

THIS INSTRUMENT PREPARED BY:

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

LICENSE, REMOVAL and MAINTENANCE AGREEMENT
FOR LAKE NONA POND 2

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as “CITY”), whose mailing address is 400 S. Orange Avenue, Orlando, FL, 32802 and **LAKE NONA MARKETPLACE, LLC**, a Florida limited liability company, whose address is 2701 Michigan Avenue, Ste. J, Kissimmee, FL, 34744, (hereinafter referred to as the “DEVELOPER”).

RECITALS:

WHEREAS, CITY is the owner of certain real property, consisting of approximately 8.59 acres located east of Narcoossee Road, south of Moss Park Road and north of SR 417, in east Orange County, more particularly depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (the “CITY PROPERTY”); and

WHEREAS, CITY operates and maintains a stormwater pond, “Pond,” on the CITY PROPERTY that accommodates water runoff from Narcoossee Road; and

WHEREAS, DEVELOPER owns property in unincorporated Orange County adjacent to the CITY PROPERTY, consisting of approximately 2.65 acres with an address of 10783 Narcoossee Road, Orlando, FL, 32832, more particularly depicted in **Exhibit “B”** attached hereto and incorporated herein by reference (the “DEVELOPER PROPERTY”); and

WHEREAS, DEVELOPER has developed the DEVELOPER PROPERTY as a Mixed Use Commercial Building, consisting of 10,600 sq. ft., “Project”; and

WHEREAS, in conjunction with operation of the Project, DEVELOPER has requested that the CITY allow DEVELOPER to encroach onto a small portion of the CITY PROPERTY, “License Area,” to construct pavers, movable seating, walkways and landscaping, “Improvements,” all as generally shown in **Exhibit “B”**, attached hereto and made a part hereof by reference; and

WHEREAS, the Improvements shown in **Exhibit “B”** will be more particularly identified in the construction plans included in the permit application to Orange County; and

WHEREAS, as a condition of its consent to construction of the Improvements, the CITY requires that the DEVELOPER enter into a binding agreement providing, among other things, for removal of the Improvements under certain conditions; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. License. The CITY hereby grants permission to the DEVELOPER to enter upon the License Area solely for the installation and maintenance of the Improvements, and the Additional Improvements as that term is hereinafter defined, and for the maintenance of the Pond as described in Paragraph 6, below, and for no other purpose whatsoever. It is solely DEVELOPER’s responsibility to ensure that no one occupies the CITY PROPERTY beyond the License Area.
3. Release. DEVELOPER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability arising in any way from this Agreement, including though not exclusively, the construction and maintenance of the Improvements or Additional Improvements as that term is hereinafter defined, the CITY’s maintenance of the Pond and surrounding Pond area and any activities occurring within the CITY PROPERTY including the License Area.
4. Priority of City Property and Right-of Way. The Improvements and Additional Improvements shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY’s use of the CITY PROPERTY, including maintenance of the Pond and any public or general utility improvements.
5. Improvements. As referenced above, the Improvements are shown in general terms on **Exhibit “B.”** In order to provide a detailed description of the Improvements as required by this Agreement, DEVELOPER shall submit the construction plans for the Improvements to the CITY for review and approval prior to submittal of the permit application to Orange County. Once approved by the CITY and permitted by Orange County, the construction plans shall constitute the description of the

Improvements allowed under this Agreement. In consideration for the CITY's consent to construction and maintenance of the Improvements on the CITY PROPERTY, as described herein, the DEVELOPER agrees, at its sole cost and expense, to construct, maintain, and repair the Improvements, consistent with reasonable engineering standards and all applicable laws, codes, and regulations, including, though not exclusively, the permit issued by Orange County. DEVELOPER is fully and solely responsible for the Improvements and any liability and claims, including damages, arising therefrom and arising from the operation of the Project in proximity to the CITY PROPERTY and the Pond and arising from any activities occurring within the License Area.

