

**,MEMORANDUM OF UNDERSTANDING, "Memorandum,"
BY AND BETWEEN
THE CITY OF ORLANDO, A FLORIDA MUNICIPAL CORPORATION, "City,"
AND
CROWNPOINTE COMMERCE PARK OWNERS ASSOCIATION, INC.,
A FLORIDA CORPORATION, "Owner."**

WHEREAS, Owner owns property, as identified by Orange County Tax Parcel ID Nos. 29-23-29-1840-00-001 and 29-23-29-0000-00-004; and

WHEREAS the parties hereto agree that a section of the Shingle Creek Trail ("Trail") is to be located on Owner's property, said Trail to be located along the east property limits from the north property line to the south property line, as legally described on Exhibit "A" (hereinafter the "Premises"); and

WHEREAS, in order to accomplish construction of the Trail "Project" in the most efficient and economical manner the parties desire to memorialize the understandings and expectations of the parties with respect to this Project and to attach to this Memorandum as an exhibit the Deed ("DEED"), and the Temporary Construction Easement ("TCE") that will be entered into by the parties to accomplish the Project, as described in the construction plan sheets ("Plans") prepared by CPH Engineers, Inc., dated February 7, 2013; and 2014

WHEREAS, the Premises are currently the sole responsibility of Owner; however, the City has agreed to assume responsibility for the Premises, but only as described and limited by the terms of the DEED, TCE and this Memorandum; and

WHEREAS, the parties further state that it is their intention and understanding that each part of this Memorandum is dependent on all understandings and expectations of the Project being accomplished in accordance with the terms of this Memorandum.

NOW THEREFORE, the parties have agreed to the following commitments:

1. The Trail property shall be occupied and used solely for a Bike and Pedestrian Trail for use by the general public, including incidental purposes related thereto. There shall be no motorized vehicles of any kind allowed on the Premises, including, but not limited to motorcycles, motor scooters and 4-wheeled vehicles, with the exception of authorized maintenance, emergency and law enforcement vehicles. The making, execution and delivery of this Memorandum has been induced by no representations, statements, warranties, or agreements other than those contained herein. This Memorandum embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.
2. The City shall design and construct the Trail, including the section to be located on the Premises, as per the Plans. The construction of the section of the Trail on the Premises is currently expected to start in 2017, and the total construction is intended to

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be completed within 12 to 18 months of the commencement of the project construction.

In the unlikely event the Project construction is not to be programmed as expected in the 2017 fiscal year or in a prior fiscal year, the provisions contained herein shall remain applicable and in full force until construction of the Project. If construction of the Project has not commenced by the end of the 2021 calendar year, the City will pay Owner an additional \$45,000.00 for conveyance to the City of the Premises hereunder. Said payment shall occur by January 31, 2022.

Upon the City of Orlando's abandonment of the Premises for recreational trail purposes as is stated and agreed to between the parties herein, the City shall remove all of its trail improvements and execute and deliver to the Owner a deed in recordable form that conveys title to the Premises back to the Owner. Prior to transfer of title to the Premises back to the Owner, the City shall at its own expense restore the entire disturbed surface of the Premises as near as practicable to that condition which existed as of the time the Premises was granted to the City, or by smoothing the contour and sodding same; provided, however, any vegetation the City installs within the Premises may remain in place.

3. Within thirty days of the effective date of this Memorandum, and subject to the Owner approving the 90% Plans, the Owner shall grant, and execute in favor of the City, a DEED and TCE for the construction and/or maintenance of the Trail on the Premises, which the 100% Plans shall be in substantial conformity to the 90% Construction Plans for the Shingle Creek Trail, a copy of which is attached hereto as Exhibit "C", and is incorporated herein by reference, using the documents, including legal descriptions, attached hereto as Exhibit "B". Should there be substantial changes made to the 100% Plans, the Owner will be provided with the 100% Plans for review and approval of the substantial changes, and which approval shall not unreasonably be withheld. Even if there are no substantial changes made to the 100% Plans, a copy of the 100% Plans will be provided to the Owner for the Owner's records. The conveyance of the Premises and the TCE by Owner to the City was under the threat of condemnation, but donation of these rights is voluntary.

4. The section of the Trail located on the Premises will be constructed of either fiber or mesh reinforced concrete or asphalt paving or six (6) inch unreinforced concrete.

