

Prepared By and Return To:

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

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 2017 (the "**Effective Date**") by and between **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company, whose address is 6900 Tavistock Lakes Boulevard, Suite 200, Orlando, Florida 32827 ("**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 ("**Grantee**") (Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**").

WITNESSETH:

WHEREAS, Grantee is the owner of that certain real property lying within Orange County, Florida, being more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (the "**Easement Area**"); and

WHEREAS, it is contemplated that certain sanitary sewer facilities, together with related improvements (collectively, the "**Facilities**"), are to be installed and located within the Easement Area for the benefit of those certain lands being more specifically described in the plat of Lake Nona Central Parcel 9 Phase 2A, according to the plat thereof, as recorded in Plat Book 90, Pages 79 through 83, of the Public Records of Orange County, Florida (the "**Benefited Property**"); and

WHEREAS, Grantor now desires to give, grant, and convey in favor of Grantee a perpetual, non-exclusive easement on, upon, over, under, across and through the Easement Area for the limited purpose of constructing, installing, operating, maintaining, repairing, replacing, and restoring the Facilities for the benefit of the Benefited Property, subject to all applicable permits related thereto, and subject to the terms and provisions set forth herein.

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 Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee perpetual, non-exclusive easement on, upon, over, under, across and through the Easement Area for the limited purpose of constructing, installing, operating, maintaining, repairing, replacing, and restoring the Facilities in accordance with and subject to any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto, for the benefit of the Benefited Property in its current condition and as it may be improved from time to time. Notwithstanding anything contained herein to the contrary, nothing contained herein shall be deemed to create or grant any right to any person or entity to use the Easement Area for the provision of general utilities or communication services.

3. **Right of Relocation.** Grantor, at its expense, shall have the right from time to time to relocate and/or reconfigure the Easement Area, as it deems necessary. During the term of this Agreement, Grantee hereby consents to any relocation and/or reconfiguration of the Easement Area (either in whole or in part) proposed by Grantor; provided that (i) the Easement Area (or portions thereof), as so relocated and/or reconfigured, shall provide Grantee with substantially the same size and quality easement area as existed prior to such relocation, (ii) Grantor obtains all necessary permits or modifications 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 Easement Area (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 (or portions thereof). 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 Easement Area, whereupon the rights of Grantee as to the relocated Easement Area (or portions thereof) shall be released and immediately revert to the Grantor, its successors, transferees and assigns.

4. **Repair and Maintenance.**

(a) Grantor, at no cost to Grantee, shall repair and maintain the Easement Area and keep the same in good order and repair in accordance with all applicable permits and other governmental requirements. Grantee, at Grantee's expense, shall repair and maintain any and all Facilities (or its respective portion thereof) dedicated to and accepted by Grantee in good order and repair in accordance with all applicable permits and other governmental requirements and shall diligently thereafter restore the surface of the Easement Area affected to as near as practicable the condition which existed prior to such activities; except, however, Grantee shall have no responsibility to restore any brick or concrete pavers or other upgraded hardscaping features other than typical asphalt lying on the surface of the Easement Area which has been excavated in conjunction with Grantee's repair and maintenance obligations hereunder. 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 by Grantor (or any Permitted Assignee) or Grantee, as applicable, in accordance with the foregoing standards, Grantor (or any Permitted Assignee) or Grantee, whichever is applicable, may deliver a notice to the other party setting forth the maintenance deficiencies,

whereupon such party 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 commercially reasonable fashion within such fifteen (15) day period, or within such forty-eight (48) hour period in case of emergency, the requesting party shall have the right, but not the obligation, to undertake all reasonably necessary maintenance and repair itself and recover from such other party the reasonable and actual, third party out-of-pocket fees, costs and expenses incurred in connection therewith. Such party shall reimburse the requesting party for the reasonable expenses in connection with any maintenance activities no less than sixty (60) days after the requesting party delivers a written request for such reimbursement, together with all applicable invoices, receipts and lien waivers for work performed (the "**Reimbursement Request**"). If such party fails to pay the amount set forth in the Reimbursement Request within the time period set forth above, the amount of the Reimbursement Request shall bear interest at the rate of six percent (6%) until paid.

(c) In the event of an emergency situation resulting in an immediate threat to the public health, safety or welfare, the requesting party shall only be required to attempt to give reasonable notice, prior to taking action in accordance with Paragraph 4(b) above.

5. **Assignment.** 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**"), whereupon Grantor shall be released from all obligations and liabilities hereunder. Grantee shall have no right to assign its rights and obligations hereunder without the express written consent of Grantor in each instance which may be withheld in its discretion.

6. **Insurance.** Grantee and/or any contractors performing work for Grantee on the Easement Area 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 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 Grantor or 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 discharge into or within the Easement Area, 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 Easement Area for its intended purposes.

9. **Liens.** Grantee shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Easement Area or any other property in connection with the exercise of Grantee's rights hereunder.

10. **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.

11. **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 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 Grantor: Lake Nona Land Company, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida 32827
Attention: James L. Zboril, President

and

With a copy to: Lake Nona Land Company, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida 32827
Attention: Michelle Rencoret, Vice President & General Counsel

and

With a copy to: Broad and Cassel LLP
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
Attention: City Engineer

With a copy to: City of Orlando
City Attorney's Office
400 South Orange Avenue
Orlando, Florida 32802
Attention: City Attorney

12. **Use of Easement Area.** It is acknowledged and agreed that the easement granted under this Agreement is not an exclusive easement and that Grantor shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein.

13. **Constructive Notice and Acceptance.** By entering the Easement Area and availing itself to the rights and benefits granted to it hereunder, Grantee shall be conclusively deemed to have consented and agreed to the terms and conditions of this Agreement, and any amendments thereto, and shall at all times comply with the provisions hereof.

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

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

Print Name: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, 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/She is personally known to me or has produced identification.

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

By: _____
Name: _____
Title: _____

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

EXHIBIT "A"

Easement Area

[See Attached Sketch of Description – CS#16-100(UE4) – 2 Pages]

SKETCH OF DESCRIPTION

SEE SHEET 2 FOR NOTES AND LEGAL DESCRIPTION



LOT 2
LAKE NONA CENTRAL
PARCEL 9 PHASE 2A
PB 90, PAGES 79-83

89.00'
N00°00'00"E
20.00'
POINT OF
BEGINNING

NOT PLATTED

N90°00'00"E 30.00'

S00°00'00"E 20.00'

CITY OF ORLANDO UTILITY EASEMENT No.4
(SANITARY SEWER)

N90°00'00"W 30.00'

NOT PLATTED

335.00'
N00°00'00"E

TRACT R
(PERFORMANCE DRIVE)
LAKE NONA CENTRAL
PARCEL 9 PHASE 2A
PB 90, PAGES 79-83

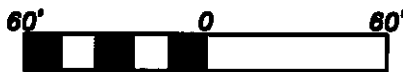
EAST LINE OF TRACT R
(PERFORMANCE DRIVE)
(LAKE NONA CENTRAL
PARCEL 9 PHASE 2A
PB 90, PAGES 79-83)

TRACT C
(ACCESS AREA)
LAKE NONA CENTRAL
PARCEL 9 PHASE 2A
PB 90, PAGES 79-83

POINT OF
COMMENCEMENT

SOUTHEAST CORNER
OF TRACT R
(PERFORMANCE DRIVE)
LAKE NONA CENTRAL
PARCEL 9 PHASE 2A
PB 90, PAGES 79-83

NOT PLATTED



Scale: 1" = 60'

LEGEND

PB PLAT BOOK
PG(S) PAGE(S)
No. NUMBER

This Sketch of Description does not depict any easements of record that may be within or adjoining the lands described hereon.

No facilities associated with this Sketch of Description have been field located by Donald W. McIntosh Associates, Inc.

PREPARED FOR:

LAKE NONA LAND COMPANY, LLC

LAKE NONA CENTRAL PARCEL 9 PHASE 2A
CITY OF ORLANDO UTILITY EASEMENT No.4 (SANITARY SEWER)

DATE	BY	DESCRIPTION

REVISIONS



DONALD W. MCINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
CERTIFICATE OF AUTHORIZATION NO. LB68

DONALD W. MCINTOSH ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION NO. LB68

Robert Tyley, Seare April 07, 2017
Florida Registered Surveyor and Mapper
Certificate No. 6950
NOT VALID WITHOUT THE SIGNATURE AND THE
ORIGINAL RAISED SEAL OF A FLORIDA LICENSED
SURVEYOR AND MAPPER.

DRAWN BY: PH	CHECKED BY: JS	JOB NO.	SCALE	SHEET
DATE: 4/2017	DATE: 4/2017	15162	1"=60'	1
				OF 2

SKETCH OF DESCRIPTION

SEE SHEET 1 FOR SKETCH

DESCRIPTION:

That part of Section 14, Township 24 South, Range 30 East, Orange County, Florida, described as follows:

Commence at the Southeast corner of Tract R (Performance Drive), LAKE NONA CENTRAL PARCEL 9 PHASE 2A, according to the plat thereof, as recorded in Plat Book 90, Pages 79 through 83, of the Public Records of Orange County, Florida; thence N00°00'00"E along the East line of said Tract R (Performance Drive), for a distance of 335.00 feet to the POINT OF BEGINNING; thence continue N00°00'00"E along said East line, 20.00 feet; thence departing said East line run N90°00'00"E, 30.00 feet; thence S00°00'00"E, 20.00 feet; thence N90°00'00"W, 30.00 feet to the POINT OF BEGINNING.

Being subject to any rights-of-way, restrictions and easements of record.

NOTES:

- This is not a survey.
- Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
- Bearings based on the East line of Tract R, (Performance Drive), LAKE NONA CENTRAL PARCEL 9 PHASE 2A, according to the plat thereof, as recorded in Plat Book 90, Pages 79 through 83, of the Public Records of Orange County, Florida, as being N00°00'00"E (per plat)
- Lands shown hereon were not abstracted for rights-of-way, easements, ownership or other instruments of record by this firm.
- No title opinion or abstract of matters affecting title or boundary to the subject property or those of adjoining land owners have been provided. It is possible there are deeds of record, unrecorded deeds or other instruments which could affect the boundaries or use of the subject property.
- This Sketch of Description does not depict any easements of record that may be within or adjoining the lands described hereon.
- No facilities associated with this Sketch of Description have been field located by Donald W. McIntosh Associates, Inc.

PREPARED FOR:

LAKE NONA LAND COMPANY, LLC

LAKE NONA CENTRAL PARCEL 9 PHASE 2A
CITY OF ORLANDO UTILITY EASEMENT No.4 (SANITARY SEWER)



DONALD W. McINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
CERTIFICATE OF AUTHORIZATION NO. LB68

DRAWN BY: <u>PH</u>	CHECKED BY: <u>JS</u>	JOB NO.	SCALE	SHEET <u>2</u>
DATE: <u>4/2017</u>	DATE: <u>4/2017</u>	<u>15162</u>	<u>N/A</u>	OF <u>2</u>