

WILLOW HAMMOCK (aka: SILVERSTONE SOUTH)

FIRST AMENDMENT AND RESTATEMENT OF

UTILITY PARTICIPATION AGREEMENT

THIS FIRST AMENDMENT AND RESTATEMENT OF UTILITY PARTICIPATION AGREEMENT (“Agreement”) is made and entered into by and between **MANATEE COUNTY**, a political subdivision of the State of Florida (“Manatee County” or “County”) and **WILLOW LANE HOLDINGS, LLC** a Delaware limited liability company, whose address is 2330 W Horatio Street, Tampa, Florida 33609 (“Developer”).

RECITALS

A. The Developer is owner of certain real property located in Manatee County, Florida, in Section 4, Township 33 South, Range 18 East and in Section 33 Township 33 South, Range 18 East, and in Section 04 Township 34 South, Range 18 East, legally described in **Exhibit “A”**, attached hereto and incorporated herein (the “Property”); and

B. The Developer has submitted to County a plan for a residential community on the Property which is identified as PDR-15-01(Z)(P) and which is known as **WILLOW LANE HOLDINGS, LLC, (formerly known as SOHO MENDOZA, LLC WILLOW HAMMOCK** (the “Project”); and

C. The Developer desires to connect the Project to the County’s wastewater collection/conveyance system for the benefit of the Project; and

D. Subject to receiving reimbursement from the County as provided herein, the Developer is willing to construct certain utility improvements (the “Utility Improvements”), more particularly described herein, and depicted in the Sketch of the Utility Improvements, attached hereto as part of **Exhibit “B”** and incorporated herein by reference (the “Scope of Work”); and

E. Pursuant to the County’s request, the Utility Improvements depicted in the Scope of Work will exceed the capacity required by the proposed Project; and

F. Policy 9.2.3.3. of the Manatee County Comprehensive Plan authorizes the County to pay for the cost of additional materials necessary for oversizing any component of the wastewater collection/conveyance system where a development is required to increase system capacity greater than that required by a proposed project; and

G. The County hereby agrees to participate in a portion of the actual costs of the Utility Improvements and acknowledges those funds to be paid to the Developer; and

H. The Developer and the County have reviewed the Bid, attached hereto as **Exhibit “C”** and incorporated herein by reference (the “Bid”), and enter into this Agreement with the understanding that such Bid is an accurate estimate of the actual costs of the Utility Improvements as set forth herein; and

I. The parties entered into a Utility Participation Agreement (the “Original Agreement”) to memorialize their agreement in writing with respect to the County’s participation in the cost of the Utility Improvements, and wish to amend and restate the Original Agreement as more fully set forth herein to reflect the actual cost of the Utility Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein.
2. Developer’s Obligations. The Developer shall provide and furnish all services necessary for the Utility Improvements, pursuant to the Scope of Work and subject to the following conditions:

(a) The Developer shall design, engineer, permit and construct the Utility Improvements within or adjacent to the Project in accordance with the Scope of Work attached hereto as **Exhibit “B”**. The Utility Improvements shall consist of the following:

- I. Construction of approximately 1,610 linear feet of 12” PVC force main (inclusive of appurtenances and valves); and
- II. Constructed 1,950 linear feet of 8” PVC force main (inclusive of appurtenances and valves); and
- III. Construction of approximately 680 Linear Feet of 12” PVC force main installed in a 24” Steel Casing via the Jack & Bore Installation Method (inclusive of appurtenances and valves).

No substantial deviations from the Scope of Work or the above-listed Utility Improvements shall be incorporated into the design and engineering without the prior written consent of the County. Such services include, without implied limitation, engineering investigation, surveys, geotechnical testing, preliminary and final design services, preparation of working drawings, and quantity and cost estimates. Developer has retained an engineer of record, ZNS ENGINEERING, which engineer is acceptable to County, who shall sign, seal, and date the certification of completed construction and as-built record drawings pertaining to the Utility Improvements.

(b) The final construction drawings and specifications approved in connection with the Project Permits and all other construction requirements reflected by such Project Permits shall be known and referred to as the “Final Scope” for purposes of this Agreement. Developer shall identify an alternate final scope which provides for the same scope of work as the Final Scope except for the Utility Improvements as shown in the Scope of Work (the “Alternate Final Scope”).

(c) Within 90 (ninety) days following the date of execution of this Agreement by both the County and the Developer, the Developer shall commence construction of the Utility Improvements. The Developer shall complete construction of the Utility Improvements within a reasonable time following commencement thereof (not to exceed 365 days).

