

THIS DOCUMENT PREPARED BY  
AND RETURN TO:

Roy K. Payne  
Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32801  
(407) 246-2295

**AGREEMENT REGARDING MULTI-USE TRAIL  
CONTRIBUTION FOR FUTURE DESIGN ENGINEERING AND CONSTRUCTION**

**THIS DEVELOPER'S AGREEMENT** (the "**Agreement**") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2017, by and between the **GDC Magnolia, LLC** a Florida limited liability company, whose address is 833 North Magnolia Avenue, Orlando, Florida 32803 (the "**Owner**"), and the **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida (the "**City**").

**WITNESSETH:**

**WHEREAS**, GDC Magnolia, LLC, as the owner of approximately 0.26 acres of land located at 500 S. Magnolia Avenue, on the southwest corner of E. Anderson Street and S. Magnolia Avenue, within the City of Orlando, Orange County, Florida, and more particularly described in the attached **Exhibit "A"** (the "**Property**"); and

**WHEREAS**, the Property is the subject of an existing Planned Development which has been reviewed and approved by the City pursuant to Chapter 65 of the Orlando City Code ("Magnolia Hotel PD," n/k/a the "**Anderson Hotel PD**"); the Planned Development contemplates development of the Property as a multiple story, maximum 150' in height and 130 room hotel, with a ground floor restaurant use, and offsite and valet only parking service (collectively the "**Project**"); and

**WHEREAS**, based on the Owner's request to have City Staff alter the Downtown Orlando Bikeways Map to include an additional alternative route, "Alternative Route," within the general Project area, the Owner, in accordance with the terms of this Agreement, agrees to make a contribution to the City in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), "**Fee**," to be held by the City in a separate account and utilized exclusively for the cost of design, engineering, and construction of the Alternative Route.

**WHEREAS**, in connection with the Project, the parties desire to enter into this Agreement to memorialize certain bikeways and multi-use trail construction requirements for improvements related to the Project site, including relocation of the multi-use trail from the preferred alignment along the Property to the Alternative Route, below the State Road-408 overpasses, which adds approximately 450ft – 500ft to the overall length of the subject trail.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. Incorporation of Recitals. The recitals set forth in this Agreement are true and correct and are incorporated herein by reference.
2. Payment of Fee. Owner shall, prior to and as a condition of, the City's issuance of the first building permit for the Project, pay the Fee to the City. City will hold the Fee in a separate account and shall utilize the Fee only for costs related to the design and construction of the Alternative Route.
3. Refund of Fee. If, prior to December 1, 2023, the City has not initiated design of the Alternative Route, the Fee shall be refunded to the Owner within thirty (30) days. If the City determines at any time prior to December 1, 2023, that it is not going to proceed with the design and construction of the Alternative Route, City shall immediately notify Owner and refund the Fee within thirty (30) days. Owner may notify the City in writing at any time that it has decided not to proceed with the Project on the Property and City will refund the Fee or any portion remaining in the Account to the Owner within thirty (30) days of said notice. City is not responsible for any portion of the Fee expended by the City in accordance with the terms of this Agreement prior to Owner's notice. Notwithstanding the foregoing, in the event the City erroneously or negligently applies or loses the Fee, the Owner shall not be obligated to pay any additional fees to the City for any costs related to the design and construction of the Alternative Route.
4. Payment of Other Fees and Expenses. Other than the payment of the Fee related to development of the Property as provided above, this Agreement shall not apply to, or cause the deferral of, the payment of any other fees or costs imposed by the City associated with the Project, including, but not limited to, building permit fees, inspection fees, sewer impact fees, transportation impact fees or other costs applicable to the Project, nor shall Owner be responsible in any manner for any further action or payment to the City in connection with the design, engineering or construction of any multi-use trail or bicycle route (or for the payment of any fee to the City in lieu thereof), including, but not limited to, the cost of any feasibility study, design or construction of any on-street bike lane identified in Figure R-20A of the City's Comprehensive Plan, any alternative bicycle route as contemplated herein, or otherwise.
5. Covenant Running With the Land; Successors and Assigns. This Agreement shall constitute a covenant running with the title to the Property and shall be binding upon the Owner and its successors and assigns as owners of the Property. Upon execution hereof, this Agreement shall be recorded in the Orange County Public Records at Owner's expense. Owner represents and warrants to City that it is the fee owner of the Property, free and clear of any mortgages, except those mortgages disclosed to the City in writing on or before the Effective Date of this Agreement, and that this Agreement and the obligations of the Owner to pay the FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) Fee as provided herein, shall constitute a prior encumbrance upon