6. Maintenance of Pond. In consideration for this License, DEVELOPER shall also maintain the area around the Pond as shown in **Exhibit "B,"** from the edge of water to the outside of the berm. Said maintenance shall consist of mowing, vegetation control and litter pick-up, and shall comply with, or exceed, the CITY's maintenance standards. CITY and DEVELOPER shall within thirty (30) days of the execution of this Agreement establish a written maintenance schedule, "Maintenance Schedule," that describes DEVELOPER's obligations with respect to maintenance of both the Improvements and the Pond area. DEVELOPER shall not conduct any activities on the CITY PROPERTY except in conformance to the Maintenance Schedule. DEVELOPER shall conduct such maintenance activities in a reasonable manner and is responsible for any and all liability arising from said maintenance activities. DEVELOPER may increase or revise its maintenance activities by providing a revised Maintenance Schedule to the CITY for review and approval. DEVELOPER acknowledges that CITY will be maintaining the remaining portion of the Pond and surrounding area per its standards. DEVELOPER shall ensure that CITY has full and adequate access for vehicles and equipment to perform said maintenance. CITY shall not be responsible for any damage or liability arising from CITY's maintenance of the remaining area of the Pond.
7. No Waiver/No Vesting. This Agreement does not constitute a waiver of the CITY'S regulatory authority. This Agreement does not operate to vest any interest or right whatsoever.
8. Insurance. DEVELOPER shall possess and maintain, at all times during the term of this Agreement: general liability insurance in the amount of at least \$3,000,000, in order to protect the CITY from any covered liability, claims, damages, losses or expenses arising from or out of in any way connected with (i) this Agreement, (ii) the construction and maintenance of the Improvements and Additional

Improvements, (iii) maintenance of the Pond area, (iv) CITY's maintenance of the Pond area, and (v) operation of the Project in proximity to the Pond. The policy shall contain a contractual endorsement to the CITY and CITY shall be listed as an additional insured on the general liability policy. DEVELOPER shall provide the CITY with proof of such insurance prior to initiating any work on the Improvements and CITY may further request proof of such insurance at any time. Nothing in this Agreement operates as a waiver of the CITY's grant of sovereign immunity or the limits of liability established under Florida law.

9. Contingency. This Agreement is contingent upon the CITY's certification that construction and maintenance of the Improvements is conducted consistent with the permitted construction plans, reasonable engineering standards and any applicable laws, rules or regulations.
10. Indemnification. The DEVELOPER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from (i) this Agreement, (ii) the DEVELOPER's construction and maintenance of the Improvements and the Additional Improvements, (ii) DEVELOPER's maintenance of the Pond area, (iv) CITY's maintenance of the Pond area and (v) operation of the Project in proximity to the Pond. Nothing in this Agreement operates as a waiver of the CITY's grant of sovereign immunity or the limits of liability established under Florida law.
11. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the DEVELOPER.
12. Recording. The DEVELOPER will record this Agreement, at its expense, in the Public Records of Orange County, Florida.
13. Controlling Laws.
 - a. 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.

- b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
 - c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.
- 14. Miscellaneous.
 - a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
 - b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
- 15. Legal Counsel. DEVELOPER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that DEVELOPER represents and warrants that it has sought such independent legal advice and counsel.
- 16. Attorney's Fees. DEVELOPER agrees that it shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.
- 17. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules 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.

18. Termination of License and Removal of Improvements. The CITY retains the right to revoke this License and terminate this Agreement at any time and for any reason, by notifying the DEVELOPER in writing at the address listed in the initial paragraph of this Agreement. DEVELOPER acknowledges CITY'S revocation/termination rights under this Paragraph and hereby waives any and all claims for damages and liability that may arise from such termination. DEVELOPER shall remove the Improvements, and any and all attendant improvements, from the CITY PROPERTY, within twenty (20) days of the date of the written notice of termination to DEVELOPER. If the DEVELOPER fails to remove the Improvements and attendant encroachments, within the above-described timeframe, the CITY may remove same and charge the cost of removal to the DEVELOPER. Should the DEVELOPER fail to pay the costs of CITY's removal of the Improvements within twenty (20) days of the CITY'S request, the CITY may file a lien against the DEVELOPER'S adjacent property to accrue interest at the statutory rate.
19. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the CITY PROPERTY.
20. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

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

By: _____
Alana Brenner, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this _____ day of _____, 2014 by _____, Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name

Notary Public Serial Number

Signed in the presence of Two Witnesses:

LAKE NONA MARKETPLACE, LLC, a
Florida limited liability company

Signature

Print Name: _____

By: _____

Name: _____

Signature

Print Name: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING was acknowledged before me this _____ day of _____ 2014, by
_____, as _____ of LAKE NONA
MARKETPLACE, LLC, a Florida limited liability company. He/She ☐ is personally known to me or ☐
who has produced _____ as identification.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____