

UTILITY REIMBURSEMENT
AND IMPACT FEE CREDIT AGREEMENT

THIS UTILITY REIMBURSEMENT AND IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made and entered into, as of _____, 2019 by and between **MANATEE COUNTY**, a political subdivision of the State of Florida (“Manatee County” or “County”) and **BENDERSON DEVELOPMENT COMPANY, LLC**, a New York limited liability company, whose address is 7978 Cooper Creek Boulevard, University Park, Florida 34201 (“Developer”).

RECITALS

A. Entities (as identified on Exhibit “A”) affiliated with the Developer are the owners of certain real property located north of 17th Street East and west of I-75 in Sections 33, 34 and 35, Township 33 South, Range 18 East, and other certain real property located north of U.S. 301 and east of Erie Road, all in Manatee County, Florida, legally described in **Exhibit “A”**, attached hereto and incorporated herein (the “Properties”); and

B. The Developer has submitted to County plans for industrial/warehouse/commercial development on the Properties which are identified as PDMU-17-04(Z)(G) (commonly referred to as “Ellenton Commerce Park”) (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 and impact fee credits 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 Utility Improvements Construction Plans, 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 construction of 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. As provided herein, the County hereby agrees to reimburse and award impact fee credits for 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 Cost Estimate, attached hereto

as **Exhibit “C”** and incorporated herein by reference (the “Estimate”), and enter into this Agreement with the understanding that such Estimate is an accurate estimate of the actual costs of the Utility Improvements as set forth herein; and

I. The parties desire to memorialize their agreement in writing, all as more fully set forth herein.

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 in accordance with the Scope of Work attached hereto as **Exhibit “B”**. The Utility Improvements shall consist of the following:

A 12” force main on 69th Street East from just east of Trevesta Place eastward to a southerly curve in the road; thence northeasterly within lands owned by Manatee County to the entrance road to the County’s North Wastewater Treatment Plant (+/- 11,000 feet), connecting into an existing 24” force main.

No substantial deviations from the Scope of Work or the above 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, WRA 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 Utility Improvements and all other construction requirements reflected by such Utility Improvements shall be known and referred to as the “Final Scope” for purposes of this Agreement.

(c) Within ninety (90) days following receipt of all required permits, the Developer

shall commence construction of the Utility Improvements. The Developer shall complete all engineering investigations, surveys, geotechnical testing, preliminary and final design services, quantities and cost estimates, specifications, bidding and construction of the Utility Improvements within a reasonable time following commencement thereof (not to exceed 365 days).

- (d) The Developer has engaged in a competitive process in determining its primary construction contractor, Westra Construction Corp. (with award to the low responsive, responsible bidder), where the number of qualified bids was at least three (3). If the County objects in writing to the proposed award of the contract within the twenty (20) days, the County and the Developer shall have thirty (30) additional days to resolve the objection. If, at the end of the additional thirty (30) days, the County and the Developer are unable to resolve the objection, this Agreement shall terminate, and the County shall, within forty-five (45) days of the date of termination, reimburse the Developer for actual costs incurred, subject to the invoice requirements set forth in Section 3 hereof.
- (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 and Impact Fee Credits. Subject to Subsection 3(e) hereof, the Developer shall fund the initial Two Hundred Thousand Dollars (\$200,000) of the actual costs of the Utility Improvements with no right to receive reimbursement for such initial actual costs. The County shall reimburse the Developer for (100%) of the remaining actual costs (over and above the Developer-funded \$200,000) of the Final Scope incurred (including costs incurred prior to the effective date of this Agreement), 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 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 One Million Eight Hundred Ninety-one Thousand Three Hundred Fifty Eight and Eight Cents (\$1,891,358.08). 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 this Section 3. 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.

(e) Upon acceptance of the Utility Improvements, the County shall award the Developer wastewater facility investment fee credits in the amount of Two Hundred Thousand Dollars (\$200,000) as impact fee credits for the Developer's funding of the initial Two Hundred Thousand Dollars (\$200,000) of actual costs of the Utility Improvements. The Developer shall be entitled to use such credits in accordance with Section 2-31-212 of the County's Code of Ordinances and Section 1106.02 of the County's Land Development Code, for eligible facility investment fees paid on behalf of any eligible development

project within the unincorporated County. Developer specifically agrees that there will be no other 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.

4. 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 Boards of County Commissioners to budget legally available funds in amounts sufficient to fund the Cost of the Utility Improvements.

5. 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.

6. Indemnity. Developer shall indemnify, defend, save and hold harmless Manatee County, its officers, agents and employees, from and against all suits, actions, claims, demands, costs, penalties, fines or liability of any nature to the extent arising out of, because of, or due to any negligent act of omission or commission of Developer, their 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 Manatee County, its officers, agents or employees.

7. 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.

8. 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.

9. 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.

10. Designation of Representatives; Notices. The parties hereby designate the persons set for the 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:

<u>If to the County:</u>	With a copy to:
Manatee County	Chairman of County Commissioners
C/O Cheri Coryea, County Administrator	Manatee County
Post Office Box 1000	Board of County Commissioners
Bradenton, Florida 34206	Post Office Box 1000
	Bradenton, Florida 34206

If to Benderson Development Company, LLC	with a copy to:
Attn: Todd M. Mathes	
7978 Cooper Creek Boulevard	
University Park, Florida 34201	

11. 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.

