

UTILITY AGREEMENT
FOREST LAKE ESTATES
PASCO COUNTY, FLORIDA

THIS UTILITY AGREEMENT dated this 16th day of July, 2020 by and between Utilities, Inc. of Florida, a Florida corporation (hereinafter referred to as "Utility"), and MHC Forest Lake Estates MH, LLC, a Delaware corporation (hereinafter referred to as "Owner").

WITNESSETH

WHEREAS, Owner represents that it is the owner of approximately 11.73 acres of real property situated in Pasco County, Florida, described with particularity in **Exhibit A** attached hereto and made a part hereof, which property is hereinafter referred to as the "**Property**"; and

WHEREAS, the Property may hereafter be developed and improved into a development consisting of approximately 35 residential building lots and one office/store requiring potable water and wastewater service (hereinafter referred to as the "**Development**"); and

WHEREAS, Utility is the owner and operator of potable water production and distribution facilities, and wastewater collection and disposal facilities within its certificated service area which encompasses the Property; and

WHEREAS, Utility has agreed to make its potable water service and wastewater service available to the Development on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises hereof and the work to be done by Utility and the sums to be paid to Utility by Owner as described hereafter, Owner and Utility agree as follows:

1. **EXCLUSIVE SERVICE TO THE PROPERTY**. Owner hereby agrees and covenants that all improvements hereafter constructed on the Property shall be served exclusively by Utility's potable water and wastewater facilities, and Owner further agrees that this grant and agreement shall be a covenant binding upon and running with title to the Property. Utility hereby agrees to make potable water and wastewater service available to the Development hereafter constructed on the Property for the rates and under the conditions referred to in this Agreement. Utility agrees that such services shall be made available through Utility's facilities which Utility has or intends to construct, and through the facilities to be constructed by Owner; provided, however, that if Utility is prevented by law or governmental regulation from constructing or expanding plants and facilities, or from providing such potable water and wastewater service for any reason, Utility shall have no liability to Owner whatsoever except that Utility shall be obligated to return, without interest, any unearned contributed funds paid to Utility hereunder, and this Agreement shall thereupon be terminated, except with respect to portions of the Development which are then being served hereunder. Utility further agrees that the potable water service to be

provided hereunder shall meet the current standards or requirements, as the case may be, of all state, local, and federal governmental agencies having jurisdiction over Utility; provided, however, that Utility shall not be responsible for any failure to meet or comply with said standards or requirements to the extent that such failure shall be occasioned by the inadequacy of the facilities to be constructed by Owner; and further, the acceptance of any such facilities by Utility shall not be an admission of, or acceptance of such responsibility. Utility hereby agrees to provide potable water and wastewater service to the Development as described in "**Exhibit B**" attached hereto and made a part hereof. Owner shall make a written request for such service to Utility, but not before the Off-Site Improvements and On-Site Facilities on the Property described in Paragraphs 3 and 4 hereof, respectively, are completed in accordance with this Agreement.

2. **CONNECTION FEES AND CHARGES.** Owner hereby agrees to pay the Utility the connection fees and charges for each single family and multi-family dwelling unit constructed on the Property as per the amount approved by the Florida Public Service Commission at the time of the payment thereof, any increases thereafter until the time of actual connection, and any tax liability arising from such payments that Utility is not otherwise previously authorized to recover in rates. Said payment shall hereinafter be referred to as the "**Connection Charge**." The Connection Charge in the amount of fifty-two thousand, seventy-eight dollars and twenty-seven cents (\$52,078.27), as detailed in "**Exhibit C**", shall be paid in full by Owner to Utility with the execution of this agreement. The Connection Charge shall be paid in cash or cashier's check, or other funds acceptable to Utility at the time Owner requests service hereunder for the residential units to be served. Account setup fees will be assessed at the time of application for service, as well as any incremental Allowance for Funds Prudently Invested (AFPI), if applicable. Utility shall have no obligation hereunder to advise any governmental authority by execution of application or otherwise that it is providing service to a portion of the Development unless the Connection Charge has been paid for the portion of the Development subject to such advice; provided, however, so long as Owner is not in default under this Agreement, Utility will accommodate Owner, upon request, by furnishing Owner with a letter to addressees designated by Owner stating that upon payment required for Connection Charge and Owner's construction of all Off-Site and On-Site Improvements required for such service, Utility will furnish potable water and wastewater service to the Development or a portion thereof. Under no circumstances shall Owner be entitled to any return of all, or any part of, any Connection Charge as described in this Paragraph 2 (unless Utility shall be unable to render services as described in Paragraph 1 hereof). The Connection Charge shall be in addition to the following: (1) the cost of constructing off-site improvements in accordance with Paragraph 3 hereof, which shall be charged and paid in accordance with said Paragraph 3, (2) the cost of constructing on-site improvements in accordance with Paragraph 4 hereof, which shall be charged and paid in accordance with said Paragraph 4, (3) the rates described

