

EXHIBIT C



INSTR # 2024017430
BK 12982 Pg. 637-796 PG(s)160
RECORDED 01/24/2024 09:28:46 AM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES \$1,361.50
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**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Frederick J. Murphy, Jr., Esquire
Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831
Telephone (863) 533-7117
Facsimile (863) 533-7412

For Recording Purposes Only

**SECOND AMENDMENT TO AGREEMENT REGARDING RESERVED CAPACITY IN
THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS 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 ("Amendment"), made and entered into this 9th day of January, 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 **HILLTOP GROVES, LLC**, a municipal corporation organized and existing under the laws of the State of Florida ("Owner").

RECITALS

1. On or about July 28, 2004, the Town and Hilltop Groves LLC, a Florida Limited Liability Company, entered into that certain Developer's Agreement Regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant (the "Agreement") a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference.
2. The Agreement provided for 266 ERCs totaling 71,920 gpd in equivalent capacity.
3. On or about February 5, 2005, the Owner executed receipts (collectively the "Receipts") acknowledging the receipt and acceptance of 266 Dundee Wastewater Treatment Facility ERC certificates numbered 1606 through 1871.
4. Copies of the Receipts are attached hereto as **Composite Exhibit "B"** and incorporated herein by reference.
5. On or about July 28, 2020, the Town and Owner 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 1606 through 1648).

6. A copy of the 2020 Amendment is attached hereto as **Composite Exhibit "C"** and incorporated herein by reference.

7. On or about July 22, 2021, the Town and Owner entered into that certain Amendment To Agreement Regarding Reserved Capacity In The Town of Dundee's Wastewater Treatment Plant (the "2021 Amendment") reactivating thirty-seven (37) ERCs (Original ERC Certificates 1649 through 1685).

8. A copy of the 2021 Amendment is attached hereto as **Composite Exhibit "D"** and incorporated herein by reference.

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

10. Copies of the Deed and closing statement are attached hereto as **Exhibit "E"** and incorporated herein by reference.

11. 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's 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).

12. A copy of the 2023 Agreement is attached hereto as **Composite Exhibit "F"** and incorporated herein by reference.

13. The Town and Owner have determined that, at this time, the Owner holds, albeit expired, 112 Wastewater ERCs representing 30,240 gallons per day (GPD) in equivalent capacity in the Town's Wastewater Utility System represented by ERC Certificates numbered 1760 through 1871 (the "Owner ERCs").

14. 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.

15. The Owner ERCs expired on April 24, 2011.

16. On October 4, 2023, the Owner requested that the Town reactivate the Owner ERCs (Original ERC Certificates 1760 through 1871).

17. The 112 Owner ERCs requested for reactivation would have accrued One Hundred Seven Thousand Three Hundred Fifty-two Dollars and no cents (\$107,352.00) in idle capacity charges from April 24, 2006 through January 24, 2024 which remains unpaid.

18. On June 23, 2020, the Town introduced and passed Resolution No. 20-13 (the "Resolution"). A copy of the Resolution is attached hereto as **Exhibit "G"** and incorporated herein by reference.

19. The Resolution provides for a temporary waiver of certain Town of Dundee Idle Capacity Fee(s) for a period of eighteen (18) months beginning on June 23, 2020 and automatically sunseting on December 23, 2021.

20. In accounting for the temporary waiver provide for with the passage of the Resolution, the idle capacity charges for the Owner ERCs (Original ERC Certificates 1760 through 1871), totals Ninety-eight Thousand Two Hundred Eighty dollars and no cents (\$98,280.00).

21. 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 (see attached **Exhibit "A"**) and that the Town presently has adequate permitted capacity in its wastewater plant for the wastewater capacity represented by the Owner ERCs described above.

22. 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 112 Owner ERCs and grants to the Owner an extension of the term of the 112 Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by Wastewater ERC Certificates (Original ERC Certificates 1760 through 1871) through a period expiring January 24, 2025 ("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 Ninety-eight Thousand Two Hundred Eighty dollars and no cents (\$98,280.00) 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 January 24, 2025 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 Wastewater Owner ERCs that are the subject of this Agreement, then Owner agrees to pay said idle capacity and/or 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 be **Ninety-eight Thousand Two Hundred Eighty dollars and no cents (\$98,280.00)** 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 the terms of the Agreement attached hereto as **Exhibit "A"** shall not control and when new certificates are issued by the Town to Owner. No Wastewater capacity in the Town's Wastewater Utility Systems shall be reserved beyond January 24, 2025 and the Owner ERCs extended herein shall expire on January 24, 2025.

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). The parties agree that Owner shall enter into transfer and/or assignment agreement with **RICHMOND AMERICAN HOMES OF FLORIDA, LP, a Colorado limited partnership**, in the event of any transfer and/or assignment of the Owner ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

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 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 Agreement, as amended, and 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 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: Frederick J. Murphy, Jr.
(which shall not Town Attorney, Town of Dundee
constitute notice) P.O. Drawer 30
245 South Central Avenue
Bartow, Florida 33830

OWNER: HILLTOP GOVES, LLC
5529 US Highway 98 North
Lakeland, FL 33809

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.

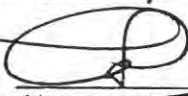
[SIGNATURE PAGES TO FOLLOW]

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.

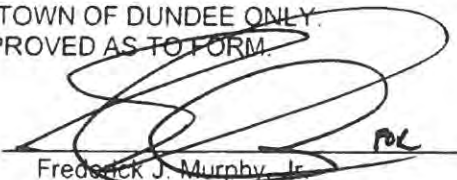
ATTEST:

THE TOWN OF DUNDEE

By: 
Print Name: Sam Pennino
As Its: Mayor
Date: 1-12-2024

By: 
Print Name: Trevor Douthett
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:

HILLTOP GROVES, LLC,
a Florida limited liability company

By: [Signature]

Name: LEE SAUNDERS

Title: MANAGER

Signed and delivered
In the presence of:

Print Name: [Signature]

Print Name: Jessica Gonzalez

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 12 day of January, 2024, by Lee Saunders, as Manager of HILLTOP GROVES, LLC, on behalf of the company, HILLTOP GROVES, LLC. He is ☒ personally known to me or [] has produces _____ as identification and [] (did) [] (did not) take an oath.

[Signature]
Signature of Person Taking Acknowledgement

Melissa Glogowski
Name of Acknowledger, Types, Printed, or Stamped

HR Coordinator / Executive Admin Asst
Title or Rank

Serial Number, if any.



EXHIBIT A

Final Draft 07/28/2004

Agreement #4

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

PAID APR 25 2006
IN FULL
Jim Gallagher
John Monaghan

THIS AGREEMENT ("Agreement") is made on this 25th day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF ^{Town of Dund} DUNDEE, a municipal corporation organized and existing under the laws of the State of ^{P.O. Box 100} Florida (the "Town"). ^{Dundee, FL 33838}

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain **connection** fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least **700,000** gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of **\$691,267.50** which amount is based on a total of **266** ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the **71,820 gpd** in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as **Exhibit "A"**. Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase **266** ERCs which represents **71,820 gpd** in equivalent capacity.

4.0 Developer's/Owner's Obligations.

4.1.1 The Developer/Owner agrees to pay to the Town the sum of **\$691,267.50** in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase **266** ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents **71,820 gpd** in equivalent capacity in accordance with the following:

4.1.2 The sum of **One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14)** in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of **Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36)** shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of **\$107,848.12** is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of **\$107,848.12** is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of **\$367,723.12** is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MID-FLORIDA
CR # 07-448 3566716

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves **71,820 gpd** in equivalent capacity for the Developer/Owner based on **266 ERCs** purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity **266 ERC's** representing **71,820 gpd** (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. **In the event that the Town is unable to secure the required up front cash along with letters of credit**

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:	Town Manager Town of Dundee Post Office Box 1000 105 Center Street Dundee, FL 33838-1000
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With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

ATTEST:

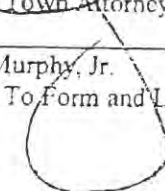
By: 
Town Clerk

TOWN COUNCIL OF THE
TOWN OF DUNDEE

By: 
Kevin Kitto - Mayor

Date: 11th August 04

Approved by Town Attorney

By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

WITNESSES

{ DEVELOPER }



My wife, Shirley
Joe L. Saunders

Hilltop Groves, LLC

By: Joe L. Saunders
Joe L. Saunders

Its Managing Member

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



NOTARY PUBLIC
My Commission Expires _____

 Emily J. Chaffin
My Commission DD244879
Expires August 26 2007

Exhibit A

**MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit**

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of **Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809** in the aggregate amount of USD **Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36)** available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by **Hilltop Groves, LLC** in return for the Town of Dundee reserving and assigning a total of **266 ERC's** of sewer plant capacity exclusively for utilization by **Hilltop Groves, LLC** in accordance with the following schedule as agreed:

Payment No. 1, for the amount of **\$107,848.12** is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of **\$107,848.12** is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment No. 3, for the amount of **\$367,723.12** is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on **Hilltop Groves, LLC** and the **MIDFLORIDA Federal Credit Union** and once delivered to **Hilltop Groves, LLC** requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

Drafts drawn under this credit must state on their face "drawn under **MIDFLORIDA Federal Credit Union** irrevocable letter of credit number **302997** dated **August 25, 2004**."

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

EXHIBIT B

Hilltop Groves

Receipt for (quantity) _____ 266 Dundee Wastewater Treatment Facility ERC

Certificates number _____ 1606 _____ to _____ 1871 _____

Received By:

Date 2/10/05

Signed [Signature]

Issued By:

Date 2/10/05

Signed [Signature]

Please return original to Finance Department to replace certificates.

Town of Dundee
ERC Schedule
Wastewater Plant Expansion

Company	Development	Equivalent Residential Units	Certificate Numbers
Hilltop Groves	Hilltop	266	1606 -1871

Town of Dundee
ERC Schedule
Wastewater Plant Expansion

Company	Development	Equivalent Residential Units	Certificate Numbers
Hilltop Groves	Hilltop	266	1606 - 1871

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

PAID APR 25 2006
IN FULL
Jim Gallagher
Jason Monroy

THIS AGREEMENT ("Agreement") is made on this 28th day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF ^{Town of Dund} ~~DUNDEE~~, a municipal corporation organized and existing under the laws of the State of ^{P.O. Box 100} ~~Dundee, FL 33838~~ Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain **connection** fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations

4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:

4.1.2. The sum of **One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14)** in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of **Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36)** shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MID-FLORIDA
CR # 07-448 3566716

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the **266 ERCs** for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.

5.0 Town's Obligations

- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves **71,820 gpd** in equivalent capacity for the Developer/Owner based on **266 ERCs** purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity **266 ERC's** representing **71,820 gpd** (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town **In the event that the Town is unable to secure the required up front cash along with letters of credit**

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof

- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:	Town Manager
	Town of Dundee
	Post Office Box 1000
	105 Center Street
	Dundee, FL 33838-1000

With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

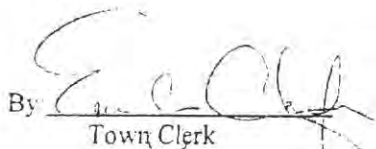
For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

ATTEST:

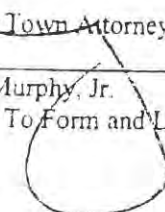
By 
Town Clerk

TOWN COUNCIL OF THE
TOWN OF DUNDEE

By: 
Kevin Kitto - Mayor

Date: 11th August 04

Approved by Town Attorney

By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

WITNESSES

{ DEVELOPER }


FRANK S. [illegible]
Joe L. Saunders

Hilltop Groves, LLC

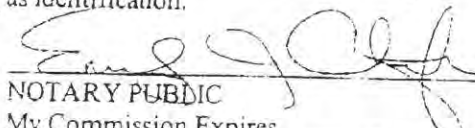
By: Joe L. Saunders
Joe L. Saunders

Its. Managing Member

STATE OF FLORIDA

COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.


NOTARY PUBLIC

My Commission Expires _____



Emily J. Chaffin
My Commission DD244879
Expires August 26 2007

MIDFLORIDA
Federal Credit Union

P.O. Box 9608 Lakeland, Florida 33802 941/686-7587

Employee #: 154 Receipt #: 425095938 Date: 04/25/2006 Time: 9:59:10
Account: [REDACTED] Free Business Checking Sub: 1 Check #: 4483566716
Hilltop Groves LLC
Check Withdrawal #4483566716 \$367,723.12-
New Balance \$12,932.05

RECEIVED APR 25 2006

X _____ RECEIVED BY _____

DETACH AND RETAIN UPPER PORTION BEFORE DEPOSITING

21

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. ABSENCE OF THIS FEATURE WILL INDICATE A COPY.

MIDFLORIDA
Federal Credit Union
P.O. Box 9608 Lakeland, Florida 33802 941/686 7587

CASHIER'S CHECK

07-448 3566716

VOID OVER \$367,723.12

69-35
519
04/25/2006

Y THREE HUNDRED SIXTY SEVEN THOUSAND SEVEN HUNDRED
TWENTY THREE AND 12/100 DOLLARS

**367,723.12

MIDFLORIDA
FEDERAL CU \$367,723dols 12cts

THE
DEP OF

Town Of Dundee
From The Account Of
HILLTOP GROVES LLC

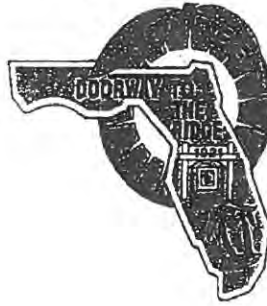
Gayle O'Brien

VOID AFTER 90 DAYS

ABLE THROUGH
T
RIESTON, WV

Town of Dundee

P.O. Box 1000
105 Center Street
Dundee, Florida 33838-1000



Tel. (863) 419-3100
Fax (863) 419-3105
Suncom 515-9950

April 18, 2005

Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

Dear Joe:

The fourth and final installment payment on your sewer ERC purchase agreement is now due.

