

## EXHIBIT B

### RESOLUTION NO. 08-19

(Approval of Standard Drainage Easement and Terms and Conditions and Authorization of the Executive Director to Execute the Standard Drainage Easement)

#### TERMS AND CONDITIONS

#### AND GRANT OF A

#### REVOCABLE STORM DRAINAGE LICENSE

(as referenced in Easement Deed and Revocable Storm Drainage License Agreement to

Southeast Metro Stormwater Authority)

SEMSWA is the grantee of easements for detention ponds, storm sewers and similar storm drainage uses and facilities from a variety of landowners (collectively "storm drain easements"); and

The storm drainage easements are located on property either described in the plat dedication, in the case of easements dedicated by plat, or in the case of easements granted by separate instrument, such property is described in that instrument as the "Development" or is otherwise identified as the property subject to the easement; and

SEMSWA utilizes the storm drainage easements to provide for the eventual conveyance of storm water to regional outfalls, and facilities, including underground storm sewers; and

SEMSWA manages its storm drainage easements; and

SEMSWA has historically restricted a landowner's ability to use SEMSWA storm drainage facilities to only that flow quantity, quality, and rate approved by SEMSWA, and had conditioned access to and use of its facilities upon terms satisfactory to SEMSWA; and

The restrictions and conditions on use and access have generally related to requiring payment of a pro-rata portion of construction costs, dedication of necessary easements, agreement by the property owner to maintain and keep in repair all facilities, restrictions on the quality of storm water discharge, and similar restrictions; and

In some cases, construction details for storm drainage system components are detailed in a subdivision improvement agreement ("SIA") for the property burdened by the easement ("SIA"); and

SEMSWA staff has recommended, and the Board of Directors has approved, the use of a uniform storm water easement, which contains uniform conditions regarding the easement granted to the SEMSWA and also grants a limited and revocable license to the grantee to use certain components of SEMSWA's storm drainage facilities, under stated conditions; and

The Board of Directors has determined that it is advisable to record the current version of SEMSWA's uniform easement deed and revocable storm drainage license agreement to provide additional notice of the terms of the various drainage easements, storm sewer easements, and detention pond easements now held by SEMSWA and to provide easy reference to terms and conditions for easements acquired hereafter by SEMSWA; and

THEREFOREBY OWNER EXECUTING AND HAVING RECORDED AN EASEMENT DEED AND REVOCABLE STORM DRAINAGE LICENSE AGREEMENT TO SOUTHEAST METRO STORMWATER AUTHORITY WHEREIN THIS DOCUMENT IS REFERENCED, OWNER HEREBY AGREES TO THE FOLLOWING:

- I. Each and every drainage easement, storm sewer easement, detention pond easement and similar property right granted by plat or separate instrument to SEMSWA is and shall be conclusively deemed to be granted for the following purposes and upon the following terms and conditions:
  - A. The easement is deemed to be granted by the grantor, for itself and for its successors, tenants, licensees, heirs (if applicable) and assigns (hereafter, the "Owner"). The easement shall be deemed to burden the entire legal description of the grantor's ownership, described in the dedication certificate on the plat, which property shall be the servient estate (hereafter, the "Development"). In the case of easements granted by separate instrument, the servient estate shall be the property described therein as the Development. If no property is labeled as the Development on such instrument, the servient estate shall be the property identified therein as the property burdened by the easement. For purposes of these Terms And Conditions, the servient estate is referred to herein as the "Development".
  - B. The easement is deemed to be granted for and in consideration of the sum of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is deemed to be acknowledged by Owner by its signature on the plat or separate instrument. The easement is deemed to be a grant and conveyance from Owner to the Board of Directors of SEMSWA, a body corporate and politic, its successors and assigns, of a permanent easement to enter, re-enter, occupy and use the Easement Property [as identified on the plat or separate instrument], which Owner warrants the title to the same, for the purpose of constructing, connecting, disconnecting, rerouting, enlarging, removing, repairing, operating, monitoring, inspecting and testing, and maintaining above ground, surface, and underground storm sewer facilities, detention ponds and related drainage facilities, which may include all necessary above ground, surface and underground facilities and appurtenances related thereto, including but not limited to: mains, manholes, conduits, valves, pavement, vaults, ventilators, retaining walls, drop structures, inlets, outfalls, erosion control structures, culverts, pipes, electric or other control systems, cable, wires and connections, including telephone wiring; in, upon, under, through and across the Easement Property.
  - C. Owner's grant of the easement constitutes Owner's agreement to the following terms and conditions:
    1. Owner (which term includes successor owners to all or portions of the Development) is solely responsible for constructing, maintaining, repairing and replacing all facilities except to the extent limited by the terms of SEMSWA's regulations, and is solely responsible for compliance with the requirements of all other instruments which affect or regulate the Easement Property. All work shall conform to the standards and requirements of SEMSWA, at the time of construction and as

those standards may be amended from time to time, and shall be subject to inspection by SEMSWA, upon terms, conditions and fee schedules as may be in effect from time to time. Copies of such regulations are available from SEMSWA and may be recorded.

