

UTILITY UPSIZING AND REIMBURSEMENT AGREEMENT

This Utility Upsizing and Reimbursement Agreement (“**Agreement**”) is made this _____ day of _____, 2023 (the “**Effective Date**”), by and between the CITY OF VENICE, FLORIDA, a municipal corporation (hereinafter referred to as the “**City**”) and MERITAGE HOMES OF FLORIDA, INC., a Florida Corporation (hereinafter referred to as the “**Developer**”). The City and Developer shall be referred to individually as “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, the Developer is developing approximately 318 acres of land in the City of Venice, Sarasota County, as more particularly described in **Exhibit “A”** attached hereto (hereinafter referred to as the “**Property**”); and,

WHEREAS, the development of the Property was initially approved and referred to as the “Rustic Road PUD” under Ordinance No. 2019-25; and,

WHEREAS, the City approved residential development plans for the Property through Development Orders No. 21-05PP, 21-03PP, and 22-61SP (the “**Project**”); and,

WHEREAS, the Property is subject to a Pre-Annexation Agreement, dated April 30, 2019, which specifies various conditions and obligations for development of the Property; and,

WHEREAS, Paragraph 6 of the Property’s Pre-Annexation Agreement directs that, at the time of development of the Property, the developing party “shall design, construct, and pay for installing, extending, sizing, and upsizing all offsite and onsite potable water, reclaimed water, and wastewater utility pipelines, and lift-stations necessary to serve the full buildout of the project. All

such work shall be performed in accordance with plans and specification approved through the City's construction permitting process and in accordance with the current version of the City standard details;" and,

WHEREAS, pursuant to letter dated May 5, 2021, the City approved the construction plans for the Generation at Venice project, a proposed and approved residential multi-family development (the "**Generation Project**") on the approximately 30.47-acre property located along Knights Trail Road, and as more specifically described in **Exhibit "B"** attached hereto (the "**Generation Property**"); and,

WHEREAS, the Generation Project included a lift station to be constructed in the southeastern corner of the Generation Property along Knights Trail Road (the "**Generation Lift Station**"); and,

WHEREAS, the City's May 5, 2021, letter approving the construction plans for the Generation Project included a stipulation that the City may request specific improvements to the Generation Lift Station and associated infrastructure in order to better serve future development in the area; and,

WHEREAS, pursuant to a letter dated October 4, 2021, the City approved the offsite utility construction plans for the Project, which encompassed the design, specifications, and connections for the Project's offsite wastewater infrastructure (the "**Approved Plans**"); and,

WHEREAS, the Approved Plans specified that the Project would connect to the Generation Lift Station and included the necessary modifications to the originally approved design for the Generation Lift Station so as to serve only the combined wastewater needs for the Generation Project and the Project (the "**Modified Generation Lift Station**"); and,

WHEREAS, on November 30, 2021, the City issued Construction Plan Approval letters

regarding the Rustic Road South Phases 1 and 2, and the Rustic Road North Phases 1 and 2, phases of the Project, which indicated the Developer acknowledged that the City may require specific improvements to other existing lift stations to accommodate flows from these phases of the Project, in addition to those modifications necessary for the Modified Generation Lift Station; and,

WHEREAS, the City has now expressed its interest in the Developer upsizing the Modified Generation Lift Station, including necessary associated wastewater infrastructure, beyond the specifications in the Approved Plans so to serve future development in the area (the “**Knights Trail Road Lift Station**”), the general location, design, and specifications for which are included in the City of Venice Knights Trail Road Lift Station Bid Plans prepared by Kimley-Horn and Associates, Inc., dated October 19, 2022, as may be modified during final engineering and permitting (the “**KTR Lift Station Plans**”), incorporated herein by reference; and,

WHEREAS, pursuant to the City’s offsite utility construction plan approval letter for the Project dated February 9, 2023, the Developer is required to provide certain emergency vacuum pumping services, as needed, for certain existing lift stations and other lift stations to be constructed in the area (the “**Emergency Pumping Services**”) until the Knights Trail Road Lift Station has been turned over to the City; and,