- I. Should the above construction fail to start within the time frame listed above in Section 2(c), the County may proceed with construction subject to 120 days written notice to the Developer.
- II. Within 30 days of receiving the above notice from the County, the Developer shall provide Recorded permanent Easement(s) and access easement sufficient for the construction of all of the Utility Improvements;

(d) The Developer has engaged in a competitive process in determining its primary construction contractor (with award to the low responsive, responsible bidder, E.T. MacKenzie). The bids of the Alternate Final Scope were submitted to the County for approval or objection, and the County has approved the bids.

(e) During construction, the Developer shall prepare and maintain complete and accurate books of account and records as to all costs, which books of account and records shall be kept and maintained in accordance with generally accepted industry standards, consistently applied, and the Developer shall promptly supply to the County detailed documentation of actual costs as the costs are incurred, including pay requests, cancelled checks, and other documentation reasonably deemed necessary by the County, upon written request by the County.

(f) Upon completion of construction of the Utility Improvements, the Developer's engineer of record shall prepare and provide to the County the certification of completed construction and the as-built record drawings.

3. County Reimbursement. The County shall reimburse the Developer for one hundred percent (100%) of actual costs for the 12" force main in Section 2.(a) I & III above and no more than twenty (20%) of actual costs for the 8" force main in Section 2.(a) II above as described in Exhibit "C" as Upsize From 6" FM to 8" FM along Mendoza Road, on a per-invoice basis, for construction of the Utility Improvements, such percentage being the County's pro rata share of the cost of the Alternate Final Scope as shown on **Exhibit "C"**, subject to the following conditions:

(a) The County's obligation to reimburse the Developer shall not exceed the sum of Nine Hundred, Eleven Thousand, Five Hundred Twenty-Two Dollars (\$911,522.00). The Developer shall notify the County prior to incurring any costs in excess of such amount. Upon receipt of such notice, the County shall have the option of (i) within forty-five (45) days of receipt of the aforesaid notice, approving (by motion of the Board of County Commissioners) an increase in the maximum obligation of the County, or (ii) terminating this Agreement and, within forty-five (45) days of the date of termination, reimbursing the Developer for actual costs incurred, subject to the invoice requirements set forth in Subsection 3(b) hereof. In the event the County does not exercise the option to increase its maximum obligation within forty-five (45) days pursuant to option (i) above, the County shall be deemed to have elected to terminate this Agreement pursuant to option (ii) above.

(b) The Developer will submit to the **Deputy Director of Engineering Services, Public Works Department** (the "County Representative") an invoice for payments made by the

Developer for services through the 25th day of the preceding month by the first day of the month. Such invoices shall (i) identify all Costs funded by Developer for which reimbursement is requested; and (ii) include detailed invoices and documentation acceptable to Manatee County, to include pay requests, canceled checks, wire transfer instructions and other verification reasonably necessary to identify all Costs incurred and funded by Developer. The invoice will include the percentage of the completed work performed. The invoice will include documentation of completion and acceptance by the County of such services. The invoice will also include proof of payment to the contractors who provided the services.

(c) The County shall reimburse the Developer for the Costs incurred in accordance with this Agreement, less a ten percent (10%) retainage amount which will be paid with the final payment due hereunder following acceptance of construction by the County. The County shall process and pay invoices in accordance with the Local Government Prompt Payment Act (Sections 218.70-218.74, Florida Statutes), which generally requires payment for non-disputed amounts within twenty five (25) business days of submittal. On or before the end of such twenty-five (25) day period, the County Representative shall advise Developer of any amount in dispute. Payment for any undisputed amount shall be made, and all unpaid disputed amounts shall be handled, in accordance with the Local Government Prompt Payment Act.

(d) Acceptance of construction by the County shall not be unreasonably withheld or delayed. The County shall not reimburse the Developer for any expenditures not related to, consistent with, or otherwise incurred in connection with this Agreement.

4. Impact Fees. Developer specifically agrees that there will be no impact fee credits requested or provided to the Developer for the Utility Improvements constructed pursuant to this Agreement, and that the builders within the Project will pay all impact fees otherwise associated with buildings within the Project.

5. No General Obligation. The obligations of the County set forth herein shall not be construed to be or constitute general obligations, debts or liabilities of the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, or to result in a pledge of or lien upon any revenues of the County. The obligation of the County to reimburse Developer hereunder is subject to the discretion of the Board of County Commissioners to budget and appropriate legally available funds in amounts sufficient to fund the Cost of the Utility Improvements.

6. County's Remedies. Should Developer fail to promptly complete construction of the Utility Improvements within the time periods provided in Paragraph 2 or any time extension approved in writing by Manatee County, then Manatee County shall have the right to complete the improvements.

