

**Memorandum of Understanding  
Regarding Replacement of Utility Network Between  
MHC Bay Indies, LLC, and the City of Venice, Florida**

This Memorandum of Understanding Regarding Replacement of Utility Network (the “MOU”), is entered into as of the Effective Date (as defined herein), by and between the **City of Venice, Florida** (the “City”), a municipal corporation organized and existing under the laws of the State of Florida, whose address is 401 West Venice Avenue, Venice, FL 34285, and **MHC Bay Indies, LLC** (“MHC Bay Indies”), a foreign limited liability company authorized to do business in the State of Florida, whose mailing address is Two North Riverside Plaza, Suite 800, Chicago, IL 60606. The City and Bay Indies are collectively referred to herein as the “Parties.”

**WHEREAS**, the Parties have a mutual interest with regard to public infrastructure in a mobile home community called “Bay Indies” located in Venice, Florida, which is shown in the Vicinity Map attached hereto as Exhibit “A;” and

**WHEREAS**, Bay Indies was developed as a private development almost 50 years ago and includes approximately 210.5 acres and about 1,300 mobile homes in the City of Venice, Florida; and

**WHEREAS**, the City operates and maintains a sanitary sewer system and lift station network including gravity mains and force mains for the transmission of sewage from Bay Indies for treatment by the City (the “Sewer Network”); and

**WHEREAS**, the City also operates and maintains a potable water network to distribute potable water to Bay Indies and to each of the mobile homes in Bay Indies through individual water meters (the “Potable Water Network”); and

**WHEREAS**, the City also operates and maintains a reclaimed water distribution network of reclaimed water mains and services to each of the individual lots in Bay Indies and other community buildings within Bay Indies (the “Reclaimed Water Network”); and

**WHEREAS**, the Sewer Network, Potable Water Network, and the Reclaimed Water Network shall be referenced hereinafter, collectively, as the “Utility Network;” and

**WHEREAS**, the Utility Network has exhausted its useful life and is now in need of total replacement, which will eliminate infiltration and inflows to the Sewer Network, eliminate frequent water main breaks to the Potable Water network and the Reclaimed Water Network, and also relocate the Utility Network to the streets in Bay Indies, rather than the current location in the backyards where it is more difficult for the City to operate and maintain; and

**NOW THEREFORE**, in consideration of the mutual covenants and obligations set forth in this MOU, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

### **Section 1 - Recitals**

The above recitals are true and correct and are hereby incorporated fully by reference.

### **Section 2 - Purpose**

The purpose of this MOU is to outline the Parties' respective responsibilities regarding the proposed replacement of the Utility Network, as well as the ongoing obligations regarding operation and maintenance of the Utility Network.

### **Section 3 – City's Responsibilities**

1. The City will, at the City's sole cost and expense, prepare and submit any application for a site development plan, if required, for the improvements to the Utility Network referenced herein. The City will also be responsible for all costs associated with the design, engineering, permitting, and construction of the Utility Network.
2. The City will be responsible for preparing any and all access and utility easements necessary for the construction and the ongoing operation and maintenance of the new Utility Network as described herein, as well as the abandonment of existing City infrastructure as provided for herein. The City will identify proposed locations of easements and provide MHC Bay Indies with proposed easement documents prior to requesting easements from MHC Bay Indies.
3. Subject to receiving all necessary easements from MHC Bay Indies, the City will utilize the area under the street pavement in Bay Indies for the replacement of the Utility Network. Individual services to individual mobile homes/lots and community buildings will be installed by the City with cleanouts and/or valves to establish a point of delineation as generally shown in Exhibit "B" attached hereto.
4. Upon completion of the installation of the new Utility Network and the connection of the new Utility Network to the City's utilities systems, the City shall abandon the existing City infrastructure located within Bay Indies as follows:
  - a. The City will abandon any 3-inch or larger pipe with flowable fill.
  - b. The City will remove all pumps and electrical panels from existing wet wells that will not remain in service.
  - c. The City will fill-in any manholes no longer in use with a flowable fill.
5. The City will be responsible for the ongoing operation and maintenance of the Utility Network including all mains, buffer tanks, and pump stations. In addition, as generally set forth in Exhibit "B," the City will be responsible for the ongoing operation and maintenance of the services upstream of and including the meters for the Potable Water Network and Reclaimed Water Network, and the services downstream of and including the cleanouts closest to the edge of pavement of the streets in Bay Indies for the Sewer Network.