5. All on-going maintenance of the Premises and the Trail section on the Premises will become the City's responsibility one year after the conveyance of title to the Premises from the Owner to the City. GRANTOR: (a) shall owe no duty of care to keep the Premises safe for entry by others, or to give warning to persons entering or going on the Premises of any hazardous conditions, structures or activities thereon, beyond that which is the Owner's current obligation; (b) shall not be presumed to extend any assurance that the Premises is safe for any purpose; (c) shall not incur any duty of care toward a person who goes on the Premises; and (d) shall not become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the Premises; EXCEPT, however, to the extent any such liability would otherwise

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exist for GRANTOR's deliberate, willful or malicious injury to persons or property. The GRANTOR shall be responsible for all damage or injury on the Premises of any character during the one year of maintenance responsibility by the GRANTOR, resulting from any act, omission, neglect or misconduct in the GRANTOR's manner or method of activities on the Premises. When or where any direct or indirect damage or injury is done on the Premises by or on account of any act, omission, neglect or misconduct in the execution of activities on the GRANTOR's part, the GRANTOR shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring, as may be directed, or GRANTOR shall make good such damage or injury, in an acceptable manner.

6. The City's trimming of low-hanging tree limbs/shrubs that could interfere with safe utilization of the Trail, and the trimming of encroaching tree roots will be accomplished under the supervision of an arborist as part of the Trail construction and maintenance to ensure that said trimming will not impair the sustainability of adjacent trees. Any trees that are located adjacent to the Trail that could interfere with safe utilization of the Trail shall be removed by the City as part of the Trail construction and maintenance. Any trees that fall onto the Premises will also be removed as part of the Trail maintenance by the City. Owner will grant City the TCE as necessary to accomplish the obligations contained in this provision.

7. An information kiosk will be installed as part of the Trail construction as depicted on the Plans. The City shall assume ownership of, and maintenance responsibility for, the kiosk.

8. As per the Plans, a six (6) foot high, Black Ornamental Steel Fence and a black chain-link fence will be installed as part of the construction of the Trail on the west side of the Premises. Upon installation of the chain-link and ornamental fences, ownership and maintenance will be the responsibility of the City. Owner hereby grants City the TCE as necessary to accomplish the obligations contained in this provision. City has also coordinated with Owner for the location of gates in the fence so that Owner can have access from the Premises through such gates to maintain Owner's property to the west of the Premises. Such gates shall be secured for use by Owner by the City's provision to Owner of keys or a combination to the gate lock.

9. Landscaping improvements will be relocated and/or installed as per the Plans.

10. The Owner will own and be responsible for the maintenance of landscaping located outside the Premises.

11. The owner agrees to grant the TCE, attached as a part of Exhibit "B", to the City for the purpose of reconstructing the southern pond's north overflow weir structure located on the Owner's property but outside of the Premises. The City shall design, permit as necessary, and construct said weirs. Upon completion of project construction, the Owner will own and be responsible for

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maintenance of said weir structures in perpetuity. The weir reconstruction is to occur during the construction of the Project on the Premises. Owner's approval in writing to the City of the construction plans, that includes the design for replacement of both weirs, shall constitute acceptance of the construction design of both weirs by Owner. The City hereby acknowledges that said weirs will not be in compliance with stormwater permit requirements until the weirs have been reconstructed. Based on the fact that a plan for the timely reconstruction of the weirs has been established and based on the condition that Owner fully complies with its obligations under this MOU and does not cause a delay in the reconstruction, the City will not issue notice(s) of non-compliance or fines to the Owner for non-compliance with the requirements of the stormwater permit that relate to said weirs. Notwithstanding the City's agreement, as described in the previous sentence, the City must retain the authority to enforce repair/replacement of the southern weir in the event of a catastrophic failure. The parties acknowledge that the City is only responsible for reconstruction of the weirs, as necessary, in conjunction with construction of the Project which may not be for several years. The parties further acknowledge that the City is not responsible for any damage caused by the condition of the weirs or any repair/reconstruction of the weirs that is necessary prior to the City's reconstruction obligations arising under this Agreement. The Owner owns and is responsible for the weirs subject only to the City's reconstruction obligations under this Agreement.

The parties acknowledge that the section of the northern weir that had previously deteriorated and was no longer functional has been removed by the Owner. The City will reconstruct said northern weir during construction of the Project and the Owner will not be required by the City to replace the remaining portion or the previously removed section of the northern weir prior to the replacement of the northern weir by the City during construction of the Project. As previously stated, the City is not responsible for any damage caused by the condition of the weirs or any repair/reconstruction of both weirs that may be necessary prior to the City's reconstruction obligations arising under this Agreement.