The town engineer's certification that the sewer plant expansion project is now 100% complete and started up is attached.

Please make your check in the amount of **\$367,723.12** payable to the Town of Dundee and send it to my attention.

Also, the ribbon cutting ceremony is scheduled for Noon on May 2, 2006 at the plant on Welsh Road. Lunch will be served and you and your guest(s) are invited to attend. Please RSVP by April 24th.

Very truly yours,

Jim Gallagher
Town Manager



Consulting Civil & Environmental Engineers, Planners, and Surveyors

2105 Dundee Road
Post Office Box 9309
Winter Haven, FL 33883-9309
Telephone: (863) 324-1112
Fax: (863) 294-6185
Email: envisors@envisors.com

18 April 2006
Hand Delivered

Mr. James Gallagher, Town Manager
TOWN OF DUNDEE
Post Office Box 1000
Dundee, Florida 33838

RECEIVED APR 18 2006

Subject: Construction Progress Certification
Project: Phase II Wastewater Treatment Facility (WWTF) Expansion Improvements - Town of Dundee
EVI Job No.: 71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that start-up of the Town's Phase 2 WWTF expansion is 100% complete, the WWTF is fully operational, and the required FDEP notification for project completion and start-up has been submitted. Please note for the record that start-up of the facility occurred on 13 April 2005 and it is now processing wastewater.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

Yours truly,
ENVISORS, LLC

A handwritten signature in black ink, appearing to read 'Steven L. Elias'.

Steven L. Elias, P. E.
Vice President of Engineering

SLE/DM/lhh

Enclosure: None

Copy to: EVI Job and Cost File No. 71103401; S:\JOBS\EVI\711 DUNDEE\71103401\CORRES\71103401.L34

AN EQUAL OPPORTUNITY EMPLOYER-M/F/V/H
ORIGINAL PRINTED ON RECYCLED PAPER 50%
A small logo of a tree inside a circle, indicating the paper is recycled.

THIS DOCUMENT HAS A GRADUATED BACKGROUND, DARK TO LIGHT. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK.

Hilltop Groves, LLC
5529 US Hwy 98 North
Lakeland, FL 33809-3103
PH 863-858-5686

MidFlorida Federal Credit Union
Lakeland, FL 33802
63-7980/2631

2014

PAY **** ONE HUNDRED SEVEN THOUSAND EIGHT HUNDRED FORTY EIGHT & 12/100 DOLLARS

TO THE
ORDER OF

DATE

AMOUNT

11/18/05

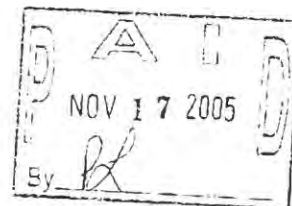
\$ **107848.12

Town of Dundee

AUTHORIZED SIGNATURE

Joe C Saunders

THIRD PAYMENT
ON ERC INSTALLMENT
AGREEMENT FOR 266 ERC'S
SEWER CAPACITY.



Town of Dundee

P.O. Box 1000
105 Center Street
Dundee, Florida 33838-1000



Tel. (863) 419-3100
Fax (863) 419-3105
Suncom 515-9950

November 1, 2005

Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

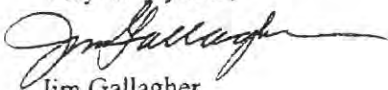
Dear Joe:

The third installment payment on your sewer ERC purchase agreement is now due.

The town engineer's certification that the sewer plant expansion project is now 50% complete is attached.

Please make your check in the amount of \$107,848.12 payable to the Town of Dundee and send it to my attention. Thanks.

Very truly yours,


Jim Gallagher
Town Manager

Pd 11/17/05


C. RICK MILLER



Consulting Civil & Environmental Engineers, Planners, and Surveyors

2105 Dundee Road
Post Office Box 9309
Winter Haven, FL 33883-9309
Telephone: (863) 324-1112
Fax: (863) 294-6185
Email: envisors@envisors.com

28 October 2005
Hand Delivered

Mr. James Gallagher, Town Manager
TOWN OF DUNDEE
Post Office Box 1000
Dundee, Florida 33838

Subject: Construction Progress Certification

Project: Phase II Wastewater Treatment Facility (WWTF) Expansion Improvements -
Town of Dundee

EVI Job No.: 71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that construction activities of the Town's Phase II WWTF expansion is more than 50% complete as of 28 October 2005.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

Yours truly,
ENVISORS, LLC

A handwritten signature in black ink, appearing to read 'Steven L. Elias'.

Steven L. Elias, P. E.
Vice President of Engineering

SLE/DM

Enclosure:

Copy to:

None

EVI Job and Cost File No. 71103401; S:\JOBS\EVI\711 DUNDEE\71103401\CORRESP\71103401 L21

AN EQUAL OPPORTUNITY EMPLOYER-M/F/V/H
ORIGINAL PRINTED ON RECYCLED PAPER FIBERS

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTING. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK.

Hilltop Groves, LLC
5579 US-98 North
Lakeland, FL 33810
PH: 863-858-4397

PAY TO THE ORDER OF: Town of Dundee

MidFlorida Federal Credit Union
Lakeland, FL

For ERC Units 2nd installment

1057
3/15/2005

\$107,848.12

[Signature]

RECEIPT

DATE	3/17/05	No.	163445
RECEIVED FROM	Hilltop Groves, LLC		\$107,848.12
One hundred seven thousand eight hundred forty eight dollars + 12/100			
FOR RENT, ERC Units - 2nd installment			
ACCOUNT		CASH	☐
PAYMENT		CHECK	☒
BAL DUE		MONEY ORDER	☐
		FROM	10
		BY	Madison C. McAlain

Jim Gallagher

From: Jim Gallagher [townmanager@townofdundee.com]
Sent: Tuesday, March 15, 2005 12:42 PM
To: Lee Saunders (E-mail)
Subject: Hilltop Groves, LLC ERC Purchase Agreement

Lee and Joe:

You are the only party who has not paid the second payment on their ERC purchase agreement or indicated that their payment is on the way

I realize that there is a letter of credit for the Town to draw upon, but we really would prefer not to force payment and possibly strain our friendly business relationship. therefore, if for some reason you have changed your mind about purchasing the 266 ERC's, I would be willing to recommend to the Town Council that we refund your initial payment and let you out of the purchase agreement.

However, if I don't hear from you very soon, we will have to proceed with drawing against the letter of credit

Jim Gallagher
Town Manager
Town of Dundee
(863) 419-3100

3/15/2005

Town of Dundee

P.O. Box 1000
105 Center Street
Dundee, Florida 33838-1000



Tel. (863) 419-3100
Fax (863) 419-3105
Suncom 515-9950

March 1, 2005

Dear Sewer Plant Expansion Project Partner:

The second installment payment on your sewer ERC purchase agreement is due.

I have attached a copy of the Town Engineer's certification that the design engineering is completed and that the project is out to bid.

Please make your check payable to the Town of Dundee and send it to my attention.
Thanks

Very truly yours,

Jim Gallagher
Town Manager



Consulting Civil & Environmental Engineers, Planners, and Surveyors

2105 Dundee Road
Post Office Box 9309
Winter Haven, FL 33883-9309
Telephone: (863) 324-1112
Fax: (863) 294-6185
Email: envisors@envisors.com

1 March 2006
Hand Delivered

Mr. James Gallagher, Town Manager
TOWN OF DUNDEE
Post Office Box 1000
Dundee, Florida 33838

Subject: Design Completion Certification

Project: Phase II Wastewater Treatment Facility (WWTF) Expansion Improvements -
Town of Dundee

EVI Job No.: 71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that design of the Town's Phase II WWTF expansion has been completed and the Project has been advertised for public bid. The pre-bid meeting for the Project will be held with prospective bidders this afternoon at 2:00.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

Yours truly,
ENVISORS

A handwritten signature in black ink, appearing to read 'Steven L. Elias'.

Steven L. Elias, P. E.
Vice President of Engineering

SL&pt
Enclosure:
Copy to:

None

EVI Job and Cost File No. 71*03401; S:\JOBS\EVI\711 DUNDEE\71103401\CORRES\71*03401* L08

AN EQUAL OPPORTUNITY EMPLOYER-M/F/V/H
ORIGINAL PRINTED ON RECYCLED PAPER FIBERS
www.envisors.com

Town of Dundee

P.O. Box 1000
105 Center Street
Dundee, Florida 33838-1000



Tel. (863) 419-3100
Fax (863) 419-3105
Suncom 515-9950

February 11, 2005

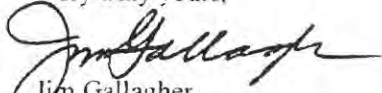
Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

Dear Joe:

This is just a reminder that the second installment payment on your sewer ERC purchase agreement is due March 1, 2005.

Please make your check in the amount of \$107,848.12 payable to the Town of Dundee and send it to my attention. Thanks.

Very truly yours,


Jim Gallagher
Town Manager

LJR LTD FAMILY
5100 US HIGHWAY 98 NORTH
LAKELAND, FL 33809
PH: 863-858-4399

Date

8/27/09

646
63-7980/2631
10

Pay to the
Order of

Town of Dundee

\$107,848.19

one hundred seven thousand eight hundred forty eight and 19/100

DOLLARS

MIDFLORIDA
Federal Credit Union
Lakeland, Florida

Hilltop Groves

For

Seven Tape

Joe C. Saunders

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

THIS AGREEMENT ("Agreement") is made on this ____ day of July, 2004, by and between **Hilltop Groves, LLC** (the "Developer/Owner") and the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain **connection** fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least **700,000** gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of **\$691,267.50** which amount is based on a total of **266 ERCs** the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the **71,820 gpd** in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as **Exhibit "A"**. Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase **266 ERCs** which represents **71,820 gpd** in equivalent capacity.

4.0 Developer's/Owner's Obligations.

- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of **\$691,267.50** in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase **266 ERCs** that it proposes to connect to the Town's wastewater treatment plant and which represents **71,820 gpd** in equivalent capacity in accordance with the following:
- 4.1.2. The sum of **One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14)** in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of **Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36)** shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of **\$107,848.12** is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of **\$107,848.12** is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of **\$367,723.12** is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.

5.0 Town's Obligations.

- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves **71,820 gpd** in equivalent capacity for the Developer/Owner based on **266 ERCs** purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity **266 ERC's** representing **71,820 gpd** (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. **In the event that the Town is unable to secure the required up front cash along with letters of credit**

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:

Town Manager
Town of Dundee
Post Office Box 1000
105 Center Street
Dundee, FL 33838-1000

With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

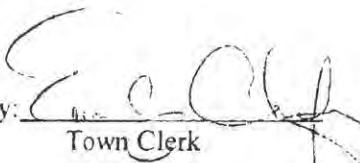
With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

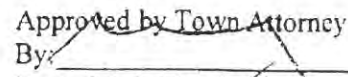
TOWN COUNCIL OF THE
TOWN OF DUNDEE

ATTEST:

By: 
Town Clerk

By: 
Kevin Kitto - Mayor

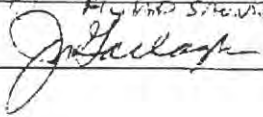
Date: 11th August 04

Approved by Town Attorney
By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

WITNESSES

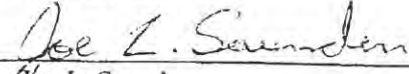
{ DEVELOPER }



Atty. John S. Williams


Joe L. Saunders

Hilltop Groves, LLC

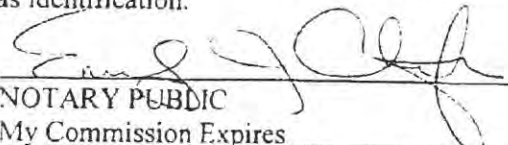
By: 

Joe L. Saunders

Its: Managing Member

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



NOTARY PUBLIC
My Commission Expires _____



Emily J. Chafin
My Commission DD244879
Expires August 26 2007

Exhibit A

**MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit**

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of **Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809** in the aggregate amount of **USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36)** available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by **Hilltop Groves, LLC** in return for the Town of Dundee reserving and assigning a total of **266 ERC's** of sewer plant capacity exclusively for utilization by **Hilltop Groves, LLC** in accordance with the following schedule as agreed:

Payment No. 1, for the amount of **\$107,848.12** is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of **\$107,848.12** is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment No. 3, for the amount of **\$367,723.12** is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on **Hilltop Groves, LLC** and the **MIDFLORIDA Federal Credit Union** and once delivered to **Hilltop Groves, LLC** requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

Drafts drawn under this credit must state on their face "drawn under **MIDFLORIDA Federal Credit Union** irrevocable letter of credit number **302997** dated **August 25, 2004**."

