

**THIS DOCUMENT PREPARED BY  
AND RETURN TO:**

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32802  
(407) 246-2295

**TRANSPORTATION AGREEMENT**

**THIS TRANSPORTATION AGREEMENT** (hereinafter the "Agreement") is entered into this \_\_\_\_\_ date of \_\_\_\_\_, 2014 by and between the **City of Orlando**, Florida, a municipal corporation organized and existing pursuant to the laws of the State of Florida with an address of 400 South Orange Avenue, Orlando, Florida 32802 (hereinafter "the City") and **Lake Nona Central, LLC**, a Florida limited liability company with an address of 9801 Lake Nona Road, Orlando, Florida 32827 (hereinafter "the Developer").

**WITNESSETH:**

**WHEREAS**, the Developer is the owner of real property in the City of Orlando, generally located south of Dowden Road, west of Narcoossee Road and east of the Orlando International Airport, lying within the project more commonly known as the Lake Nona Development of Regional Impact (the "Lake Nona DRI") and the property more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

**WHEREAS**, the Property is subject to that certain Fourth Amended and Restated Development Order for the Lake Nona Development of Regional Impact recorded on December 4, 2007 in Official Records Book 9522, Page 525, that certain First Amendment recorded on March 26, 2008, in Official Records Book 9640, Page 1888, that certain Second Amendment

recorded on July 10, 2012, in Official Records Book 10406, Page 4222, and that certain Third Amendment recorded on November 27, 2013, in Official Records Book 10670, Page 3145, all in the Public Records of Orange County, Florida (collectively, the “Development Order”); and

**WHEREAS**, the United States Tennis Association ("USTA") has selected an approximately 63-acre site within the Lake Nona DRI (the "Project Site") for its newest tennis complex, to be the largest such complex in the country, consisting of a high performance player development area, tournament and league areas, administrative offices, and a collegiate tennis area, with seating for 1,200 which will serve as the home of the University of Central Florida's men's and women's varsity tennis programs (the "Project"); and

**WHEREAS**, the Project qualifies as a Target Industry pursuant to the State of Florida, Department of Economic Opportunity, Division of Strategic Business Development Qualified Target Industry (QTI) Tax Refund Program; and

**WHEREAS**, the Project is anticipated to generate new annual demand in excess of 50,000 hotel room nights; and

**WHEREAS**, the Project qualifies within a high-impact sector as defined by Chapter 288.108, Florida Statutes; and

**WHEREAS**, the Project contains a national headquarters component, elevating Orlando as a home for corporate governance; and

**WHEREAS**, the Project is located in an area where the City of Orlando Growth Management Plan provides policy support for enhanced and accelerated job creation.

Specifically, Goal 4 in the Future Land Use Element of the Growth Management Plan includes the following:

*The City also recognizes the importance of the emerging bio-medical cluster in the Southeast Orlando Sector Plan/Lake Nona area (the Medical City), particularly in regards to the provision of quality health care for Orlando area citizens, the advancement of health and medical sciences through education and research, and the potential commerce and economic development opportunities inherent to the bio-medical field. Because the Medical City concept is so vital to the diversification of Orlando's economy and the creation of a healthy jobs/housing balance, the City of Orlando is dedicated to the continued growth of medical and health related businesses and institutions in the Southeast Orlando Sector Plan/Lake Nona area.*

**WHEREAS**, the Project is planned to build upon the emerging bio-medical cluster at Lake Nona, and will act as an attractor for allied businesses and industries associated with sports and wellness related research and development in human performance and new products; and

**WHEREAS**, improvements proposed to accommodate the Project include an approximately 1.25 mile two-lane divided roadway extending from Lake Nona Boulevard that will provide accessibility to the Project Site for employees, visitors and players (the "Entry Road"); and

**WHEREAS**, Developer has requested that the City participate in the Project by purchasing the Entry Road right-of-way and by paying a portion of the cost of designing and constructing the Entry Road; and

**WHEREAS**, due the extremely unique nature of the Project, as described above, and the significant positive impacts to economic development within this area of the City, as well as the national exposure that the Project will bring to the City, City has agreed to participate in the construction under the following terms.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City agree as follows:

1.     Recitals. The Recitals set forth in the preamble to this Agreement are true and correct and are incorporated herein by this reference as if fully set out below.