The parties acknowledge that the southern weir will require repairs by the Owner prior to reconstruction of said weir by the City during construction of the Project. The parties further acknowledge that with the agreed to plan for replacement of the southern weir by the City during construction of the Project, the cumulative cost to the Owner for repairs to the southern weir in the interim has the potential to not be economically justifiable. The Owner has recently completed repairs to the southern weir that cost the Owner \$3,500. Should any repair(s) to the southern weir that may be required subsequent to the recently completed repair exceed a total of \$3,500 as estimated by a qualified and licensed construction contractor, the total cost of the current and estimated repair(s) would exceed \$7,000. The parties hereby agree that if the cumulative cost of the current repair and future repair cost estimate(s) exceed \$7,000, further repairs to the southern weir will not be justified and the southern weir must be replaced at that time by the Owner at the Owner's expense and as per the construction plans prepared for the Project.

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Any estimate(s) obtained by the Owner for the cost to repair the southern weir will be provided to the City. If the City does not agree with a cost estimate(s) and plan(s) obtained by the Owner for a proposed repair(s) to the southern weir that exceed(s) the \$7,000 cumulative repair cost referenced above, the determination from an independent review by a third-party engineer agreeable to both the City and the Owner will be selected to review the repair plan(s) and cost estimate(s), and this third-party engineer's determination will dictate the repair plan(s) to be implemented, if applicable. If the third-party engineer determines that a cost estimate(s) and proposed plan(s) obtained by the Owner for repair(s) to the southern weir that exceeds \$3,500 is reasonable and appropriate, then the Owner will contribute \$3,500 to be applied to the cost of repairs and the City will be responsible for said cost in excess of \$3,500 unless the City determines that further repairs to the southern weir are not justified and the Owner will replace the southern weir at that time as described herein. If the third-party engineer determines that an alternate repair plan that will not exceed \$3,500 is viable, the Owner will obtain a repair plan and estimate for an alternate repair plan and make repairs to the southern weir in accordance with that plan. The fees that may be incurred for the third-party engineer's review and determination will be included in the calculation of the above referenced total \$3,500 repair cost.

The parties acknowledge that the conditions and terms of the Project's LAP Construction Grant Funds do not allow for the City to reimburse the Owner for the cost of replacing the southern weir using the Project's Lap Construction Grant Funds, should such be necessary prior to construction of the Project. In the unlikely event that construction for replacement of the southern weir by the Owner must occur prior to construction of the Project as determined by the third-party engineer to be necessary to prevent a collapse or failure of the southern weir, , the City will seek and obtain funds from a City funding source that is separate from the Project's LAP Construction Grant Funds for reimbursement to the Owner for the reasonable cost the Owner will have incurred for replacement of the southern weir. The City will initiate the process to obtain approval for the encumbrance and allocation of said City funds to reimburse the Owner for the actual cost incurred to replace the southern weir upon receipt from the Owner of a contractor's cost estimate(s) for repairs to the southern weir that exceed \$3,500 as provided for in the above paragraph, unless the City determines the cost of the repairs in excess of the \$3,500 is a justified expenditure of City funds to extend the physical life of the southern weir until the southern weir is reconstructed as part of the Project. The timing for commencement of the City's efforts to encumber City funds for this purpose is to allow for the City to be able to guarantee reimbursement to the Owner for the actual cost incurred to replace the southern weir within 90 days of receipt by the City of the documentation from the Owner of the actual costs that were paid by the Owner for replacement of the southern weir prior to construction of the Project.

12. As indicated on the Plans, the pedestrian access gates to the Sequoia Drive Distribution Center , LLC, properties (Tax Parcel ID Nos. 20-23-29-1842-01-000 and 20-23-29-1842-02-000), and the KTR Central Florida LLC, property (Tax Parcel ID No. 29-23-29-1841-16-000), located within the Crownpointe Commerce Park and to be

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installed by the City, will be self-closing and self-locking. Should another property owner within the Crownpointe Commerce Park request a pedestrian trail access gate on their property, the gate(s) will be self-closing and self-locking, and written notification will be provided to the Crownpointe Commerce Park Owner Association's Property Manager of the property owner's request. The owner's of the two properties {a/k/a KTR Central Florida, LLC (Tax Parcel ID No29-23-29-1841-16-000), and Sequoia Drive Distribution Center, LLC (Tax Parcel ID Nos. 20-23-29-1842-01-000 and 20-23-29-1842-02-000)} located adjacent to the Shingle Creek Trail, have requested pedestrian access gates for utilization only by those authorized by each of these property owners and emergency personnel, and the construction plans reflect the location of the pedestrian access gates as requested by these two property owners. The City will install the pedestrian access gate(s) for the benefit of each of these property owners without any cost to Owner. No pedestrian access gates for utilization by the general public will be installed on the Premises without the written approval of the Crownpointe Commerce Park Owner Association's Property Manager.