in Paragraph 6 hereof, which shall be charged and paid separately in accordance with paragraph 6 hereof, and (4) meter installation fees as described in Paragraph 7 hereof, which will be charged and paid separately in accordance with said Paragraph 7 hereof.

3. **OFF-SITE IMPROVEMENTS.** In order to provide potable water and wastewater service to the Development, certain off-site improvements will be constructed. These off-site improvements (the "**Off-Site Improvements**") shall be those improvements which are determined by Utility, at its sole discretion, to be necessary to transport water from Utility's plant, which will serve the Development, to the Development, including, but not limited to, all lines, mains, valves, hydrants and other ancillary facilities necessary to serve the Development and necessary to bring wastewater from the Development to Utility's wastewater treatment plant with which it will serve the Development including all lines, mains, manholes, lift stations and other ancillary facilities. As a condition precedent to the Utility's obligation to provide the service to the Development hereunder, Owner shall be responsible for constructing, at Owner's sole cost and expense, the Off-Site Improvements and interconnecting the Off-Site Improvements with Utility's existing potable water, reclaimed water and wastewater system at a point as specified by Utility. The Off-Site Improvements shall be constructed in accordance with plans and specifications approved by Utility and in accordance with all requirements of Utility's standard engineering practices which it shall provide to Owner on request, and all applicable governmental and regulatory authorities. Owner shall convey the Off-Site Facilities to the Utility, at no cost or expense to the Utility. Further, pursuant to the Utility's Tariff, at the time Utility accepts the Off-Site Facilities, Developer shall also pay to Utility the amount of the tax impact on such facilities. Such conveyance shall be by bill of sale, warranty deed or other appropriate instrument as determined by Utility to ensure Utility's ownership of the Off-Site Facilities, at its sole discretion, and shall be free and clear of all liens and encumbrances whatsoever. By conveyance of the Off-Site Facilities, Owner shall be deemed to have represented and warranted to Utility (1) that all costs therefor have been paid in full and that Utility will be furnished such evidence thereof as it may reasonably require, and (2) that said Off-Site Facilities have been constructed in a good and professional manner, free from all defects, and that Owner will correct any defect occurring or discovered in said facilities within a period of one (1) year from the date of conveyance and has required industry standard warranties from all contractors who performed work on, provided services to or delivered products for the On-Site Facilities.

4. **ON-SITE FACILITIES.** When the Property is developed, Owner shall construct and install therein, at its own cost and expense, all necessary on-site potable water and wastewater facilities (the "**On-Site Facilities**"), including generally all the facilities of whatever nature or kind needed to be constructed on the Property to connect the Development to the Off-Site Improvements or the lines of Utility, and including, but not limited to all lines, mains, hydrants,

manholes, lift stations and service connections to serve the Development to be constructed on the Property. Owner agrees that the construction and installation of such On-Site Facilities shall be subject to the following:

A. The On-Site Facilities shall be constructed and installed by Owner only after the approval of the plans and specifications therefor by Utility. The plans and specifications shall be in accordance with the requirements of Utility's standard engineering practices and all applicable regulatory authorities, and Owner shall obtain approval thereof from the Florida Department of Environmental Protection or other governmental bodies responsible for the issuance of such approvals prior to commencement of construction.

B. Upon review and approval of the plans and specifications by Utility, as provided in subparagraph A hereof, the On-Site Facilities shall be constructed strictly in accordance with such plans and specifications. It is estimated that such cost of plan review shall be approximately \$150.00 per phase. Utility shall be advised as to the progress of such construction and afforded the right to make inspection of said construction; provided, however, Utility shall have no duty to make such inspections, and by making such inspections shall incur no responsibility for the installation or construction thereof which shall remain the responsibility of Owner and Owner's contractor(s). Owner agrees to pay to Utility, or Utility's authorized agent, a reasonable sum to cover the cost of inspection of installations made by the Owner or Owner's contractor. It is estimated that such cost of inspection shall be approximately \$300.00 per phase.