WHEREAS, the City has now also expressed its interest in the Developer constructing an additional 16-inch force main to eventually serve the Project and other future development in the area (the “**16” Force Main**”), the general location for which is depicted in **Exhibit “C”** attached hereto; and,

WHEREAS, the Developer is willing to construct the Knights Trail Road Lift Station, provide the Emergency Pumping Services, and construct the 16” Force Main in exchange for the City’s reimbursement of certain costs, as specified herein, as well as the City’s Utilities

Department's approval of the issuance of Certificates of Occupancy for the Project prior to the Knights Trail Road Lift Station's turnover to the City, as further described and pursuant to the terms herein; and,

WHEREAS, the City seeks to benefit from the Developer constructing the above-described utility infrastructure as it will enhance the future capacity of the City's wastewater system and service, allow the City to provide wastewater service to more customers and properties in the area, and thereby provide the City with revenue in the form of additional utility service fees and charges related thereto; and

WHEREAS, the City desires to allow the Developer to construct the Knights Trail Road Lift Station and the 16" Force Main, and to reimburse the Developer for certain costs associated with same as further detailed by the terms herein.

NOW, THEREFORE, for and in consideration of the terms, conditions, and mutual covenants contained herein, the City and the Developer agree as follows:

1. RECITALS TRUE AND CORRECT. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. UPSIZED UTILITY INFRASTRUCTURE. The Developer agrees to construct and install the Knights Trail Road Lift Station and 16" Force Main pursuant to the following terms:

A. *Knights Trail Road Lift Station Design and Specifications.* In the course of negotiating this Agreement, the City has provided the KTR Lift Station Plans to the Developer for the Developer's review and use in obtaining a construction bid for same. The Developer agrees to construct and install the Knights Trail Road Lift Station in accordance with the KTR Lift Station Plans, as may be modified during final engineering and permitting. In connection with the Knights Trail Road Lift Station and KTR Lift Station Plans, the Parties acknowledge and agree that: (1)

the City takes full ownership and liability as it relates to the design, engineering, and preparation of the KTR Lift Station Plans, as well as the delivery of same to the Developer; (2) the City shall, to the extent permissible under Florida law and without waiving its sovereign immunity, indemnify the Developer from any liability in connection with the design, engineering, and preparation of the KTR Lift Station Plans; (3) the Developer's use of the KTR Lift Station Plans shall not be construed as the Developer's review and/or approval of same; (4) the Developer has agreed to use the KTR Lift Station Plans for the purpose and scope of constructing and installing the utility infrastructure thereunder; and, (5) the Developer shall have no liability beyond the scope of construction and installation in accordance with the KTR Lift Station Plans.

B. 16" Force Main. The City is in the process of designing, engineering, and preparing construction plans for the 16" Force Main (the "**16" Force Main Plans**"). Upon its finalization and approval of the 16" Force Main Plans, the City shall provide same to the Developer for the Developer's review and use in obtaining a construction bid for same. However, should the City fail to provide such fully finalized and approved 16" Force Main Plans to the Developer within two (2) years from the Effective Date, then the Developer shall have no obligation to construct the 16" Force Main. Should the Developer agree to construct and install the 16" Force Main upon receipt of the 16" Force Main Plans, then the Parties shall prepare an addendum to this Agreement to further specify the Parties obligations and liabilities in connection with same. The Parties acknowledge and agree that in the event the Developer constructs the 16" Force Main, the City shall reimburse the Developer in accordance with terms set forth in said addendum, which terms shall be materially consistent with the terms provided in the Utility Reimbursement Agreement between the City and the Developer for the Knights Trail 16" Water Main Project dated July 12, 2022, as amended.

