

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

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For Recording Purposes Only

**AMENDMENT TO AGREEMENT REGARDING THE EXTENSION OF CERTAIN
EQUIVALENT RESIDENTIAL CONNECTIONS FOR RESERVED CAPACITY IN THE
TOWN OF DUNDEE'S WATER TREATMENT PLANT**

THIS AMENDMENT TO AGREEMENT REGARDING THE EXTENSION OF CERTAIN EQUIVALENT RESIDENTIAL CONNECTIONS FOR RESERVED CAPACITY IN THE TOWN OF DUNDEE'S WATER TREATMENT PLANT ("Amendment"), made and entered into this _____th day of August, 2024, by and between the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"), and **DUNDEE RESERVE HOLDINGS, LLC**, an active Delaware limited liability **ICHMOND AMERICAN HOMES OF FLORIDA, LP**, a Colorado limited liability company authorized to transact business in State of Florida ("Owner").

RECITALS

1. On or about August 17, 2005, the Town entered into that certain TOWN OF DUNDEE RECEIPT AND ACKNOWLEDGEMENT OF PAYMENT AND RESERVATION OF WATER TREATMENT PLANT CAPACITY (the "Reservation") with Silver Residential Development, Inc., for reservation in the Town's Water Treatment Plant of 153,000 GPO in equivalent capacity or 425 Equivalent Residential Connections (the "Water ERCs") for the Tree-O-Groves and Raley's Groves Subdivisions.

2. A copy of the Reservation is attached hereto as **Composite Exhibit "A"** and incorporated herein by reference.

3. Pursuant to the Reservation (see **Exhibit "A"**), the term for the Water ERCs commenced on January 1, 2006 and expired on January 1, 2016.

4. On or about January 9, 2006, the Town entered into that certain ASSIGNMENT AND ASSUMPTION OF DEVELOPER'S RIGHTS (the "Assignment") approving the request of Silver Residential Development, Inc., to assign 105 of the Water ERCs (Nos. 1321-1425) to State Housing and Development, Inc.

5. A copy of the Assignment is attached hereto as **Composite Exhibit "A"** and incorporated herein by reference.

6. On December 1, 2011, pursuant to that certain Bill of Sale (the "Bill") executed by Larry D. Silver, Manager of Silver Capital Advisors, LLC as Manager of Lake Marie, LLC, 306 Water ERCs (Nos. 1015-1320) were transferred to Wheeler Farms, Inc., a Florida corporation.

7. A copy of the Bill is attached hereto as **Composite Exhibit "A"** and incorporated herein by reference.

8. On March 2, 2022, Wheeler Farms, Inc. and Owner entered into that certain ASSIGNMENT OF DEVELOPMENT RIGHTS, ENTITLEMENTS, IMPACT FEE CREDITS, AND OTHER RIGHT, TITLE AND INTEREST (the "Assignment of Rights") which transferred and/or assigned, amongst others, 306 Water ERCs (Nos. 1015-1320) to the Owner.

9. A copy of the Assignment of Rights is attached hereto as **Composite Exhibit "A"** and incorporated herein by reference.

10. On September 13, 2022, the Owner requested that the Town ratify and approve the transfer(s) and assignment(s) of the 306 Water ERCs (Nos. 1015-1320) and renew and/or reactivate the Water ERCs (Nos. 1015-1320).

11. At that time, the Town renewed and reissued the 306 Water ERCs (Nos. 1015-1320) as re-issued Water ERC Nos. 22-01 through 22-306.

12. The Town and Owner have determined that, at this time, the Owner holds, albeit expired, 306 Water ERCs representing 110,160 gallons per day (GPO) in equivalent capacity in the Town's Water Treatment Plant represented by ERC Certificates numbered 22-01 through 22-306.

13. The Owner has not otherwise conveyed, assigned, pledged, hypothecated or otherwise redeemed any of said certificates representing the Water ERCs as defined and identified herein although said Owner ERCs expired on July 25, 2024.

14. The Owner is the owner of certain real property situated in Polk County, Florida, more particularly described by **Composite Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property") which is the Reserve at Dundee Lakes Subdivision.

15. Prior to July 25, 2024, the Owner requested that the Town reactivate or renew 306 Water ERCs (Nos. 22-01 through 22-306) for a period of twenty-four (24) months beginning on July 25, 2024 through July 24, 2026.

16. The 306 Water ERCs requested for renewal and/or reactivation would accrue Thirty-Three Thousand Forty-Eight Dollar and zero cents (\$33,048.00) in idle capacity charges from July 25, 2024 through July 24, 2026, if same remained unpaid.

17. On August 29, 2024, at a duly notice public meeting, the Town Commission approved the reactivation of the Water ERCs (Nos. 22-01 through 22-306) for the development of the Reserve at Dundee Lakes Subdivision.

18. Owner received the transfer or assignment of the 306 Water ERCs for construction of single-family homes to be located within the municipal limits of the Town.

19. 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 reactivates the Water ERCs (Nos. 22-01 through 22-306), and the Town further acknowledges and agrees that Owner owns the 306 Water 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 306 Water ERCs and grants to the Owner an extension of the term of the 306 Water ERCs of equivalent capacity in the Town's Water Treatment Plant represented by Water ERC Certificates (ERC Certificates 22-01 through 22-306) through a period expiring July 25, 2026 ("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 Thirty-Three Thousand Forty-Eight Dollar and zero cents (\$33,048.00) in immediately available funds to the Town in full satisfaction of the water idle capacity charges outstanding as of the date of this Agreement and due through July 24, 2026, 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 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 Thirty-Three Thousand Forty-Eight Dollar and zero cents (\$33,048.00) in immediately available funds to the Town, all previously issued certificates representing the Water 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 Water ERCs extended herein and that are the subject matter of this Agreement and provide same to the Owner. Provided however that the terms of the Agreement attached hereto as **Composite Exhibit "A"** shall not control and when new

certificates are issued by the Town to Owner. No Water capacity in the Town's Water Treatment Plant shall be reserved beyond July 24, 2026, and the 306 Water ERCs extended herein shall expire on July 25, 2026.

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 Water 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 Water 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). The parties agree that Owner shall enter into transfer and/or assignment agreement with **DUNDEE RESERVE HOLDINGS, LLC**, in the event of any transfer and/or assignment of the Water ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

C. In the case of a Water 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 Water 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 Reservation and this Agreement.

SECTION 5. OBLIGATIONS OF TOWN.

A. The Town shall allocate water capacity for the Water 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 Water 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 effected. 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:
(*which shall not
constitute notice*)

Frederick J. Murphy, Jr.
Town Attorney, Town of Dundee
P.O. Drawer 30
245 South Central Avenue
Bartow, Florida 33830

OWNER: DUNDEE RESERVE HOLDINGS, LLC
Attn: Shelton Rice
225 East Lemon Street
Suite 300
Lakeland, Florida 33801

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: _____
Frederick J. Murphy, Jr.
Town Attorney

OWNER:

DUNDEE RESERVE HOLDINGS, LLC,
a Delaware limited liability company

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 _____,
2022, by _____, as _____ of DUNDEE RESERVE HOLDINGS,
LLC, on behalf of the company, DUNDEE RESERVE HOLDINGS, LLC. He is []
personally known to me or [] has produces _____ 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.