

**MARKETING AGREEMENT
(NLC Service Line Warranty Program)**

This MARKETING AGREEMENT (“**Agreement**”) is entered into by and between the **City of Lake Worth Beach, Florida** (“**City**”), and **Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America** (“**Company**”), herein collectively referred to singularly as “**Party**” and collectively as the “**Parties**”. This Agreement shall be effective as of [_____], 2022 (“**Effective Date**”).

RECITALS:

WHEREAS, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners residing in the City (“**Residential Property Owner**”); and

WHEREAS, City desires to offer Residential Property Owners the opportunity, but not the obligation, to purchase a service plan and other similar products set forth in Exhibit A or as otherwise agreed in writing from time-to-time by the Parties (each, a “**Product**” and collectively, the “**Products**”); and

WHEREAS, Company, a subsidiary of HomeServe USA Corp., is the administrator of the National League of Cities Service Line Warranty Program and has agreed to make the Products available to Residential Property Owners subject to the terms and conditions contained herein; and

WHEREAS, the City Commission has determined that entering into this Agreement is in the best interests of the City and serves a valid public purpose.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Purpose**. City hereby grants to Company the right to offer and market the Products to Residential Property Owners subject to the terms and conditions herein.

2. **Grant of License**. City hereby grants to Company a non-exclusive, limited license (“**License**”) to use City’s name and logo (“**Marks**”), on letterhead and marketing materials to be sent to Residential Property Owners from time to time, and to be used in advertising (including on the Company’s website), all at Company’s sole cost and expense and subject to City’s City Manager’s or its designee’s prior review and written approval, which will not be unreasonably conditioned, delayed, or withheld. The City’s review and written approval may be provided via e-mail to Company. Company’s use of the Marks in accordance with this Agreement will not infringe any other party’s rights. City agrees that it will not extend or grant a similar license to any competitor of Company during the Term and any Renewal Term of this Agreement. Any direct marketing shall expressly include the reference that Company is an independent company, separate from the City, and as such, all Products being offered by Company to Residential Property Owners are optional. As used herein, “**Member**” means those Residential Property Owners that purchase and are successfully enrolled in a Product by Company. Each Member’s name, address, phone

number, email address and any other information that SLWA collects from, on behalf of, or relating to a Member, is Company's property and subject to the confidentiality provision of this agreement and to the extent Chapter 119, Florida Statutes, Florida's Public Records law applies to Company as set forth herein.

3. **Term.** The term of this Agreement ("**Initial Term**") shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms (each a "**Renewal Term**", and collectively with the Initial Term, the "**Term**") unless one of the Parties gives the other written notice at least ninety (90) days prior to end of the Initial Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that Company is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to Company of such breach, if said breach is not cured during said thirty (30) day period. Company will be permitted to complete any marketing approved and initiated prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Consideration.** As consideration for such license, Company will pay to City a License Fee of as set forth in Exhibit A ("**License Fee**") during the Term of this Agreement. The first payment shall be due by January 30th of the year following the conclusion of the first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term, due and payable on January 30th of the succeeding year. City agrees to provide a completed Form W-9 to Company in order to facilitate proper payment of the License Fee. City will have the right, at its sole expense, to conduct an audit, upon reasonable notice and during normal business hours, of Company's books and records pertaining to any fees due under this Agreement while this Agreement is in effect and for one (1) year after any termination of this Agreement.

5. **Applicable Laws.** Each Party shall comply at all times with all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgements, orders and interpretations, as well as licensing or registration requirements ("**Applicable Laws**") with respect to its obligations under this Agreement.

6. **Preferred Provider Utilization.** Company shall use its best efforts to ensure repair services provided to Residential Property Owners under the Program are provided through union hiring halls or otherwise established unionized workforces, or local businesses, small businesses and/or veteran business enterprises as those terms are defined in the City's Purchasing Code at Section 2-117. The Company shall include with its annual payment a statement regarding compliance with this provision and the percentage of services provided by the aforementioned preferred providers.