12. 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 Property and/or Project without the County's consent.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

WITNESS

Benderson Development Company, LLC

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

Date: _____

MANATEE COUNTY, a political subdivision of
the State of Florida

By its Board of County Commissioners

By: _____
County Administrator

EXHIBIT "A"

[LEGAL DESCRIPTION]

PARCEL ONE:

PARCEL ID NO.: 814600003 and 815710009

OWNER: 7978 Associates III, LLC

FROM THE WEST QUARTER CORNER OF SECTION 9, TOWNSHIP 34 SOUTH, RANGE 18 EAST, RUN N 19 DEGREES 58'59" E, A DISTANCE OF 11.70 FEET, TO THE CENTERLINE INTERSECTION OF TWO DITCHES MENTIONED IN O.R. BOOK 636, PAGE 790, ALSO BEING THE POINT OF BEGINNING; THENCE N 89 DEGREES 22'22" W, ALONG SAID CENTERLINE, A DISTANCE OF 1304.44 FEET, TO THE INTERSECTION WITH A LINE PARALLEL TO AND PERPENDICULARLY DISTANT 20 FEET EAST OF THE WEST LINE OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 34 SOUTH, RANGE 18 EAST; THENCE N 00 DEGREES 49'31" E, ALONG SAID LINE, A DISTANCE OF 1353.39 FEET TO THE INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF 29TH STREET EAST (FORMER RAILROAD RIGHT OF WAY), AS DESCRIBED IN O.R. BOOK 801, PAGE 571; THENCE S 89 DEGREES 14'35" E, ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 1287.39 FEET, TO THE INTERSECTION WITH THE WEST LINE OF SECTION 9, TOWNSHIP 34 SOUTH, RANGE 18 EAST; THENCE S 00 DEGREES 16'11" W, ALONG SAID WEST LINE, A DISTANCE OF 702.18 FEET, TO THE NORTHWEST CORNER OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9; THENCE N 89 DEGREES 54'37" E, A DISTANCE OF 1339.46 FEET, TO THE NORTHEAST CORNER OF SAID SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE N 89 DEGREES 54'37" E, ALONG THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9, A DISTANCE OF 38.67 FEET, TO THE WESTERLY LIMITED ACCESS RIGHT OF WAY LINE OF INTERSTATE 75, ALSO BEING A POINT ON A CURVE TO THE LEFT WHOSE RADIUS POINT LIES N 83 DEGREES 44'20" E, A DISTANCE OF 5903.58 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 1190.28 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 33'07", ALSO BEING SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE, TO THE END OF SAID CURVE; THENCE S 13 DEGREES 48'58" E, A DISTANCE OF 492.44 FEET, ALONG SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE; THENCE S 05 DEGREES 30'33" E, A DISTANCE OF 303.78 FEET, ALONG SAID LIMITED ACCESS RIGHT OF WAY LINE; THENCE S 11 DEGREES 05'33" W, A DISTANCE OF 41.10 FEET; ALONG SAID WESTERLY LIMITED ACCESS RIGHT OF WAY LINE, TO THE INTERSECTION WITH THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 9; THENCE N 89 DEGREES 53'29" W, ALONG SAID SOUTH LINE, A DISTANCE OF 432.88 FEET, TO THE SOUTHWEST CORNER OF SAID NORTHEAST 1/4 OF THE SOUTHWEST 1/4; THENCE N 89 DEGREES 53'29" W, A DISTANCE OF 1340.82 FEET, TO THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 9; THENCE N 00 DEGREES 25'22" E, ALONG THE CENTERLINE OF A DITCH MENTIONED IN O.R. BOOK 636, PAGE 790, A DISTANCE OF 1329.22 FEET, TO THE POINT OF BEGINNING, LYING AND BEING IN SECTIONS 8 AND 9, TOWNSHIP 34 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA.

And

North 1/2 of the Southwest 1/4 of the Northwest 1/4, Section 9, Township 34 South, Range

00236288-7

18 East, Manatee County, Florida, LESS any portion thereof within the former right-of-way of the Tampa Southern Railroad Company.

PARCEL TWO

PARCEL ID NO.: 815800008 and 811700004

OWNERS:

DELTA-SONIC CARWASH SYTEMS, INC., a New York corporation, as a tenant in common with an undivided 4.3366 % interest, RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF AS TRUSTEES UNDER A TRUST AGREEMENT DATED DECEMBER 26, 1989 KNOWN AS THE EVAN BENDERSON 1989 TRUST, as a tenant in common with an undivided 1.08415 % interest, RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF AS TRUSTEES UNDER A TRUST AGREEMENT DATED DECEMBER 26, 1989 AS THE SHAUN BENDERSON 1989 TRUST, as a tenant in common with an undivided 1.08415 % interest, RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF AS TRUSTEES UNDER A TRUST AGREEMENT DATED DECEMBER 26, 1989 KNOWN AS THE BRETT BENDERSON 1989 TRUST, as a tenant in common with an undivided 1.08415 % interest and RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF AS TRUSTEES UNDER A TRUST AGREEMENT DATED DECEMBER 26, 1989 KNOWN AS THE TODD BENDERSON 1989 TRUST, as a tenant in common with an undivided 1.08415 % interest.

ALL THAT TRACT OR PARCEL OF LAND situate, lying and being in the County of Manatee, State of FLORIDA, more particularly described as follows:

The SW ¹/₄ of the SW ¹/₄ and the NW ¹/₄ of the SE ¹/₄ of the SW ¹/₄; all in Section 9, Township 34 South, Range 18 East, Manatee County, Florida and the NE ¹/₄ of the SE ¹/₄ of the SE / 14, Section 8, Township 34 South, Range 18 East, Manatee County, Florida; LESS Right of Way recorded in Official Record Book 848, Page 830 and LESS Right of Way recorded in Official Record Book 441, Page 587, all of the Public Records, Manatee County, Florida.

EXHIBIT "B"

[Utility Improvements – Construction Plans]

EXHIBIT "C"

[Estimate of Costs]