#### **Section 4 – Bay Indies’ Responsibilities**

1. To the extent necessary, MHC Bay Indies shall designate the City as MHC Bay Indies’ agent and otherwise authorize the City to submit any application for a site development plan or any other required permit for the improvements to the Utility Network as provided for herein. MHC Bay Indies, as the property owner, shall further provide any and all documentation required for the proposed improvements to the Utility Network.
2. Subject to the prior review and approval by MHC Bay Indies of the proposed easement locations and easement documents, MHC Bay Indies shall grant all mutually agreed upon access and utility easements to the City that are needed to authorize the City, and its contractors, to install the new Utility Network including, but not limited to, a new vacuum lift station at one of the general locations shown on Exhibit “A,” as well as to allow for the City, and its contractors, to abandon any existing City infrastructure in Bay Indies as provided for herein, and to further allow the City to operate and maintain the new Utility Network in perpetuity.
3. MHC Bay Indies (or the owners of the individual mobile homes where applicable) will be responsible for the ongoing operation and maintenance of the services/laterals for the individual lots/mobile homes and common properties in Bay Indies downstream of the meters for the Potable Water Network and Reclaimed Water Network, and the services/laterals upstream of the cleanouts closest to the edge of payment of the streets in Bay Indies for the Sewer Network, as generally set forth in Exhibit “B.”
4. MHC Bay Indies shall, at MHC Bay Indies’ sole cost and expense, conduct a complete investigation of all subterranean elements of the stormwater sewer system serving Bay Indies (the “Stormwater System”) to determine, at a minimum, the condition of the Stormwater System and to identify any elements of the Stormwater System that require repair or replacement or, due to the current condition, may be susceptible to impacts from the proposed installation of the New Utility Network. Within one hundred eighty (180) days of the Effective Date, MHC Bay Indies shall provide a copy of a written report to the City detailing the findings of the investigation of the Stormwater System.

#### **Section 5 – Indemnification**

To the extent permissible under Florida law and without waiving any applicable rights of sovereign immunity, the Parties mutually agree to indemnify, defend, and hold harmless each other against any and all claims, liabilities, losses, and damages whatsoever related to this MOU arising from injury to persons or property occasioned wholly or in part by any negligent act or omission or by the willful misconduct of the indemnifying Party.

#### **Section 6 –Termination**

MHC Bay Indies acknowledges that the City is relying upon MHC Bay Indies’ consent provided pursuant to this MOU and that the City will incur costs associated with the planning, design, and

the construction of the Utility Network. Accordingly, MHC Bay Indies acknowledges that this MOU may not be terminated by MHC Bay Indies without the written consent of the City except as provided for herein. The City may terminate this MOU, for any reason, with sixty (60) days' written notice to MHC Bay Indies, but, if the City does so, the City will be responsible for restoring any affected site and the Utility System to its original operating condition.

This MOU may be terminated by either Party with cause by providing the other Party written notice stating the reason for termination and providing the receiving party thirty (30) days to resolve the issue giving rise to the cause for termination. If after thirty (30) days, the matter remains unresolved, the MOU may be immediately terminated.

**Section 7 - Notice**

Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing. When designating such notice or communication, if to the City, notice should be directed to the City Manager; if to Bay Indies, notice should be directed to [REDACTED].

**Section 8 - Governing Law**

This MOU shall be construed in accordance with the laws of the State of Florida. In the event of litigation arising out of either party's obligations under the MOU, sole and exclusive venue shall exist in Sarasota County, Florida and the prevailing party shall be entitled to recover its attorney's fees and costs from the non-prevailing party, including but not limited to trial level fees, bankruptcy fees and appellate fees as well as fees and costs incurred in proceedings to determine entitlement to and reasonableness of such fees and costs.

**Section 9 – Successors and Assignment**

The covenants contained in this MOU shall inure to the benefit of and be binding upon the respective successors, heirs, legal representatives, and assigns to the Parties. However, neither Party may assign or transfer its responsibilities or obligations made under this MOU without the prior written consent of the other Party.

**Section 10 - Entire Agreement**

This MOU represents the entire understanding of the Parties hereto and there is no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof.

**Section 11 - Amendment**

This MOU may be amended or supplemented in writing if approved by both Parties.

**Section 12 - Severability**

If any provision of this MOU may be found to be invalid or unenforceable for any reason, such invalidity shall not affect the other remaining provisions of this MOU which can be given effect without the invalid provisions.

**Section 13 - Effective Date**

This MOU shall become effective upon the date of execution by the last Party hereto (the "Effective Date").

**IN WITNESS WHEREOF**, the Parties hereto have executed this Memorandum of Understanding on the dates indicated below.

**CITY OF VENICE, FLORIDA**

By: \_\_\_\_\_  
Nick Pachota, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**Approved as to form:**

\_\_\_\_\_  
City Attorney

**MHC BAY INDIES, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Witnesses:**

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_

\_\_\_\_\_  
Print Name