

THIS DOCUMENT PREPARED
BY AND RETURN TO:
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**AGREEMENT TERMINATING THE DEVELOPER'S AGREEMENT REGARDING
TRANSPORTATION IMPROVEMENTS FOR THE GARDENS AT MILLENIA
BOULEVARD BETWEEN HEARTWOOD 21, LLC AND CITY OF ORLANDO**

THIS AGREEMENT, "AGREEMENT," terminating the Developer's Agreement Regarding Transportation Improvements for the Gardens at Millennia Boulevard ("Developer's Agreement"), between **City of Orlando, Florida** (the "City"), a municipal corporation organized and existing under the laws of the State of Florida, whose address is c/o City Clerk, 400 South Orange Avenue, Orlando, FL, 32802, and **Heartwood 21, LLC**, a Florida limited liability company, as successor to LeRoyal International Development, LLC, a Florida limited liability company, as successor to Le Royal, Inc., (the "Developer"), whose address for purposes of this Agreement is 2100 West Cypress Creek Rd., Fort Lauderdale, FL 33309. This Agreement is effectively entered into this ____ day of _____, 2014.

WHEREAS, Developer is the owner and developer of certain property located at 3851 Millenia Boulevard, more particularly described in **Exhibit "A,"** attached hereto and made a part hereof by reference, "Subject Property;" and

WHEREAS, the Developer's predecessors-in-interest originally proposed to construct a large-scale mixed use project, known as the Gardens at Millenia Boulevard Project, "Project," upon the Subject Property; and

WHEREAS, on November 16, 2006, the City and the Developer's predecessors-in-interest entered into a Developer's Agreement Regarding Transportation Improvements for the Gardens at Millenia Boulevard between LeRoyal, Inc. and City of Orlando, "Developer's Agreement"; and

WHEREAS, the Developer's Agreement provided, among other things, that the Project would be vested with 676 additional net external Peak Hour trips, (a total of 2524 PM Peak Hour trips designated for development of the Project) conditioned upon the Developer's payment of

funds to the City for construction of certain off-site transportation improvements, “Transportation Improvements,” made necessary by construction of the Project; and

WHEREAS, to set aside and provide funds for the construction of the Transportation Improvements, the Developer and the City entered into an escrow agreement on August 6, 2007, “Escrow Agreement”; and

WHEREAS, the Escrow Agreement required the Developer to deposit Two Million Dollars (\$2,000,000.00) into escrow by September 1, 2007, “Escrow Funds,” said Escrow Funds to be utilized by the City for construction of the Transportation Improvements; and

WHEREAS, on November 29, 2007, the City and the Developer entered into a First Amendment to the Escrow Agreement, “First Amendment to Escrow Agreement”, which extended the date of the deposit of the Escrow Funds to December 7, 2007; and

WHEREAS, the Developer deposited the Escrow Funds with the Escrow Agent, as that term is defined in the Escrow Agreement, on or before December 7, 2007; and

WHEREAS, pursuant to the terms of the Escrow Agreement, the Escrow Funds would be disbursed to the City by the Escrow Agent to pay the City’s costs of constructing the Transportation Improvements; and

WHEREAS, the City has completed construction of the Transportation Improvements and to do so, utilized One Million Seven Hundred Six Thousand Nine Hundred Eighteen Dollars and Fifty-Four Cents (\$1,706,918.54) of the Escrow Funds, “Net Escrow Funds”; and

WHEREAS, the Net Escrow Funds were disbursed to the City by the Escrow Agreement consistent with the terms of the Escrow Agreement; and

WHEREAS, the remainder of the Escrow Funds, Two Hundred Ninety Three Thousand Eighty-One Dollars and Forty-Six Cents (\$293,081.46) were returned by the Escrow Agent to the Developer’s predecessors, the receipt of which funds the Developer hereby acknowledges and, therefore, releases any claim for said funds; and

WHEREAS, due to the severe adverse economic conditions which have occurred over the last five years, Developer’s predecessors-in-interest were unable to develop the Project and Developer has, in fact, determined that it will not be able to complete the Project as originally planned; and

WHEREAS, the Developer has significantly modified the Project, “Modified Project,” to a development program that is mitigated from the original plans and more feasible under current economic conditions, which are reflected in that certain Master Plan (MPL No.2013-00033) that

was approved by the Orlando City Council on December 16, 2013 (the “Modified Project Master Plan”); and

WHEREAS, the Modified Project Master Plan depicted and described an east-west roadway connection from the Modified Project to the site directly to the east (the “East-West Connector”) that is to be owned and occupied by Orange County Public Schools and shall serve as an elementary school site (the “OCPS Site”); and

WHEREAS, in connection with the Modified Project, the Developer has agreed to construct the East-West Connector within certain timeframes in order to ensure it is complete prior to the construction of the elementary school on the OCPS Site; and