13. As indicated on the Plans, the maintenance and emergency vehicle access gates will be utilized solely for these and related incidental purposes, and will not be available for access to/from the Premises by the general public. Said vehicle access gates will be padlocked to provide access to the Premises by the City, the Owner and emergency personnel.

14. As indicated on the Plans, access gates for maintenance of the ponds and shorelines by the Owner will be installed by the City.

15. Signage will be installed by the City at the north (Oak Ridge Road) and south (Sand Lake Road) trail points identifying City policy for permitted uses of the Trail.

16. Signage will be installed by the City in the vicinity of the ponds and at the pond overlooks identifying No Trespassing outside of the trail limits is allowed and that fishing, swimming and boating are not permitted from Overlook "B".

17. Signage will be installed by the City at the Sand Lake Road/Kingspointe Parkway entrance to the Crownpointe Commerce Park warning pedestrians and bicyclists of the large number of transport trucks on the Crownpointe Commerce Park roadways.

18. As per the Plans, trash receptacles of an animal deterrent/resistant design will be installed by the City along the Trail. City agrees to empty the trash and maintain the receptacles in a sightly condition as frequently as necessary, including to prevent overflow of trash.

19. As per the Plans, the scenic pond overlooks/rest areas will have under-deck screening to prevent access and trash from accumulating underneath.

20. The Trail along the Premises will be open daily for public use with the posted

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operating hours being dawn to dusk. The Trail is located within the Orlando Police Department's (OPD) West Patrol Division E Sector, which will provide crime prevention and police protection services in the area of and along the path of the Trail. OPD's International Drive Bike Patrol Unit currently operates out of a satellite office located at Grand National Drive and International Drive and will also assist uniform patrol in providing provide bike patrol services in the area of and along the path of the Trail.

21. OPD will enforce State of Florida statutes related to illegally parked vehicles.

22. As per the Plans, the City intends to install ~~emergency call boxes and motion-sensitive cameras~~ at the identified locations along the Trail in conjunction with the construction of the Shingle Creek Trail Project, subject to all applicable Federal, State and Local laws and regulations of same. If the ~~emergency call boxes and/or motion-sensitive cameras~~ are not installed as part of the Shingle Creek Trail Construction Project, the City will install the ~~emergency call boxes and/or motion-sensitive cameras~~ as per the plans subsequent to completion of the Shingle Creek Trail Construction Project.

KCL 8/25/14

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23. Owner has been given the opportunity to have their representatives and attorney review the MOU, DEED, TCE and Plans prior to execution in order to offer recommended additions, modifications, etc., if any.

24. The City of Orlando will reimburse Crownpointe Commerce Park Owners Association, Inc., for the reasonable and customary fees incurred for legal representation for grant of the trail area. It is acknowledged that approximately \$16,000 in legal fees have been incurred to date for prior negotiation and coordination efforts, which has resulted in the preparation of the Memorandum of Agreement and Notice of Intent (enclosed). Therefore, the City and Owner agree that the cost for legal representation needed to complete and finalize all documents for a closing can be achieved for a total sum of \$17,900, and the City commits to reimburse the Crownpointe Commerce Park Owners Association, Inc., up to this not-to-exceed amount of \$17,900. The payments described herein shall be made contemporaneously with the transfer of the DEED, and the TCE to the City.

25. The City will contribute \$45,000 to the Crownpointe Commerce Park Owners Association, Inc., to offset certain costs that may be incurred by the POA related to the grant of the trail area. The payments described herein shall be made contemporaneously with the transfer of the DEED and the TCE to the City.