2. Owner agrees to perform all necessary work without further notice or demand from SEMSWA, and also agrees to perform such work as may reasonably be demanded by SEMSWA to the extent consistent with the terms of this Agreement or the SIA. In the event Owner fails, refuses or is unable to complete this work or any other work required by the terms of this Agreement and these Terms And Conditions, Owner agrees, as an additional remedy for SEMSWA, to reimburse SEMSWA upon demand for the costs incurred by SEMSWA in performing such work, plus an administrative charge of 15% of the costs incurred.
3. SEMSWA, its contractors, agents, employees, successors and assigns shall have and exercise the right of ingress and egress in, to, through, over, under and across the Easement Property for any purpose necessary to SEMSWA's full use and enjoyment of its easement rights. SEMSWA shall have the right of subjacent and lateral support from adjacent property of Owner to whatever extent is necessary or convenient for SEMSWA's full use and enjoyment of its easement rights.
4. Owner shall not construct, place, or permit any structure or plant on any part of the Easement Property, including buildings, street lights, power poles, yard lights, mail boxes, signs, shrubs, trees, woody plants or nursery stock, except to the extent permitted in writing signed by the Executive Director of SEMSWA. Any such structure or plant now located or hereafter permitted on the Easement Property may be removed or altered by SEMSWA at Owner's expense without liability for damages whatsoever.
5. After the completion of any activities on the Easement Property, SEMSWA shall reasonably restore the general surface of the ground near any of SEMSWA's facilities, except as may be modified to accommodate SEMSWA's facilities, to the approximate grade and compaction existing immediately prior to activity. SEMSWA shall, to the extent it can do so with existing materials and without significant additional expense, re-install turf, landscaping features and permitted improvements disturbed by the work. Owner acknowledges that the above ground and surface facilities will necessarily modify the contours and grade of the Easement Property. The reasonable costs incurred in such restoration and re-installation shall be reimbursed by Owner upon demand by SEMSWA.
6. This Easement is accepted by SEMSWA pursuant to resolution of the Board of Directors only for the purposes expressed in the Resolution, and for no other purposes. Owner shall have the right to utilize the Easement Property for any purpose not inconsistent with this Easement. Owner shall not grant any other licenses or easements in the Easement Property without the consent of SEMSWA, which consent will not be unreasonably withheld but which may be conditioned upon reasonable measures to prevent increases to SEMSWA's maintenance costs or to prevent interference with SEMSWA's facilities.
7. Owner warrants that it has full right, good title and authority to grant this Easement and that the Easement Property is free and clear of all liens and encumbrances except easements and rights of way of record prior to the date of the separate instrument and/or plat dedication, disclosed to and accepted by SEMSWA as Special Conditions to the grant, and agrees to defend SEMSWA in the exercise of its easement rights against any defect in title except easements and rights of way accepted of record as Special Conditions to the grant.
8. In the event Owner fails to pay any sum due under the easement terms, or in the event SEMSWA incurs any expense reimbursable hereunder, interest shall accrue from the date the expense is incurred at the rate of 1.25% per month until paid. In the event of default by Owner of the easement terms, failure of warranty of title or other default, SEMSWA shall be entitled to the remedy of specific performance, and to recover the costs of suit, interest and reasonable attorney

fees incurred in enforcing these terms, which remedies shall be cumulative and not exclusive. Any amount due under the terms of this instrument shall be a lien upon each and every parcel of the Development property equal in priority to the terms of this instrument.