WHEREAS, construction of the Transportation Improvements has created significant, additional transportation capacity within the City’s Southwest Impact Fee District and particularly Transportation Area 10, as hereinafter defined; and

WHEREAS, Developer has requested and City has agreed to refund and grant transportation impact fee credits, “Refund,” in the amount of the Net Escrow Funds less thirty percent (30%), or One Million One Hundred Ninety-Four Thousand Eight Hundred Forty-Three Dollars (\$1,194,843.00), but only on the terms described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein described, the sufficiency of which is acknowledged by the parties hereto, City and Developer agree as follows:

1. **Recitals**. The above recitals are true and correct and incorporated into the substantive body of this Agreement.
2. **Refund**. Refund of the Net Escrow Funds shall occur consistent with Section 59.608, City Code, which, in part, requires the City to retain thirty (30) percent of the Net Escrow Funds for administrative expenses. Therefore, the Refund to Developer from the Net Escrow Funds under this Agreement shall be One Million One Hundred Ninety Four Thousand Eight Hundred and Forty Three Dollars (\$1,194,843.00) (“Refund Amount”), which shall be allocated as Seven Hundred Twenty-Seven Thousand Seven Hundred Seventy-Six Thousand Dollars (\$727,776.00) in an Initial Payment, as defined below and the granting of a Credit, also as defined below, in the amount of Four Hundred Sixty-Seven Thousand Sixty-Seven Dollars (\$467,067.00). Subject to satisfaction of the terms of this Agreement, and in particular, the satisfaction of the conditions of payment described in this Paragraph and Paragraph 3 below, the Initial Payment shall occur in the form of a cash payment on October 1, 2014 to the extent that funds are available as described herein in an amount not to exceed Seven Hundred Twenty-Seven Thousand Seven Hundred Seventy-Six Dollars (\$727,776.00) (the “Initial Payment” or

“Initial Payments” as the case may be). The balance (if any) of the Initial Payment shall be paid in the form of a cash payment to the extent that funds are available as described herein October 1, 2014 and on October 1st of each year thereafter until the Initial Payment is fully paid. The balance of the Refund Amount, the amount of Four Hundred Sixty-Seven Thousand Sixty-Seven Dollars (\$467,067.00), shall be paid in the form of transportation impact fee credits, “Credit,” to be utilized within Transportation Area 10 referenced and described in the City’s Growth Management Plan, and generally defined by that certain geographic area bound by I-4 to the North and West, John Young Parkway to the East, and the Florida Turnpike to the South and West, see **Exhibit “B”** attached hereto (the “Millenia Area”). The Credit shall be made available on account to Developer upon full payment of the Initial Payment and such Credit shall be transferrable and/or assignable at the Developer’s sole and absolute discretion exclusively for use in conjunction with development occurring within the Millenia Area. The Initial Payment(s) of the Refund Amount shall be made from Transportation Impact Fees collected by the City for new development occurring within the Southwest Impact Fee District that are contiguous or adjacent to the Subject Property, beginning as of January 1, 2014 and paid through the dates applicable to the Initial Payment(s).

3. Conditions of Refund. No Initial Payment of the Refund Amount shall occur prior to satisfaction of the following conditions:

A. The Developer files an application for amendment of the City’s Growth Management Plan (GMP) Subarea Policy for the Subject Property in substantially the following form and the amendment becomes effective:

Modified Project Master Plan. The Modified Project Master Plan shall be required for the property located within this subarea policy boundary described as the Modified Project. The parties hereby recognize that the Modified Project Master Plan has been approved as of the Effective Date of this Agreement. After the Modified Project Master Plan approval, development on individual parcels shall be subject to Specific Parcel Master Plan review and approval (“SPMP”). SPMP’s may be reviewed and approved administratively if determined to be consistent with the overall Modified Project Master Plan through a Planning Official Determination. The Modified Project Master Plan and the SPMP approvals shall not be a condition to receiving the Refund Amount.

Trips. Development within this subarea policy boundary shall be limited to no more than 1,848 Net External P.M. Peak Hour trips, calculated using a methodology approved by the City’s Transportation Planning Division project master plan. Any proposed development that would exceed the 1,848 Net External P.M. Peak Hour trip threshold shall be subject to additional infrastructure and transportation impact analysis. Consistent with Transportation Policy 1.8.11, applicants for development

proposals within this subarea policy boundary shall conduct a neighborhood impact analysis if the proposed development is projected to generate more than 1,000 daily trips.

Conservation Use. Because Lake Amanda is not a protected wetland or natural water body, the City Planning Official is authorized to revise the Conservation Use boundary consistent with plans approved by the Water Management District, provided there is no net decrease in the overall acreage of the Conservation Use area. A portion of the Conservation Use area may be used for parks and/or open space.

