

UTILITY SERVICE AND CONVEYANCE AGREEMENT for PRESERVE DESOTO TWO, LLC

THIS AGREEMENT made and entered into this 25th day of April, 2023, by and between **Preserve DeSoto Two, LLC**, a Delaware limited liability company authorized to transact business in the State of Florida whose address is 12401 W. Okeechobee Road, Suite 257, Hialeah Gardens, Florida 33018, hereinafter referred to as "Customer", and **DeSoto County, Florida**, a political subdivision located within the State of Florida, hereinafter referred to as the "County", hereinafter collectively referred to as the "Parties".

RECITALS

1. The Customer owns or controls lands located in DeSoto County, Florida, and described in Exhibit " A " attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property", and Customer has or is about to develop the Property by erecting thereon, residential or commercial improvements to be known as The Preserve (hereinafter the "Project").
2. The Customer is desirous of receiving central Water and Wastewater service for Phases 3 and 4 the Project to be located on the Property.
3. The County currently has Water and Wastewater treatment capacity that can be immediately allocated to Phase 3 of the Project.
4. The County is willing to provide available Water and Wastewater treatment capacity, in accordance with the provisions and stipulations of this Agreement and in accordance with all applicable laws, and to operate such central Water and Wastewater system so the Property will receive Water and Wastewater service from the County to support Phase 3 of the Project.
5. The County shall provide, and the Customer shall acquire, pay Capital Charges for, and reserve **321 Equivalent Residential Units ("ERUs")** of Water and Wastewater treatment capacity in its central Water and Wastewater system ("**Phase 1 Wastewater ERUs**") for a portion of the Customer's Project pursuant to the terms and conditions outlined in this Agreement; Chapter 12, Article II of the DeSoto County Code of Ordinances; and Ordinance No. 2021-14 codified as Section 12-36, DeSoto County Code of Ordinances.

NOW, THEREFORE, in consideration of the preceding clauses, the following mutual promises, representations, agreements and other good and valuable consideration, the delivery, receipt and sufficiency of which is hereby acknowledged, the Parties agree for themselves and their permitted successors and assigns as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and are a material part of this Agreement.

SECTION 2. DEFINITIONS. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning. Other definitions and references used have the meaning indicated in DeSoto County Code of Ordinances:

(1) "Agreement" - This Utility Service and Conveyance Agreement for Water and a Phase 1 Wastewater ERU allocation with Preserve DeSoto Two, LLC, and all exhibits and amendments that may be added thereto in the future, including but not limited to Exhibit A, the legal description of the Property, and Exhibit B, Special Conditions, attached hereto and made a part hereof by reference.

(2) "Capacity Reservation Charge" - A charge adopted by the County Board of County Commissioners and levied by the County to reserve capacity in the County Water and Wastewater facilities for the Customer.

(3) "Capital Charge" - A charge adopted by the County Board of County Commissioners and levied by the County to pay for Water and Wastewater infrastructure construction, repair and/or expansion and other capital costs associated with linking the Property into the County's central Water and Wastewater systems. This charge is sometimes referred to as an impact fee.

(4) "Contribution-in-Aid-of-Construction" - The sum of money, and/or property, represented by the value of the Water and Wastewater collection systems constructed by Customer, which Customer covenants and agrees to convey to the County as a contribution-in-aid-of-construction to induce the County to provide Wastewater service to the Property.

(5) "Equivalent Residential Unit" or "ERU" - Calculation of total gallons of Water and Wastewater divided by the average number of single-family residence customers divided by 365 days.

(6) "Phase 1 Wastewater ERUs" - Those ERUs identified in Ordinance 2021-14, codified as Section 12-36, DeSoto County Code of Ordinances, which are available through wastewater treatment plant rehabilitation, rerating, sprayfield irrigation expansion and collection system upgrades.

(7) "Point of Collection" - The point where the County's facilities are connected with the facilities of the Customer. Unless otherwise indicated, the Point of Collection shall be at a point at the Property line where utilities enter the public right-of-way.

SECTION 3. PROVISION OF SERVICE. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the Customer, the County covenants and agrees that it will allow the connection of Water and Wastewater facilities installed by Customer to the central utility system of the County in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with requirements of DeSoto County Code of Ordinances, and the rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection.

SECTION 4. REAL PROPERTY CONVEYANCES. Customer hereby grants an easement and right of access to the County to access, maintain, service or read Water and Wastewater facilities constructed by Customer, including interconnect(s) and meters located on the Property. Customer shall convey said easement and right of access to the County at the time of, and as a condition of, the County interconnecting its central Water and Wastewater facilities with those of Customer in order to provide service to the Property.

SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION AND CONVEYANCE OF FACILITIES.