- II. Except to the extent expressly limited in the plat or separate instrument granting the storm drainage easement to SEMSWA, the Owner does not have the right to use and discharge into components of SEMSWA's storm drainage facilities from the Development property except as described and limited as follows, to which the Owner is conclusively deemed to agree by use of SEMSWA's storm drainage facilities:
  - A. The initial term of the license shall expire on December 31 of the year in which the easement is granted, and shall be subject to renewal on these or such other terms as may be imposed by SEMSWA pursuant to its regulations. If no notice of renewal or nonrenewal is recorded prior to the end of the initial term or any renewal term, this license shall be deemed to be automatically renewed for an additional one-year period without additional notice. This license may also be renewed upon different terms and conditions, or may not be renewed. In the event of nonrenewal, SEMSWA shall provide reasonable advance written notice to Owner and record an appropriate notice of nonrenewal in the real estate records. In the event of renewal upon different terms and conditions, such changed terms shall be stated in notice(s) of renewal recorded prior to the end of a term and such terms shall be in effect in any subsequent renewal terms until changed by a subsequent notice.
  - B. This license shall be deemed to permit Owner to discharge the volumes and flows of clean stormwater from the Development property no greater than the flows generated by the property in its undeveloped state, or, if applicable, no greater than those stated in the Phase 3 Drainage Report accepted by SEMSWA in connection with the approval of the development referenced on the plat or separate instrument. SEMSWA permits the discharge of only "clean" stormwater into its facilities, which is defined as stormwater which contains only those particles and compounds expressly permitted by SEMSWA in writing, as may be amended by SEMSWA from time to time in accordance with its regulation and other federal, state and local regulations to which SEMSWA or Owner may be subject. Owner shall be deemed to agree as a condition of this license that SEMSWA shall be permitted to enter onto the Development and shall be permitted to inspect the premises and collect samples as may be reasonably necessary to discover, inspect for and prevent actual or potential discharges of unpermitted compounds and substances into the storm drainage facilities or other unauthorized use of the SEMSWA's stormwater facilities. SEMSWA shall, when feasible, provide Owner with reasonable advance notice of routine and nonemergency entries onto fenced or locked portions of the Development. Owner further agrees to reimburse SEMSWA for all reasonable costs associated with the detection, testing and prevention of unpermitted discharges or unauthorized use of SEMSWA's facilities, and agrees, without waiver of Owner's right to contest any such levy, to pay any fines imposed upon Owner or SEMSWA as a result of Clean Water Act or NPDES regulations or permit conditions. Owner further agrees that SEMSWA shall have the right to require Owner to pretreat stormwater discharges, if determined to be necessary by SEMSWA, pursuant to its regulations. SEMSWA reserves the right to change its criteria and standards, and to attach other reasonable conditions to this license as a condition to Owner's continued access to and use of SEMSWA's storm sewer facilities, which conditions may take effect immediately. Owner acknowledges that SEMSWA currently does not charge tap fees, user fees, maintenance fees, or other ongoing charges for

access to and use of the storm drainage facilities, and that SEMSWA reserves the right to levy such charges pursuant to system-wide regulations, and Owner, its successors, heirs and permitted assigns, agrees to pay such charges, as a condition of the continued access to and use of SEMSWA's storm drainage facilities. This license may be revoked by SEMSWA, without affecting the validity of the easement granted herein, upon failure of Owner to adhere to the terms hereof, as may be amended from time to time in accordance with SEMSWA's regulations. SEMSWA shall provide Owner with reasonable advance written notice of such failure prior to the effective date of revocation. Upon revocation, SEMSWA shall record an appropriate notice in the real estate records.

- C. Owner acknowledges that it is not permitted to discharge stormwater from the Development into the SEMSWA's public stormwater facilities except upon the terms of this license. In the event of termination, revocation or nonrenewal of this license, SEMSWA shall be permitted (at Owner's sole cost) to disconnect the Development from its access to SEMSWA's facilities, either at the property line of the development or at the outfall to the storm drainage facilities, and to take such additional steps as are necessary to ensure that the Development does not discharge stormwater into SEMSWA's facilities, without liability to Owner or to tenants or users of the Development. In addition, Owner shall defend, indemnify and hold SEMSWA harmless from any and all claims of liability or liability as a result of such disconnection. Upon disconnection, Owner shall immediately submit to SEMSWA plans reasonably satisfactory to SEMSWA which depict an alternative method for discharging, or an approved method of retaining, the stormwater from the Development. Upon approval by SEMSWA, Owner shall immediately undertake to construct such facilities and shall thereafter keep such facilities in good repair and operating condition.
- D. Owner is responsible for constructing, keeping in good repair, and replacing, as necessary, all facilities within the easement, except to the extent limited by the terms of SEMSWA's regulations. Except to the extent limited by the terms of SEMSWA's regulations, Owner also agrees to maintain, at its sole cost, the structure and operating and conveyance capacities of all facilities located on the Development, and Owner's pro-rata share of similar expenses for all facilities located between the Development and the Outfall defined in the plat or separate instrument. If an outfall is not otherwise defined, the Outfall shall be deemed to be the regional detention pond or underground storm sewer located in SEMSWA right of way into which storm drainage flows from the Development are conveyed. Owner's pro-rata share of the cost for a particular off-site facility shall be defined as SEMSWA's reasonable estimate of the percentage of the total stormwater flows designed to be carried by the particular facility that is attributable to the flows caused by drainage from the Development. All work shall conform to the standards and requirements of SEMSWA, and shall be subject to inspection by SEMSWA, upon terms, conditions and fee schedules as may be in effect from time to time.

- III. The Owner shall not assign this License or its obligations under these TERMS AND CONDITONS without the prior written approval of SEMSWA which approval shall be granted in SEMSWA sole discretion.