7. **Confidentiality.** Each Party will treat all non-public, confidential and trade secret information received from the other Party as confidential, and such Party shall not disclose or use such information in a manner contrary to the purposes of this Agreement. Notwithstanding the foregoing, the City shall not be liable for any disclosure of confidential information that is required to be disclosed under any applicable public records act or under court order. City shall provide notice to Company prior to any such disclosure.

8. **Code Change.** In the event that: (i) a change or proposed change in Applicable Laws, or municipal or similar codes; or (ii) an interpretation, policy, ruling, or order by any court, tribunal,

arbitrator, regulatory agency, commission, including a public service commission or similar body of a municipality, or other instrumentality of the United States, or any state, county, city, or other political subdivision; negatively or potentially negatively impacts the terms of this Agreement or the obligations of the Parties set forth in this Agreement, the Parties shall negotiate in good faith to modify the terms of this Agreement accordingly. Should the Parties be unable to reach a mutual agreement to revise this Agreement, then either Party may terminate this Agreement on thirty (30) days' written notice to the other Party.

9. **Indemnification.** Company hereby agrees to protect, indemnify, and hold the City, its elected officials, officers, employees, and agents (collectively or individually, "Indemnitee") harmless from and against any and all third party claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, and reasonable attorneys' fees and court costs at all trial and appellate levels (individually or collectively, "Claim"), which an Indemnitee may suffer or which may be sought against or are recovered or obtainable from an Indemnitee, as a result of or arising out of any breach of this Agreement by the Company, or any negligent or fraudulent act or omission of the Company or its officers, employees, contractors, subcontractors, or agents in the performance of this Agreement; provided that the applicable Indemnitee notifies the Company of any such Claim within a time that does not prejudice the ability of the Company to defend against such Claim. Any Indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

10. **Notice.** Any notice required to be given hereunder shall be deemed to have been given when notice is (i) received by the Party to whom it is directed by personal service, (ii) sent by federally recognized overnight courier, or (iii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

To City:
City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460
Phone: (561) 586-1600

To Company:
Utility Service Partners Private Label, Inc.
ATTN: Chief Sales Officer
4000 Town Center Boulevard, Suite 400
Canonsburg, PA 15317
Phone: (866) 974-4801

11. **Modifications or Amendments/Entire Agreement.** Except for the list of available Products under the Agreement, set forth in the attached Exhibit A, which may be amended from time to time by the Parties in writing and without signature, any and all of the representations and obligations of the Parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing signed by that Party.

12. **Assignment and Construction.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party unless such assignment or delegation is to an affiliate or to an acquirer of all or substantially all of the assets of the transferor. This Agreement shall not be construed against either Party.

13. **Counterparts/Electronic Delivery; No Third Party Beneficiary.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by email and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this agreement any third- party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

14. **Choice of Law/Attorney Fees.** The Parties shall maintain compliance with all Applicable Laws with respect to their obligations under this Agreement. The governing law shall be the laws of the State of Florida, without regard to the choice of law principles of the forum state. The Parties agree that venue for any disputes related to this Agreement shall be in Palm Beach County, Florida. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT.

15. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibit A attached hereto are incorporated by this reference and expressly made part of this Agreement.

16. **Inspector General.** Company acknowledges that the Inspector General of Palm Beach County (“**Inspector General**”) has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement, and pursuant to such authority granted to the Inspector General, may demand and obtain records and testimony from the Company pursuant to the Office of Inspector General, Palm Beach County, Florida Ordinance. The Company understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Company to fully cooperate with the Inspector General, pursuant to this section and the Office of Inspector General, Palm Beach County, Florida Ordinance, may be deemed by the City to be a material breach of this Agreement justifying its termination.

17. **Independent Contractor.** Company is and shall be, in the performance of this Agreement, an independent contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the services related to or arising from this Agreement shall at all times, and in all places, be subject to Company’s sole direction, supervision, and control. The Company shall exercise control over the means and manner in which it and its employees perform the services. The Company shall be responsible for all taxes associated with its services and payment of its employees and all other persons utilized to perform any services hereunder.