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

HILLTOP GROVES LLC



Town of Dundee

TOWN HALL

♦ 202 E. Main Street ♦ PO Box 1000 ♦ Dundee, Florida 33838 ♦ (863) 438-8330 ♦ Fax (863) 438-8338

June 23, 2021

Mr. Lee Saunders
Vista Del Lago of Polk County, LLC
5529 US Highway 98 North
Lakeland, Florida 33809

Re: Vista Del Lago Phase III Subdivision (Hilltop Groves LLC)

Mr. Saunders:

Please find the outstanding calculations for the Idle Capacity, including the moratorium of the 18-month waiver from June 23, 2020. Please find the breakdown chart below to detail the amount due:

Hilltop Groves 37 ERC's Idle Capacity Chart		
Idle Capacity Period	Dates	Total
Original Expiration Date	04/24/06 - 04/24/11	\$9,990.00
Current Yearly Fee	04/25/11 - 04/25/20	\$17,982.00
2020 Monthly Fee	04/26/20 - 06/23/20	\$333.00
	Subtotal	\$28,305.00
	Total	\$28,305.00

Sincerely,

Tandra S. Davis, M.B.A.
Town Manager/Finance Director
Town of Dundee
202 E. Main Street
Dundee, Florida 33838-4306
tdavis@townofdundee.com
Office: 863-438-8330 ext. 253
Fax: 863-438-8333

cc: Frederick J. Murphy, Jr., Esquire, Town Attorney
Marisa Barmby, CFRPC

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

Frederick J. Murphy, Jr., Esquire
Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831
Telephone (883) 533-7117
Facsimile (883) 533-7412



INSTR # 2021119842
BK 11706 Pgs 1463-1483 PG(s) 21
RECORDED 05/07/2021 1:48:26 PM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES \$180.00
RECORDED BY SHAKCAMP

For Recording Purposes Only

**AMENDMENT TO AGREEMENT REGARDING RESERVED CAPACITY IN THE
TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS 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 ("Amendment"), made and entered into this 28 day of July, 2020, by and between the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"), and HILLTOP GROVES, LLC, a Florida Limited Liability Company ("Owner").

RECITALS

1. On or about July 28, 2004 the Town and Hilltop Groves LLC, a Florida Limited Liability Company entered into that certain Developer's Agreement Regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
2. The Town and Owner have determined that at this time the Owner holds, albeit expired, 266 Wastewater ERCs representing 71,820 gallons per day (GPD) in equivalent capacity in the Town's Water Utility System ("Owner ERCs") pursuant to the Agreement. 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 ERC's expired on April 24, 2011.
3. The Owner is the owner of certain real property situated in Polk County, Florida, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Property") which is the Vista Del Lago Phase II Replat Subdivision.
4. On July 10, 2020, the Owner requested that the Town reactivate 43 of the 266 Wastewater ERCs (Original ERC Certificates 1606 through 1648), and, as a result of

demonstrated hardship(s), waive all past-due and/or accrued idle capacity fees for the 43 Wastewater ERC certificates.

5. The 43 Owner ERCs requested for reactivation would have accrued thirty-three thousand eighty-eight and 50/100 Dollars (\$33,088.50) in idle capacity charges from April 24, 2008 through July 24, 2020 of which thirty-three thousand eighty-eight and 50/100 Dollars (\$33,088.50) remains unpaid.

6. On June 23, 2020, the Town introduced and passed Resolution No. 20-13 (the "Resolution"). A copy of the Resolution is attached hereto as Exhibit "C" and made a part hereof by reference.

7. The Resolution provides for a temporary waiver of certain Town of Dundee Idle Capacity Fee(s) for a period of eighteen (18) months beginning on June 23, 2020 and automatically sunseting on December 23, 2021.

8. On July 10, 2020, the Town agreed to reactivate the 43 Owner ERCs and waive all past-due and/or accrued idle capacity fees for the 43 Wastewater ERC certificates (Original ERC Certificates 1608 through 1648) for a period of time consistent with the sunset and/or expiration date of the Resolution (December 23, 2021).

9. 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 Agreements and that the Town presently has adequate permitted capacity in its wastewater plant for the wastewater capacity represented by the Owner ERCs described above.

10. Owner contemplates the transfer or assignment of the 43 Owner ERCs to VISTA DEL LAGO OF POLK COUNTY, LLC, a Florida Limited Liability Company, for construction of single-family homes to be located within the municipal limits of the Town.

11. 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 Recitals above are true and correct and form a material part of this Amendment. The Town acknowledges and agrees 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 43 Owner ERCs and grants to the Owner an extension of the term of the 43 Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by

Wastewater ERC Certificates listed on Schedule "1" (Original ERC Certificates 1608 through 1648) through a period expiring December 23, 2021 ("Expiration Date").

B. In light of the COVID-19 pandemic and financial hardships arising out of same, as well as the hardships demonstrated by the Owner, the Town Commission of the Town of Dundee agrees to waive the accrued thirty-three thousand eighty-eight and 50/100 Dollars (\$33,088.50) in past-due and/or accrued idle capacity charges from April 24, 2008 through July 24, 2020.

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 Agreements 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). The parties agree that Owner shall enter into transfer and/or assignment agreement with VISTA DEL LAGO OF POLK COUNTY, LLC, a Florida Limited Liability Company, in the event of any transfer and/or assignment of the Owner ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

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 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:

HILLTOP GROVES, LLC
Lee Saunders, Member Manager
5529 U.S. Highway 98 North
Lakeland, FL 33809

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.

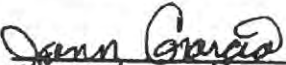
[SIGNATURE PAGES TO FOLLOW]

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.

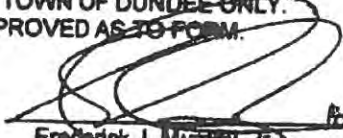
ATTEST:

THE TOWN OF DUNDEE

By: 
Print Name: Samuel Penland
As Its: Mayor
Date: 08/05/2020

By: 
Print Name: Sean Garcia
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:

HILLTOP GROVES, LLC,
a Florida limited liability company

By: [Signature]
Name: Lee Saunders
Title: Member Manager

Signed and delivered
In the presence of:

[Signature]
Print Name: Billy Wilkins
[Signature]
Print Name: Pam Chancey

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 16 day of September, 2020, by LEE SAUNDERS, as Member Manager of HILLTOP GROVES, LLC, on behalf of the company, HILLTOP GROVES, LLC. He is ☒ personally known to me or ☐ has produces _____ as identification and ☐ (did) ☐ (did not) take an oath.

[Signature]
Signature of Person Taking Acknowledgement

Pamela G. Chancey
Name of Acknowledger Types, Printed, or Stamped



PAMELA Q. CHANCEY
MY COMMISSION # GG 013227
EXPIRES: October 15, 2020
Bonded Third Degree Notary Service

Title or Rank
GG 013227
Serial Number, if any.

EXHIBIT A
to Amendment

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Agreement #4

**DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT**

PAID APR 25 2005

IN FULL

John McConery

THIS AGREEMENT ("Agreement") is made on this 28th day of July, 2004, by and between H&Itop Groves, LLC (the "Developer/Owner") and the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

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permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

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necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations

- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:
- 4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MIDMORIAN
CH # 07-448 3566716

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Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plant expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

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- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

DECLARATION ON BEHALF OF THE
SUTTERING
CLERK OF THE CIRCUIT

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from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developer/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

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- 11.0 Definitions: Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts: This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger: This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration: This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment: This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances: Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices: Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town: Town Manager
 Town of Dundee
 Post Office Box 1000
 105 Center Street
 Dundee, FL 33838-1000

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With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

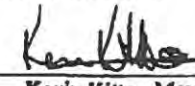
IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

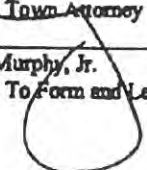
TOWN COUNCIL OF THE
TOWN OF DUNDEE

ATTEST:

By: 
Town Clerk

By: 
Kevin Kitto - Mayor

Date: 11th August 04

Approved by Town Attorney
By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

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CERTIFICATION OF LAST PAGE
THIS IS THE LAST PAGE
CLERK OF THE COURT

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to Amendment

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WITNESSES

(DEVELOPER)


Joe L. Saunders

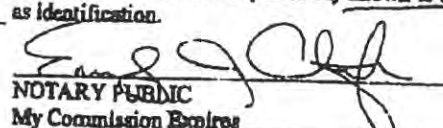
Hilltop Groves, LLC

By: Joe L. Saunders
Joe L. Saunders

Its: Managing Member

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of (DEVELOPER), on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.


NOTARY PUBLIC
My Commission Expires _____

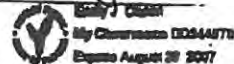


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Exhibit A
MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit

Date issued: August 25, 2004

Letter of Credit No. 302897

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of Hilltop Groves, LLC, 6529 U.S. 98 North, Lakeland, Florida 33809 in the aggregate amount of USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36) available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by Hilltop Groves, LLC in return for the Town of Dundee reserving and assigning a total of 266 ERC's of sewer plant capacity exclusively for utilization by Hilltop Groves, LLC in accordance with the following schedule as agreed:

Payment No. 1, for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

CERTIFICATION
STATE OF FLORIDA
CLERK OF THE COURT

EXHIBIT "A"
to Amendment

Final Draft 07/28/2006

Payment No. 3, for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on Hilltop Groves, LLC and the MIDFLORIDA Federal Credit Union and once delivered to Hilltop Groves, LLC requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

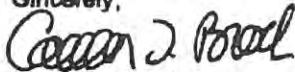
Drafts drawn under this credit must state on their face "drawn under MIDFLORIDA Federal Credit Union Irrevocable letter of credit number 302997 dated August 25, 2004.

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

EXHIBIT "B"
to Amendment

Detail by Entity Name

Florida United Utility Company
HILLTOP GROVES, LLC

Filing Information

Document Number 18306000880
Filing Number 20-167784
Date Filed 10/17/2020
State FL
Status ACTIVE

Principal Address

5520 U.S. HIGHWAY 90 NORTH
LAKELAND, FL 33809

Mailing Address

5520 U.S. HIGHWAY 90 NORTH
LAKELAND, FL 33809

Registered Agent Name & Address

Guardian, LLC
5520 U.S. HIGHWAY 90 NORTH
LAKELAND, FL 33809

Name Change: 03/03/2015

Authorized Personnel Detail

Name & Address

Title NORM

GALENDERS, LLC
5520 US HWY 90 N
LAKELAND, FL 33809

Annual Reports

Report Year	Filed Date
2018	04/16/2019
2019	04/08/2020
2020	09/21/2020

Document Images

04/16/2019 - ANNUAL REPORT	View Image in PDF format
04/08/2019 - ANNUAL REPORT	View Image in PDF format
04/08/2019 - ANNUAL REPORT	View Image in PDF format
03/16/2017 - ANNUAL REPORT	View Image in PDF format
03/20/2016 - ANNUAL REPORT	View Image in PDF format
01/08/2014 - ANNUAL REPORT	View Image in PDF format
03/20/2014 - ANNUAL REPORT	View Image in PDF format
04/16/2013 - ANNUAL REPORT	View Image in PDF format
03/20/2012 - ANNUAL REPORT	View Image in PDF format
03/16/2011 - ANNUAL REPORT	View Image in PDF format
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04/16/2008 - ANNUAL REPORT	View Image in PDF format
03/20/2007 - ANNUAL REPORT	View Image in PDF format
03/20/2006 - ANNUAL REPORT	View Image in PDF format
04/16/2005 - ANNUAL REPORT	View Image in PDF format
03/20/2004 - ANNUAL REPORT	View Image in PDF format
04/16/2003 - ANNUAL REPORT	View Image in PDF format
04/16/2002 - ANNUAL REPORT	View Image in PDF format

18306000880
20-167784
10/17/2020

RESOLUTION NO. 20-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, MAKING FINDINGS AND, IN ACCORDANCE WITH SECTION 54-18 OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE, TEMPORARILY WAIVING IDLE CAPACITY CHARGE(S) FOR A PERIOD OF EIGHTEEN (18) MONTHS BEGINNING ON THE EFFECTIVE DATE OF THIS RESOLUTION AND PROVIDING FOR THE FULL AMOUNT OF THE TOWN OF DUNDEE IDLE CAPACITY CHARGE(S) TO AUTOMATICALLY BE REINSTATED UPON THE EXPIRATION OF EIGHTEEN (18) MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION; PROVIDING FOR APPLICABILITY OF THE TEMPORARY WAIVER OF IDLE CAPACITY CHARGES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission has reviewed the current charge(s) for reserved capacity arising out of current and active Equivalent Residential Connection(s) ("ERC") in the Town of Dundee water and wastewater utility system; and

WHEREAS, in accordance with Section 54-18(c) of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission may, from time to time, set the amount(s) charged and collected for Idle Capacity charges by resolution; and

WHEREAS, in March, 2007 in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, the Town Commission adopted Resolution 07-09 establishing Idle Capacity Charges; and

WHEREAS, in response to the COVID-19 pandemic and economic difficulties arising therefrom, the Town Commission desires to stimulate new development within the Town of Dundee, Florida, and promote economic activity within the Town of Dundee, Florida; and

WHEREAS, the Town Commission desires, for a temporary period of time not to exceed eighteen (18) months and beginning on the effective date of this Resolution, to waive the Idle Capacity Charges imposed by the Town of Dundee, Florida, for any current and active unredeemed ERC and/or paid connection fee; and

WHEREAS, the Town Commission finds that a temporary waiver of the Town of Dundee Idle Capacity Charges, for a period of time not to exceed eighteen (18) months beginning on the effective date of this Resolution, will promote the development, growth, and vitality of the Town of Dundee, Florida, and will further the health, safety and welfare of the citizens and residents of the Town of Dundee, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

Resolution No. 20-13 Page 1

CERTIFICATION OF LAST
JACLYN M. BUTTERFIELD
CLERK OF THE CIRCUIT COURT

Section 1. The above recitals are incorporated as a factual basis for the passage of this Resolution.