5. USE OF ON-SITE FACILITIES. At the time Owner desires to connect the On-Site Facilities constructed by it to Utility's potable water and wastewater systems with respect to any lot or project in the Development, and as a condition precedent for the right to make such connection, Owner shall convey to Utility, at no cost to Utility, the On-Site Facilities as Utility shall require. Further, pursuant to the Utility's Tariff, at the time Utility accepts the On-Site Facilities, Developer shall also pay to Utility the amount of the tax impact on Such Facilities. Such conveyance shall be by bill of sale, warranty deed or other appropriate instrument as determined by Utility to ensure Utility's ownership of the On-Site Facilities, at its sole discretion, and shall be free and clear of all liens and encumbrances whatsoever. In the event that On-Site Facilities have been connected to Utility's systems without said conveyance, the requirement to convey said facilities to Utility shall not be waived and Utility may thereafter, at any time, require the conveyance of such facilities. In the event that Owner is unable or unwilling to convey to Utility such facilities for any reason whatsoever, Utility shall have the option to terminate this Agreement. Notwithstanding the foregoing, Utility shall not be required to accept such conveyance, or undertake the maintenance of any portion of the On-Site Facilities which are not in a public right-of-way and/or do not have adequate access easements to allow Utility's proper operation and maintenance, which the Utility may, at its sole discretion, decide to leave as the property of, and

the responsibility of, Owner. In addition, Utility shall not be obligated to make any connections until Utility has received the Engineer's certification that all construction has been performed in substantial conformance with the engineering plans and that all tests required by the Engineer and by Utility have been satisfactorily performed, and necessary approvals for use have been received from the Florida Department of Environmental Protection or other governmental bodies responsible for the issuance of such approvals. The cost of all materials, construction tests and testing and installation for On-Site Facilities and line extensions and any other expenses arising from conveyance of the On-Site Facilities shall be paid in full by Owner prior to the transfer to Utility. Owner shall provide to Utility documentation describing the full cost of all On-Site and Off-Site Facilities in a form acceptable to Utility. By conveyance of the On-Site Facilities, Owner shall be deemed to have represented and warranted to Utility (1) that all costs therefor have been paid in full and that Utility will be furnished such evidence thereof as it may reasonably require, and (2) that said On-Site Facilities have been constructed in a good and workmanlike manner, free from all defects, and that Owner will correct any defect occurring or discovered in said facilities within a period of one (1) year from the date of such conveyance and has required industry standard warranties from all contractors who performed work on, provided services or products for the On-Site Facilities.

6. **RATES**. The rates to be charged by Utility for potable water and wastewater service to the Development hereafter built on the Property shall be those rates and charges made by Utility to its customers as approved by the Florida Public Service Commission and as amended from time to time, or by any other governmental regulatory body having jurisdiction over such matters. Service to the Development shall be subject to all regulations lawfully imposed on Utility with respect to the operations of its systems, and except as limited by such regulations, the amounts of utility deposits, billing practices and times, liability for damage to Utility's Property and rate changes shall be exclusively within the discretion and control of Utility subject to approval by the Florida Public Service Commission and as amended from time to time.

7. **WATER METERS**. It is hereby agreed by the parties hereto that Utility shall install water meters as Utility should deem to be necessary to serve the Development and the Property. Utility shall have the right to designate the number, type, quality and size of said meters. The cost for said water meters and the labor charges associated with their installation, as described in **Exhibit D** attached hereto, shall be paid to Utility by Owner prior to installation of each such meter at the rate approved by the Florida Public Service Commission, as amended from time to time, or any other governmental regulatory body having jurisdiction over such matters. All water meters so installed shall remain the property of Utility.

8. **PORTABLE GENERATOR**. The Owner shall convey to the Utility a portable diesel-powered auxiliary generator adequately sized to power the lift station or lift stations

constructed as part of the On-Site Facilities in order to maintain wastewater service to the Property. Such conveyance shall be by Bill of Sale or other appropriate instrument as determined by Utility to ensure Utility's ownership and shall be free and clear of all liens and encumbrances whatsoever.

