

Prepared By and Return To:

Sara W. Bernard, P.A.
Broad and Cassel
Bank of America Center
P.O. Box 4961
Orlando, Florida 32802-4961

DRAINAGE EASEMENT AGREEMENT
(Laureate Park Phase 5A, Tract SMA-1A and Tract SMA-1B)

THIS DRAINAGE EASEMENT AGREEMENT (the “**Agreement**”) is made and entered into this ___ day of _____, 2014 (the “**Effective Date**”) by and between **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company, whose mailing address is 9801 Lake Nona Road, Orlando, Florida 32827 (“**LNLC**”), **LAKE NONA LAUREATE PARK, LLC**, a Florida limited liability company, whose mailing address is 9801 Lake Nona Road, Orlando, Florida 32827 (“**LNLP**”) (LNLC and LNLP shall be referred to herein collectively as the “**Grantor**”), and the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida 32801 (the “**Grantee**”) (LNLC, LNLP and Grantee are sometimes together referred to herein as the “**Parties**”, and separately as the “**Party**”).

WITNESSETH:

WHEREAS, Grantee is the owner of those certain streets and alleys, located in the City of Orlando, Orange County, Florida, dedicated for the perpetual use of the public by virtue of that certain Plat of Laureate Park Phase 5A recorded in Plat Book ___, Pages ___ through ___, inclusive, in the Public Records of Orange County, Florida (the “**Rights-of-Way**”); and

WHEREAS, LNLC is the owner in fee of that certain real property being more particularly depicted and described in **Exhibit “A”** attached hereto and by this reference incorporated herein (“**SMA-1B**”), upon which LNLC either has constructed or intends to construct certain permanent drainage and conveyance facilities for the purposes of conveying stormwater drainage and runoff from the Rights-of-Way to SMA-1B; and

WHEREAS, LNLP is the owner in fee of that certain real property surrounding SMA-1B, being more particularly depicted and described in **Exhibit “B”** attached hereto and by this reference incorporated herein (“**SMA-1A**”), upon which LNLC either has constructed or intends to construct certain permanent drainage and conveyance facilities for the purposes of conveying stormwater drainage and runoff from the Rights-of-Way through SMA-1A to SMA-1B; and

WHEREAS, SMA-1A and SMA-1B shall be collectively referred to herein as the “**Drainage Easement Parcel**”; and

WHEREAS, both LNLC and LNLP desire to grant in favor of Grantee a permanent, non-exclusive drainage easement on, upon, over, under, across and through each of their respective portions of the Drainage Easement Parcel to accommodate stormwater drainage and runoff from the Rights-of-Way through SMA-1A to SMA-1B, pursuant to the laws, rules and regulations and otherwise in accordance with all applicable permits and governmental requirements.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant of Drainage Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, nonexclusive easement on, upon, over, under, across and through the Drainage Easement Parcel for stormwater discharge, conveyance, and runoff purposes from the Rights-of-Way, in accordance with and subject to any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto, including, without limitation, permits issued by the South Florida Water Management District.

3. **Right of Relocation.** Grantor, each acting together and at their expense, shall have the right from time to time to relocate and/or reconfigure all or any portion of the Drainage Easement Parcel (together with any and all drainage facilities lying therein), as it mutually agrees and deems necessary so long as such relocation or reconfiguration meets the standards described below. During the term of this Agreement, Grantee hereby consents to any relocation and/or reconfiguration of the Drainage Easement Parcel and drainage facilities lying therein (either in whole or in part) proposed by Grantor; provided that (i) the Drainage Easement Parcel (or portions thereof), as so relocated and/or reconfigured, shall provide Grantee with substantially the same quality and capacity of permitted drainage rights as existed prior to such relocation; (ii) Grantor obtains all necessary permits or modification of permits and constructs the relocated/reconfigured facilities consistent therewith; (iii) Grantor shall pay for any expenses incurred in the relocation and/or reconfiguration of the Drainage Easement Parcel and drainage facilities lying therein (either in whole or in part) in compliance with all governmental permits, approvals, and requirements; and (iv) Grantor shall deliver to Grantee an amendment to this Agreement together with a legal description for the relocated easement area. After execution of such amendment, the rights of Grantee shall automatically extend and fully apply to such relocated easement area to the same extent as they applied prior to such relocation of the Drainage Easement Parcel and drainage facilities lying therein whereupon the rights of Grantee as to the relocated Drainage Easement Parcel and drainage facilities lying therein (or portions thereof) shall be released and immediately revert to the applicable Grantor or its successor(s)-in-title.

4. **Repair and Maintenance.**

(a) Each Grantor shall repair and maintain its respective portion of the Drainage Easement Parcel and any drainage facilities lying therein and keep the same in good working order and repair in accordance with all applicable permits and other governmental requirements and at no cost to Grantee; provided, each Grantor may assign any or all of its repair, maintenance or other obligations hereunder to any Permitted Assignee (as defined herein) which assumes such obligations in writing at any time.

(b) In the event any required repair and/or maintenance hereunder is not performed in accordance with the foregoing standards, Grantee may deliver a notice to the applicable Grantor or Permitted Assignee, whichever is applicable, setting forth the maintenance deficiencies, whereupon the applicable Grantor or Permitted Assignee, as applicable, shall have a period of fifteen (15) days to remedy the deficiencies, or forty-eight (48) hours, in case of emergency. In the event the deficiencies are not remedied in a reasonable fashion within such fifteen (15) day period, or within such forty-eight (48) hour period in case of emergency, Grantee shall have the right, but not the obligation, to undertake all reasonably necessary maintenance and repair itself and recover from the applicable Grantor or such Permitted Assignee, as applicable, the reasonable and actual, third party out-of-pocket fees, costs and expenses incurred in connection therewith. The applicable Grantor shall reimburse Grantee for Grantee's reasonable expenses in connection with any maintenance activities no less than sixty (60) days after Grantee provides a written request to such applicable Grantor for such reimbursement, together with all applicable invoices, receipts and lien waivers for work performed (the "**Reimbursement Request**"). Additionally, each Grantor shall have the same enforcement and self-help rights granted herein to the Grantee with respect to any repair or maintenance deficiencies of the other Grantor.