Section 2. The current amount of all Town of Dundee Idle Capacity Charges as set forth in Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and first established by Resolution 07-09 of the Town Commission of the Town of Dundee and related schedule of such charges that may be on file in the Town Clerk's office are hereby temporarily waived for a period of eighteen (18) months beginning on the effective date of this Resolution; and all Idle Capacity Charges shall automatically be reinstated to the amount(s) charged on the effective date of this Resolution as of December 23, 2021. All other provisions of Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and Resolution 07-09 shall remain in full force and effect.

Section 3. The temporary waiver of the Town of Dundee Idle Capacity Charges established by this Resolution shall apply prospectively beginning on the effective date of this Resolution. The temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to waive any currently past-due or delinquent charge(s) for unpaid Idle Capacity Charges; and the temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to unredeemed ERCs which are inactive, expired, and/or have not been renewed by the Town Commission on or before the effective date of this Resolution.

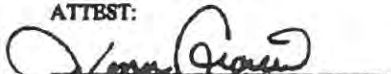
Section 4. This Resolution shall be effective immediately upon passage by the Town Commission.

INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, in regular session this 23rd day of June, 2020.

TOWN OF DUNDEE, FLORIDA


MAYOR- Sam Pennant

ATTEST:


TOWN CLERK

Approved as to form:


TOWN ATTORNEY - Frederick J. Murphy, Jr.

Resolution No. 20-13 Page 2

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Page 21 of 21



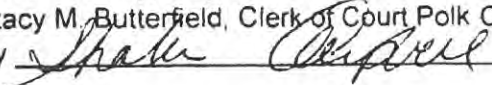
I hereby certify that the foregoing is a true copy of the record in my office this day, May 07, 2021. Redacted ☐ Unredacted/law ☒
Stacy M. Butterfield, Clerk of Court Polk County, Florida
By  Deputy Clerk

EXHIBIT D

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

Frederick J. Murphy, Jr., Esquire
Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831
Telephone (863) 533-7117
Facsimile (863) 533-7412



**INSTR # 2021215083
BK 11852 Pgs 1369-1382 Pg(s) 24
RECORDED 08/17/2021 4:03:36 PM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES \$205.60
RECORDED BY SHAURUS8**

For Recording Purposes Only

**AMENDMENT TO AGREEMENT REGARDING RESERVED CAPACITY IN THE
TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS 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 ("Amendment"), made and entered into this 22nd day of June, 2021, by and between the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"), and **HILLTOP GROVES, LLC**, a Florida Limited Liability Company ("Owner").

RECITALS

1. On or about July 28, 2004 the Town and Hilltop Groves LLC, a Florida Limited Liability Company, entered into that certain Developer's Agreement Regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference.
2. The Town and Owner have determined that at this time the Owner holds, albeit expired, 266 Wastewater ERCs representing 71,820 gallons per day (GPD) in equivalent capacity in the Town's Water Utility System ("Owner ERCs") pursuant to the Agreement. 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 ERC's expired on April 24, 2011.
3. The Owner is the owner of certain real property situated in Polk County, Florida, more particularly described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "Property") which is the Vista Del Lago Phase II Replat Subdivision.
4. On June 22, 2021, the Owner requested that the Town reactivate 37 of the 223 Wastewater ERCs (Original ERC Certificates 1649 through 1685).

5. The 37 Owner ERCs requested for reactivation would have accrued TWENTY-EIGHT THOUSAND THREE HUNDRED FIVE DOLLARS and zero cents (\$28,305.00) in idle capacity charges from April 24, 2006 through June 22, 2021 which remains unpaid.

6. On June 23, 2020, the Town introduced and passed Resolution No. 20-13 (the "Resolution"). A copy of the Resolution is attached hereto as Exhibit "C" and made a part hereof by reference.

7. The Resolution provides for a temporary waiver of certain Town of Dundee Idle Capacity Fee(s) for a period of eighteen (18) months beginning on June 23, 2020 and automatically sunseting on December 23, 2021.

8. On June 22, 2021, the Town agreed to reactivate the 37 Owner ERCs (Original ERC Certificates 1649 through 1685) for a period of twenty-four (24) months beginning on June 22, 2021 and automatically terminating on June 22, 2023.

9. 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 Agreements and that the Town presently has adequate permitted capacity in its wastewater plant for the wastewater capacity represented by the Owner ERCs described above.

10. Owner contemplates the transfer or assignment of the 37 Owner ERCs (Original ERC Certificates 1649 through 1685) to Richmond American Homes, for construction of single-family homes to be located within the municipal limits of the Town.

11. 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 Recitals above are true and correct and form a material part of this Amendment. The Town acknowledges and agrees 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 37 Owner ERCs and grants to the Owner an extension of the term of the 37 Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by Wastewater ERC Certificates listed on Schedule "1" (Original ERC Certificates 1649 through 1685) through a period expiring June 22, 2023 ("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 TWENTY-EIGHT THOUSAND THREE HUNDRED FIVE DOLLARS and zero cents (\$28,305.00) 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 June 22, 2021 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 TWENTY-EIGHT THOUSAND THREE HUNDRED FIVE DOLLARS and zero cents (\$28,305.00) 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 the terms of the Agreement attached hereto as Exhibit "A" shall not control and when new certificates are issued by the Town to Owner. No Wastewater capacity in the Town's Wastewater Utility Systems shall be reserved beyond June 22, 2023 and Wastewater Owner ERCs extended herein shall expire on June 22, 2023.

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 Agreements 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). The parties agree that Owner shall enter into transfer and/or assignment agreement with Williamson Fabrication Works of Foston, LP in the event of any transfer and/or assignment of the Owner ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

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 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: Frederick J. Murphy, Jr.
(which shall not Town Attorney, Town of Dundee
constitute notice) P.O. Drawer 30
245 South Central Avenue
Bartow, Florida 33830

OWNER: HILLTOP GROVES, LLC
Lee Saunders, Member Manager
5529 U.S. Highway 98 North
Lakeland, FL 33809

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.

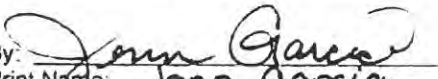
[SIGNATURE PAGES TO FOLLOW]

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: Sam Pennington
As Its: Mayor
Date: 7/13/2021

By: 
Print Name: Jenn Garcia
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:

HILLTOP GROVES, LLC,
a Florida limited liability company

By: [Signature]
Name Lee Saunders
Title Member Manager

Signed and delivered
In the presence of:

[Signature]
Print Name: David C. Cook
[Signature]
Print Name: Tom [unclear]

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 18 day of July, 2020, by LEE SAUNDERS, as Member Manager of HILLTOP GROVES, LLC, on behalf of the company, HILLTOP GROVES, LLC. He is ☒ personally known to me or ☐ has produces _____ as identification and ☐ (did) ☐ (did not) take an oath.



PAMELA G. CHANCEY
Commission # HH 010422
Expires October 15, 2021
Bonded Thru Budget Notary Services

[Signature]
Signature of Person Taking Acknowledgement

Pamela G. Chancey
Name of Acknowledger Types, Printed, or Stamped

Office Manager
Title or Rank

Serial Number, if any

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

Agreement #4

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

PAID APR 25 2005

IN FULL

Jim McLaughlin
John Monaghan

THIS AGREEMENT ("Agreement") is made on this 25th day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations.

4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:

4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MIDMORAD
CR # 07-448 3560716

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

4

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

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- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

4

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

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- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:	Town Manager Town of Dundee Post Office Box 1000 105 Center Street Dundee, FL 33838-1000
---------------	--

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

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With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

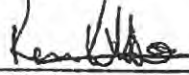
IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

TOWN COUNCIL OF THE
TOWN OF DUNDEE

ATTEST:

By: 
Town Clerk

By: 
Kevin Kitto - Mayor

Date: 11th August 04

Approved by Town Attorney

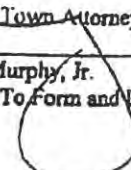
By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

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WITNESSES

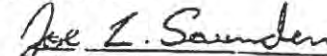
{ DEVELOPER }



Witness

Hilltop Groves, LLC

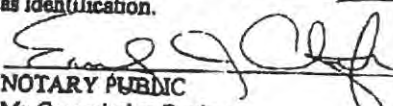
By:


Joe L. Saunders

Its: Managing Member

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.


NOTARY PUBLIC

My Commission Expires _____



Errol J. Chalm
My Commission 00344579
Expires August 28, 2007

EXHIBIT "A"
to Amendment

Final Draft 07/28/2004

Exhibit A
MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809 in the aggregate amount of USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36) available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by Hilltop Groves, LLC in return for the Town of Dundee reserving and assigning a total of 288 ERC's of sewer plant capacity exclusively for utilization by Hilltop Groves, LLC in accordance with the following schedule as agreed:

Payment No. 1, for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

EXHIBIT "A"
to Amendment

Final Draft 07/28/2005

Payment No. 3, for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on Hilltop Groves, LLC and the MIDFLORIDA Federal Credit Union and once delivered to Hilltop Groves, LLC requires immediate payment to the Town of the funds requested.

This Irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

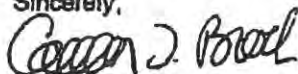
Drafts drawn under this credit must state on their face "drawn under MIDFLORIDA Federal Credit Union irrevocable letter of credit number 302997 dated August 25, 2004.

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

6/24/2021

EXHIBIT B
to Amendment

Property Search

[Skip to main content](#)
[Home Page](#) » [Return To Search Results](#)

[Change Browser Language](#)

Parcel Details: 27-28-23-000000-013010

[TAX EST](#) [PRC CALC](#) [PRC](#) [HTML PRE](#) [TRIM](#) [HTML TRIM](#) [TAX BILL](#)

Owners

HILLTOP GROVES LLC 100%

Mailing Address

Address 1 **5529 US HIGHWAY 98 N**
Address 2
Address 3 **LAKELAND FL 33809-3103**

Site Address

Address 1 **0 LAKE HATCHINEHA RD**
Address 2
City **HAINES CITY**
State **FL**
Zip Code **33844**

Parcel Information

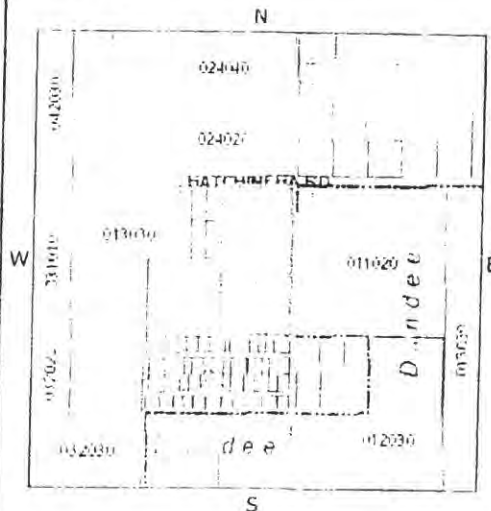
Neighborhood **140996.00**
Show Recent Sales in this Neighborhood
Subdivision **NOT IN SUBDIVISION**
Property (DOR) **Unplatted tracts 10 - 29.99 acres**
Use Code **(Code: 9920)**
Acreage **19.20**
Taxing District **DUNDEE/SWFWM (Code: 90460)**
Community Redevelopment Area **NOT IN CRA**

Property Desc

DUNDEE

E1/2 OF NW1/4 OF NE1/4 LESS RD R/W

Area Map



Mapping Worksheets (plats) for 272823

[Mapping Worksheet](#) [Mapping Worksheet Printable PDF](#)
HTML (opens in new tab)

Sales History

Important Notice: If you wish to obtain a copy of a deed for this parcel, click on the blue DR Book/Page number. Doing so will cause you to leave the Property Appraiser's website and access the Polk County Clerk of the Circuit Court's Official Records Search. Once the document opens, click the printer icon to print the document. If you have any issues opening the document once you have met all the listed system

<https://www.polkpa.org/CamaDisplay.aspx?OutputMode=Display&SearchType=RealEstate&ParcelID=272823000000013010>

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5/24/2021

EXHIBIT "B" to Amendment

requirements, please contact the Clerk's office at (863)534-4000 and ask to speak to an IT staff member. If the Book/Page number does not have a blue link to Official Records, the deed may not be available through the online search of the Clerk of the Circuit Court. In order to obtain a copy of the deed you will need to contact the Clerk of the Circuit Court Indexing Department at 863-534-4516. If the Type Inst is an "R", the document is not available through the Clerk of the Circuit Court's Official Records Search. Please contact the Property Appraiser to order "R" type instruments.

OR Book/Page	Date	Type Inst	Vacant/ Improved	Grantee	Sales Price
10919/00747	07/2019	W	V	HILLTOP GROVES LLC	\$316,000
10620/01186	08/2018	W	V	POWELL EARL	\$190,000
5802/1949	05/2004	W	V	HILLTOP GROVES LLC	\$200,000
2595/0876	12/1987	C	V	WYROSDICK CHARLES	\$180,000
2592/1128	12/1987	C	V		\$180,000
2590/1823	12/1987	W	V		\$180,000

Exemptions

Note: The drop down menus below provide information on the amount of exemption applied to each taxing district. The HX—first \$25,000 homestead exemption may be allocated to one or more owners. The HB—second \$25,000 amended homestead exemption reflects the name of the first owner only.

Code	Bld. #	Description	% Ownership	Renew Cd	Year Name	Note	Value
------	--------	-------------	-------------	----------	-----------	------	-------

If you have a Senior Exemption (Additional Homestead Exemption for Persons 65 and Older): For the 2021 tax year, the allowable total household adjusted gross income received during 2020 could not exceed \$31,100. If your total household adjusted gross income exceeded this limit.

Receiving no notification from the qualified senior will be considered a sworn statement, under penalty of perjury, that the income does not exceed the limit.

