

**THIS DOCUMENT PREPARED BY
AND RETURN TO:**

Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

MAINTENANCE AGREEMENT

This Agreement, entered into this ____ day of _____, 2014, by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida, (“City”), and **GDC VERDE MASTER, LLC.**, a New York limited liability company, authorized to engage in business in the State of Florida, c/o GDC Properties, LLC, 245 Saw Mill River Road, Hawthorne, New York 10532 Attention: Adam Ginsburg (“Developer”).

Recitals

WHEREAS, Developer is the owner of certain property located at 899 N. Orange Avenue, in Orlando, Florida, (more particularly described in **Exhibit “A”**, attached hereto and made a part hereof by reference, hereinafter referred to as “Property,”) on which Developer is constructing the NORA Apartments, a 246 unit apartment and retail development,(the “Project,”) pursuant to Master Plan Approval MPL2011-00010 (as it may be amended or modified, the “Master Plan”) and City Permit Number ENG2012-01233 and other related permits for the Project(the “City Permits”);

WHEREAS, in conjunction with construction of the Project, the Developer must install certain landscaping, driveway and sidewalk improvements, “Improvements,” within the right of way, “Right-of-Way,” for Orange Avenue, as more particularly detailed in the plans therefore approved by the City and the Florida Department of Transportation (“FDOT”) shown in **Exhibit “B”**, attached hereto and made a part hereof by reference (the “Improvement Plans”);

WHEREAS, the Right of Way is owned and maintained by the Florida Department of Transportation (FDOT);

WHEREAS, FDOT has issued a Landscape Permit, #2014L59401, “Permit,” authorizing Developer to install and maintain the Improvements within the Right of Way and by which, the Developer has assumed certain obligations and responsibilities; and

WHEREAS, the City and Developer intend, by this Agreement, to ensure that Developer complies with its construction and maintenance responsibilities under the Permit and with those obligations and responsibilities contained in this Agreement; and

WHEREAS, Developer's construction and maintenance responsibilities with respect to the Improvements, as described in this Agreement, are a condition of Developer's construction and operation of the Project and required by City Code;

WHEREAS, City and Developer acknowledge that construction and maintenance of the Improvements on FDOT right-of-way, in accordance with the Improvement Plans, and as memorialized in the Permit and this Agreement, constitutes a public purpose and will benefit the citizens of the City of Orlando;

WHEREAS, the parties hereto desire to memorialize their agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Improvements. Developer shall, at its sole cost and expense, construct, maintain and repair the Improvements in accordance with the Improvement Plans in perpetuity, consistent with reasonable engineering standards and all applicable laws, codes, and regulations, including the Master Plan, the City Permits and applicable FDOT permits, provided, however that there will be no change in the Improvement Plans without prior approval by Developer, FDOT and the City. Specifically, Developer shall construct and maintain the Improvements in compliance with FDOT standards and the Permit. Developer hereby acknowledges the terms of construction and maintenance of the Improvements described in the Permit and this Agreement and agrees to be bound thereby. The Developer's maintenance and construction obligations described herein are a condition of the development of the Project. Any default or inadequacy in Developer's performance hereunder shall be deemed a violation of City Code and handled under the City's code violation provisions in effect at the time of default (or alternatively addressed under Sections 3(c) or 4 hereof).

3. Construction of the Improvements.

(a) Insurance During Design and Construction. Developer shall require that the contractor (the “Contractor”) for the Improvements, at all times during the construction of the Improvements possess: 1) worker’s compensation insurance in the amount of the Florida Statutory Limit; and 2) general liability insurance in the amount of at least \$2,000,000. All liability insurance shall be maintained throughout the course of the construction of the Improvements and for a period of time thereafter as required to protect City from any liability, claims, damages, losses and expenses (including costs and attorney’s fees), arising, directly or indirectly, under this Agreement, except to the extent that said liability, claims, damages, losses and expense, arise from the negligence or intentional misconduct of the City. The above general liability policy shall contain a contractual liability endorsement in favor of the City and each policy shall name City, its officers, agents, elected and appointed officials and employees as additional insureds. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement.

