

**PREPARED BY AND RETURN TO:**

Roy K. Payne, Esquire  
Chief Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32801  
407-246-3483

**RIGHT-OF-WAY ENCROACHMENT AND MAINTENANCE AGREEMENT**

This Right-of-Way Encroachment and Maintenance Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, (the “City”), and **UC ORLANDO CENTRAL LLC**, a Delaware limited liability company, whose mailing address is 315 East Robinson Street, Suite 290, Orlando, Florida, 32801, (the “Owner”).

**Recitals**

**WHEREAS**, Owner is the owner of certain real property located at 150 E. Central Blvd. Orlando, Florida, more particularly described in **Exhibit “A”**, attached hereto and made a part hereof by reference, (hereinafter referred to as “Property,”) in the City of Orlando; and

**WHEREAS**, Owner will be constructing a mixed-use high-rise building, known as The Modera Central, “Project,” on the Property; and

**WHEREAS**, in conjunction with the development of the Project, City and Owner have agreed that Owner will install stormwater planter improvements (the “Improvements”), within City right-of-way, (the “City Right-of-Way”) as shown in **Exhibit “B”**, attached hereto and made a part hereof by reference; and

**WHEREAS**, the area for construction and maintenance of the Improvements is referred to herein as the “Maintenance Area”; and

**WHEREAS**, City and Owner acknowledge that the Improvements are a public benefit as well as an integral part of the overall development of the Project and agree that it is in the best interests of both parties that the Improvements be properly installed and maintained; and

**WHEREAS**, the parties hereto desire to memorialize this Agreement.

**W I T N E S S E T H**

**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. Encroachment/Utilization. The City hereby grants permission for the utilization of, and encroachment into, the City Right-of-Way strictly limited to Owner's construction, maintenance and operation of the Improvements.

3. Release. Owner hereby releases the City, its representatives, employees and elected officials from any and all damages, claims, or liability arising under this Agreement, including, though not exclusively, the City's termination of this Agreement.

4. Priority of City Right-of-Way. Owner's utilization of the City Right-of-Way is subordinate to, and shall not be operated or maintained in such a manner so as to interfere with, the City's operation or maintenance of its right-of-way or property, including, though not exclusively, any public or general utility improvements located thereon.

5. Construction of Improvements. Owner, at its sole cost and expense, shall construct and install the Improvements along Pine Street, as shown in **Exhibit "B"**, consistent with applicable engineering standards and all applicable laws, codes, and regulations, including any City permits. The Improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any portion of the Project. The Improvements shall be used for the sole purpose of treating stormwater associated with the impervious area within the public right-of-way, and shall not be used for treatment for any stormwater runoff generated from the redeveloped site (private property).

6. Maintenance of Improvements. Owner shall now and at all times henceforth be solely responsible for maintaining the Improvements and all costs associated therewith, consistent with this Agreement.

Under the terms of this Agreement, City shall not be responsible for maintaining or repairing any portion of the Improvements, now or at any time in the future. Owner shall within thirty (30) days of this Agreement provide to the City a proposed schedule, "Maintenance

Schedule”, of maintenance activities. Owner shall revise the Maintenance Schedule to accommodate the City’s comments or concerns. Owner shall not commence any maintenance activities prior to City approval of the Maintenance Schedule. Any requested changes to the approved Maintenance Schedule shall be submitted to the City in writing and are subject to City review and approval. Except in the case of an emergency, Owner shall only enter upon the Maintenance Area to carry out construction and maintenance activities. Any default or inadequacy in Owner’s performance under this Agreement, after written notice and sixty (60) days opportunity to cure, shall be deemed a violation of conditions of the City’s approval of the Project and shall further entitle the City to terminate this Agreement and/or to pursue any remedy at law or in equity.

In the event of damage to City property, or any other property arising from Owner’s activities, or the activities of anyone for whom Owner is responsible, under this Agreement, the Owner, at its sole cost and expense, must immediately undertake and complete repairs to said property.

City has the right, but not the duty or obligation, to inspect the Improvements at any time. In the event Owner fails to construct or maintain the Improvements in good condition and in accordance with this Agreement or applicable laws and regulations, the City may give Owner written notice thereof and Owner shall be obligated to conduct such repair or maintenance and correct such deficiency within a reasonable period of time. In the event Owner fails to maintain the Improvements and correct any such deficiency within a reasonable time after such written notice by the City, then the City shall have the right, but not the obligation, to correct any such deficiency and Owner shall then reimburse the City for the City’s reasonable expenses in connection therewith, no less than sixty (60) days after written request by the City, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the City upon the Property. Such liens shall become effective upon the filing of a Claim of Lien by the City in the Official Records of Orange County, Florida and may be foreclosed in the manner as provided by Florida law. The City’s conduct of remedial action shall not operate to impose any obligation, responsibility or liability whatsoever upon the City. Furthermore, nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the construction, operation or maintenance of the Improvements under this Agreement.