- 5.1 So that the County may continuously provide the Property with central Water and Wastewater services, and as a condition of receiving such service, Customer hereby covenants and agrees to pay for the design, permitting and construction, and to thereafter transfer to the County ownership and control of Water and Wastewater facilities designed, permitted and/or constructed by the Customer either on the Property or in the right-of-way, as a Contribution-in-Aid-of-Construction. All conveyances of said personal property shall be accompanied by an owner's affidavit, bill or sale, and/or an attorney's opinion of title, satisfactory to the County, establishing Customer's rights to convey said personal property to the exclusion of any other person in interest. The County agrees that the acceptance of the Customer's Water and Wastewater facilities shall constitute the assumption of responsibility by the County for the continuous operation and maintenance of such facilities from that date forward.
- 5.2 Customer shall provide the County with engineering plans and specifications of the type and in the form as prescribed by the County, showing the on-site and off-site Water and Wastewater facilities proposed to be installed to provide Service to the subject Property. The County will advise Customer's engineer of any sizing requirements as mandated by the County's policies and utility standards for the preparation of plans and specifications of facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time.

- 5.3 During the construction of any Customer Water and Wastewater facilities, the County shall have the right to inspect such installation to determine compliance with plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration/vacuum, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the County upon completion of construction.
- 5.4 All installations by Customer or its contractor shall be warranted for at least two years from the date of acceptance by the County. Mortgagee(s), contractors, builders, subcontractors, materialmen or any others, if any, holding prior liens on personal property constructed within the public right-of-way to be conveyed to the County, shall be required to release such liens, subordinate their position and join in the grant or dedication of said personal property.
- 5.5 Payment of the Contributions-in-Aid-of-Construction does not and will not result in the County waiving any of its rates, rate schedules or rules and regulations, allocations fees, and their enforcement shall not be affected in any manner whatsoever by Customer making the contribution. The County shall not be obligated for any reason whatsoever nor shall the County pay any interest or rate of interest upon the Contributions-in-Aid-of-Construction.

SECTION 6. APPLICATION OF RULES, REGULATIONS AND RATES.

Notwithstanding any provision in this Agreement, the County may establish, revise, modify and enforce rules, regulations and rates covering the provision of Water, Reclaimed Water and/or Wastewater Service to the Property. Rates charged to Customer or Customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon Customer, upon any other entity holding by, through or under Customer, and upon any Customer of any Water, Reclaimed Water and/or Wastewater services provided to the Property by the County.

SECTION 7. PERMISSION TO CONNECT REQUIRED. Customer, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect to the Water and/or Wastewater facilities of the County until approval for such connection has been granted by the County.

SECTION 8. BINDING AGREEMENT; ASSIGNMENTS BY CUSTOMER. This Agreement shall be binding upon and shall inure to the benefit of Customer, the County and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by Customer

without the written consent of the County first having been obtained. The County agrees not to unreasonably withhold such consent.

SECTION 9. NOTICES. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to: Preserve DeSoto Two, LLC, 12401 W. Okeechobee Road, Suite 257, Hialeah Gardens, Florida 33018; and if to the County, shall be mailed or delivered to DeSoto County, 201 East Oak Street, Suite 201, Arcadia, Florida 34266. Attention: Utilities Director.

SECTION 10. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of Customer and the County shall survive the completion of the work of Customer with respect to completing the Water and Wastewater facilities and services to any phase area and to the Property as a whole.

SECTION 11. ENTIRE AGREEMENT, AMENDMENTS, APPLICABLE LAW. This Agreement supersedes all previous agreements or representations either verbal or written, heretofore in effect between Customer and the County, made with respect to the matters herein contained. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the County.

SECTION 12. INDEMNIFICATION. The Customer shall indemnify the County and its respective agents and employees from and against any and all claims, liability, demands, damages, suits, actions and fees for injury or death to persons or damage to property that may arise from or be related to acts, errors, omissions of the Customer, its agents, employees, licenses or contractors, or by any person acting under the control or direction of the Customer, or by the Customer's use of the County's system. This is a continuing obligation of Customer which shall survive the termination of this Agreement.

SECTION 13. RECORDATION. The Parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of DeSoto County, Florida, at the expense of the Customer.

SECTION 14. VENUE. This Agreement shall be governed and construed in accordance with Florida law. Venue of any action to enforce the terms of this Agreement shall be in DeSoto County if filed in state court and in the Middle District of Florida if filed in federal court.

SECTION 15. EFFECTIVE DATE. This Agreement shall take effect immediately upon execution by both Parties.

SECTION 16. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the Parties can continue to be effected.

SECTION 17. SPECIAL CONDITIONS. The following Special Conditions are mutually agreed between Customer and the County:

SEE EXHIBIT "B" ATTACHED TO AND INCORPORATED IN THIS AGREEMENT IN ITS ENTIRETY AND AS A PART HEREOF.

