

Prepared by:

Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Ave.
Orlando, FL 32801
(407) 246-3483

PROPERTY EXCHANGE AGREEMENT

This Property Exchange Agreement, "Agreement", entered into this ____ day of _____, 2016, by and between the **City of Orlando**, a municipality, duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32801, "City", and the **Narcoossee Properties, LLC**, a Florida Limited Liability Company, whose address is 6401 SW 93rd Ave., Gainesville, FL, 32608, "Developer".

WITNESSETH:

WHEREAS, the City owns certain property, "City Property," located along the west side of Narcoossee Road, as shown in **Exhibit "A"**, attached hereto and made a part hereof; and

WHEREAS, the City Property was acquired for the purpose of constructing improvements to Narcoossee Road; and

WHEREAS, the Florida Department of Transportation, "FDOT", has since initiated the construction of improvements to Narcoossee Road using property along the east side, so that the City Property, which is located on the west side of Narcoossee Road, is no longer necessary for road construction; and

WHEREAS, Developer owns certain property, "Developer Property," located along the west side of Narcoossee Road, Tax ID #, 23-23-30-6396-09-000, consisting of approximately ten (10) acres, as shown in **Exhibit "B"**, attached hereto and made a part hereof by reference; and

WHEREAS, the Developer Property is contiguous to, and directly west of the City Property; and

WHEREAS, the Orlando Corporate Centre Planned Development Ordinance, "PD," that encumbers the Developer Property references an extension to Goldenrod Road over the rear sixty feet (60') of the Developer Property, "Extension Property," also as shown in **Exhibit "B"**; and

WHEREAS, City and Owner agree that it would be in the best interests of the public and the future development of properties under the PD, if the Extension Property was conveyed to the City for future development of the Goldenrod Road Extension, in exchange for conveyance of the City Property to the Developer; and

WHEREAS, the City and the Developer desire to memorialize their Agreement.

NOW, THEREFORE, in consideration of the mutual covenants described herein, the sufficiency of which is hereby acknowledged, the 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. Conveyance of Properties. The City agrees to convey the City Property to the Developer by Standard Special Warranty Deed. The Developer agrees to convey the Extension Property to the City by Standard Special Warranty Deed.
3. Closing Date(s). The exchange of properties will be occur on or before November 21, 2016, unless extended by mutual consent of the parties hereto.
4. As is Condition of Properties. The City Property and the Extension Property will be conveyed hereunder, in an “as is” condition and “with all faults.” Neither Party makes any warranties or representations, express, implied, or statutory, including but not limited to, the implied warranties of title, marketability and suitability or fitness for a particular purpose.
5. City Inspection. The City shall have fifteen (15) days from the effective date of this Agreement (“Inspection Period”) to inspect the Extension Property. In addition to standard inspection activities, the City may install test wells on the Extension Property upon written notice to the Developer. The Developer hereby grants the City a license to engage in inspection activities during the Inspection Period. The City agrees to immediately repair any damage caused to the Extension Property by the City’s inspection activities.
6. Developer Inspection. The Developer shall have fifteen (15) days from the effective date of this Agreement (Inspection Period) to inspect the City Property. During the Inspection Period, in addition to standard inspection activities, the Developer may install test wells upon written notice to the City. The City hereby grants the Developer a license to engage in inspection activities. During the Inspection Period

the Developer agrees to immediately repair any damage caused to the City Property by the Developer' inspection activities.

7. Termination. Either Party may terminate this Agreement for any reason prior to Closing.
8. Marketable Title. The City shall be responsible for obtaining a policy of title insurance for the Extension Property. The Developer shall be responsible for obtaining a policy of title insurance for the City Property. City shall notify the Developer of defects in the title of the Extension Property within fifteen (15) days of this Agreement. Developer shall use diligent efforts to cure said defects but without an obligation to expend funds. Developer shall notify the City of defects in the title of the City Property within fifteen (15) days of this Agreement. City shall use diligent efforts to cure said defects but without an obligation to expend funds.
9. Property Valuation. City and Developer agree that the City Property and the Extension Property are approximately equal in value, \$120,000 (one hundred twenty thousand dollars).
10. City Services Easement. The City and Developer agree that the Special Warranty Deed from the City shall reserve a standard City Services Easement over the eastern fifteen feet (15') of the City Property.
11. Taxes, Assessments and Recording. The Parties shall pay all ad valorem taxes, prorated ad valorem taxes, and tangible personal property taxes applicable, accruing on their respective properties before the date of closing, as well as any and all assessments levied against said properties by an authorized entity. City shall be responsible for the cost of recording the Special Warranty Deed for Extension Property in the Official Records of Orange County, Florida. Developer shall be responsible for the cost of recording the Standard Special Warranty Deed for the City Property in the Official Records of Orange County, Florida.
12. In lieu of Condemnation. The conveyances, under this Agreement, are in lieu of condemnation, and exempt from documentary stamp taxes.
13. Vacate and Remove Personal Property. The Parties shall vacate their respective properties and remove and dispose of any and all personal property there from by or before Closing. After Closing, the respective Grantee shall assume the responsibility for

removal and disposal of any and all personal property located on the property and shall not be liable for any damages resulting from said removal and disposal.

