

**THIS INSTRUMENT PREPARED BY**  
Markeishia L. Smith, Esquire  
The Law Offices of Markeshia L. Smith, PA  
Post Office 3303  
Haines City, FL. 33845

**AND SHOULD BE RETURNED TO:**  
Erica Anderson  
Town of Dundee Town  
202 East Main Street  
Dundee, FL 33838

For Recording Purposes Only

**THIRD AMENDMENT (AS ASSIGNED TO RICHMOND AMERICAN HOMES) FOR AGREEMENT REGARDING RESERVED CAPACITY IN THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS THIRD AMENDMENT (AS ASSIGNED TO RICHMOND AMERICAN HOMES) TO THE DEVELOPER'S AGREEMENT REGARDING RESERVED CAPACITY IN THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT ("Amendment") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"), and **RICHMOND AMERICAN HOMES OF FLORIDA, LP**, a Foreign limited partnership (the "Owner").

**RECITALS**

1. On or about July 28, 2004, the Town of Dundee, hereinafter called the "Town", entered into that certain "the Developer's Agreement Regarding the Funding of the Design, Permitting, and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant" for 71,920 gpd in equivalent capacity being 266 ERCs with HILLTOP GROVES, LLC, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
2. On or about February 5, 2005, the HILLTOP GROVES, LLC accepted 266 wastewater ERC certificates numbered 1606 through 1871 as shown in the attached receipt which is attached hereto as Exhibit "B" and incorporated herein by reference.
3. On or about July 28, 2020, the Town and HILLTOP GROVES, LLC entered into that certain Amendment to Agreement Regarding Reserved Capacity in the Town of Dundee's Wastewater Treatment Plant (the "2020 Amendment") reactivating forty-three (43) ERCs (Original ERC Certificates numbered 1606 through 1648).

4. On or about June 22, 2021, the Town and HILLTOP GROVES, LLC entered into that certain Amendment to Agreement Regarding Reserved Capacity in the Town of Dundee Wastewater Treatment Plant (the "2021 Amendment") reactivating thirty-seven (37) ERCs (Original ERC Certificates 1649 through 1685) and establishing the transfer of ERCs 1606-1648 and 1649-1685 to Vista Del Lago, LLC for the development of the Vista Del Lago, Phase II and Phase III subdivisions.

5. On or about November 3, 2021, Richmond American Homes of Florida, LP acquired 74 wastewater ERCs (Original ERC Certificates 1686 to 1759) from HILLTOP GROVES, LLC, a Florida limited liability company, pursuant to a Special Warranty Deed.

6. On or about November 14, 2023, the Town and Richmond American Homes of Florida, LP entered into that certain Second Amendment to Agreement Regarding Reserved Capacity in the Town of Dundee Wastewater Treatment Plant (the "2023 Amendment") approving the transfer and reactivation of twenty-five (25) ERCs represented by ERC Certificate Nos 2022-50 through 2022-74 (Original ERC Certificates 1735 through 1759).

7. On or About January 9, 2024, HILLTOP GROVES, LLC and the Town entered into that certain Second Amendment to Developer's Agreement regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant dated January 9, 2024, recorded in Official Records Book 12982, Pages 637 to 796, of the Public Records of Polk County, Florida (the "Second Amendment") which reactivated 112 ERCs (Original ERC Certificates 1760 through 1871) through January 24, 2025, which is attached hereto as Exhibit "C" and incorporated herein by reference.

8. Consistent with the Second Agreement described above, HILLTOP GROVES, LLC assigned ERC Certificates 2024-01 through 2024-109 (Original ERC Certificates 1760 through 1868) to RICHMOND AMERICAN HOMES OF FLORIDA, LP, a Colorado limited partnership and HILLTOP GROVES, LLC retained ERC Certificates 2024-110 through 2024-112 (Original ERC Certificates 1869 through 1871).

9. The Town and Owner have determined that, at this time, Richmond American Homes of Florida LP, a Colorado limited partnership holds, forty-eight (48) expired Wastewater ERCs representing 12,000 gallons per day (GPD) in equivalent capacity in the Town's Wastewater Utility System represented by ERC Certificates numbered 2024-29 through 2024-109 (Original ERC Certificates 1788 through 1868).

10. The Owner has not otherwise conveyed, assigned, pledged, hypothecated or otherwise redeemed any of said certificates representing the Owner ERCs as defined and identified herein although said Owner ERCs expired on January 24, 2025.

11. On March 17, 2025, the Owner requested that the Town reactivate 81 of the Wastewater ERC Certificates numbered 2024-29 through 2024-109 (Original ERC Certificates 1788 through 1868) for use in the Bella Vista subdivision.