If you would like to receive a notice of renewal electronically, please send us an email at polkpa@polkpa.org with your name, property address, and confirmation of your request.

PERMITS

The Polk County Property Appraiser's Office does not issue or maintain permits. Please contact the appropriate permitting agency to obtain information. This property is located in the **DUNDEE/SWFWM** taxing district. The beginning of the description indicates permit agency (UNINCORP is an abbreviation for Unincorporated **POLK COUNTY**).

Land Lines

LN	Land Dscr	Ag/GreenBelt	Land Unit Type	Front	Depth	Units
1	Residential	N	A	0	0	19.20

NOTICE: All information ABOVE this notice is current (as of Wednesday, June 23, 2021 at 2:17:12 AM). All information BELOW this notice is from the 2020 Tax Roll, except where otherwise noted.

Value Summary (2020)

Desc	Value
Land Value	\$192,037
Building Value	\$0
Misc. Items Value	\$0
Land Classified Value	\$0
Just Market Value	\$192,037
Cap Differential and Portability	\$0
Agriculture Classification	\$0
Assessed Value	\$192,037

<https://www.polkpa.org/CamaDisplay.aspx?OutputMode=Display&SearchType=RealEstate&ParcelID=27282300000013010>

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6/24/2021

Exempt Value (County)

Taxable Value (County)

EXHIBIT B to Amendment

\$0

\$192,037

Values by District (2020)

District Description	Final Tax Rate	Assessed Value	Final Assessed Taxes	Exemption	Final Tax Savings	Taxable Value	Final Taxes
BOARD OF COUNTY COMMISSIONERS	6.899000	\$192,037	\$1,324.86	\$0	\$0.00	\$192,037	\$1,324.86
POLK COUNTY SCHOOL BOARD - STATE	3.687000	\$192,037	\$708.04	\$0	\$0.00	\$192,037	\$708.04
POLK COUNTY SCHOOL BOARD - LOCAL	2.248000	\$192,037	\$431.70	\$0	\$0.00	\$192,037	\$431.70
TOWN OF DUNDEE	7.900000	\$192,037	\$1,517.09	\$0	\$0.00	\$192,037	\$1,517.09
SOUTHWEST FLA WATER MGMT DIST	0.266900	\$192,037	\$51.25	\$0	\$0.00	\$192,037	\$51.25
		Assessed Taxes:	\$4,032.94	Tax Savings:	\$0.00	Total Taxes:	\$4,032.94

Non-Ad Valorem Assessments (2020)

LN	Code	Desc	Units	Rate	Assessment
1	ST460	DUNDEE STORMWATER UTILITY	1.00	34.50	\$34.50
Total Assessments					\$34.50

Taxes

Desc	Last Year	2020 Final
Taxing District	DUNDEE/SWFWMD (Code: 90460)	DUNDEE/SWFWMD (Code: 90460)
Millage Rate	21.4226	21.0009
Ad Valorem Assessments	\$4,319.63	\$4,032.94
Non-Ad Valorem Assessments	\$34.50	\$34.50
Total Taxes	\$4,354.13	\$4,067.44

Your final tax bill may contain Non-Ad Valorem assessments which may not be reflected on this page, such as assessments for roads, drainage, garbage, fire, lighting, water, sewer, or other governmental services and facilities which may be levied by your county, city or any other special district. Visit the Polk County Tax Collector's site for Tax Bill information related to this account. Use the Property Tax Estimator to estimate taxes for this account.

Prior Year Final Values

2019

Land Value	\$201,639.00
Building Value	\$0.00
Misc. Items Value	\$0.00
Just Value (Market)	\$201,639.00

<https://www.polkpa.org/CamaDisplay.aspx?OutputMode=Display&SearchType=RealEstate&ParcelID=272823000000013010>

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6/24/2021

EXHIBIT B to Amendment

SOH Deferred Val	\$0.00
Assessed Value	\$201,639.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$201,639.00
2018	
Land Value	\$192,037.00
Building Value	\$0.00
Misc. Items Value	\$0.00
Just Value (Market)	\$192,037.00
Assessed Value	\$960.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$960.00
2017	
Land Value	\$182,435.00
Building Value	\$0.00
Misc. Items Value	\$0.00
Just Value (Market)	\$182,435.00
Assessed Value	\$960.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$960.00
2016	
Land Value	\$182,435.00
Building Value	\$0.00
Misc. Items Value	\$0.00
Just Value (Market)	\$182,435.00
Assessed Value	\$24,965.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$24,965.00

DISCLAIMER:

The Polk County Property Appraiser makes every effort to produce and publish the most current and accurate information possible. The PCPA assumes no responsibility for errors in the information and does not guarantee that the data are free from errors or inaccuracies. Similarly the PCPA assumes no responsibility for the consequences of inappropriate uses or interpretations of the data. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Last Updated: Wednesday, June 23, 2021 at 2:17:12 AM

EXHIBIT "C"
to Amendment

RESOLUTION NO. 20-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, MAKING FINDINGS AND, IN ACCORDANCE WITH SECTION 54-18 OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE, TEMPORARILY WAIVING IDLE CAPACITY CHARGE(S) FOR A PERIOD OF EIGHTEEN (18) MONTHS BEGINNING ON THE EFFECTIVE DATE OF THIS RESOLUTION AND PROVIDING FOR THE FULL AMOUNT OF THE TOWN OF DUNDEE IDLE CAPACITY CHARGE(S) TO AUTOMATICALLY BE REINSTITUTED UPON THE EXPIRATION OF EIGHTEEN (18) MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION; PROVIDING FOR APPLICABILITY OF THE TEMPORARY WAIVER OF IDLE CAPACITY CHARGES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission has reviewed the current charge(s) for reserved capacity arising out of current and active Equivalent Residential Connection(s) ("ERC") in the Town of Dundee water and wastewater utility system; and

WHEREAS, in accordance with Section 54-18(c) of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission may, from time to time, set the amount(s) charged and collected for Idle Capacity charges by resolution; and

WHEREAS, in March, 2007 in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, the Town Commission adopted Resolution 07-09 establishing Idle Capacity Charges; and

WHEREAS, in response to the COVID-19 pandemic and economic difficulties arising therefrom, the Town Commission desires to stimulate new development within the Town of Dundee, Florida, and promote economic activity within the Town of Dundee, Florida; and

WHEREAS, the Town Commission desires, for a temporary period of time not to exceed eighteen (18) months and beginning on the effective date of this Resolution, to waive the Idle Capacity Charges imposed by the Town of Dundee, Florida, for any current and active unredemmed ERC and/or paid connection fee; and

WHEREAS, the Town Commission finds that a temporary waiver of the Town of Dundee Idle Capacity Charges, for a period of time not to exceed eighteen (18) months beginning on the effective date of this Resolution, will promote the development, growth, and vitality of the Town of Dundee, Florida, and will further the health, safety and welfare of the citizens and residents of the Town of Dundee, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

Resolution No. 20-13 Page 1

EXHIBIT "C"
to Amendment

Section 1. The above recitals are incorporated as a factual basis for the passage of this Resolution.

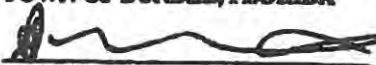
Section 2. The current amount of all Town of Dundee Idle Capacity Charges as set forth in Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and first established by Resolution 07-09 of the Town Commission of the Town of Dundee and related schedules of such charges that may be on file in the Town Clerk's office are hereby temporarily waived for a period of eighteen (18) months beginning on the effective date of this Resolution; and all Idle Capacity Charges shall automatically be reinstated to the amount(s) charged on the effective date of this Resolution as of December 23, 2021. All other provisions of Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and Resolution 07-09 shall remain in full force and effect.

Section 3. The temporary waiver of the Town of Dundee Idle Capacity Charges established by this Resolution shall apply prospectively beginning on the effective date of this Resolution. The temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to waive any currently past-due or delinquent charge(s) for unpaid Idle Capacity Charges; and the temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to unredeemed EREs which are inactive, expired, and/or have not been renewed by the Town Commission on or before the effective date of this Resolution.

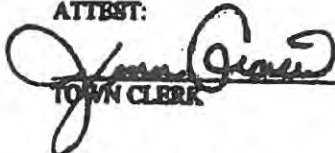
Section 4. This Resolution shall be effective immediately upon passage by the Town Commission.

INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, in regular session this 23rd day of June, 2020.

TOWN OF DUNDEE, FLORIDA


MAYOR - Sam Perment

ATTEST:


TOWN CLERK

Approved as to form:


TOWN ATTORNEY - Frederick J. Murphy, Jr.

Resolution No. 20-13 Page 2

EXHIBIT E

File 21000060785 **Stewart Title Guaranty Company**
Combined Statement

11/1/2021 11:21 AM

Stewart Title Guaranty Company, Tampa 3402 West Cypress Street, Tampa, FL 33607, (813) 789-8620 Escrow Officer: Janice Coulton			
Seller(s)	Hilltop Groves, L.L.C., 6529 U.S. Highway 98 North, Lakeland, FL 33609		
Buyer(s)	Richmond American Homes of Florida, LP, 2822 Commerce Park Drive, Suite 100, Orlando, FL 32819		
Lender(s)			
Property	Property Address Lake Hatchineha Road Dundee, Florida 33844 Site/Store Number Hilltop PIN 27-28-23-000000-013010		
Closing Date	11/4/2021	Disbursement Date	11/4/2021
	Buyer		Proration Date 11/4/2021
Debit	Credit	Debit	Credit
		Sales Price/Consideration	
\$1,702,000.00			Contract sales price \$1,702,000.00
			Deposits
	\$25,000.00		Initial Earnest Money Deposit
			Prorations
\$847.57			County taxes 11/4/2021 to 1/1/2022 @ \$4,076.23/yr \$847.57
			Other Adjustments
\$259,000.00			Reimbursement to Seller for Sewer Impacts fees \$3,500.00 per Lot x 74 Lots \$259,000.00
			Title Charges
\$760.00		\$750.00	Settlement or closing fee to Stewart Title Commercial Services - Tampa
			Title Insurance to Stewart Title Guaranty Company
\$7,613.00			Owner's coverage \$1,702,000.00 \$8,630.00 - FL 9106 r 5 14 REM Unimprvd Land OP STG \$863.00 - FL Survey Comm STG \$100.00
\$226.00		\$226.00	Document Coordination Fee to Stewart Title Commercial Services - Tampa
\$500.00			Search Fee - Invoice No. 61176 to Stewart Title Commercial Services - Tampa
			Recording Fees/Transfer Charges
		\$100.00	Recording fees: Special Warranty Deed - Estimate
		\$11,914.00	Documentary Stamps Deed
			Additional Charges
		\$4,076.23	2021 Real Estate Taxes - Account #272823-000000-013010 to Joe G. Tadder, CFC, Tax Collector for Polk County
\$1,970,735.57	\$25,000.00	Subtotals	\$17,084.33 \$1,987,847.57
	\$1,946,735.57	Balance due from Buyer	
		Balance due to Seller	\$1,944,863.34
\$1,970,735.57	\$1,970,735.57	Totals	\$1,981,847.57 \$1,981,847.57

Stewart Title Guaranty Company Combined Statement

11/1/2021 11:21 AM

Buyer and Seller (Transferee and Transferor) understand the Closer or Escrow Agent on behalf of Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. Any real estate agent or lender involved may be furnished a copy of this statement. Buyer and Seller (Transferee and Transferor) understand that tax and insurance provisions and reserves were based on figures for the preceding year or supplied by others, or based on estimated figures for current year, and, in the event of any change for current year, all necessary adjustments must be made between Buyer and Seller (Transferee and Transferor) directly. The undersigned hereby authorizes Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services to make expenditures and disbursements as shown above and approve the same for payment. The undersigned also acknowledge receipt of proceeds as applicable, and receipt of a copy of this Statement.

Dated as of this 2nd day of November 2021

Buyer(s):

RICHMOND AMERICAN HOMES OF FLORIDA LP,
a Colorado limited partnership

BY: RAH of Florida, Inc. a Colorado corporation,
General Partner

BY: [Signature]
Name: F. B. Brown - Oak Grove
Title: V.P., Land

Seller(s):

HILLTOP GROVES, L.L.C.,
a Florida limited liability company

By: [Signature]
Name: Lee Saunders
Title: Manager

Stewart Title Guaranty Company,
a Texas Corporation

Date _____

By: _____
Janice Coulton
Commercial Escrow Officer

This document prepared by and Return to:
Richmond American Homes of Florida LP
2822 Commerce Park Drive #100
Orlando, FL 32819

Grantee Tax ID# 33-1077584
Parcel Tax ID# 272823-000000-013010

INSTR # 2021295125
BK 11979 Pgs 0250-0251 PG(s)2
11/12/2021 07:29:43 AM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES 18.50
DEED DOC 11,914.00

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed") is made this 3 day of November, 2021, between **HILLTOP GROVES, L.L.C.**, a Florida limited liability company, whose address is 5529 US 98N, Lakeland, FL 33809 ("Grantor"), and **RICHMOND AMERICAN HOMES OF FLORIDA, LP**, a Colorado limited partnership, whose address is 2822 Commerce Park Drive, Suite 100, Orlando, Florida 32819 ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00), to it in hand paid by the Grantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor has bargained and sold and does hereby grant and convey unto the Grantee and the Grantee's heirs, successors and assigns forever, in fee simple absolute, all of Grantor's right, title, and interest in and to the following described land, situate, lying and being in Polk County, Florida, to wit ("Property"):

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 28 SOUTH, RANGE 27 EAST, LESS AND EXCEPT A STRIP OF LAND 15 FEET IN WIDTH OFF THE NORTHERLY, EASTERLY AND SOUTHERLY SIDES THEREOF FOR PUBLIC HIGHWAY PURPOSES, ALSO LESS AND EXCEPT ADDITIONAL ROAD RIGHT-OF-WAY AS SHOWN IN DEED RECORDED IN OFFICIAL RECORDS BOOK 447, PAGE 570, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA.

