

## **AMENDED AND RESTATED EFFLUENT AGREEMENT**

This Agreement is made this 17<sup>th</sup> day of November, 1999 by and between **RIVERWOOD COMMUNITY DEVELOPMENT DISTRICT** (the "District"), and **CENTEX HOMES**, a Nevada general partnership ("Centex").

### **BACKGROUND**

A. Riverwood Utilities, Inc., as seller, and the District, as purchaser, previously closed the purchase and sale of a sewerage collection, treatment and disposal system (the "Sewer System") in accordance with a Sewer System Purchase and Sale Agreement (the "Purchase Agreement").

B. Robert M. Taylor, as Trustee, owned Riverwood Utilities, Inc. and Riverwood Development, Inc.

C. Robert M. Taylor and Riverwood Development, Inc., pursuant to the Purchase Agreement entered, or contemplated entering into, an Effluent Agreement.

D. Centex is the successor in title to certain real property previously owned by Robert M. Taylor, as Trustee and acquired all of Robert M. Taylor's and Riverwood Development, Inc.'s right, title and interest in the Effluent Agreement.

E. Centex and the District desire to confirm and restate the rights and obligations of Centex and the District regarding provision of effluent irrigation water for certain property within the Riverwood Development of Regional Impact ("Riverwood").

### **AGREEMENT**

For good and valuable considerations the receipt and adequacy of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Provision of Effluent. The District agrees to provide to Centex irrigation quality effluent. Irrigation quality effluent shall be such effluent meeting all Florida Department of Environmental Regulation Standards for irrigation. District acknowledges Centex shall utilize irrigation quality effluent only for irrigation of the golf course located within Riverwood and may assign its rights and obligations hereunder only to parties who will utilize the irrigation quality effluent for the golf course. Upon assignment, Centex shall provide notice to the District of the entity or entities to whom it is to provide irrigation quality effluent in accordance with this Agreement. To the extent that effluent produced by the Sewer System drops below irrigation quality, the District shall notify Centex and its assigns as soon as reasonably possible. District shall also provide to Centex and its assigns at

least three (3) days advance written notice of plant clearings, aquatic weed control efforts or other activities which are likely to materially deteriorate water quality or disrupt the provision of irrigation quality effluent.

2. Quantity of Effluent. District shall distribute to Centex and its assigns, in the quantities and priority designated by Centex, irrigation quality effluent. Any irrigation quality effluent not needed or desired by Centex or its assigns for irrigation of the golf course may be utilized by the District to irrigate areas dedicated to the CDD which need irrigation, such as by way of example and without limitation, median landscaping, entry areas, parks and buffer landscaping ("CDD Landscaping") or other purposes as the District otherwise determines appropriate. District shall use best efforts to provide irrigation quality effluent in accordance with this Agreement and shall not waste or dispose of irrigation quality effluent by permitting the same to be placed in evaporation/percolation ponds or any other means of disposal until the requirements of Centex and its assigns have been satisfied. Centex and its assigns shall be obligated to take and utilize only up to 400,000 gallons per day of irrigation quality effluent, and Centex and its assigns shall be obligated to take effluent only when the District's effluent storage pond is nearing or is at its maximum capacity. District agrees that any other user of irrigation quality effluent shall be provided irrigation quality effluent only after the needs of the golf course have been satisfied, unless otherwise agreed to in writing by Centex and its assigns.

3. Distribution System. District shall deliver irrigation quality effluent to its effluent storage pond and the District, at its sole cost, shall install and maintain an irrigation pump and system to withdraw water from the storage pond and deliver it to the boundary of the property where such effluent shall be used for irrigation, whether such property is the golf course or developable property. District, Centex and its assigns agree to grant to each other any easements reasonably required for such construction, operation and maintenance. District and Centex and its assigns agree to mutually cooperate in obtaining all necessary permits, consents and approvals for construction, operation and maintenance of the effluent withdrawal and distribution system.

4. Term. The initial term of this Agreement shall end December 31, 2042. Thereafter, this Agreement shall automatically be extended for consecutive terms of ten (10) years each, unless either party provides notice of its intent to terminate this Agreement at least twelve (12) months prior to the expiration of the then current term.

5. Right of First Refusal. In the event District terminates this Agreement in accordance with Section 4 hereof, District, prior to providing irrigation quality effluent to any party other than Centex or its assigns, shall give Centex and its assigns, the right of first refusal to obtain effluent on the same terms and conditions as the third party. Said right of first refusal must be exercised within sixty (60) days of notice to Centex and its assigns, or the same shall be deemed waived.

6. Representation. Centex represents and warrants it acquired all of the rights and obligations of Riverwood Land Company, L.P. (the successor in interest of Robert M. Taylor and Riverwood Development, Inc.) in, to and under the Effluent Agreement, provided Centex shall not be liable for acts or omissions of Riverwood Land Company, L.P. or Riverwood Development, Inc. occurring prior to the date Centex acquired Riverwood Land Company, L.P. interest in Riverwood. Centex agrees to indemnify and defend the District for all losses, damages, judgment, costs, fees and expenses for breach of this representation and warranty.

7. Indemnification. In the event that Centex or its assigns shall fail to comply with any rule or regulation, Federal, State, County or local agencies, a violation of any permit granted with regard to the use of the effluent, Centex or its assign who has failed to comply or is responsible for such violation shall indemnify the District, its officers, governing board, employees and agents against all claims, demands, causes of actions, suites, judgements, fines, penalties, or losses, including all costs suffered or incurred by the District by reason of such failure. In the event the District shall fail to comply with any rule, regulation, order of any Federal, State, County or local agency with regard to the District's delivery and provision of effluent, the District shall indemnify Centex and its assigns, and their officers, board of directors, employees and agents against all claims, demands, causes of actions, suites, judgments, penalties, fines or losses suffered or incurred by Centex and its assigns as reason of such failure. Any partial assignment by Centex shall release Centex of all liability for any claim based on or related to the acts of the assignee.

8. Miscellaneous.

(a) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties.

(b) Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought and making specific reference to this Agreement.

(c) Further Assurances. The parties hereby agree from time to time to execute and deliver such further and other transfer, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

(d) Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

(e) Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex and telegraphic communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

Centex Homes  
5801 Pelican Bay Boulevard  
Suite 600  
Naples, Florida 34108  
Attn: President or  
Managing General Partner

Riverwood Community Development District  
10300 N.W. 11th Manor  
Coral Springs, Florida 33065  
Attn: Chairman

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery, (b) on the date telecommunicated if by telegraph, (c) on the date of transmission with confirmed answer back if by telex, and (d) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

(f) Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

(g) Severability. If any part of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

(h) Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(i) Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any party of any breach of any

provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver or any right, power or remedy under this Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

(j) Specific Performance. Each of the parties acknowledges that the parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party of any provision of this Agreement, then the other parties shall be entitled, in addition to all other rights or remedies, to injunctions restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Agreement.

(k) Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party of this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

(l) Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Charlotte County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Charlotte County or the court of the United States, having jurisdiction over Charlotte County, Florida; (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail; as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

(m) Enforcement Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

(n) Remedies Cumulative. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each remedy shall be cumulative and

shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

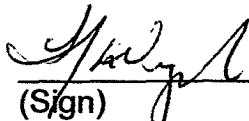
(o) Governing Law. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to principals of conflicts of laws.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first above written.

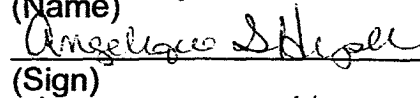
**WITNESSES:**

**CENTEX HOMES, a  
Nevada general partnership**

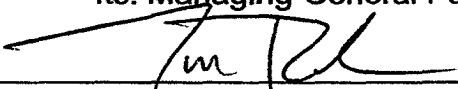
By: Centex Real Estate Corporation,  
a Nevada corporation  
Its: Managing General Partner

  
(Sign)

T. Wiegman  
(Name)


  
(Sign)

Angelique S. Hyster  
(Name)

By:   
Tim Ruemler, President

(Corporate Seal)

**RIVERWOOD COMMUNITY  
DEVELOPMENT DISTRICT**

  
(Sign)

Marc Spence  
(Name)

  
(Sign)

DIANA M. UNSINN  
(Name)

By:   
Sue Fisher, Chairwomen

Attest:   
Gary Moyer, Secretary