12. The 48 Owner ERCs requested for reactivation have accrued Four Thousand Five Hundred and Ninety Dollars (\$4,590.00) in idle capacity charges from April 25, 2025 through April 24, 2026 (11) and April 25, 2024 through April 24, 2027 which remains unpaid.

13. The Town acknowledges that all Town wastewater impact fees have been paid by Owner or its predecessor in interest for the Town's allocation of wastewater capacity for the Owner ERCs pursuant to the Agreement and that the Town presently has adequate permitted capacity in its wastewater plant for the wastewater capacity represented by the Owner ERCs described above.

14. The parties covenant and agree that they have the power and authority to enter into this Amendment and bind themselves to the provisions of this Amendment.

**ACCORDINGLY**, in consideration of the Recitals stated above and other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**SECTION 1. RECITALS; OWNERSHIP.** The Factual Recitals above are true and correct and form a factual and material basis of this Amendment. The Town acknowledges and ratifies the transfer of the Owner ERCs, and the Town further acknowledges and agrees that Owner owns the Owner ERCs which are the subject matter of this Amendment.

**SECTION 2. DEFINITIONS.** All capitalized terms not defined herein shall have the same meaning as defined in the Agreements.

**SECTION 3. GRANT OF EXTENSION.**

A. The Town, pursuant to the terms of this Amendment, hereby reactivates said 48 Owner ERCs and grants to the Owner an extension of the term of the 48

Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by Wastewater ERC Certificates 2025-22 through 2022-81 (Original ERC Certificates 1788 through 1868) through a period expiring April 24, 2027 and April 24, 2028 ("Expiration Date").

B. In consideration for such extension, within thirty (30) calendar days after mutual execution of this Agreement and approval by the Town Commission, Owner shall pay **Four Thousand Five Hundred and Ninety Dollars and fifty cents (\$4,590.00)** in immediately available funds to the Town in full satisfaction of the wastewater idle capacity charges outstanding as of the date of this Agreement and due through April 24, 2027 for the eleven ERC and April 4, 2028 for the remaining thirty-seven (37) ERC's and pay any and all other charges that may be due pursuant to Chapter 54 of the Town's Code of

Ordinances. To the extent the Town determines that any other idle capacity charges are due in accordance with Chapter 54 of the Town's Code of Ordinances regarding the Water and Wastewater Owner ERCs that are the subject of this Agreement then Owner agrees to pay said charges to the Town within thirty (30) calendar days of receipt of an invoice sent to Owner for same. No refunds of any idle capacity charges paid by Owner shall be given by the Town.

C. Once the Owner has paid the sum of Four Thousand Five Hundred and Ninety Dollars (\$4,590.00) in immediately available funds to the Town, all previously issued certificates representing the Wastewater Owner ERCs extended herein and that are the subject of this Agreement shall be returned to the Town and cancelled and of no force and effect. Thereafter, in exchange for the returned certificates, the Town will issue new certificates for Wastewater Owner ERCs extended herein and that are the subject matter of this Agreement and provide same to the Owner. Provided, however, that upon issuance of the new certificates, the terms of the Agreement attached hereto as **Exhibit "A"** shall not control with respect to such certificates. No Wastewater capacity in the Town's Wastewater Utility Systems shall be reserved beyond April 24, 2027 for the eleven ERC's and April 24, 2028, for the remaining thirty-seven (37) ERC's and the Owner ERCs extended herein shall expire on April 24, 2027 for the eleven ERC's and April 24, 2028 for the remaining thirty-seven (37) ERC's.

#### **SECTION 4. GRANT OF OPTION.**

A. The Town, pursuant to the terms of this Amendment and in addition to any rights granted to Owner under the Agreement or under applicable law, hereby grants to the Owner an option to transfer, from time to time (i) all or a portion of the Owner ERCs to a third party ("ERC Transferee") without transferring fee simple title to all or any portion of the Property ("ERC Transfer"), and/or (ii) transfer of all or any portion of the Property to a third party ("Property Transferee"; ERC Transferees and Property Transferees are collectively "Transferees") and retain all or any Owner ERCs ("Property Transfer"; "ERC Transfers" and "Property Transfers" are collectively "Independent Transfers"). Owner may exercise such option in its sole and absolute discretion.

B. At least thirty (30) days prior to any Independent Transfer as defined herein, Owner shall provide written notice to the Town thereof ("Transfer Notice"), which shall include the Transferee's (i) name, (ii) address, (iii) employer identification number (EIN) or federal tax identification number, and (iv) contact information (including telephone number, fax number, and e-mail address, as applicable).

C. In the case of an Owner ERC Transfer of all outstanding ERCs, Owner shall no longer be liable for any idle capacity charges which may accrue with respect to the applicable Owner ERCs if Transferee executes a written commitment to pay such charges. In that event the Transferee must also comply with all of the conditions and obligations in the Agreement and this Amendment including but not limited to the provisions of Section 6 B of this Amendment.