TOGETHER WITH all tenements, hereditaments, improvements, fixtures, and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the Property in fee simple forever.

GRANTOR covenants that at the time of delivery of this deed, except as set forth on Exhibit "A" hereto, the Property is free of any liens or encumbrances, and Grantor hereby specially warrant the title to the Property, and will defend it against the lawful claims and demands of all persons claiming by, through or under Grantor, but against none other.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the day, month and year first above written.

GRANTOR:

WITNESSES:

Pam Chancey
Print Name: Pam Chancey

P. H. H.
Print Name: A. David Norris

HILLTOP GROVES, L.L.C., a Florida limited liability company

By: [Signature]
Name: LEE SAUNDERS - HILLTOP GROVES, LLC
Title: MANAGER

STATE OF FLORIDA)
COUNTY OF Polk)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 3 day of December 2021, by Lee Saunders of Hilltop Grove, L.L.C., a Florida limited liability company, on behalf of the corporation.

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced: _____



PAMELA G. CHANCEY
Commission # HH 010422
Expires October 15, 2024
Bonded thru Budget Notary Services

[Signature]
(Signature of Notary Public)

Pamela G. Chancey
(Print, Type, or Stamp Commissioned Name of Notary Public)

My Commission expires: 10-15-2024

Affix Notary SEAL

Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

EXHIBIT F

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

Frederick J. Murphy, Jr., Esquire
Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831
Telephone (863) 533-7117
Facsimile (863) 533-7412



INSTR # 2024009674
BK 12972 Pgs 256-303 PG(s) 48
RECORDED 01/12/2024 10:20:59 AM
STACY M. BUTTERFIELD, CLERK OF COURT
POLK COUNTY
RECORDING FEES \$409.50
RECORDED BY ml116091

For Recording Purposes Only

**SECOND AMENDMENT TO AGREEMENT REGARDING RESERVED CAPACITY IN
THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS 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 ("Amendment"), made and entered into this 14th day of November, 2023, 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 Colorado limited partnership ("Owner").

RECITALS

1. On or about July 28, 2004, the Town and Hilltop Groves LLC, a Florida Limited Liability Company, entered into that certain Developer's Agreement Regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant (the "Agreement") a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference.

2. On or about November 3, 2021, the Owner acquired 74 wastewater ERCs ("Owner ERCs") from **HILLTOP GROVES, LLC**, a Florida limited liability company, by Special Warranty Deed (the "Deed") which were the subject of the Agreement. Copies of the Deed and closing statement are attached hereto as **Composite Exhibit "B"** and made a part hereof by reference.

3. On or about September 13, 2022, the Town and Richmond American Homes of Florida, LP, a Colorado limited partnership, entered into that certain 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 (the "First Amendment") a copy of which is attached hereto as **Exhibit "C"** and incorporated herein by reference.

4. The Town and Owner have determined that, at this time, the Owner holds, albeit expired, 25 Wastewater ERCs representing 6,750 gallons per day (GPD) in

1

equivalent capacity in the Town's Wastewater Utility System represented by ERC Certificates numbered 2022-50 through 2022-74 (formerly numbered 1735 through 1759).

5. 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 October 24, 2022.

6. The Owner is the owner of certain real property situated in Polk County, Florida, more particularly described on **Exhibit "B"** attached hereto and incorporated herein by this reference (the "Property") which is also known as the Seasons at Hilltop Subdivision.

7. On September 14, 2023, the Owner requested that the Town reactivate 25 of the Wastewater ERCs numbered 2022-50 through 2022-74 (formerly numbered 1735 through 1759).

8. The Owner submitted ERCs 2022-01 through 2022-49 (formerly numbered 1686 through 1734) to the Town for the development of single-family homes in and/or for the Seasons of Hilltop Subdivision.

9. As part of the First Amendment (see attached Exhibit "C"), the idle capacity fees for the 25 ERCs requested for reactivation were paid through October 24, 2022.

10. The 25 Owner ERCs requested for reactivation have accrued One Thousand Four Hundred Sixty-Two Dollars and 50 cents (\$1,462.50) in idle capacity charges from October 25, 2022 through November 24, 2023 which remains unpaid.

11. 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 the Town presently has adequate permitted capacity in its wastewater plant for the wastewater capacity represented by the Owner ERCs described above.

12. Owner received the transfer or assignment of the 25 Owner ERCs for construction of single-family homes to be located within the municipal limits of the Town.

13. 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 25 Owner ERCs and grants to the Owner an extension of the term of the 25 Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by Wastewater ERC Certificates (Original ERC Certificates 1686 through 1759) through a period expiring November 24, 2024 (the "Expiration Date").

B. In consideration for such extension, within thirty (30) calendar days from the date on which this Amendment is approved by the Town Commission, the Owner shall pay One Thousand Four Hundred Sixty-Two Dollars and 50 cents (\$1,462.50) in immediately available funds to the Town in full satisfaction of the wastewater idle capacity charges outstanding as of the date of this Amendment and due through November 24, 2023 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 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 One Thousand Four Hundred Sixty-Two Dollars and 50 cents (\$1,462.50) 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 Amendment 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 Amendment and provide same to the Owner. Provided however that the terms of the Agreement attached hereto as Exhibit "A" shall not control when new certificates are issued by the Town to Owner. No Wastewater capacity in the Town's Wastewater Utility Systems shall be reserved beyond November 24, 2024, and the Owner ERCs extended herein shall expire on November 24, 2024.

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). The parties agree that Owner shall enter into transfer and/or assignment agreement with **RICHMOND AMERICAN HOMES OF FLORIDA, LP**, in the event of any transfer and/or assignment of the Owner ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

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 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: RICHMOND AMERICAN HOMES OF FLORIDA, LP
2822 Commerce Park Drive, Suite 100
Orlando, Florida 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

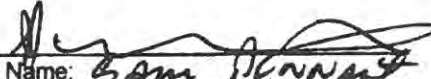
amended by this Amendment, the terms and conditions of the Agreement and the Assignment shall remain unchanged and unamended, and are hereby ratified and confirmed. In the event of any conflict between the terms of the Agreement and Amendment, the terms of this Amendment shall control.

[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.

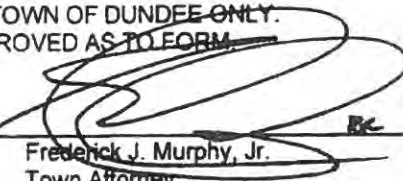
ATTEST:

THE TOWN OF DUNDEE

By: 
Print Name: Sam Pennant
As Its: Mayor
Date: _____

By: 
Print Name: Fredrick J. Murphy, Jr.
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:

RICHMOND AMERICAN HOME OF FLORIDA, LP,
a Colorado limited partnership

By: [Signature]
Name: TIMOTHY J. WHEELER
Title: DIRECTOR OF LAND DEVELOPMENT

Signed and delivered
In the presence of:

Print Name: Ralsa Garcia

Print Name: Yvonne Musselwhite

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 11 day of Jan,
2024 ~~2022~~, by Timothy Wheeler, as director of RICHMOND AMERICAN HOMES
OF FLORIDA, LP, on behalf of the company, RICHMOND AMERICAN HOMES OF
FLORIDA, LP. He is ☐ personally known to me or ☒ has produces divisions
identification and ☐ (did) ☐ (did not) take an oath.

[Signature]
Signature of Person Taking Acknowledgment
Notary Public State of Florida
Shawanda Concepcion
My Commission HH 354973
Name of Acknowledged Party, Printed, or Stamped
notary
Title or Rank
Serial Number, if any.

EXHIBIT A

Final Draft 07/28/2004

Agreement #4

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

PAID APR 25 2006

IN FULL

Jim Gallagher
Town Manager

THIS AGREEMENT ("Agreement") is made on this 25th day of July, 2004, by Town of Dundee and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town").
P.O. Box 1000
Dundee, FL 33838

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

Exhibit A

Final Draft 07/28/2004

4

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

Final Draft 07/28/2004

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations.

- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:
- 4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MIDPRIORITY
CR # 07-448 3560716

Final Draft 07/28/2004

4

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

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- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

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- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:	Town Manager Town of Dundee Post Office Box 1000 105 Center Street Dundee, FL 33838-1000
---------------	--

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With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

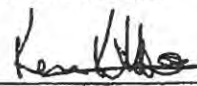
IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

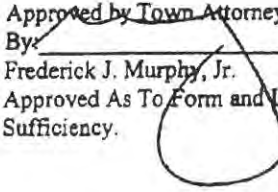
ATTEST:

By: 
Town Clerk

TOWN COUNCIL OF THE
TOWN OF DUNDEE

By: 
Kevin Kitto - Mayor

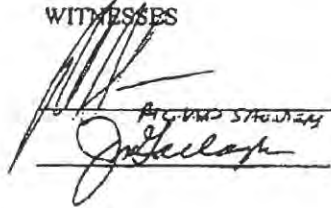
Date: 11th August 04

Approved by Town Attorney
By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

Final Draft 07/28/2004

WITNESSES

{ DEVELOPER }



Notary Public

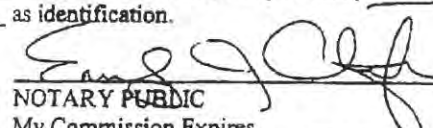
Hilltop Groves, LLC

By: Joe L. Saunders
Joe L. Saunders

Its: Managing Member

STATE OF FLORIDA
COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



NOTARY PUBLIC

My Commission Expires _____



Emily J. Chalm
My Commission DD244879
Expires August 28, 2007

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Exhibit A

**MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit**

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of **Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809** in the aggregate amount of **USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36)** available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by **Hilltop Groves, LLC** in return for the Town of Dundee reserving and assigning a total of **266 ERC's** of sewer plant capacity exclusively for utilization by **Hilltop Groves, LLC** in accordance with the following schedule as agreed:

Payment No. 1, for the amount of **\$107,848.12** is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of **\$107,848.12** is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

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Payment No. 3, for the amount of **\$367,723.12** is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on **Hilltop Groves, LLC** and the **MIDFLORIDA Federal Credit Union** and once delivered to **Hilltop Groves, LLC** requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

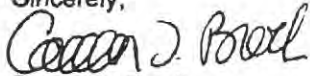
Drafts drawn under this credit must state on their face "drawn under **MIDFLORIDA Federal Credit Union** irrevocable letter of credit number **302997** dated **August 25, 2004**."

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

File 21000000185

Stewart Title Guaranty Company
Combined Statement

11/1/2021 11:21 AM

Stewart Title Guaranty Company, Tampa

3402 West Cypress Street, Tampa, FL 33607, (813) 788-6620

Escrow Officer: Janice Coulton

Seller(s) Hilltop Groves, L.L.C., 6528 U.S. Highway 98 North, Lakeland, FL 33809
Buyer(s) Richmond American Homes of Florida, LP, 2822 Commerce Park Drive, Suite 100, Orlando, FL 32819
Lender(s)
Property Property Address
 Lake Hatchineha Road Dundee, Florida 33644

Site/Store Number
 Hilltop

PIN
 27-28-23-000000-013010

Closing Date 11/4/2021 Disbursement Date 11/4/2021 Proration Date 11/4/2021

Debit	Buyer	Credit	Debit	Seller	Credit
\$1,702,000.00					\$1,702,000.00
		\$26,000.00			
\$847.57					\$847.57
\$268,000.00					\$268,000.00
\$760.00				\$760.00	
\$7,613.00					
\$225.00				\$225.00	
\$500.00					
				\$100.00	
				\$11,914.00	
				\$4,075.23	
\$1,878,738.57	\$26,000.00		\$17,644.33		\$1,881,847.87
	\$1,848,738.57				
\$1,878,738.57	\$1,878,738.87		\$1,844,663.34		
			\$1,881,847.87		\$1,881,847.87

**Stewart Title Guaranty Company
Combined Statement**

11/11/2021 11:21 AM

Buyer and Seller (Transferor and Transferee) understand the Closser or Escrow Agent on behalf of Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. Any real estate agent or lender involved may be furnished a copy of this statement. Buyer and Seller (Transferor and Transferee) understand that tax and insurance provisions and reserves were based on figures for the preceding year or supplied by others, or based on estimated figures for current year, and, in the event of any change for current year, all necessary adjustments must be made between Buyer and Seller (Transferor and Transferee) directly. The undersigned hereby authorizes Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services to make expenditures and disbursements as shown above and approve the same for payment. The undersigned also acknowledge receipt of proceeds as applicable, and receipt of a copy of this Statement.