14. Responsibility Prior to Closing. Each Party shall bear sole responsibility and liability for their respective properties until the Closing occurs and title transfers thereby.
15. Entire Agreement. 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.
16. Assigns. All of the 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.
17. Survey. City shall survey the City Property and Developer shall survey the Extension Property, and submit said surveys to the other party within fifteen (15) days of the Effective Date of this Exchange Agreement. Each party shall then have five (5) days to notify the other party of any objections. The failure to object shall constitute approval of the applicable survey.
18. Exchange of Reports. Each Party shall, within fifteen (15) days of the Effective Date of this Agreement, submit to the other Party, copies of all surveys, title opinions, geotechnical and environmental reports and any other reports or documents that relate to the condition or title of their respective property.
19. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any Party to this Agreement or substantially increase the burden of any Party to this Agreement, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.
20. Choice of Law and Venue. Florida law shall govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be in Orange County, Florida.

21. Construction of the Agreement. This Agreement is the result of negotiations among the Parties hereto such that all Parties have contributed substantially and materially to the preparation of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than against another Party or other Parties.
22. Closing Costs. Closing costs, including, though not exclusively, documentary stamp taxes, shall be paid by each party consistent with standard practice.
23. Entire Agreement. 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.
24. Assignment. Neither party may assign this Agreement without the consent of the other, which may be withheld in the sole and absolute discretion of the party whose consent is necessary. Any assignment shall not terminate the liability of the assignor to perform, unless a written release is given by the non-assigning party to this Agreement.
25. Binding Effect. All of the 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.
26. Notices and Deliveries. Any notices or other communications or deliveries which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or if sent by telecopy facsimile to the numbers set forth below, or if sent by overnight courier (e.g., Federal Express), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

If to the City:

City of Orlando
Attention: Real Estate Manager

400 S. Orange Avenue
Orlando, FL 32801

With copy to:

City of Orlando
Attention: Public Works
Chief Assistant City Attorney
400 South Orange Ave.
Orlando, FL 32801

If to Developer:

Narcoossee Properties, LLC
6401 SW 93rd Ave.
Gainesville, FL 32608

With copy to:

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the second business day following the day such notice is deposited in the United States mail in the manner specified above. Any notice delivered by overnight courier shall be deemed to have been duly given, delivered or made on the first business day following the day such notice is delivered to the overnight courier as established by the receipted bill of lading. Any notice which is given, delivered or made by personal delivery or telecopy shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying said change of address.

27. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

28. Effective Date. This Agreement shall become effective on the date of full and complete execution by both parties.
29. No Waiver. Nothing in this Agreement modifies or changes the regulatory authority of the City, nor does this Agreement vest any particular manner or means of development of the Developer Property.
30. Further Assurances. In addition to the acts recited in this Agreement, the Parties agree to perform or cause to be performed any and all further acts as may be reasonably necessary to complete the transactions contemplated hereby, including the execution and/or recordation of further instruments, provided, however, such acts shall not expand the liabilities or obligations, nor diminish the rights of the Parties, as contemplated herein.
31. Force Majeure. The Parties shall not be liable to each other for damages, costs, attorneys' or paralegal fees (including attorneys' or paralegal fees on appeal) for breach of contract, or otherwise for failure or inability to perform occasioned by any cause beyond the control and without the fault of the Parties ("Force Majeure").

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

ATTEST:

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

By: _____
Amy T. Iennaco, Interim City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ____ day of _____, 2016
by _____, Mayor Pro Tem and _____, Interim City Clerk, who is
personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Signed in the presence of Two Witnesses:

Narcoossee Properties, LLC, a Florida
Limited Liability Company

Signature
Print Name: _____

By: _____

Ellen Miller
Signature
Print Name: Ellen Miller

Name: STAN HIGGINBOTHAM
Title: MANAGER

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE ALACHUA

PERSONALLY APPEARED before me, the undersigned authority,
STAN HIGGINBOTHAM, as MANAGER, of **Narcoossee Properties, LLC**, a
FL limited liability company. He/she ☐ is personally known to me or ☒ who has produced
Florida Driver License as identification.

WITNESS my hand and official seal this 17th day of October, 2016.



Ryan Brown
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG025767
Expires 8/29/2020

Notary Public
Print Name: Ryan Brown
My commission expires: 08/29/2020

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida only

_____, 2016

By: _____
Chief Assistant City Attorney