B. Developer shall file an application to pull a building permit to construct the East-West Connector to the OCPS Site from the City of Orlando. Developer shall complete construction of the East-West Connector to the OCPS Site on or before the commencement of the 2016 OCPS academic year pursuant to terms and conditions existing between a separate agreement between the Developer and OCPS, dated _____ and recorded at OR Book ____ Page _____, Public Records of Orange County, Florida.

4. Developer Warranties. Developer hereby warrants and represents that it is legally entitled to the Refund Amount, that no other entity has a claim to said funds and that Developer has no knowledge of any dispute to Developer's entitlement to the Refund Amount. Developer warrants that marketable fee simple title to the Subject Property is in the name of Developer. Developer further warrants that this Agreement will not interfere with, or impair, any licenses, contracts, mortgages, or other such agreements that currently encumber the Subject Property.

5. Consent of Escrow Agent. Escrow Agent has executed this Agreement solely to confirm its consent thereto and does not hereby incur any obligations, liabilities or responsibilities under the terms hereof.

6. Termination. As of the Effective Date of this Agreement, the City and Developer do hereby abandon, release, and discharge the Developer's Agreement and thus the same is hereby terminated and null and void.

7. Release. As a result of the foregoing termination, the City and the Developer shall be free from the obligations, terms and conditions of the Developer's Agreement. The City and Developer, with the intention of binding themselves, their heirs, successors and assigns, hereby release and discharge the other party, and their respective heirs, successors and assigns and their respective officers, directors, shareholders and employees from any and all suits, claims, demands, actions or judgments, known or unknown, direct or indirect, which either party has ever had, or now has, or may in the future have against each other, their respective heirs,

successors or assigns, and their respective officers, directors, shareholders or employees, arising out of, or relating to, the Developer's Agreement.

8. Entire Agreement; Facsimile; Counterparts. This Agreement contains the complete agreement between the City and Developer and may be executed by facsimile in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

9. Binding on Successors. This Agreement shall be binding upon the City and Developer, their predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, shareholders and employees, and each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement and to bind the party on whose behalf he or she is signing.

10. Governing Law. This Agreement shall be governed, in all respects, under the laws of the State of Florida, irrespective of any choice of law rules, and proper venue for any legal proceedings shall be Orange County, Florida.

11. Attorneys' Fees and Costs. In the event of any litigation or other proceeding with respect hereto, each party shall be responsible for its own attorneys' fees and costs incurred.

12. 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.

13. Miscellaneous.

a. 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.

19. Effective Date. The effective date of this Agreement is the date of its full and complete execution by both parties.

20. Termination. This Agreement shall terminate ten (10) years from the Effective Date (whether or not the Refund Amount has been paid in full,) or upon written consent of the parties hereto, which consent shall be recorded in the Public Records of Orange County, Florida. This Agreement may be terminated by either party by filing a notice in the Public Records of Orange County, Florida if (i) the Subject Property is not rezoned within six months of the Effective Date, pursuant to Developer's application referenced in Paragraph 3.A., above, including the repeal of the planned development ordinance currently encumbering the Subject Property or (ii) the GMP is not amended within nine months of the Effective Date, pursuant to Developer's application referenced in Paragraph 3.B, above. Upon request of the Developer, the City may, in its sole discretion, extend either of the timeframes referenced in (i) or (ii) above, if the Developer can reasonably show that the cause(s) of the delay was beyond the control of the Developer.

21. No Waiver. Nothing in this Agreement operates as a waiver of the City's regulatory authority with respect to development of the Subject Property.

SIGNATURES START NEXT PAGE

CITY OF ORLANDO, FLORIDA,

Attest:

Mayor/Pro Tem

City Clerk

State of Florida)
County of Orange)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ and _____, as the **City Clerk** and the **Mayor/Mayor Pro Tem** of the City of Orlando, Florida, and who have acknowledged that they executed the same on behalf of the City of Orlando, Florida and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I have hereunto set my hand and official seal.

Notary Public, State of Florida
Printed Name: _____

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

Chief Assistant City Attorney

(Signatures Continue Next Page)

Signed in the presence of two witnesses:

“DEVELOPER” (CORPORATE SEAL)

**HEARTWOOD 21, LLC,
a Florida limited liability company**

Signature
Print Name: _____

By: _____

Name: _____

Signature
Print Name: _____

Title: _____

State of Florida)
County of Orange)

The foregoing was acknowledged before me this ____ day of _____, 2014, by _____, as _____ of **Heartwood 21, LLC**, and who has acknowledged that he executed the same on behalf of Heartwood 21, LLC and that he was authorized to do so. He is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida
Printed Name: _____

EXHIBIT "A"

EXHIBIT "B"