(b) Warranty/Maintenance Bond. Developer shall obtain from the Contractor, a two-year warranty (in a form acceptable to the City) on the materials and work performed with regard to the Improvements. City shall be named as additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Improvements are completed.

(c) Non-Conforming Work. In the event work is discovered, whether by the City or Developer, its consultants or contractors, which is defective or otherwise non-conforming to the requirements of the Improvement Plans, the City or Developer shall promptly notify the other party of such defect or non-compliance. Developer shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the satisfaction of the City. City, so long as it is acting reasonably, has final authority over the determination that certain work related to the Improvements is non-conforming or defective and that said non-conforming or defective work has been remedied, which determination shall be made in accordance with **Exhibit B**; provided, however, that in the event of a disagreement between the City and FDOT as to any non-conforming or defective work, the Developer will not be required to make any corrections until and unless the City and FDOT agree on a mutually acceptable and reasonable remedy (provided, further however, Developer will promptly make any corrections necessary to keep the right-of-way in a safe and non-dangerous condition).

(d) Independent Contractors. Developer, its agents, contractor, subcontractor or design engineer, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon the City.

4. City Inspection. City shall have the right, but not the obligation, to inspect the Improvements during or subsequent to construction, in order to determine whether the Improvements were properly constructed and are being properly maintained in accordance with the Improvement Plans. If the City determines, in its sole but reasonable discretion, that the Improvements are not being properly maintained, City shall notify Developer in writing of said determination and of the appropriate repair or maintenance activities Developer must undertake. Developer shall have (a) thirty (30) days, if the conditions do not constitute an unsafe condition, and ten (10) days, if the conditions constitute an unsafe condition, to make said repairs or accomplish said maintenance activities, after which the City may do so and invoice the Developer for the costs. If Developer fails to pay the invoices within 30 days of receipt thereof, the amount shall become a lien against the Property in the same manner as a special assessment lien. City may conduct emergency repairs or maintenance activities on the Improvements without notice to Developer. The cost of said emergency repairs shall be paid by Developer in the manner described above, including the imposition of liens. Notwithstanding the foregoing, in the event of a disagreement between the City and FDOT as to any Developer failure hereunder, the Developer will not be required to make any corrections until and unless the City and FDOT agree on a mutually acceptable and reasonable remedy (provided, further however, Developer will promptly make any corrections necessary to keep the right-of-way in a safe and non-dangerous condition).

5. Performance and Maintenance Bonds. Developer shall submit performance and maintenance bonds with respect to the Improvements, consistent with City Code and all applicable laws, rules or regulations. City shall be listed as an additional insured on said bonds, with respect to construction and maintenance of the Improvements.

6. Insurance. Developer shall possess and maintain, at all times during the term of this Agreement: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; and 2) general liability insurance in the amount of at least \$2,000,000. All liability insurance shall be maintained throughout the term of the Agreement and for a period of time thereafter as required to protect City from any liability, claims, damages, losses and expenses (including costs and attorney's fees), arising, directly or indirectly, under this Agreement, except to the extent that said liability, claims, damages, losses and expense, arise from the negligence or intentional misconduct of the

City. The above general liability policy shall contain a contractual liability endorsement in favor of the City and each policy shall name City, its officers, agents, elected and appointed officials and employees as additional insureds. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement. Developer shall provide proof of such insurance prior to the initiation of any maintenance activity within the Right of Way.

7. Removal. It is understood between the parties hereto that the City may direct Developer, at Developer's cost and expense, to remove, relocate or adjust the Improvements, or any portion thereof, at any time in the future as determined to be necessary by the City. The Developer shall be given no less than thirty (30) calendar days notice to conduct said removal, relocation or adjustment activities, after which time the City may do so, and collect the costs from the Developer as provided in Paragraph No. 4, above.

8. Priority of Right-of-Way. The Improvements shall not be installed, operated, or maintained in a manner that in any way interferes with the City's or FDOT's operation and maintenance of the Right-of-Way, nor shall the Improvements be installed, operated, or maintained in a manner that in any way unreasonably interferes with the public's normal use of the Right-of-Way.

9. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: City of Orlando, Florida
400 South Orange Avenue
Orlando, Florida 32801
Attn: City Engineer
Telephone: (407) 246-3222
Telecopy: (407) 246-2266

Developer: GDC Properties, LLC
245 Saw Mill River Road
Hawthorne, New York 10532
Attn: Adam Ginsburg
Telephone: (914) 747-4000
Facsimile: (914) 747-1237

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

10. Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida.

11. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the Parties hereto. All obligations of the Parties hereunder shall be binding upon their respective successors-in-title and assigns; provided the covenants and obligations herein are only personal to and enforceable against the Parties or successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Agreement shall have accrued, it being intended that upon the conveyance of title by a Party, the Party conveying title shall thereupon be released from any liability hereunder as to the property conveyed for any breach of this Agreement or claim arising under this Agreement accruing after the date of such conveyance. Notwithstanding any of the foregoing, developer shall not assign its interest in this Agreement without the prior written consent of the City.

12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the Parties.

13. Litigation and Attorneys' Fees. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation, all as actually incurred, including, without limitation, attorneys' fees, costs, and expenses of investigation incurred before, during or after trial or in any appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under the United States Bankruptcy Code, or any successor statutes. Any judgment or decree rendered in any such actions or proceedings shall include the award of attorneys' fees, costs, and expenses, as just described. The terms of this section shall survive the termination of this Agreement.

14. Relationship Between the Parties. Nothing contained in this Agreement, nor the relationship between the parties which may arise as a result of the provisions of this Agreement, are

intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between the Parties.

15. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

16. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

17. Recording of Agreement. Developer shall be responsible for recording this Agreement (including all costs associated therewith) within the Public Records of Orange County, Florida and shall send a copy of said recorded Agreement to the City within 30 days of the execution of this Agreement.

18. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

19. Indemnification. Developer shall release, indemnify and hold the City harmless from and against any and all causes-of-action, claims, liability or damages that may arise, directly or indirectly, under this Agreement or due to Developer's construction, maintenance or operation of the Improvements, except to the extent that said causes of action, claims, liability or damages arise from the negligence or intentional misconduct of the City .

20. Termination of License and Removal of Encroachment. The CITY retains the right to revoke this license at any time, by notifying the Developer in writing at the address listed in the initial paragraph of this Agreement. Developer shall remove the Improvements within thirty (30) days of the date of receipt of the written notice to Developer . If the Developer fails to remove the Improvements within the above-described timeframe, the CITY may remove same and charge the cost of removal to the Developer. Should the Developer fail to pay the costs of CITY's removal of the Improvements within thirty (30) days of the CITY'S request, the CITY may enforce payment as provided in Paragraph 4, above.

21. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

22. License. This Agreement constitutes a mere license and does not rise to the dignity of an interest in real property within the Right-of-Way.

23. Effective Date. This Agreement shall become effective upon its full and complete execution by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

“CITY”

CITY OF ORLANDO, FLORIDA, a
municipal corporation, organized and existing
under the laws of the State of Florida

ATTEST:

Mayor / Mayor Pro Tem

Alana Brenner, City Clerk

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as Mayor/Mayor Pro Tem, of City of Orlando, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, on behalf of the City. He/she is personally known to me or has produced _____ as identification.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No. _____

My commission expires:

SIGNATURES CONTINUE NEXT PAGE

Signed in the presence of Two Witnesses:

“DEVELOPER” (Corporate Seal)

Sign Name: _____

Print Name: _____

Print Name: _____

By: _____

Sign Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as _____ of GDC Verde Master, LLC, a NY limited liability company. He/she is personally known to me or has produced _____ as identification.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida
Commission No. _____
My commission expires:

EXHIBIT "A"

EXHIBIT "B"