Dated as of this 2nd day of November 2021

Buyer(s):

RICHMOND AMERICAN HOMES OF FLORIDA LP,
a Colorado limited partnership

By: **RAH of Florida, Inc.,** a Colorado corporation,
General Partner

By: [Signature]
Name: F.B. [Signature]
Title: V.P., Land

Seller(s):

HILTON GROVES, L.L.C.,
a Florida limited liability company

By: [Signature]
Name: Lee Saunders
Title: Manager

Stewart Title Guaranty Company,
a Texas Corporation

Date _____

By: _____
Janice Coulton
Commercial Escrow Officer

Exhibit B

INSTR # 2021295125
BK 11979 Pgs 0250-0251 PG(s)2
11/12/2021 07:29:43 AM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES 18.50
DEED DOC 11,914.00

This document prepared by and Return to:
Richmond American Homes of Florida LP
2822 Commerce Park Drive #100
Orlando, FL 32819

Grantee Tax ID# 33-1077984
Parcel Tax ID# 272823-000000-013010

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed") is made this 3 day of November, 2021, between HILLTOP GROVES, L.L.C., a Florida limited liability company, whose address is 5529 US 98N, Lakeland, FL 33809 ("Grantor"), and RICHMOND AMERICAN HOMES OF FLORIDA, LP, a Colorado limited partnership, whose address is 2822 Commerce Park Drive, Suite 100, Orlando, Florida 32819 ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00), to it in hand paid by the Grantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor has bargained and sold and does hereby grant and convey unto the Grantee and the Grantee's heirs, successors and assigns forever, in fee simple absolute, all of Grantor's right, title, and interest in and to the following described land, situate, lying and being in Polk County, Florida, to wit ("Property"):

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 28 SOUTH, RANGE 27 EAST, LESS AND EXCEPT A STRIP OF LAND 15 FEET IN WIDTH OFF THE NORTHERLY, EASTERLY AND SOUTHERLY SIDES THEREOF FOR PUBLIC HIGHWAY PURPOSES, ALSO LESS AND EXCEPT ADDITIONAL ROAD RIGHT-OF-WAY AS SHOWN IN DEED RECORDED IN OFFICIAL RECORDS BOOK 447, PAGE 570, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA.

TOGETHER WITH all tenements, hereditaments, improvements, fixtures, and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the Property in fee simple forever.

GRANTOR covenants that at the time of delivery of this deed, except as set forth on Exhibit "A" hereto, the Property is free of any liens or encumbrances, and Grantor hereby specially warrant the title to the Property, and will defend it against the lawful claims and demands of all persons claiming by, through or under Grantor, but against none other.

[Signature Page Follows]

Exhibit B

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the day, month and year first above written.

GRANTOR:

HILLTOP GROVES, L.L.C., a Florida limited liability company

WITNESSES:

Pam Chancey
Print Name: Pam Chancey

A. David Norris
Print Name: A. David Norris

By: Lee Saundero
Name: LEE SAUNDERO - HILLTOP GROVES, LLC
Title: MANAGER

STATE OF FLORIDA)
COUNTY OF Polk)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 3 day of November, 2021, by Lee Saundero of Hilltop Grove, L.L.C., a Florida limited liability company, on behalf of the corporation.

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced: _____

Pam Chancey
(Signature of Notary Public)

Pamela G Chancey
(Print, Type, or Stamp Commissioned Name of Notary Public)



PAMELA G. CHANCEY
Commission #HN 010422
Expires October 15, 2024
Bonded thru Budget Notary Services

My Commission expires: 10-15-2024

Affix Notary SEAL

Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

Stacy M. Butterfield POLK
CFN# 2021295125 OR BK 11979 PG 251 Pgs 0250-0251 11/12/2021 07:29:43 AM

Book12972/Page278 CFN#2024009674

Page 23 of 48

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

Frederick J. Murphy, Jr., Esquire
Boswell & Dunlap, LLP
Post Office Drawer 30
245 South Central Avenue (33830)
Bartow, Florida 33831
Telephone (863) 533-7117
Facsimile (863) 533-7412

For Recording Purposes Only

**AMENDMENT TO AGREEMENT REGARDING RESERVED CAPACITY IN THE
TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT**

THIS 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 ("Amendment"), made and entered into this 13th day of September, 2022, 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 Colorado limited partnership ("Owner").

FACTUAL RECITALS

1. On or about July 28, 2004, the Town and Hilltop Groves LLC, a Florida Limited Liability Company, entered into that certain Developer's Agreement Regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant (the "Agreement") a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

2. On or about November 3, 2021, the Owner acquired 74 wastewater ERCs ("Owner ERCs") from HILLTOP GROVES, LLC, a Florida limited liability company, by Special Warranty Deed (the "Deed") which were the subject of the Agreement. Copies of the Deed and closing statement are attached hereto as Composite Exhibit "B" and made a part hereof by reference.

3. The Town and Owner have determined that, at this time, the Owner holds, albeit expired, 74 Wastewater ERCs representing 19,980 gallons per day (GPD) in equivalent capacity in the Town's Wastewater Utility System represented by ERC Certificates numbered 1686 through 1759.

4. 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 April 24, 2011.

Exhibit C

5. The Owner is the owner of certain real property situated in Polk County, Florida, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Property") which is the Seasons at Hilltop Subdivision.

6. On September 13, 2022, the Owner requested that the Town reactivate 74 of the Wastewater ERCs (Original ERC Certificates 1686 through 1759).

7. On June 22, 2021, the Town Commission approved the reactivation and transfer of ERCs 1606-1648 and 1649-1685 to the Vista Del Lago, LLC for the development of the Vista Del Lago, Phase II and Phase III subdivisions.

8. The 74 Owner ERCs requested for reactivation would have accrued Fifty-Nine Thousand Nine Hundred Forty Dollars and zero cents (\$59,940.00) in Idle capacity charges from April 24, 2006 through October 24, 2022 which remains unpaid.

9. On June 23, 2020, the Town introduced and passed Resolution No. 20-13 (the "Resolution"). A copy of the Resolution is attached hereto as Exhibit "C" and made a part hereof by reference.

10. The Resolution provides for a temporary waiver of certain Town of Dundee Idle Capacity Fee(s) for a period of eighteen (18) months beginning on June 23, 2020 and automatically sunseting on December 23, 2021.

11. 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.

12. Owner received the transfer or assignment of the 74 Owner ERCs for construction of single-family homes to be located within the municipal limits of the Town.

13. 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 Agreement.

SECTION 3. GRANT OF EXTENSION.

A. The Town, pursuant to the terms of this Amendment, hereby reactivates said 74 Owner ERCs and grants to the Owner an extension of the term of the 74 Owner ERCs of equivalent capacity in the Town's Wastewater Treatment Plant represented by Wastewater ERC Certificates (Original ERC Certificates 1686 through 1759) through a period expiring September 13, 2023 ("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 Fifty-Nine Thousand Nine Hundred Forty Dollars and zero cents (\$59,940.00) 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 October 24, 2022 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 Fifty-Nine Thousand Nine Hundred Forty Dollars and zero cents (\$59,940.00) 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 the terms of the Agreement attached hereto as Exhibit "A" shall not control and when new certificates are issued by the Town to Owner. No Wastewater capacity in the Town's Wastewater Utility Systems shall be reserved beyond September 13, 2023 and the Owner ERCs extended herein shall expire on September 13, 2023.

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). The parties agree that Transferee shall enter into transfer and/or assignment agreement with RICHMOND

AMERICAN HOMES OF FLORIDA, LP. In the event of any transfer and/or assignment of the Owner ERCs and that notice was previously given by Owner for this specific anticipated Independent Transfer.

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.

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 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.

Exhibit C

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 Agreement, 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
202 East Main 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: RICHMOND AMERICAN HOMES OF FLORIDA, LP
2822 Commerce Park Drive, Suite 100
Orlando, Florida 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

Exhibit C

confirmed. In the event of any conflict between the terms of the Agreement and Amendment, the terms of this Amendment shall control.

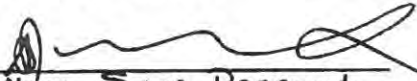
[SIGNATURE PAGES TO FOLLOW]

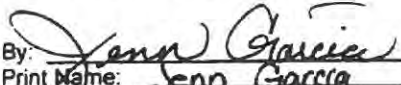
Exhibit C

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: Sam Pennant
As Its: Mayor
Date: 09/15/2022

By: 
Print Name: Jenn Garcia
As Its: Town Clerk

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

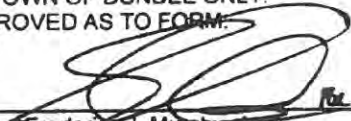
By: 
Frederick J. Murphy, Jr.
Town Attorney

Exhibit C

OWNER:

RICHMOND AMERICAN HOME OF FLORIDA, LP,
a Colorado limited partnership

By: [Signature]
Name: KENNETH SMITH
Title: DIVISION PRESIDENT

Signed and delivered
In the presence of:

[Signature]
Print Name: SCOTT HAWKINS

[Signature]
Print Name: Joshua Rivera

STATE OF FLORIDA
COUNTY OF ~~POLK~~ Orange

The foregoing instrument was acknowledged before me this 22 day of September, 2022, by Kenneth Smith, as Division President of RICHMOND AMERICAN HOMES OF FLORIDA, LP, on behalf of the company, RICHMOND AMERICAN HOMES OF FLORIDA, LP. He is ☒ personally known to me or ☐ has produces _____ as identification and ☐ (did) ☐ (did not) take an oath.

[Signature]
Signature of Person Taking Acknowledgement

Joshua Rivera
Name of Acknowledger Types, Printed, or Stamped

Notary, Production Coordinator
Title or Rank

14 122819
Serial Number, if any.



Final Draft 07/28/2004

Agreement #4

DEVELOPER'S AGREEMENT
REGARDING THE FUNDING OF THE
DESIGN, PERMITTING AND
CONSTRUCTION OF THE
EXPANSION OF THE TOWN OF DUNDEE'S
WASTEWATER TREATMENT PLANT

PAID APR 25 2006

IN FULL

[Signature]
[Signature]

THIS AGREEMENT ("Agreement") is made on this 28th day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town"). Town of Dundee
P.O. Box 1000
Dundee, FL 33828

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 Recitals. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 Purpose. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 Wastewater Treatment Plant Capacity. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations

- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:
- 4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

PAID
MIDWEST
CR# 07-448 3546716

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- 5.1.2 Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 Authority. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 Binding Effect. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- 8.0 Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 Exhibits. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 Captions and Paragraph Headings. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

- 11.0 Definitions. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 Counterparts. This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 Amendment. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- 16.0 Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 Notices. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:

Town Manager
Town of Dundee
Post Office Box 1000
105 Center Street
Dundee, FL 33838-1000

With a Copy to: Frederick J. Murphy, Jr. Town Attorney
Town of Dundee
Post Office Drawer 30
245 South Central Avenue
Bartow, Florida 33830

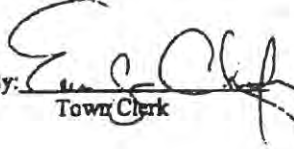
For the Developer/Owner: Joe Saunders
Hilltop Groves, LLC
5529 U.S. 98 North
Lakeland, FL 33809

With copy to: Attn: Rick Miller
Miller, Crosby & Miller
P.O. Box 8169
Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

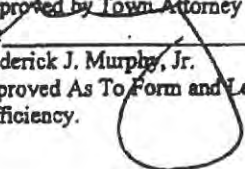
ATTEST:

By: 
Town Clerk

TOWN COUNCIL OF THE
TOWN OF DUNDEE

By: 
Kevin Kitto - Mayor

Date: 11th August 04

Approved by Town Attorney
By: 
Frederick J. Murphy, Jr.
Approved As To Form and Legal
Sufficiency.

Final Draft 07/28/2004

4

WITNESSES

(DEVELOPER)



Witness

Hilltop Groves, LLC

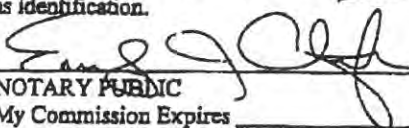
By: Joe L. Saunders
Joe L. Saunders

Its: Managing Member

STATE OF FLORIDA

COUNTY OF Polk

The foregoing instrument is hereby acknowledged before me this 28th day of July, 2004, by Joe L. Saunders, as Managing Member of (DEVELOPER), on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.



NOTARY PUBLIC
My Commission Expires _____

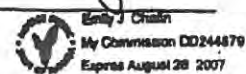


Exhibit A

**MIDFLORIDA Federal Credit Union
Business Services
Irrevocable Letter of Credit**

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary: Town of Dundee
P.O. Box 1000
105 Center Street
Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809 in the aggregate amount of USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36) available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by Hilltop Groves, LLC in return for the Town of Dundee reserving and assigning a total of 266 ERC's of sewer plant capacity exclusively for utilization by Hilltop Groves, LLC in accordance with the following schedule as agreed:

Payment No. 1, for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

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Payment No. 3, for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on Hilltop Groves, LLC and the MIDFLORIDA Federal Credit Union and once delivered to Hilltop Groves, LLC requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

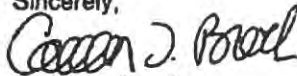
Drafts drawn under this credit must state on their face "drawn under MIDFLORIDA Federal Credit Union Irrevocable letter of credit number 302997 dated August 25, 2004.

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,



Cameron Brock
Assistant Vice President
MIDFLORIDA Federal Credit Union
Business Services

This document prepared by and Return to:
Richmond American Homes of Florida LP
2822 Commerce Park Drive #100
Orlando, FL 32819

Grantee Tax ID# 33-1077984
Parcel Tax ID# 272823-000000-013010

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed") is made this 3 day of November, 2021, between **HILLTOP GROVES, L.L.C.**, a Florida limited liability company, whose address is 5529 US 98N, Lakeland, FL 33809 ("Grantor"), and **RICHMOND AMERICAN HOMES OF FLORIDA, LP**, a Colorado limited partnership, whose address is 2822 Commerce Park Drive, Suite 100, Orlando, Florida 32819 ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00), to it in hand paid by the Grantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor has bargained and sold and does hereby grant and convey unto the Grantee and the Grantee's heirs, successors and assigns forever, in fee simple absolute, all of Grantor's right, title, and interest in and to the following described land, situate, lying and being in Polk County, Florida, to wit ("Property"):

THE EAST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 28 SOUTH, RANGE 27 EAST, LESS AND EXCEPT A STRIP OF LAND 15 FEET IN WIDTH OFF THE NORTHERLY, EASTERLY AND SOUTHERLY SIDES THEREOF FOR PUBLIC HIGHWAY PURPOSES, ALSO LESS AND EXCEPT ADDITIONAL ROAD RIGHT-OF-WAY AS SHOWN IN DEED RECORDED IN OFFICIAL RECORDS BOOK 447, PAGE 570, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA.