C. Construction Bids.

i. Approved Plans Bid. The Developer previously obtained a construction bid in connection with the Approved Plans (attached hereto as **Exhibit “D”** and hereinafter referred to as the “**Approved Plans Bid**”). The Parties agree that the relevant cost figures in the Approved Plans Bid shall serve as the baseline figures for calculating the reimbursement due to the Developer for its construction and installation pursuant to the KTR Lift Station Plans.

ii. Developer’s Construction Bid. The Developer has obtained its own bid for construction of the Knights Trail Road Lift Station per the KTR Lift Station Plans, which is attached hereto as **Exhibit “E”** (the “**Developer’s Construction Bid**”). The City has reviewed the Developer’s Construction Bid for consistency with the KTR Lift Station Plans and hereby provides its approval of same. In the event that any change orders become necessary and alter the Developer’s Construction Bid, then within three (3) business days from the Developer’s notice of any such change order, and before such cost is incurred, the Developer shall provide the City with written notice of same. Within five (5) business days from receipt of such notice, the City shall, with respect to any such noticed change order, provide written notice to the Developer of either: (a) its approval; (b) its request for additional information; or, (c) its denial with specific reasons stated in support thereof. Failure of the City to respond within five (5) business days shall be deemed an approval by the City of any such noticed change order. The City agrees to not unreasonably withhold its approval of or to deny any necessary change orders and acknowledges that change orders may be necessitated by circumstances including, but not limited to, shortages in materials, increased costs of materials and/or shipment or delivery of same. The Parties further acknowledge that the Developer’s Construction Bid may be further modified at a later date to include the 16” Force Main, which the Parties intend to be made part of this Agreement, pursuant

to an addendum to this Agreement. The Parties acknowledge that the Developer obtained a minimum of three (3) bids for the Knights Trail Road Lift Station construction and therefore agree that the Developer shall be required to obtain a minimum of three (3) bids for the construction of the 16" Force Main when authorized pursuant to an addendum to this Agreement.

D. Timing of Construction. The Developer agrees to commence construction of the Knights Trail Road Lift Station by the later of (a) twenty (20) days after the Effective Date or (b) twenty (20) days after the City's and any other applicable governmental agency's final approval and permitting of the Knight Trail Road Lift Station Plans. The Developer further agrees to complete such construction within one (1) year from the date of commencement; however, the deadline for the Developer's completion of construction of the Knights Trail Road Lift Station may be reasonably extended in the event of circumstances necessitating such an extension. Any such extension (other than an extension for a force majeure event as provided in Section 10 hereof) shall be requested in writing by the Developer and is subject to the approval of the City, which shall not be unreasonably withheld. Failure by the City to respond within five (5) business days to such request by the Developer shall be deemed an approval by the City of such request. Extensions relating to force majeure events shall be governed by the terms detailed in Section 10.

E. Insurance. In addition, Developer shall require that the construction contract for the Knights Trail Road Lift Station provide that the Developer's contractor carry and maintain, at its sole cost and expense, a policy or policies of commercial general liability insurance with respect to the construction of the Knights Trail Road Lift Station, with the premiums thereon fully paid on or before the due date. Such insurance shall have a minimum combined single limit of liability of at least \$1,000,000.00 per occurrence and a general aggregate limit of at least \$2,000,000.00. All such policies shall be written to apply to all bodily injury, property damage,

personal injury losses. Such liability insurance shall be written as primary policies. The Developer's contractor shall also maintain workers' compensation insurance in the amounts and coverages required by the laws of the State of Florida. All insurance required to be maintained by the Developer's contractor shall: (a) be issued by insurance companies that are authorized to do insurance business in the State of Florida and carry a financial rating by Best's Key Rating Guide of Class VIII or better; (b) contain a provision whereby the insurer is not allowed to cancel, fail to renew or change materially the coverage without first giving thirty (30) days prior written notice to the City; and, (c) as to the commercial general liability policy, name the City of Venice, its elected officials, officers, agents, and employees as additional insured.