18. **Public Entity Crimes and Scrutinized Companies.** The Company acknowledges and agrees

that a person or affiliate of Company who has been placed on the “Convicted vendor list,” managed and published by the Florida Department of Management Services, following a conviction for a public entity crime pursuant to § 281.133, Fla. Stat. (2021), may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017, Fla. Stat (2021), for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the “Convicted vendor list.” Company will advise the City immediately if it becomes aware of any violation of this statute. Further, Company certifies that it and its subcontractor are not on the “Scrutinized Companies that Boycott Israel List” and are not engaged in the boycott of Israel. Pursuant to § 287.135, Fla. Stat. (2021), the City may immediately terminate this Agreement at its sole option if the Company or any of Company’s subcontractors are found to have submitted a false certification in contravention to this section; or if the Company or any of Company’s subcontractors are placed on the “Scrutinized Companies that Boycott Israel List,” pursuant to § 215.4725, Fla. Stat. (2021), or is engaged in the boycott of Israel during the term of this Agreement.

19. **E-Verify.** To the extent applicable, the Company and its subcontractors shall comply with section 448.095(2), Florida Statutes, regarding registration with and use of the E-Verify system to verify the work authorization status of all newly hired employees.

20. **Public Records.** The Company shall comply with Florida’s Public Records Laws, Chapter 119, Florida Statutes, and, if it is determined to be acting on behalf of the City as provided under section 119.011(2), the Company specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the services under this Agreement.
- (b) Upon request from the City’s custodian of public records, provide the City 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 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said 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 Agreement term and following completion of the Agreement if the Company does not transfer the records to the City.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Company or keep and maintain public records required by the City to perform the services. If the Company transfers all public records to the City upon completion of the Agreement, the Company shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Company keeps and maintains public records upon completion of the Agreement, the Company shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LICENSE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

Date

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

UTILITY SERVICE PARTNERS PRIVATE
LABEL, INC.

By: _____
Richard Gannon, Chief Financial Officer

[CORPORATE SEAL]



STATE OF Connecticut)
COUNTY OF Fairfield)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 16th day of may 2022, by Richard Gannon, as the CEO of Utility Service Partners Private Label, Inc., who is authorized to do business in the State of Florida, produced known to me as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind Utility Service Partners Private Label, Inc., to the same.

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Second line of faint text, likely a recipient address or department name.

Third and fourth lines of faint text, possibly containing a date or specific instructions.

Fifth and sixth lines of faint text, likely a signature line or a reference to a document.

Seventh and eighth lines of faint text, possibly a closing or a note.



Handwritten signature or initials in the center of the page.

Printed name and title, likely 'John Edgar Hoover, Director'.

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Exhibit A
NLC Service Line Warranty
Program City of Lake Worth Beach

Term Sheet

- I. Initial Term. Three (3) Years with Renewal Terms, subject to Section 3 of the Agreement.

- II. License Fee. During the Term, Company will pay City fifty cents (\$0.50) per Product for each month that a Product is in force for a Residential Property Owner (and for which payment is received by Company), aggregated and paid annually, for:
 - A. Use of City logo and name on letterhead, advertising, and marketing materials.

- III. Products.
 - A. External water service line plan (initially, \$5.75 per month)
 - B. External sewer/septic line plan (initially, \$7.75 per month)
 - C. Interior plumbing and drainage plan (initially, \$9.99 per month)

Pricing above does not include taxes. Company may adjust the foregoing Product fees; provided, that any such monthly fee adjustment shall not exceed fifty cents (\$0.50) in any twelve (12) month period. If such adjustment shall exceed fifty cents (\$0.50), both Parties must agree in writing.

- IV. Scope of Coverage.
 - A. External water service line plan:
 - i. Covers Property Owner responsibility: From the meter to the external wall of the home.
 - ii. Covers well service lines if applicable.
 - B. External sewer/septic line plan:
 - i. Covers Property Owner responsibility: From the external wall of the home to the sewer main.
 - ii. Covers septic lines if applicable.
 - C. Interior plumbing and drainage plan:
 - i. Covers water supply pipes and drainage pipes within the interior of the home.

- V. Marketing Campaigns. Company shall have the right to conduct up to three (3) campaigns per year (each campaign consists of two (2) mailings) and such other channels as may be mutually agreed in writing. Initially, Company anticipates offering the interior plumbing and drainage plan Product via in-bound phone or web only.