[Rest of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Customer and the County have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

**BOARD OF COUNTY COMMISSIONERS,
DESOTO COUNTY, FLORIDA**

ATTEST:

Mandy Hihes
Mandy Hihes
County Administrator

Judy Schaefer
Judy Schaefer, Chair

Approved as to form and correctness:

Donald D. Conn
Donald D. Conn, County Attorney

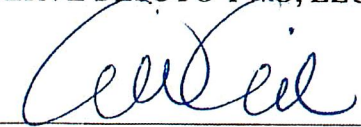
**STATE OF FLORIDA
COUNTY OF DESOTO**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 25th day of April, 2023 by Judy Schaefer of DESOTO COUNTY who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

SYLVIA D. ALTMAN
NOTARY PUBLIC
STATE OF FLORIDA
NO. GG976688
MY COMMISSION EXPIRES MAY. 26, 2024

Sylvia Altman
Notary Public State at Large
My Commission Expires:

PRESERVE DESOTO TWO, LLC,

x: 

By: ELLEN WEIL

(print name)

Its MANAGER

(title)

STATE OF FLORIDA
COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 23 day of MARCH, 2023 by ELLEN WEIL of PRESERVE DESOTO TWO, LLC who is personally known to me or who has produced _____ as identification and who did/did not take an oath.


Notary Public State at Large
My Commission Expires:



Exhibit A

LEGAL DESCRIPTION FOR PHASES 3-4

A tract or parcel of land lying in Sections 32 and 33, Township 39 South, Range 23 East, Desoto County, Florida, said tract or parcel being more particularly described as follows:

Beginning at the East Quarter Comer of said Section 32, run S89°01'56"E along the North line of the Southwest Quarter (SW 1/4) of said Section 33 for 2,647.93 feet to the Northeast corner of said Fraction; thence run S00°32'40"E along the East line of said Fraction for 2,657.46 feet to the Southeast corner of said Fraction; thence run N89°33'19"W along the South line of said Fraction for 2,662.25 feet to the Southeast Corner of said Section 32; thence run N00°13'38"W along the East line of the Southeast Quarter (SE 1/4) said Section 32 for 50.00 feet to an intersection with the North line of the South 50 feet of said Section 32; thence run the following two (2) courses along said North line: N89°38'48"W for 2,602.61 feet and N89°29'29"W for 48.25 feet to an intersection with the Easterly right of way line of Boland Street, being 30 feet Easterly as measured perpendicular to the center line thereof, as shown on the record plat of "Loreda Park" recorded in Plat Book 4, Page 19 of the Public Records of Desoto County, Florida; thence run N00°04'20"E along said Easterly right of way for 2,382.71 feet; thence run S89°55'40"E for 999.56 feet; thence run N81°53'14"E for 1,654.37 feet to the POINT OF BEGINNING.

Containing 312.17 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West State Plane (NAD1983/NSRS 2007) and are based on the North line of the Southwest Quarter (SW 1/4) of said Section 33 to bear S89°01'56"E.

Exhibit B

SPECIAL CONDITIONS

Pursuant to Paragraph 17, the following are the Special Conditions mutually agreed upon between the Customer and the County. To the extent that these Special Conditions may conflict with the recitals or provisions contained within the Agreement, these Special Conditions shall prevail.

1. Provided Customer shall have complied with the requirements herein, the Customer is hereby granted **321 Water and 321 Phase 1 Wastewater ERUs** for central Water and Wastewater service at the Property which shall be allocated to Customer under the following conditions:
 - a. On the date of the County's approval of this Agreement, Customer shall pay DeSoto County the adopted Capital Charge for 321 Water and 321 Phase 1 Wastewater ERUs reserved for Customer by this Agreement.
 - b. Customer shall pay DeSoto County all required fees to include Plan Review Fee, the required Permit and Inspection Fees, and any other required fees or charges.
2. The first day of the month following the month in which ERUs paid for under this Agreement are available and are allocated to Customer, and on each monthly anniversary date thereafter, Customer shall pay to the County the adopted Capacity Reservation charge for each unconnected or unused ERU for which Capital Charges have been paid, prorated based upon the period of time during the year when such ERU'S were unconnected or unused.
3. The first day of the month following the month in which ERUs paid for under this Agreement are available and are allocated to Customer, and on each monthly anniversary date thereafter, Customer shall pay to the County the adopted Maintenance Fee for each unconnected or unused ERU for which Capital Charges have been paid, prorated based upon the period of time during the year when such ERUs were unconnected or unused.
4. Customer shall timely pay all Capacity Reservation charges and Maintenance Fees in accordance with this Agreement and Chapter 12, Article II of the DeSoto County Code of Ordinances.
5. Customer shall be responsible for design, permitting and construction of all required utility infrastructure, both on and off-site, to comply with the DeSoto County Utilities Manual of Standards and Specifications for the Construction of

Water and/or Wastewater and all regulatory agencies' requirements for the development of the Property.

6. Customer acknowledges that this Agreement is authorized by and shall be governed by Chapter 12, Article II of the DeSoto County Code of Ordinances.