2.     Right-of-Way Dedication. The Developer shall dedicate or convey to the City right-of-way for the Entry Road in an approximately \_\_\_\_\_(\_\_\_\_) foot wide cross section from the boundary of the Project Site to Lake Nona Boulevard (hereinafter the "Right-of-Way"). Developer shall ensure that the Right-of-Way is conveyed to the City free and clear of any and all liens, encumbrances or mortgages to the satisfaction of the City. Said conveyance shall occur by Special Warranty Deed or by subdivision plat, upon the City's certification as provided in Paragraph 4, below and the City's acceptance of the Entry Road for maintenance. The Right-of-Way value shall be based on the fair market value as provided in that certain Market Value Appraisal Report dated April 28, 2011 prepared by Integra Realty Resources multiplied by the acreage of the Right-of-Way to be dedicated (the "Right-of-Way Value"). In consultation with the City, the Right-of-Way boundary and the Right-of-Way Value shall be established by Developer consistent with this Paragraph and transmitted in writing to the City within ninety (90) days of the Effective Date of this Agreement.

3.     Entry Road/City Payment. Developer is solely responsible for the design, permitting and construction of the Entry Road as a two-lane divided roadway extending from Lake Nona Boulevard to the Project Site with a cross-section typical of similar roadways within the Lake Nona DRI. Developer shall incorporate the City's comments regarding design and

construction of the Entry Road as much as reasonably practicable. In consideration for Developer's construction of the Entry Road and dedication of the Right-of-Way to the City and due to the unique nature of the Project, including though not exclusively, the significant economic development impacts to the area and the commensurate establishment of additional tax base, the City agrees to purchase the Right-of-Way from Developer and to pay a Developer a portion of the cost of designing and constructing the Entry Road, in the total amount of Four Million Dollars (\$4,000,000.00), "City Payment." The City Payment is specifically conditioned upon the Developer's completion of the Entry Road and dedication of the Right-of-Way to the City as provided herein. Developer shall be entitled to the City Payment regardless of whether such costs for design, engineering and permitting costs, and construction are funded, all or in part, by the Economic Development Transportation Fund grant applied for or to be applied for the Entry Road. City shall make the City Payment to Developer no later than the earlier of the City's certification of the Entry Road or \_\_\_\_\_, 2015. Developer acknowledges that such funds received by Developer pursuant to this Paragraph shall be passed through to USTA in the form of cash or credit for financial obligations directly related to the Project, due Developer from USTA, less any Developer funds previously advanced to USTA by Developer that shall instead be reimbursed to Developer.

4. Certification. Upon completion of the Entry Road, the City shall conduct a final inspection. If the City determines that all work has been completed in conformance with the permitted Construction Plans and any other applicable construction, permitting or engineering requirements, City shall promptly notify Developer in writing. Upon receipt of the City's written notification, Developer shall cause the contractor for the Entry Road to submit a final completion certification of the Entry Road to the City. This certification shall be accompanied by the As-

Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any. The Entry Road remains the sole and exclusive responsibility of the Developer until the City's certification hereunder. In the event work is discovered which is defective or otherwise non-conforming to the requirements of the City-permitted construction Plans, Developer shall immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conformity to the satisfaction of the City prior to the City's certification. Upon completion of the Entry Road and the City's certification, Developer 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 Entry Road. As a condition of certification, City shall be named as additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Entry Road is certified by the City.

5.     Litigation and Attorneys' Fees. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to attorneys' fees, experts' fees and costs, in addition to any other relief granted as a result of such litigation.

6.     Legal Validity. No statements, representations, warranties, either written or oral from whatsoever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications

hereof shall be effective unless made in writing and executed by the parties with the same formalities as this Agreement is executed.

7. Terms. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

8. No Waiver. This Agreement does not, in any way, constitute a waiver of City's rights to approve and/or regulate development of the Property in accordance with the City Code and any other applicable laws or regulations.

9. Interpretation. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

10. Legal Counsel. All the parties to this Agreement acknowledge that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement and all parties represent and warrant that they have sought such independent legal advice and counsel or have knowingly or voluntarily waived this right.

11. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party. Further, this Agreement was drafted jointly by all parties and no party is entitled to the benefit of any rule of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

12. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supercedes all previous discussions, understandings and agreements; provided however that it does not supercede City Code.

13. Release. At such time as the terms, obligations and conditions of this Agreement have been met, the parties hereto agree to execute a document in recordable form, stating that said terms, obligations, and conditions have been satisfied.

14. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.

15. Governing Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies or disputes arising out of or relating to any part of this Agreement or any breach thereof shall be Orange County, Florida.