F. Turnover of the Knights Trail Road Lift Station. Upon completion of the Knights Trail Road Lift Station construction and installation, the Developer shall perform the required inspections, testing, and sampling in accordance with and per the City's Standard Details. The Developer shall also obtain, prepare, and provide to the City all required as-built information and Record Drawings of the Knights Trail Road Lift Station. Developer shall be further responsible for all other requirements specified under Section 6 of the City's Standard Details in order to effectuate a "turnover" of the Knights Trail Road Lift Station to the City as expeditiously as possible. At the time of turnover, the Developer shall, at the Developer's sole discretion, either: (a) provide the City with a warranty for the installation of the Knights Trail Road Lift Station, which shall remain in place for a period of one (1) year from the date of turnover of the Knights Trail Road Lift Station; or, (b) cause its utility contractor to provide the City with such warranty.

3. EASEMENTS. The City shall be responsible for and bear the cost associated with obtaining all necessary permanent utility easements associated with the Knights Trail Road Lift Station. Further, the City's failure to obtain any such easements shall automatically extend the

deadline for the Developer's completion of construction of the Knights Trail Road Lift Station. The Developer shall be responsible for and bear the cost associated with obtaining all necessary temporary construction easements and right-of-way permits associated with the construction of the Knights Trail Road Lift Station. The City shall reasonably extend the deadline for the Developer's completion of construction of the Knights Trail Road Lift Station in the event that the Developer encounters delays in obtaining any such necessary temporary construction easements and/or right-of-way permits.

4. INTERIM CONDITION. The City acknowledges that the Developer's agreement to construct and install the Knights Trail Road Lift Station, at the City's request and for the City's benefit, exposes the Developer to potential delay in the Project's receipt of wastewater service by reasons outside of the Developer's control. Therefore, in the event that the Knights Trail Road Lift Station is not available for connection and service at the time that the Project is otherwise ready to connect to and receive City wastewater service, the City agrees to allow the Project to temporarily connect to City wastewater and receive service therefrom in accordance with: (1) the Project's fully approved offsite utility plans; and, (2) the City's letter dated February 9, 2023, approving same (hereinafter referred to collectively as the "**Interim Condition**," which together detail and stipulate to the terms of the Project's temporary wastewater connection and the Parties' obligations during such term). The Parties hereby agree to incorporate by reference said plans and letter comprising the Interim Condition in this Agreement. As stipulated in the referenced letter, in furtherance of the Interim Condition, and upon the Developer's application for Certificates of Occupancy for the Project, the City's Utilities Department agrees to approve the issuance of Certificates of Occupancy for five hundred three (503) residential units in the Project — up to a maximum of two hundred (200) single-family residential units and up to a maximum of three

hundred three (303) multi-family residential units. Upon completion, operation, and turnover of the KTR Lift Station to the City, the City's Utilities Department shall no longer impose the limitations upon its issuance of Certificates of Occupancy for the Project, except as provided for herein. During the time period when the KTR Lift Station is complete, in operation, and has been turned over to the City, but the 16" Force Main is yet to be completed, in operation, and turned over to the City, the City shall issue Certificates of Occupancy for the Project in accordance with the "**Monitoring Guidelines**" attached hereto as **Exhibit "F."** The City shall use the Monitoring Guidelines as a means to proactively monitor and evaluate the wastewater system serving the Project to determine whether additional residential units can be properly served by the system and communicate same to Developer upon Developer's written request to the City. However, upon the completion, operation, and turnover to the City of the 16" Force Main, the City's Utilities Department shall no longer impose any limitations upon its approval of issuance of Certificates of Occupancy for the Project.