any mortgage lender providing construction financing for the Project after the Effective Date of this Agreement.

6. No Vesting. This Agreement does not operate to vest any particular type or intensity of development or redevelopment of the Property, which remains subject to any and all applicable rules, laws, regulations or ordinances, except those regulations, laws or ordinances, promulgated by the City after the Effective Date of this Agreement which may be in conflict with this Agreement, including, but not limited to, that certain City Ordinance 2016-94, rezoning the Property in connection with the Project.
7. No Waiver. This Agreement does not, in any way, constitute a waiver of City's regulatory authority and its rights to approve and/or regulate development of the Property in accordance with the City Code and any other applicable laws or regulations, including, but not limited to, that certain City Ordinance 2016-94, rezoning the Property in connection with the Project.
8. 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.
9. 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.
10. Termination. This Agreement shall automatically terminate (without the necessity of any further action by either party) and the parties shall be relieved of any further liability or obligations hereunder upon the expiration of the term of this Agreement on December 1, 2023.
11. Defaults. Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement by providing ten (10) days written notice to the defaulting party of such termination, and, in the event of any such default by the City, the Owner

may be entitled to elect the City immediately return the FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) Fee, or the remaining portion thereof, to Owner, without thereby waiving any right to any other cure or remedy Owner shall be entitled to under this Agreement or Florida law. City shall not be responsible for any portion of the Fee expended under the terms of the Agreement prior to Owner's termination. Notwithstanding the foregoing, in the event the City erroneously or negligently applies or loses the Fee, the Owner shall not be obligated to pay any additional fees to the City for any costs related to the design and construction of the Alternative Route. Upon termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise expressly provided herein.

12. Severability. The invalidity or unenforceability of any term or provision of this Agreement or the non-applicability of any such term or provision to any person or circumstance as determined in any respect by a court of competent jurisdiction shall not impair or affect any other provision of this Agreement.
13. Entire Agreement. This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof. None of the terms and provisions hereof may be amended, supplement, waived or changed orally, but only by a writing signed by each of the parties hereto.
14. Controlling Laws. 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, including, but not limited to, that certain City Ordinance 2016-\_\_\_, rezoning the Property in connection with the Project.
15. Effective Date. This Agreement shall become effective on the date of full and complete execution by the parties hereto.

**[SIGNATURE PAGES TO FOLLOW]**

In witness whereof, this Agreement has been duly executed by the parties as of the day and year first above written.

TWO WITNESSES:

**GDC Magnolia, LLC,**  
a Florida limited liability company

\_\_\_\_\_

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

By: \_\_\_\_\_

\_\_\_\_\_

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

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

Its: (title) \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, as \_\_\_\_\_ of both GDC Magnolia, LLC, a Florida limited liability company, who executed the foregoing instrument and acknowledged before me that he executed the same for the purposes therein expressed and who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial  
Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**[SIGNATURE PAGE TO FOLLOW]**

**CITY:**

**CITY OF ORLANDO, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF ORLANDO, FLORIDA, ONLY

\_\_\_\_\_, 2017

\_\_\_\_\_  
Assistant City Attorney

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
by \_\_\_\_\_, as Mayor of the City of Orlando, on behalf of the  
City of Orlando. He  is personally known to me or  has produced  
\_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
(Name typed, printed or stamped)

**Exhibit "A"**

H C HARRISONS ADDITION C/83 THE NORTH 75FT OF EAST 182.4 FT OF  
LOT-14 (LESS ROAD RIGHT-OF-WAY ON EAST AND NORTH)