26. The Owner hereby warrants and represents that Owner is lawfully seized and possessed of the real estate herein described, and that they have good and lawful right to convey the DEED and TCE to the City, and that K.C. Ladnier, President of the Crownpointe Commerce Park Owners Association, Inc., has the authority to execute this Memorandum, the Deed and the TCE on behalf of Owner. The Owner shall convey the Deed and the TCE free and clear of all liens and encumbrances, except taxes for the

year 2013. Conveyance of the properties described herein is contingent upon (i) the City's determination of marketable title and (ii) the conditions of insuring marketable title imposed by the title insurance commitment obtained by the City.

27. The Owner acknowledges that, as the owner of the Premises and the property referenced and as shown in Exhibit "B," Owner desires to make a voluntary donation of the DEED and TCE to the City for the use and benefit of the City, and that they have been advised of their right to have the referenced property interest appraised, to accompany the appraiser during the appraisal inspection of the property, to receive full compensation for the above referenced property interests, and to receive reimbursement for reasonable fees and cost incurred, if any. Having been fully informed of the above rights, the Owner waives these rights unless stated otherwise herein.

28. The section of the Trail on the Owner's property will not encroach outside the limits of the Premises, or interfere with the functional operation of the Owner's property located outside of the Premises.

29. None of the Trail construction activities will occur outside of the Premises or TCE limits.

30. The parties hereto acknowledge that additional agreements may need to be entered into to allow each party to perform under the terms of this agreement and that various conveyances will need to be made to allow this project to move forward. Each party agrees to use their best efforts to execute the necessary agreements and documents for the conveyance in a timely manner.

31. This agreement and its attachments constitutes the complete and final expression of the parties with respect to the subject matter hereof and incorporates and includes all prior negotiations, agreements and understandings regarding the matters contained herein, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

32. In further consideration of this Memorandum and the conveyance of the Premises to the City for the Trail Project, the City agrees to indemnify, hold harmless and defend Owner, its agents, representatives, employees and assigns, from and against any and all claims, causes of action, demands, suits, interest, liens, liabilities, attorneys' fees and losses whatsoever arising out of the City's construction of the Trail Project upon the Premises, and thereafter the use of the Premises by the general public, with the intent of this provision including that the Owner, its agents, representatives, employees and assigns, incur no loss or liability whatsoever for conveying the Premises to the City for the construction of the Trail Project and for the use of the Premises for the Trail Project. The City of Orlando's indemnity obligation shall include, without limitation, any negligent acts, omissions to act, or willful misconduct, whether active or passive, on the part of the City of Orlando, its contractors and agents but shall not extend to the negligence or willful misconduct of the Owner, its contractors or agents. Nothing herein shall be construed as a waiver of the City's grant of sovereign immunity beyond the

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extent of that provided for in Section 768.28, *Florida Statutes*, as may be amended from time to time. The City's above-referenced indemnity obligation is further subject to the limits of liability referenced in said Section or established under Florida law. In consideration for the City's covenants and payment, as described herein, Owner agrees to indemnify, hold harmless and defend City, its agents, representatives, employees, appointed and elected official and assigns, from and against any and all claims, causes of action, demands, suits, interest, liens, liabilities, attorneys' fees and losses whatsoever arising out of the Owner's activities on the Premises.

33. In connection with any litigation between Owner and City arising out of this Memorandum, the Deed, the TCE, the construction of the Trail Project or use of the Premises for the bike and pedestrian path, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

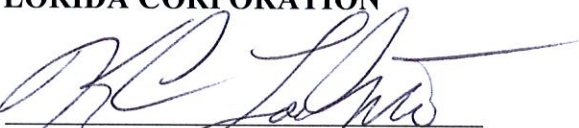
34. This Memorandum shall become effective upon the date last signed by the below parties.

35. The City shall pay all closing costs for the conveyances required by this Memorandum, including title work and recording fees. The City shall provide warrants at the closing for payment of the referenced Owner costs and attorney fees/costs as are stated herein.

[signatures to follow]

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**CROWNPOINTE COMMERCE PARK OWNERS ASSOCIATION, INC.,
A FLORIDA CORPORATION**

By: 
Owner's/Representatives Signature
K.C. Ladnick
Print Owner's/Representatives Name

4221 Playa Court
Orlando, FL 32812

02/04/2014
Date

CITY OF ORLANDO, FLORIDA,
a Florida municipal corporation

By: _____
Mayor/Mayor Pro Tem

400 South Orange Avenue
Orlando, Florida 32801

Date

Attest:

Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY,
for use and reliance by the City of Orlando, Florida, only.

Assistant City Attorney

Date