#### **SECTION 5. OBLIGATIONS OF TOWN.**

A. The Town shall allocate wastewater capacity for the Owner ERCs in the name of Owner and/or its successors and assigns in accordance with all applicable laws

and Ordinances and the terms of the Agreements, as amended by this Amendment, through the Expiration Date.

B. The Town shall, within ten (10) days following receipt of Owner's request, provide a written statement to Owner certifying the current number of Owner ERCs in the name of Owner.

**SECTION 6. AGREEMENT TO COOPERATE.** The parties agree to cooperate and to do all things reasonably necessary to accomplish the terms of this Amendment, and that they respectively shall, upon being requested by the other party to do so, execute and deliver promptly any and all such authorizations, instruments, papers or documents of any and every kind and character as may be reasonably required, necessary or proper for the purpose of giving full force and effect to this Amendment and to the covenants, conditions, and agreements contained herein. Except as specifically modified by this Amendment, all of the terms, covenants, conditions and agreements of the Agreements shall remain in full force and effect.

**SECTION 7. DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** This Amendment is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

**SECTION 8. SEVERABILITY.** If any part of this Amendment is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Amendment if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, this Amendment is declared to be severable.

**SECTION 9. LAND USE APPROVALS.** Owner acknowledges and understands that the Town is prohibited from engaging in "Contract Zoning" or the bartering away of its legislative prerogative. As such, this Amendment shall not be construed as a basis for (1) granting or assuring or indicating or (2) refusing to grant or preventing any future grant of land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the Property.

**SECTION 10. BINDING UPON SUCCESSORS.** This Amendment shall be binding upon and shall inure to the benefit of the successors or assigns of the parties hereto.

**SECTION 11. APPLICABLE LAW AND VENUE.** This Amendment and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida. Venue for any dispute or cause of action under the Agreements, as modified by this Amendment, shall be exclusively in the state courts of competent subject matter jurisdiction in Polk County, Florida.

**SECTION 12. NOTICES.** All notices, demands, requests and other communications required or permitted by the Agreements, as modified by this Amendment, by any party hereto to any other party shall be in writing and shall be validly given or made by any party, or any party's attorney on behalf of such party, only if personally served or delivered by Federal Express or other similar reputable national courier service keeping records of deliveries and attempted deliveries. In the event of

personal service, notice shall be deemed effective when delivered. Service by courier shall be conclusively deemed made on the second business day delivery is attempted or upon receipt, whichever is sooner.

TOWN: TOWN OF DUNDEE  
P.O. Box 1000  
105 Center Street  
Dundee, Florida 33838-1000  
Attention: Town Manager

With a copy to: Markeishia L. Smith, Esquire  
*(which shall not constitute notice).* Town Attorney, Town of Dundee  
408 S Tenth Street  
Haines City, FL 33844

OWNER: RICHMOND AMERICAN HOMES OF FLORIDA, LP  
2822 Commerce Park Drive, Suite 100  
Orlando, FL 32819

Any person or entity may change their address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others.

**SECTION 13. ENTIRE AGREEMENT.** The Agreement, as modified by this Amendment, constitute the entire agreement between the parties. Modifications to and waivers of the provisions herein shall not be binding unless made in writing and signed by the parties hereto and approved by the Town's governing body. Except as expressly amended by this Amendment, the terms and conditions of the Agreement and the Assignment shall remain unchanged and unamended and are hereby ratified and confirmed. In the event of any conflict between the terms of the Agreement and Amendment, the terms of this Amendment shall control.

**[SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF**, Owner and the Town have executed or have caused this Amendment, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Amendment.

**ATTEST:**

**THE TOWN OF DUNDEE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
As Its: Mayor \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
As Its: Town Clerk \_\_\_\_\_

FOR THE USE AND RELIANCE  
OF TOWN OF DUNDEE ONLY.  
APPROVED AS TO FORM.

By: \_\_\_\_\_  
Markeishia L. Smith  
Town Attorney

**OWNER:**

RICHMOND AMERICAN HOMES OF FLORIDA, LP  
a Foreign limited liability partnership

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

Signed and delivered  
In the presence of:

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

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

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2026, by \_\_\_\_\_, as \_\_\_\_\_ of RICHMOND AMERICAN HOMES  
OF FLORIDA, LP, a Foreign limited liability partnership on behalf of the company,  
RICHMOND AMERICAN HOMES OF FLORIDA, LP, a Foreign limited liability partnership.  
He is [ ] personally known to me or [ ] has produced \_\_\_\_\_ as identification and [ ]  
(did) [ ] (did not) take an oath.

\_\_\_\_\_  
Signature of Person Taking Acknowledgement

\_\_\_\_\_  
Name of Acknowledger Types, Printed, or Stamped

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, if any.