TOGETHER WITH all tenements, hereditaments, improvements, fixtures, and appurtenances thereto belonging or in anywise appertaining.

To have and to hold the Property in fee simple forever.

GRANTOR covenants that at the time of delivery of this deed, except as set forth on Exhibit "A" hereto, the Property is free of any liens or encumbrances, and Grantor hereby specially warrant the title to the Property, and will defend it against the lawful claims and demands of all persons claiming by, through or under Grantor, but against none other.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the day, month and year first above written.

GRANTOR:

HILLTOP GROVES, L.L.C., a Florida limited liability company

WITNESSES:

Pam Chancey
Print Name: Pam Chancey

D. David Norris
Print Name: D. David Norris

By: Lee Saunderson
Name: LEE SAUNDERSON - HILLTOP GROVES, LLC
Title: MANAGER

STATE OF FLORIDA)

COUNTY OF Polk)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 3 day of November 2021, by Lee Saunderson of Hilltop Grove, L.L.C., a Florida limited liability company, on behalf of the corporation.

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced: _____

Pamela G. Chancey
(Signature of Notary Public)

Pamela G. Chancey
(Print, Type, or Stamp Commissioned Name of Notary Public)



PAMELA G. CHANCEY
Commission # NH 010422
Expires October 18, 2024
Renewed Your Notary History Database

My Commission expires: 10-18-2024

Affix Notary SEAL

Online Notary: ☐ (Check Box if acknowledgment done by Online Notarization)

Stacy M. Butterfield POLK
CFN# 2021295125 OR BK 11979 PG 251 Pgs 0250-0251 11/12/2021 07:29:43 AM

Exhibit **EXHIBIT B**

File 21000000105

**Stewart Title Guaranty Company
Combined Statement**

11/1/2021 11:21 AM

Stewart Title Guaranty Company, Tampa 3402 West Cypress Street, Tampa, FL 33607, (813) 700-0020 George Officer: Justice Gaudin					
Seller(s) Buyer(s) Lender(s) Property	Hilltop Groves, LLC, 4650 U.S. Highway 90 North, Lakeland, FL 33803 Riverside American Homes of Florida, LP, 2622 Commerce Park Drive, Suite 100, Orlando, FL 32816 Property Address Lake Haldimochie Road Dundee, Florida 33844 Star/Store Number Hilltop PIN 27-00-23-000000-013010				
Closing Date	11/1/2021	Disbursement Date	11/1/2021	Preparation Date	11/1/2021
Debit	Credit				
\$1,702,500.00		Settle Price/Commission			
		Original sales price			
		Commission			
		\$20,000.00 Initial Earnout Money Deposit			
		Escrow			
		County taxes 11/1/2021 to 11/1/2022 \$1,078,500.00			
		Other Adjustments			
		Reimbursement to Seller for Owner Impact fees			
		\$0.00 per Lot x 74 Lots			
		Title Charges			
		Statement or closing fee to Stewart Title			
		Commercial Services - Tampa			
		Title Insurance to Stewart Title Guaranty Company			
		Owner's mortgage \$1,700,000.00 \$0.00			
		- FL 9100 r 8 14 REM Unimproved Land OP STG			
		0000.00			
		- FL Survey Comm STG \$100.00			
		Document Commission Fee to Stewart Title			
		Commercial Services - Tampa			
		Search Fee - Ordinance No. 61176 to Stewart Title			
		Commercial Services - Tampa			
		Power of Attorney/Recording			
		Recording Fee - Special Warranty Deed - Hillsborough			
		Documentary Stamp Deed			
		Additional Charges			
		2021 Real Estate Taxes - Amount \$27,023.00			
		200000-013010 to Joe G. Tucker, CPC, Tax			
		Collector for Palm County			
		Escrow			
		Balance due from Buyer			
		Balance due to Seller			
		Taxes			

**Stewart Title Guaranty Company
Combined Statement**

11/12/2021 11:21 AM

Buyer and Seller (Transferee and Transferor) understand the Clear or Gross Agent on behalf of Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services has obtained the information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. Any and all state agent of lender involved may be furnished a copy of this statement. Buyer and Seller (Transferee and Transferor) understand that tax and insurance premiums and charges were based on figures for the preceding year or supplied by others, or based on estimated figures for current year, and, in the event of any change for current year, all necessary adjustments must be made between Buyer and Seller (Transferee and Transferor) directly. The undersigned hereby attests that Stewart Title Guaranty Company - Stewart Title Guaranty Company - Commercial Services to make expenditures and disbursements as shown above and approve the same for payment. The undersigned also acknowledges receipt of proceeds as applicable, and receipt of a copy of this Statement.

Dated as of this 2nd day of November, 2021

Buyer/for

RICHMOND AMERICAN HOMES OF FLORIDA LP,
a Colorado limited partnership

By: RAH of Florida, Inc., a Colorado corporation,
General Partner

By: [Signature]
Title: V.P., Legal

By: [Signature]
Title: Manager

Stewart Title Guaranty Company,
a Title Corporation

By: [Signature]
Title: Assistant Vice President

EXHIBIT C

RESOLUTION NO. 20-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, MAKING FINDINGS AND, IN ACCORDANCE WITH SECTION 54-18 OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE, TEMPORARILY WAIVING IDLE CAPACITY CHARGE(S) FOR A PERIOD OF EIGHTEEN (18) MONTHS BEGINNING ON THE EFFECTIVE DATE OF THIS RESOLUTION AND PROVIDING FOR THE FULL AMOUNT OF THE TOWN OF DUNDEE IDLE CAPACITY CHARGE(S) TO AUTOMATICALLY BE REINSTATED UPON THE EXPIRATION OF EIGHTEEN (18) MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION; PROVIDING FOR APPLICABILITY OF THE TEMPORARY WAIVER OF IDLE CAPACITY CHARGES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission has reviewed the current charge(s) for reserved capacity arising out of current and active Equivalent Residential Connection(s) ("ERC") in the Town of Dundee water and wastewater utility system; and

WHEREAS, in accordance with Section 54-18(c) of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission may, from time to time, set the amount(s) charged and collected for Idle Capacity charges by resolution; and

WHEREAS, in March, 2007 in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, the Town Commission adopted Resolution 07-09 establishing Idle Capacity Charges; and

WHEREAS, in response to the COVID-19 pandemic and economic difficulties arising therefrom, the Town Commission desires to stimulate new development within the Town of Dundee, Florida, and promote economic activity within the Town of Dundee, Florida; and

WHEREAS, the Town Commission desires, for a temporary period of time not to exceed eighteen (18) months and beginning on the effective date of this Resolution, to waive the Idle Capacity Charges imposed by the Town of Dundee, Florida, for any current and active unredeemed ERC and/or paid connection fee; and

WHEREAS, the Town Commission finds that a temporary waiver of the Town of Dundee Idle Capacity Charges, for a period of time not to exceed eighteen (18) months beginning on the effective date of this Resolution, will promote the development, growth, and vitality of the Town of Dundee, Florida, and will further the health, safety and welfare of the citizens and residents of the Town of Dundee, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

Resolution No. 20-13 Page 1

Section 1. The above recitals are incorporated as a factual basis for the passage of this Resolution.

Section 2. The current amount of all Town of Dundee Idle Capacity Charges as set forth in Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and first established by Resolution 07-09 of the Town Commission of the Town of Dundee and related schedule of such charges that may be on file in the Town Clerk's office are hereby temporarily waived for a period of eighteen (18) months beginning on the effective date of this Resolution; and all Idle Capacity Charges shall automatically be reinstated to the amount(s) charged on the effective date of this Resolution as of December 23, 2021. All other provisions of Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and Resolution 07-09 shall remain in full force and effect.

Section 3. The temporary waiver of the Town of Dundee Idle Capacity Charges established by this Resolution shall apply prospectively beginning on the effective date of this Resolution. The temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to waive any currently past-due or delinquent charge(s) for unpaid Idle Capacity Charges; and the temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to unredeemed ERCs which are inactive, expired, and/or have not been renewed by the Town Commission on or before the effective date of this Resolution.

Section 4. This Resolution shall be effective immediately upon passage by the Town Commission.

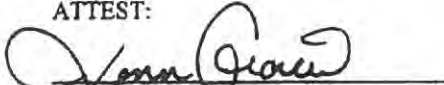
INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, in regular session this 23rd day of June, 2020.

TOWN OF DUNDEE, FLORIDA

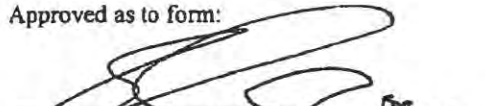


MAYOR- Sam Pennant

ATTEST:


TOWN CLERK

Approved as to form:


TOWN ATTORNEY - Frederick J. Murphy, Jr.

Resolution No. 20-13 Page 2

EXHIBIT G

RESOLUTION NO. 20-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, MAKING FINDINGS AND, IN ACCORDANCE WITH SECTION 54-18 OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE, TEMPORARILY WAIVING IDLE CAPACITY CHARGE(S) FOR A PERIOD OF EIGHTEEN (18) MONTHS BEGINNING ON THE EFFECTIVE DATE OF THIS RESOLUTION AND PROVIDING FOR THE FULL AMOUNT OF THE TOWN OF DUNDEE IDLE CAPACITY CHARGE(S) TO AUTOMATICALLY BE REINSTATED UPON THE EXPIRATION OF EIGHTEEN (18) MONTHS FROM THE EFFECTIVE DATE OF THIS RESOLUTION; PROVIDING FOR APPLICABILITY OF THE TEMPORARY WAIVER OF IDLE CAPACITY CHARGES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission has reviewed the current charge(s) for reserved capacity arising out of current and active Equivalent Residential Connection(s) ("ERC") in the Town of Dundee water and wastewater utility system; and

WHEREAS, in accordance with Section 54-18(c) of the Code of Ordinances of the Town of Dundee, Florida, the Town Commission may, from time to time, set the amount(s) charged and collected for Idle Capacity charges by resolution; and

WHEREAS, in March, 2007 in accordance with Section 54-18 of the Code of Ordinances of the Town of Dundee, the Town Commission adopted Resolution 07-09 establishing Idle Capacity Charges; and

WHEREAS, in response to the COVID-19 pandemic and economic difficulties arising therefrom, the Town Commission desires to stimulate new development within the Town of Dundee, Florida, and promote economic activity within the Town of Dundee, Florida; and

WHEREAS, the Town Commission desires, for a temporary period of time not to exceed eighteen (18) months and beginning on the effective date of this Resolution, to waive the Idle Capacity Charges imposed by the Town of Dundee, Florida, for any current and active unredeemed ERC and/or paid connection fee; and

WHEREAS, the Town Commission finds that a temporary waiver of the Town of Dundee Idle Capacity Charges, for a period of time not to exceed eighteen (18) months beginning on the effective date of this Resolution, will promote the development, growth, and vitality of the Town of Dundee, Florida, and will further the health, safety and welfare of the citizens and residents of the Town of Dundee, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

Section 1. The above recitals are incorporated as a factual basis for the passage of this Resolution.

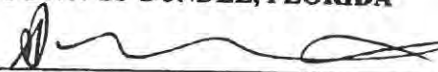
Section 2. The current amount of all Town of Dundee Idle Capacity Charges as set forth in Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and first established by Resolution 07-09 of the Town Commission of the Town of Dundee and related schedule of such charges that may be on file in the Town Clerk's office are hereby temporarily waived for a period of eighteen (18) months beginning on the effective date of this Resolution; and all Idle Capacity Charges shall automatically be reinstated to the amount(s) charged on the effective date of this Resolution as of December 23, 2021. All other provisions of Section 54-18 of the Code of Ordinances of the Town of Dundee, Florida, and Resolution 07-09 shall remain in full force and effect.

Section 3. The temporary waiver of the Town of Dundee Idle Capacity Charges established by this Resolution shall apply prospectively beginning on the effective date of this Resolution. The temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to waive any currently past-due or delinquent charge(s) for unpaid Idle Capacity Charges; and the temporary waiver of the Town of Dundee Idle Capacity Charges shall not be applicable to unredeemed ERCs which are inactive, expired, and/or have not been renewed by the Town Commission on or before the effective date of this Resolution.

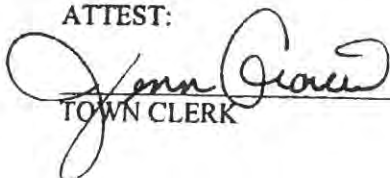
Section 4. This Resolution shall be effective immediately upon passage by the Town Commission.

INTRODUCED AND PASSED by the Town Commission of the Town of Dundee, Florida, in regular session this 23rd day of June, 2020.

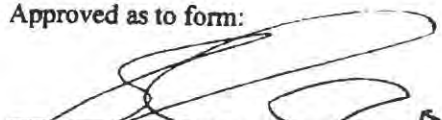
TOWN OF DUNDEE, FLORIDA


MAYOR- Sam Pennant

ATTEST:


TOWN CLERK

Approved as to form:


TOWN ATTORNEY - Frederick J. Murphy, Jr.

Resolution No. 20-13 Page 2