7. Indemnity. Developer shall indemnify, save and hold harmless Manatee County, its officers, agents and employees, from and against all suits, actions, claims, demands, costs, penalties, fines or liability or any nature whatsoever arising out of, because of, or due to any act or occurrence of omission or commission of Developer, its consultants, contractors, officers, agents or employees, in the performance of this Agreement. Neither Developer, or its, consultants, contractors, nor any of their officers, agents or employees, will be liable under this paragraph for damages arising out of injury or

damage to persons or property directly caused or resulting from the overt actions and/or negligence of the County, its officers, agents or employees.

8. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any dispute shall be located in a civil court of competent jurisdiction of Manatee County, Florida.

9. Severability; Partial Invalidity. The provisions of this Agreement are declared by the parties to be severable. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

10. Integration. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11. Designation of Representatives; Notices. The parties hereby designate the persons set forth below as their agents and each party agrees that its agents shall be responsible for the administration of this Agreement and shall be duly authorized to perform and request all acts necessary for the administration and performance of this Agreement. Every notice, request or other communication provided for in this Agreement, if in writing, shall be deemed to have been given or served at the time that the same is received, if hand delivered, or at the time the same shall be deposited in the United States mail, postage prepaid, addressed to the parties and signed by the designated representatives and addressed as provided below, until either party provides written notice of a different agent or address:

If to the County:

Manatee County
C/O Cheri Coryea, County Administrator
Post Office Box 1000
Bradenton, Florida 34206

with copies to:

Manatee County Public Works
C/O Sia Mollanazar, P.E., Deputy
Director of Engineering Services Division
1022 26th Avenue East
Bradenton, Florida 34206

If to the Developer:

Willow Lane Holdings, LLC
ATTN: Charles Bruck
2330 W Haratio Street
Tampa, Florida 33609

with copies to:

Nathan Kragt, P.E.
ZNS Engineering, Inc.
201 5th Ave. Dr. East
Bradenton, Florida 34205

12. No Development Rights Conferred. The parties understand, acknowledge and agree that no approval is given hereby for any development of the Project. Nothing contained in this Agreement shall (i) create any development rights in favor of Developer; (ii) create, or otherwise acknowledge the existence of, any vested development rights by reason of estoppel, detrimental reliance, or otherwise; or (iii) authorize, permit, or otherwise allow any construction and/or development of or on any other property unless separately approved by the Board of County Commissioners pursuant to County Ordinances. All land use authorizations, development and construction rights and authorizations, shall be obtained upon proper application and in compliance with all standards and requirements of the Manatee County Comprehensive Plan, the Manatee County Land Development Code, any approved general development plan, preliminary or final site plan, and all conditions or stipulations thereto.

13. No Assignment. Developer shall not be authorized to assign this Agreement, or any portion hereof, without the prior written consent of Manatee County, which consent may be withheld in Manatee County's solely exercised discretion. Provided, however, the County specifically understands that the rights obtained by the Developer under the County land use approvals of the Project may be assigned to a subsequent developer or assignee of all or a portion of the Project without the County's consent.

14. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no right or cause for action shall accrue, to by reason hereof, or for the benefit of any third party not a party hereto.

15. Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

16. Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

17. Headings. The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

18. Modifications and Amendments; Waivers.

(a) This Agreement may be amended only pursuant to an instrument in writing that has been jointly executed by the parties hereto and duly authorized and approved by the Board of County Commissioners of the County and by Developer.

(b) Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein

reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

19. Public Records Act Compliance.

Pursuant to Florida Statutes § 119.0701, to the extent Developer is performing services on behalf of the County, Developer shall:

(a) Keep and maintain public records required by the County to perform the service.

(b) Upon request from the County's custodian of public records (identified below), provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Developer does not transfer the records to the County.

(d) Upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Developer or keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of this Agreement, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of this Agreement, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 941.742.5845, Debbie.Scaccianoce@mymanatee.org, Attn: Records Manager 1112 Manatee Avenue West, Bradenton FL 34205.

20. Amendment and Restatement of Original Agreement. This Agreement constitutes the amendment and restatement of the Original Agreement in its entirety, and this Agreement shall replace and supersede the Original Agreement in its entirety. Upon the effective date hereof, all matters addressed herein shall be governed solely by the terms and provisions of this Agreement, and no term, condition, or obligation of any party set forth in this Agreement shall be conditioned upon or subject to any term, condition, or obligation of the Original Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below.

WITNESS

WILLOW LANE HOLDINGS, LLC

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

Date: _____

[**ADDITIONAL SIGNATURES ON FOLLOWING PAGE**]

MANATEE COUNTY, a political subdivision of the
State of Florida

By its Board of County Commissioners

By: _____
County Administrator

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
FORCE MAIN ROUTE

EXHIBIT “C”

BID COSTS