7. 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: Attn: City Engineer  
City of Orlando, Florida  
400 South Orange Ave.  
Orlando, Florida 32802  
Telephone: 407-246-3222  
Facsimile: 407-246-2266

Owner: Attn: Todd Bleakley  
UC Orlando Central LLC  
315 East Robinson Street Suite 290  
Orlando FL 32801  
Telephone: 407-608-7321

With Copy to: Attn: Rebecca Wilson, Esq.  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 N. Eola Drive  
Orlando, Florida 32801  
Telephone: 407-418-6250  
Facsimile: 407-843-4444

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.

8. 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.

9. 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.

10. 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.

11. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising therefrom, the prevailing party shall be entitled to payment of its costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

12. 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.

13. 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.

14. 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.

15. Recording of Agreement. Owner 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.

16. 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.

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

18. No Waiver/No Vesting. Nothing in this Agreement operates as a waiver of the City's regulatory authority or a vesting of rights.

19. Effective Date. This Agreement shall become effective upon full and complete execution by the parties hereto.

20. Payment & Performance Bonds. Owner shall require the contractor for construction of the Improvements, "Contractor", to obtain performance and payment bonds, prior to commencement of construction of the Improvements and in a form acceptable to the City with the penal amount of each bond equal to the contract amount for the Improvements. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register and is subject to the final approval of the City. The City shall be listed as additional obligees on each bond. Owner shall act diligently to prevent construction liens from being filed and if a lien is filed, Owner shall immediately take the requisite action to have the lien removed.

21. Indemnification. Owner shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), to the extent arising out of or resulting from Owner's construction, installation and maintenance of the Improvements, or which are caused in whole or in part, directly or indirectly, by Owner or any of its contractors, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

22. Insurance. Owner shall at all times during the term of this Agreement, possess or required its contractor(s) to possess: 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$5,000,000. All liability insurance shall be maintained throughout the course of the construction, installation and maintenance of the Improvements and for a period of time thereafter as required by the City in order to protect the City from any liability, claims, damages, losses or expenses arising from or out of or in any way connected with this Agreement, and construction, installation and maintenance of the Improvements. City shall be listed as additional insureds on the automobile and general liability policies of insurance and each policy shall contain a contractual liability endorsement in favor of the City. Owner shall provide proof of such insurance coverages, as described above, ten (10) days prior to commencement of construction of the Improvements and ten (10) days prior to the commencement of maintenance of the Improvements, respectively. 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. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

23. Warranty/Maintenance Bond. Upon completion of the Improvements, Owner shall obtain from the Contractor, a two-year warranty (in a form reasonably acceptable to the City) on the materials and work performed with regard to the Improvements. City shall be named as additional beneficiaries of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Improvements are completed unless otherwise agreed by the parties.

24. Non-Conforming Work. In the event work is discovered, whether by the City or Owner, its consultants or contractors, which is defective or otherwise non-conforming to the requirements of this Agreement or any applicable permits, the City or Owner, shall promptly notify the other party of such defect or non-compliance. Owner shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming to the satisfaction of the City. Any costs associated with correcting such deficient work shall be borne by Owner.

25. Independent Contractors. Owner, its agents, contractor(s), subcontractors 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 with respect to the Improvements.

26. Termination. Owner or City may terminate this Agreement at any time and for any reason, upon thirty (30) days written notice to the non-terminating party. In the event of termination by either party, Owner shall remove the Improvements, within thirty (30) days of the date of mailing of the written notice, whether or not the notice is received, unless the City agrees in writing to the abandonment and acceptance of the Improvements so installed. If the Owner fails to remove the Improvements, within the above-described timeframe, the City may remove same without liability to Owner. City shall be entitled to recover the cost of removing the Improvements as provided in Paragraph 4, above.

27. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the Maintenance Area or any other property or right of way.

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

ATTEST:

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

By: \_\_\_\_\_  
Amy Iennaco, Interim City Clerk

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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.

(Affix Notary Seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed name of Notary Public)

Notary Public, State of Florida

Commission No. \_\_\_\_\_

My commission expires: \_\_\_\_\_



Signed in the presence of Two Witnesses:

**UC ORLANDO CENTRAL LLC,**  
a Delaware limited liability company

Sign Name: \_\_\_\_\_

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

Sign Name: \_\_\_\_\_

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

By: MCRT Modera Central LLC,  
a Delaware limited liability company,  
its Managing Member

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

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, as \_\_\_\_\_ of MCRT Modera Central LLC, a Delaware limited liability company, as Managing Member of UC ORLANDO CENTRAL LLC, a Delaware limited liability company, who executed the foregoing instrument and acknowledged before me that he executed the same for the purposes therein expressed and who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of Notary Public)

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

**EXHIBIT "A"**

Parcel ID: 25-22-29-8216-00-010

**Property Described as:**

Lots 1 through 8, inclusive, SPERRY'S SUBDIVISION OF THE NORTH ½ OF BLOCK 13 OF SUMMERLIN'S ADDITION TO ORLANDO, according to the Plat thereof as recorded in Plat Book B, Page 89 of the Public Records of Orange County, Less and Except therefrom the West 15 Feet of Lots 4 and 5.

**EXHIBIT “B”**