9. **PLATS.** All plats of the Property, or portions thereof, filed among the Public Records of Pasco County, Florida, or any other governmental unit, shall provide for such dedicated utility easements as may be reasonable and necessarily required for the purpose of Utility serving the Property, or portions thereof, with the potable water, reclaimed water and wastewater service to be provided hereunder.

10. **SALE TO GOVERNMENTAL ENTITY.** In the event Utility shall hereafter sell the utility systems, or any part thereof serving the Property, to the State of Florida, Pasco County, or a duly constituted municipality, or any agency or entity under such State's, County's or municipality's control, supervision or direction, Owner agrees that with respect to potable water, and wastewater service to the Property, the rules and regulations of such purchaser, and not the provisions of this contract, shall control, and that, upon assignment of this Agreement to the Purchaser, Utility shall be relieved of all further obligations hereunder.

11. **NOTICES.** Payments required to be made under the terms hereof and notices permitted, or required to be made under the terms hereof, shall be delivered to the parties at the respective addresses:

Utility:	Utilities Inc. of Florida 500 W Monroe Street, Ste. 3600 Chicago IL 60661-3779 Attn: Chairman
Copy to:	Utilities Inc. of Florida 200 Weathersfield Avenue Altamonte Springs, FL 32714 Attn: President
Owner:	MHC Forest Lake Estates MH, LLC Two N. Riverside Plaza Chicago, IL 60606 Attn: Everett Butler, Regional Vice President

Any notices required or permitted hereunder shall be considered properly made if in writing and mailed by United States Mail, postage prepaid, to the addresses set forth herein.

12. **MISCELLANEOUS.**

A. **Entire Agreement.** The Parties agree that this Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Agreement are contractual and shall survive the execution of this Agreement.

B. **Amendments.** No modification, amendment, or waiver of any provision of this

Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.

C. Severability. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the parties in entering into this Agreement.

D. Governing Law. This Agreement is made and entered into in the State of Florida and will in all material respects be interpreted, enforced, and governed under the laws of Florida.

E. Costs and Attorney's Fees. In the event either party brings an action to enforce this Agreement by Court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, together with reasonable attorney's fees at all levels, including appeals.

F. Capacity. The Parties warrant and represent that, prior to the execution of this Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Agreement and have entered into the Agreement voluntarily. Any person executing this Agreement in a representative capacity, represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented party.

G. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

H. Counterparts. This Agreement may be executed in one or more counterparts, at different times and places. When all parties have executed a counterpart of this Agreement, it shall be binding on all parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other copy of an executed counterpart hereof, such as an e-mailed PDF copy, shall have the same effect as an original.

I. Representation by Counsel. The Parties have read and understand this Agreement, and they have had the opportunity to be or in fact have been represented by legal counsel in the negotiation, drafting, and consummation of the transactions herein contemplated. Accordingly, the Parties agree to waive any and all rights and to apply in the interpretation of this Agreement the rule of construction that any ambiguities are to be resolved against the drafter of this Agreement. This Agreement is to be treated as if the Parties

had jointly conceived and drafted the Agreement.

J. Headings. The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

K. Alternative Dispute Resolution. Disputes arising under this Agreement must be first mediated by a Supreme Court Certified Circuit Civil Mediator in Lake County, Florida. The parties agree that the mediation shall occur within 30 days of the date mediation is requested by either party. The mediator shall be agreed upon, but if the parties are unwilling or unable to agree upon a mediator then each party shall select a mediator and the two mediators shall select a third mediator to conduct the mediation. The parties agree to pay the Mediator fees promptly and share them on an equal basis. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator or (ii) terminated in writing by one or both parties. The confidentiality provisions of the "Mediation Confidentiality and Privilege Act" attach to any such pre-suit mediation.

L. Time is of the essence. Time is of the essence in the performance of this agreement.

M. Original Agreement. This Agreement shall be executed in several counterparts each of which if properly executed by both parties shall be considered an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names and their seals to be hereunto affixed, by their proper officers thereunto duly authorized, on the day and year first above written.

Utilities Inc. of Florida

By: *Gary Rudkin*
Gary Rudkin, President

ATTEST:

Michael A. Wilson

Forestar (USA) Real Estate Group Inc.

By: *Everett Butler*
Everett Butler, Regional Vice President

ATTEST:
