List, including those listed below, via transmission of Notices of Electronic Filing generated by the e-Portal System.

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