

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

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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 May, 2025**, 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 (the "Owner").

RECITALS

1. On or about July 28, 2004, the **Town of Dundee** (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").

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

3. The Agreement provided for 266 *Wastewater Equivalent Residential Connections* (hereinafter referred to as "ERC") totaling 71,920 gpd in equivalent wastewater capacity.

4. On or about February 5, 2005, the **HILLTOP GROVES, LLC**, executed receipts (collectively the "Receipts") acknowledging the receipt and acceptance of 266 ERC certificates (Original ERC Nos. 1606 through 1871).

5. Copies of the Receipts are attached hereto as **Exhibit "B"** and incorporated herein by reference.

6. On or about July 28, 2020, the Town and **HILLTOP GROVES, LLC**, entered into that certain *Amendment to Agreement Regarding Reserved Capacity in the Town of Dundee's Wastewater Treatment Plant* (the "2020 Amendment") reactivating forty-three (43) ERCs (Original ERC Nos. 1606 through 1648).

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

8. On or about November 3, 2021, pursuant to a Special Warranty Deed, **Richmond American Homes of Florida, LP**, acquired 74 ERCs (Original ERC Nos. 1686-1759) from **HILLTOP GROVES, LLC**.

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

10. On or About January 9, 2024, **HILLTOP GROVES, LLC**, and the Town entered into that certain *Second Amendment to Developer's Agreement regarding the Funding of the Design, Permitting and Construction of the Expansion of the Town of Dundee's Wastewater Treatment Plant dated January 9, 2024*, as recorded in Official Records Book 12982, Pages 637-796, public records of Polk County, Florida (the "Second Amendment").

11. Copies of the Second Amendment and referenced exhibits are attached hereto as **Composite Exhibit "C"** and incorporated herein by reference.

12. The Second Amendment (see **Composite Exhibit "C"**) reactivated 112 ERCs (Original ERC Nos. 1760-1871) through January 24, 2025.

13. Pursuant to the terms and conditions of the Second Amendment (see **Composite Exhibit "C"**), **HILLTOP GROVES, LLC**, retained ERC Certificates 2024-110 through 2024-112 (Original ERC Nos. 1869-1871) and assigned ERC Certificates 2024-01 through 2024-109 (Original ERC Nos. 1760-1868) to **Richmond American Homes of Florida, LP**.

14. Pursuant to the terms and conditions of the Second Amendment (see **Composite Exhibit "C"**), wastewater idle capacity fee(s) for the reactivated 112 ERCs (Original ERC Nos. 1760-1871) in full satisfaction of outstanding idle capacity charges through January 24, 2025.

15. The Town and Owner have determined that, at this time, **Richmond American Homes of Florida, LP**, holds, albeit expired, 81 ERCs (Original ERC Nos. 1788-1868) representing 21,870 gallons per day (GPD) in equivalent wastewater capacity in the Town's Wastewater Utility System represented by ERC Certificates numbered 2024-29 through 2024-109 (the "Owner ERCs").

16. The Owner ERCs expired on **January 24, 2025**.

17. 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.

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

19. The 81 Owner ERCs requested for reactivation would have accrued Five Thousand Four Hundred Sixty-seven Dollars and fifty cents (\$5,467.50) in idle capacity charges from **January 25, 2025** through **April 24, 2026** which has not been paid.

20. Pursuant to the Agreement (see **Exhibit "A"**), the Town acknowledges that all applicable wastewater connection fees have been paid by Owner or its predecessor in interest for the Town's allocation of wastewater capacity for the Owner ERCs.

21. The Town acknowledges and represents that the Town presently has adequate permitted wastewater capacity in and/or for its wastewater utility system for the wastewater capacity represented by the Owner ERCs.

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. Factual Recitals; Ownership.

The above-referenced Factual Recitals and referenced exhibits are incorporated herein as true and correct statements which form a factual and material basis for the entry into this Amendment, and the Town Commission of the Town of Dundee, Florida, hereby adopts the above-referenced Factual Recitals as the legislative findings supporting the entry into this Amendment between the Town and Owner.

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. Defined Terms.

All capitalized terms not defined herein shall have the same meaning as set forth in the Agreement (see **Exhibit “A”**), 2020 Amendment, 2021 Amendment, 2023 Amendment, and/or Second Amendment (see **Composite Exhibit “C”**), as applicable.

Section 3. Grant of Extension.

A. The Town, pursuant to the terms of this Amendment, hereby reactivates said **81** Owner ERCs and grants to the Owner an extension of the term of the **81** Owner ERCs which provide equivalent capacity in the Town’s Wastewater Treatment Plant represented by Wastewater ERC Certificates 2024-29 through 2024-109 (Original ERC Nos. 1788-1868) through a period of time expiring **April 24, 2026** (“Expiration Date”).

B. In consideration for such extension, within thirty (30) calendar days after mutual execution of this Amendment and approval by the Town Commission, at a duly noticed public meeting, the Owner shall pay Five Thousand Four Hundred Sixty-seven Dollars and fifty cents (\$5,467.50) in immediately available funds to the Town in full satisfaction of the wastewater idle capacity charges outstanding as of the date of this Agreement and due through **April 24, 2026**, and pay any and all other charges that may be due pursuant to *Chapter 54 of the Town of Dundee 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 of Dundee Code of Ordinances* regarding the Owner ERCs that are the subject of this Amendment, the 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 Five Thousand Four Hundred Sixty-seven Dollars and fifty cents (\$5,467.50) in immediately available funds to the Town, all previously issued certificates representing the Owner ERCs extended herein, which 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 the Owner ERCs extended herein and provide same to the Owner. Provided however, the terms of the Agreement attached hereto as **Exhibit “A”** shall not control when new ERC certificates are issued by the Town to Owner.

No wastewater capacity in the Town’s Wastewater Utility Systems shall be reserved beyond April 24, 2026 and the Owner ERCs extended herein shall expire on April 24, 2026.

Section 4. Grant of Option.

A. The Town, pursuant to the terms of this Amendment and in addition to any rights granted to the Owner under the Agreement or 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, the Owner shall provide written notice to the Town thereof ("Transfer Notice"), which shall include the Transferee's (i) name, (ii) address, (iii) employer identification number (EIN) or federal tax identification number, and (iv) contact information (including telephone number, fax number, and e-mail address, as applicable).

C. In the case of an Owner ERC Transfer of all outstanding ERCs, the 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 the 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 (see **Exhibit "A"**), 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 the Owner certifying the current number of Owner ERCs in the name of the 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 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.

The Owner acknowledges and affirms 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 Agreement, as amended, and 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 Agreement, as amended, and 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: RICHMOND AMERICAN HOMES OF FLORIDA, LP
2822 Commerce Park Drive, Suite 100
Orlando, FL 32819

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

Section 13. Entire Agreement.

The Agreement, as modified by this Amendment, constitutes 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, as amended, is 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.

[Remainder of page intentionally left blank]

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

ATTEST:

THE TOWN OF DUNDEE

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

By: _____
Print Name: _____
As Its: Town Clerk _____

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

By: _____
Frederick J. Murphy, Jr.
Town Attorney

OWNER:

RICHMOND AMERICAN HOMES OF FLORIDA, LP
a Florida limited liability company

By: _____

Name: _____

Title: _____

Signed and delivered

In the presence of:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ 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 produced _____ as identification and [] (did) [] (did not) take an oath.

Signature of Person Taking Acknowledgement

Name of Acknowledger Types, Printed, or Stamped

Title or Rank

Serial Number, if any.