16. Due Diligence. All parties to this Agreement covenant that they shall immediately commence all reasonable action necessary to fulfill their obligations hereunder and shall diligently pursue same throughout the existence of this Agreement.



17. Binding Effect. This Agreement, once effective, shall run with the Property described herein and shall be binding upon and enforceable by and against the parties hereto and their beneficiaries, heirs, successors and assigns.

18. Enforcement and Remedies. If either party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting party shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated in this Agreement, to (i) bring an action for the recovery of actual damages (not including punitive, consequential or incidental loss or damage) in a court of competent jurisdiction; and/or (ii) bring an action for specific performance in a court of competent jurisdiction. In the event the City asserts that the Developer is in material breach of a covenant contained herein, the City shall provide written notice of such event and allow the Developer forty-five (45) days from the receipt of such notice in which to cure such material breach; provided, however, if such material breach is of a nature that it cannot reasonably be cured within such forty-five (45) day period, then the Developer shall be allowed a reasonable period of time to cure such material breach provided that it diligently undertakes and pursues such cure. In the event the Developer asserts that the City is in material breach of a covenant contained herein, the Developer shall provide written notice of such event and allow the City forty-five (45) days from the receipt of such notice in which to cure such material breach; provided, however, if such material breach is of a nature that it cannot reasonably be cured within such forty-five (45) day period, then the City shall be allowed a reasonable period of time to cure such material breach provided that it diligently undertakes and pursues such cure.

19. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered upon receipt before 5:00 p.m. on a business day by hand delivery, facsimile, overnight courier or U.S. Mail, postage prepaid, certified mail, return receipt requested and addressed to a party at the address set forth opposite the party's name below, or at such other address the party may have specified by written notice to the other party delivered in accordance herewith:

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|------------------|---|
| As to the City:  | Director, Transportation Department<br>City of Orlando<br>Post Office Box 4990<br>Orlando, Florida 32802-4990<br>Fax Number: (407) 246-2892       |
| Copy To:         | City Attorney City of Orlando<br>Post Office Box 4990<br>Orlando, Florida 32802-4990<br>Fax Number: (407) 246-2854                                |
| As to Developer: | Lake Nona Central, LLC<br>Attn: James L. Zboril, President<br>9801 Lake Nona Road<br>Orlando, Florida 32827<br>Fax Number: (407) 438-0207         |
| And:             | Lake Nona Central, LLC<br>Attn: Michelle Rencoret, General Counsel<br>9801 Lake Nona Road<br>Orlando, Florida 32827<br>Fax Number: (407) 438-0207 |
| Copy To:         | Broad and Cassel<br>Attn: C. David Brown, II, P.A.<br>390 North Orange Avenue, Suite 1400<br>Orlando, Florida 32801<br>Fax Number: (407) 650-0910 |

20. Force Majeure. The parties shall use reasonable diligence to complete the obligations set forth herein but shall not be liable to each other, or their successors or assigns for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract or otherwise for failure, suspension, demolition or other variations of services occasioned by acts of God or of the public enemy, acts of other government (including regulatory entities or court) in its sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes or failure or breakdown of transmission or other facilities. parties.

21. Records Retention. Developer shall retain sufficient records of the Entry Road costs for the purpose of auditing for a period of at least five years from the completion of construction. City may audit said records at any time upon written notice to Developer.

22. Effective Date. This Agreement shall become effective upon its execution by all parties.

**IN WITNESS WHEREOF**, Developer has caused this instrument to be executed in its name and the City, acting by and through its Mayor and City Council, has caused this instrument to be executed in its name by the Mayor, its seal hereunto affixed and attested by the City Clerk, on the day and year first above written.

ATTEST:

\_\_\_\_\_  
Alana C. Brenner, City Clerk

CITY OF ORLANDO

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

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

\_\_\_\_\_, 2014  
Chief Assistant City Attorney

**"DEVELOPER"**

TWO WITNESSES:

LAKE NONA CENTRAL, LLC, a Florida  
limited liability company

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

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

By: \_\_\_\_\_  
James L. Zboril, President

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by James L. Zboril, who is personally known to me or who has produced \_\_\_\_\_, as identification, and acknowledged before me that he executed the foregoing instrument as President of Lake Nona Central, LLC, a Florida limited liability company, as its true act and deed, and that he was duly authorized so to do.

WITNESS MY hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public – State of Florida at Large

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

My commission expires:

**EXHIBIT "A"**  
**Legal Description**  
(Lake Nona DRI)