5. **Assignment and Termination.** Each Grantor, upon reasonable notice to Grantee, may assign its rights and obligations under this Agreement to any property owner association, municipality, district or other governmental authority ("**Permitted Assignee**") that agrees to construct and/or maintain, repair and replace the drainage facilities within the Drainage Easement Parcel under the same terms described herein, whereupon the applicable Grantor shall be released from all obligations and liabilities hereunder.

6. **Insurance.** Each Grantor and/or any contractors performing work for such applicable Grantor on the Drainage Easement Parcel (or any portion thereof) in accordance with Section 4 above, shall maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted herein. Said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming the other Grantor and Grantee as additional insureds, as their interests may appear, in a combined-single limit of not less than \$1,000,000.00 with respect to bodily injury or death and property damage. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by the other Grantor and Grantee.

7. **Obligations.** Any rights granted hereunder shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and

approvals, and any future modifications or amendments thereto. No Party shall knowingly discharge into or within the Drainage Easement Parcel, any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.

8. **Beneficiaries of Easement Rights/Binding Effect.** The easement set forth in this Agreement shall be solely for the benefit of Grantee, for the purpose expressly provided for herein and for no other purpose. The easement hereby created and granted includes the creation of all incidental rights reasonably necessary for the use and enjoyment of the Drainage Easement Parcel for its intended purpose.

9. **No Public Dedication.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any public use whatsoever.

10. **Liens.** Grantee shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Drainage Easement Parcel or any other property in connection with the exercise of Grantee's rights or obligations hereunder. Each Grantor shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the portion of the Drainage Easement Parcel owned by the other Grantor or any other property not owned by such Grantor in connection with the exercise of such Grantor's rights or obligations hereunder.

11. **Amendments and Waivers.** This Agreement may not be terminated or 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. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of the provisions of this Agreement.

12. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given (i) one day after depositing with a nationally recognized overnight courier service, or (ii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, local Orlando, Florida time), to the addresses listed below or to such other addresses as a Party may from time to time designate by written notice in accordance with this paragraph:

To LNLC: Lake Nona Land Company, LLC
9801 Lake Nona Road
Orlando, Florida 32827
Attention: James L. Zboril, President

With a copy to: Lake Nona Land Company, LLC
9801 Lake Nona Road
Orlando, Florida 32827
Attention: Michelle Rencoret, General Counsel

and

With a copy to: Broad and Cassel
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Sara W. Bernard, P.A.

To LNLP: Lake Nona Laureate Park, LLC
9801 Lake Nona Road
Orlando, Florida 32827
Attention: James L. Zboril, President

and

With a copy to: Lake Nona Laureate Park, LLC
9801 Lake Nona Road
Orlando, Florida 32827
Attention: Michelle Rencoret, General Counsel

and

With a copy to: Broad and Cassel
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Sara W. Bernard, P.A.

To Grantee: City of Orlando
400 South Orange Avenue
Orlando, Florida 32801

With a copy to: City of Orlando
City Attorney's Office
400 South Orange Avenue
Orlando, Florida 32801
Attention: City Attorney

13. **Use of Drainage Easement Parcel.** It is acknowledged and agreed that the easement granted under this Agreement is not an exclusive easement and that each Grantor shall have the right to use and enjoy the Drainage Easement Parcel in any manner that does not impair the functioning of the drainage facilities within the Drainage Easement Parcel and is not inconsistent with the easement rights created herein.

14. **Attorneys' Fees.** Should any action be brought arising out of this Agreement, including, without limitation, any action for declaratory or injunctive relief, or any action for the enforcement 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.

15. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the United States of America and the State of Florida. Venue for any proceeding brought hereunder shall be Orange County, Florida. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of Grantee, Grantor, and each of their respective successors and assigns. The rights, privileges and easements granted and conveyed hereunder shall be a burden upon the Drainage Easement Parcel and exist for the benefit of and shall run with title to the applicable property.

IN WITNESS WHEREOF, LNLC, LNLP and Grantee have executed this Agreement as of the day and year set forth below.

“LNLC”

Signed, sealed and delivered in the presence of the following witnesses:

LAKE NONA LAND COMPANY, LLC,
a Florida limited liability company

Print Name:_____

By:_____ James L. Zboril, President

Print Name:_____

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by James L. Zboril, as President of **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company, on behalf of said company. He 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:_____

“LNLP”

Signed, sealed and delivered in the presence of the following witnesses:

LAKE NONA LAUREATE PARK, LLC,
a Florida limited liability company

Print Name:_____

By:_____
James L. Zboril, President

Print Name:_____

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by James L. Zboril, as President of **LAKE NONA LAUREATE PARK, LLC**, a Florida limited liability company, on behalf of said company. He 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:_____

WITNESSES:

Signed, sealed and delivered in the presence of the following witnesses:

Print Name: _____

Print Name: _____

“GRANTEE”

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

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)
)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as the acting _____ of the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, on behalf of said municipal corporation. He is personally known to me or has produced _____ identification.

(Signature of Notary Public)

Print Name of Notary Public
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

EXHIBIT "A"

SMA-1B

[See Attached Sketch of Description CS#14-154(B) – 2 pages]

EXHIBIT “B”

SMA-1A

[See Attached Sketch of Description CS#14-154(C) – 2 pages]