

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

**TEMPORARY UTILITY EASEMENT AGREEMENT**  
**(Lake Nona Boulevard)**

**THIS TEMPORARY UTILITY EASEMENT AGREEMENT** (the “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (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**, Grantor 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 temporary reclaim, sanitary sewer and force main facilities, together with related improvements (collectively, the “**Facilities**”), are to be installed and located within the Easement Area for the benefit of that certain public right-of-way known as “Lake Nona Boulevard” (the “**Benefited Property**”); and

**WHEREAS**, Grantor now desires to give, grant, and convey in favor of Grantee a temporary, 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 a temporary, 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 any portion of the Facilities not dedicated to, and accepted by, the Grantee, 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**").

(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. **Term of Easement.** Upon the earlier to occur of (i) the platting or conveyance to a governmental authority for public road purposes of the future extension of Lake Nona Boulevard over the Easement Area, or (ii) recordation of a release of the easement (or any portion(s) thereof) executed by Grantee in the Public Records of Orange County, Florida, then this Agreement shall automatically terminate and be extinguished and all rights in the easement (or any applicable portion(s) thereof) granted by this Agreement shall immediately revert to the Grantor, its successors, transferees and assigns, as to the Easement Area (or any applicable portion(s) thereof), without further action of the Grantor or Grantee being required. Upon termination of this Agreement, as provided herein, and upon request by Grantor, Grantee shall promptly execute and deliver to Grantor a document in recordable form confirming termination of this Agreement.

7. **Insurance.** Grantor and Grantee acknowledge that the Grantee, as a governmental entity, self-insures its general liability, automobile liability and Worker's Compensation exposure(s). Grantee will ensure that 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.

8. **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.

9. **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.

10. **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.

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 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

13. **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.

14. **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.

15. **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.

16. **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 their respective successors and assigns. The rights, privileges and easements granted and conveyed hereunder shall be a burden upon the Easement Area and exist for the benefit of and shall run with title to the applicable property.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**



**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 \_\_\_\_\_, 2018, 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.

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

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

**EXHIBIT "A"**

**Easement Area**

**[See Attached Sketches of Description – CS#15-141(COO19-A) – 2 Pages]**

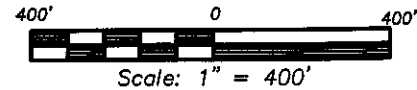
**EXHIBIT "A"**

**Easement Area**

**[See Attached Sketches of Description – CS#15-141(COO19-A) – 2 Pages]**

# SKETCH OF DESCRIPTION

(SEE SHEET 2 FOR NOTES AND DESCRIPTION)



BOGGY CREEK ROAD

NOT PLATTED

NOT PLATTED

LAKE NONA BOULEVARD  
LAKE NONA BOULEVARD FOURTH ADDITION  
(PB 84, PGS 139-142)

S88°18'06"E 2210.90'

NOT PLATTED

**POINT OF COMMENCEMENT**

SOUTHWEST CORNER OF  
LAKE NONA BOULEVARD,  
LAKE NONA BOULEVARD  
FOURTH ADDITION  
(PLAT BOOK 84 PGS 139-142)

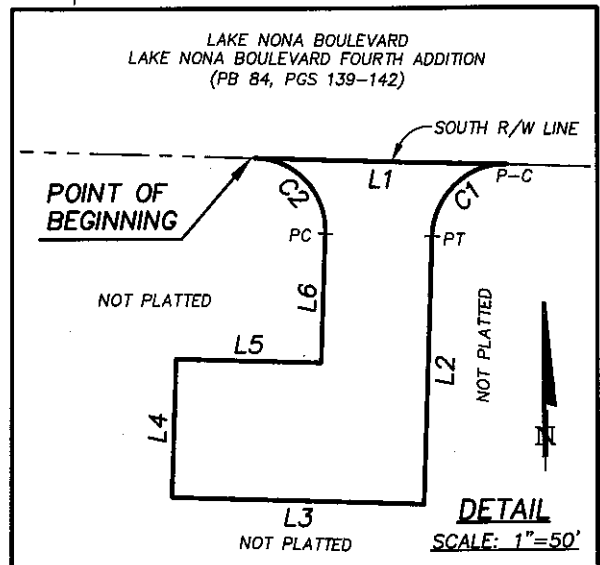
**POINT OF BEGINNING**

NOT PLATTED

**UTILITY EASEMENT**  
(SEE DETAIL BELOW)

CURVE TABLE					
NUMBER	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	40.00'	90°00'00"	62.83'	56.57'	S46°41'54"W
C2	40.00'	90°00'00"	62.83'	56.57'	N43°18'06"W

LINE TABLE		
NUMBER	BEARING	DISTANCE
L1	S88°18'06"E	140.00'
L2	S01°41'54"W	145.12'
L3	N88°18'06"W	140.00'
L4	N01°41'54"E	75.00'
L5	S88°18'06"E	80.00'
L6	N01°41'54"E	70.12'



**DETAIL**

SCALE: 1"=50'

## LEGEND

SEC 27-24-30	SECTION, TOWNSHIP, RANGE
NT	NON-TANGENT
PC	POINT OF CURVATURE
PT	POINT OF TANGENCY
P-C	POINT OF CUSP
PCC	POINT OF COMPOUND CURVATURE
L1	LINE NUMBER (SEE LINE TABLE)
C1	CURVE NUMBER (SEE CURVE TABLE)
SE	SOUTHEAST
SW	SOUTHWEST
R/W	RIGHT-OF-WAY
PB	PLAT BOOK
PGS	PAGES
CM	CONCRETE MONUMENT

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

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

PREPARED FOR:

**LAKE NONA LAND COMPANY, LLC**

CITY OF ORLANDO TEMPORARY UTILITY EASEMENT  
LAKE NONA BOULEVARD FOURTH ADDITION, ORANGE COUNTY, FLORIDA



**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 "Tyler" Sears July 31, 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: BW  
DATE: 7/2017

CHECKED BY: JS  
DATE: 7/2017

JOB NO.  
13031.001

SCALE  
VARIES

SHEET 1  
OF 2

# SKETCH OF DESCRIPTION

(SEE SHEET 1 FOR SKETCH)

## DESCRIPTION:

That part of Section 27, Township 24 South, Range 30 East, Orange County, Florida, described as follows:

Commence at the Southwest corner of Lake Nona Boulevard, LAKE NONA BOULEVARD FOURTH ADDITION, according to the Plat thereof as recorded in Plat Book 84, Pages 139 through 142, of the Public Records of Orange County, Florida; thence S88°18'06"E along the South right-of-way line of Lake Nona Boulevard according to said plat of LAKE NONA BOULEVARD FOURTH ADDITION, for a distance of 2210.90 to the POINT OF BEGINNING; thence continue S88°18'06"E, along said South right-of-way line for a distance of 140.00 feet to the point of cusp of a curve concave Southeasterly having a radius of 40.00 feet and a chord bearing of S46°41'54"W; thence departing said South right-of-way line, run Southwesterly along the arc of said curve through a central angle of 90°00'00" for a distance of 62.83 feet to the point of tangency; thence S01°41'54"W, 145.12 feet; thence N88°18'06"W, 140.00 feet; thence N01°41'54"E, 75.00 feet; thence S88°18'06"E, 80.00 feet; thence N01°41'54"E, 70.12 feet to the point of curvature of a curve concave Southwesterly having a radius of 40.00 feet and a chord bearing of N43°18'06"W; thence Northwesterly along the arc of said curve through a central angle of 90°00'00" for a distance of 62.83 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 are based on the South right-of-way line of Lake Nona Boulevard, LAKE NONA BOULEVARD FOURTH ADDITION, according to the plat thereof, recorded in Plat Book 84, Pages 139 through 142, Public Records, Orange County, Florida, being S88°18'06"E, per said 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 or restrictions 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**

CITY OF ORLANDO TEMPORARY UTILITY EASEMENT  
LAKE NONA BOULEVARD FOURTH ADDITION, ORANGE COUNTY, FLORIDA



**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>BMW</u>	CHECKED BY: <u>TS</u>	JOB NO.	SCALE	SHEET <u>2</u>
DATE: <u>7/2017</u>	DATE: <u>7/2017</u>	<u>13031.001</u>	<u>N/A</u>	OF <u>2</u>