5. **REIMBURSEMENT OF COSTS TO DEVELOPER.** The City agrees to reimburse the Developer by cash payment for the total costs incurred by the Developer to construct the Knights Trail Road Lift Station in accordance with the following terms:

A. **Actual Differential Cost of Developer's Construction Contract.** The City shall reimburse the Developer in the amount of the "**Actual Differential Cost,**" which shall be calculated by subtracting the dollar amount of the Approved Plans Bid from the "**Developer's Total Cost.**" The Developer's Total Cost shall be the sum of the following: (1) the total cost incurred to complete the scope of work detailed in the Developer's Construction Bid; (2) additional costs incurred due to approved (or deemed approved) change orders pursuant to Section 2.C hereof; and (3) costs resulting from delays due to force majeure events, the City's failure to obtain

any required easement in accordance with Section 3 hereof, or other causes beyond the Developer's control. Upon completion of the scope of work detailed under the Developer's Construction Bid, and prior to turnover of the Knights Trail Road Lift Station to the City, the Developer shall provide the City with written notice of all additional costs incurred for purposes of calculating the Actual Differential Cost.

B. Reimbursement to Developer. The City shall reimburse the Developer in the amount of the Actual Differential Cost. The City shall make its payment of all reimbursements due to the Developer within thirty (30) days from the date of the City Council's approval of the turnover package of the Knights Trail Road Lift Station and the City's receipt of proper invoices. In the event that the Developer has completed construction of the Knights Trail Road Lift Station, and that by no fault of the Developer or Developer's utility contractor, turnover of the Knights Trail Road Lift Station has not been completed within six (6) months from the date of the Developer's completion of all obligations under Section 2.F hereof, then the Developer may provide a written request for reimbursement to the City, and the City shall reimburse the Developer for all costs identified herein within thirty (30) days from receipt of such request.

C. Reimbursement for Emergency Pumping Services. The Developer agrees to contract and pay for the cost of the Emergency Pumping Services to the City, such as specified under the Interim Condition, for the duration of the Interim Condition. However, in the event that the Developer has completed construction of the Knights Trail Road Lift Station, and that by no fault of the Developer or Developer's utility contractor, turnover of the Knights Trail Road Lift Station has not been completed within six (6) months from the date of the Developer's completion of all obligations under Section 2.F hereof, then the Developer shall not be obligated to pay for any costs associated with Emergency Pumping Services provided subsequent to six (6) months

from the date of the Developer's completion of all obligations under Section 2.F hereof. At such time, the City agrees to provide the Emergency Pumping Services, as needed, at the City's cost.

6. ASSIGNMENT. Subject to the City's approval, which shall not be unreasonably withheld, and in accordance with the express terms herein, the Developer shall retain the right to assign all or a portion of its reimbursement unpaid and due from the City. Any assignment must be by written instrument and recorded in the Public Records of Sarasota County, Florida. Upon recording of such assignment, the Developer shall provide a copy of the same to the City with written notice. The Parties further agree and acknowledge that, upon the Developer's assignment in accordance with the terms of this Section 6, such assignee shall have the right to perform and the obligation to complete all other terms of this Agreement.

7. NOTICE TO PURCHASERS. Upon recording this Agreement in the Public Records of Sarasota County, Florida, the Developer's successors and assigns shall be on notice of the Developer's rights and obligations created hereunder, and this Agreement shall be binding upon any such successors and assigns. No subsequent assignee of the Developer shall be entitled to any reimbursement granted under this Agreement without a written assignment meeting the requirements of Section 6 hereof.

8. NOTICES. Notice required pursuant to Section 2 hereof may be provided by email to the email addresses identified in this Section 8. All other required notice under the terms of this Agreement shall be provided or served by hand-delivery by the Parties to the proper address(es) below, or by United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, properly addressed as follows:

To the City:
City of Venice

To the Developer:
MERITAGE HOMES OF FLORIDA, INC.

Attention: Ed Lavallee, City Manager
401 West Venice Avenue
Venice, Florida 34285

Attention: R. Tyler Vansant
10117 Princess Palm Ave., Suite 550
Tampa, FL 33610
Telephone: 813.386.8752
Facsimile: 480.452.0470
E-mail: tyler.vansant@meritagehomes.com

Copy to:

Kelly M. Fernandez, City Attorney
236 Pedro Street
Venice, FL 34285

With Required Copy to:

Meritage Homes
8800 E. Raintree Drive, Suite 300
Scottsdale, Arizona 85260
Attention: Curtis Keller
Telephone: 480.515-8013
Facsimile: 480-452-0624
E-mail: curtis.keller@meritagehomes.com

9. LEGAL FEES AND COSTS. The Parties agree to bear the expense of their respective legal fees and costs associated with the negotiation and preparation of this Agreement.

10. FORCE MAJEURE. In the event that the Developer's or the City's performance of their respective obligations under the terms of this Agreement is prevented or delayed by consequence of a force majeure, neither one of the Parties shall be liable for such nonperformance, and the time of performance shall be extended for the number of days that the force majeure event prevents or interrupts such performance. The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, riots, acts of Armed Forces, epidemics, pandemics, delays by carriers, inability to obtain materials or right of way on reasonable terms, acts of public authorities, acts of vandals or other third parties, or any other causes whether or not of the same kind as enumerated herein. In order to be entitled to the benefit of this Section, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying, in detail, the event of force majeure and shall further be required to diligently correct any adverse effect of any force majeure. This Section 10 shall not

apply to force majeure event caused by either of the Parties, or any other party under their respective control.

11. DEFAULT. Upon the breach by either of the Parties of any term or condition of this Agreement, and unless the breaching Party is diligently pursuing a cure of said breach, upon the failure to cure same after thirty (30) days written notice from either Party, then the non-defaulting Party shall have the right to enforce same or to perform any such term or condition and recover the costs of same from the defaulting Party.

12. ENFORCEMENT. In the event of a breach or default of this Agreement, the Parties shall have all remedies available at law or equity, including but not limited to the entitlement to an injunction or similar action in equity to enforce the terms of this Agreement.

13. CHOICE OF LAW. All suits or actions at law arising from the provisions, performance, or breach of this Agreement shall be brought, for State Court jurisdiction, in the Circuit Court for Sarasota County, Florida, South County Division, and for Federal Court jurisdiction, in the Middle Federal District Court of Florida, and no other jurisdictions.

14. ATTORNEY'S FEES. In the event of any breach or default pursuant to the terms of this Agreement, the prevailing Party shall be entitled to recover all reasonable attorney's fees and costs from the other Party, whether the same be incurred for negotiation, trial, or appellate proceedings.

15. BINDING ON SUCCESSORS. The covenants contained herein shall inure to the benefit of and be binding upon the respective successors, heirs, legal representatives and assigns of the Parties to this Agreement.

16. PARTIES DRAFTED EQUALLY. The Parties agree that each has engaged equally and reciprocally in the drafting of this Agreement.

17. ENTIRE AGREEMENT. This document constitutes the entire Agreement of the Parties and cannot be changed or modified except by instrument in writing duly approved by both Parties.

18. AMENDMENT. No amendment to this Agreement shall be effective unless it is in writing and executed by the Parties in the same manner as this Agreement.

19. SEVERABILITY. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions are omitted.

20. EFFECTIVE DATE. This Agreement shall be effective on the date it is executed by the last of the Parties ("**Effective Date**," as previously defined herein).

21. RECORDING. Within seven (7) days of the Effective Date, the City shall provide the Developer with a certified copy of this executed Agreement. Within seven (7) days of its receipt from the City, the Developer shall be responsible for having the certified copy recorded in the Public Records of Sarasota County, Florida.

22. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

(signatures on following pages)

IN WITNESS WHEREOF, the City and the Developer set their hands and seals hereto on the day and year first above written.

CITY OF VENICE, FLORIDA

By: _____
NICK PACHOTA, Mayor

ATTEST:

KELLY MICHAELS, City Clerk

(SEAL)

KELLY FERNANDEZ, City Attorney

DEVELOPER

MERITAGE HOMES OF FLORIDA, INC.

WITNESSES:

Sign: _____

By: _____

Print: _____

Its: _____

Sign: _____

Print: _____

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2023, by _____, who is personally known to me or who has produced _____ (type of identification) as identification and who did take an oath.

My Commission Expires:

Notary Public

Printed name of notary

Commission Number: