

**PREPARED BY AND RETURN TO:**

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City Attorney's Office  
400 S. Orange Avenue  
Orlando, FL 32802

**FOURTH AMENDMENT TO DEVELOPER'S AGREEMENT REGARDING  
TRANSPORTATION CONCURRENCY AND ROAD IMPACT FEES**

**THIS FOURTH AMENDMENT TO DEVELOPER'S AGREEMENT REGARDING TRANSPORTATION CONCURRENCY AND ROAD IMPACT FEES,** "Fourth Amendment," is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF ORLANDO**, a municipal corporation duly enacted under the laws of the State of Florida (the "**City**"), whose address is 400 South Orange Avenue, Orlando, Florida, 32802, and **GRAND NATIONAL JOINT VENTURE, LLC** a Delaware limited liability company, successor-in-interest to \_\_\_\_\_, (the "**Owner**"), whose address is 212 East Third Street, Ste. 300, Cincinnati, OH, 45202.

**WHEREAS**, Owner is the owner of approximately 16.5 acres of land, "Property," located generally at the southeast corner of Oak Ridge Road and Adrianna Avenue in the City of Orlando, Orange County, Florida, more particularly described in **Exhibit "A"** attached hereto and made a part hereof by reference; and

**WHEREAS**, on October 30, 2006, City and Owner entered into Developer's Agreement Regarding Transportation Concurrency and Road Impact Fees, the "Original Agreement", which provided, in part, for the vesting of transportation impact fee rates at 2006 levels for development of the Property to the extent of the Credit, as hereinafter defined; and

**WHEREAS**, the Original Agreement was amended by that certain First Amendment to the Original Agreement on October 21, 2009, the "First Amendment", which provided for a three (3) year extension of certain timeframes and to those deadlines defined in the Original Agreement and described below, and further modified by that certain Second Amendment to the Original Agreement dated December 16, 2011, which provided for a two (2) year extension to the deadlines in the First Amendment, and by that Third Amendment to the Original Agreement dated October 21, 2015, which provided for a two (2) year extension to the deadlines in the Second Amendment, which the Original Agreement, as amended by the First Amendment, Second Amendment and the Third Amendment, is hereinafter collectively referred to as the "Agreement"; and

**WHEREAS**, under the terms of the Agreement, Owner paid the City One-Million Nine Hundred Seven-Thousand, Nine Hundred and Fifty Dollars (\$1,907,950.00) as a transportation capacity reservation fee, which, by City Code and under the Agreement, also constitutes an impact fee credit, "Credit," applicable to development of the Property; and

**WHEREAS**, in response to continued, difficult economic conditions in the real estate development market and based on the fact that the Owner has expended significant funds to construct infrastructure on the Property in anticipation of development and has, in fact, initiated development of the Property, the Owner has requested and the City has agreed to an additional two (2) year extension of the application of transportation impact rates in effect at the time of the Original Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into the substantive body of this Third Amendment.
2. Paragraph 2 of the Agreement, is hereby amended as follows:

“2. Payment of Capacity Reservation Fee, Issuance of Capacity Reservation Certificate and Reservation of Trips for the Property. The City hereby allocates, assigns and reserves Fifteen Thousand, Two hundred Twenty-seven (15,227) CMS Trips to the Property (the “Reserved Trips”) from the City’s current CMS trip capacity and such Reserved Trips shall be treated as vested capacity pursuant to Chapter 59 of the Orlando City Code, subject to the payment of the Capacity Reservation Fee described below. The parties hereto wish to merge and supersede the existing Vesting Rights Agreement with respect to the Vested Trips, such that the Vested Trips shall become a part of this Agreement and the Vested Trips shall become part of the Project Trips (as hereinafter defined). The aggregate Vested Trips and Reserved Trips equal Twenty Thousand, Five Hundred, Seventeen (20,517) CMS Trips (the Vested Trips and Reserved Trips being hereinafter sometimes collectively referred to as the “Project Trips”). The City acknowledges and agrees that the Project Trips are sufficient for the Project as currently approved. A breakdown of the allocation of the Project CMS Trips is attached hereto and made a part hereof as **Exhibit “C”**. Within thirty (30) days from the date of this Agreement, Owner shall pay to the City the sum of One-Million, Nine Hundred Seven Thousand, Nine Hundred Fifty Dollars (\$1,907,950.00) as the capacity reservation fee, which equates to the total transportation impact fee for the entire Project, calculated as of the Effective Date of this Agreement (the “Capacity Reservation Fee”). The City’s assessment of transportation impact fees against the Project shall be based on the rates in effect on the date of this Agreement, with respect to any building permits for the Project, issued prior to January 1, 2018. With respect to any building permits for the Project, issued subsequently to, January 1, 2018, the rates in effect as of the date of the issuance of the applicable permit shall apply. Notwithstanding the above, and based on (i) the Owner’s substantial contribution to the construction of transportation improvements in the area benefitting the general public, (ii) the Owner’s construction of significant infrastructure on the Property to serve the Project; (iii) the Owner’s obligation to construct a substantial portion of the Project on or before October 30, 2019 and (iv) the Owner’s initiation of building construction for the Project, the application of rates in effect on the date of this Agreement may be extended as follows: So long as Owner has utilized at least fifteen percent (15%) of the Project Trips, as evidenced by the submittal of applications for permits on or before January 1, 2018, (which determination will be made by the City in its sole reasonable discretion), and issued within six (6) months of submittal (unless the delay in issuance is through no fault of the Owner), the application of

rates in effect on this date of this Agreement with respect to any building permits for the Project, shall be extended for a period of twenty-four (24) months, to January 1, 2020 or termination of this Agreement whichever occurs first. The Owner must formally establish the extension prior to January 1, 2018, by requesting in writing that the City determine, in writing, that Owner has utilized fifteen percent of the Project Trips by the issuance of permits for the Project and that the time frame for application of rates in effect on the date of this Agreement has therefore been extended to January 1, 2020 or termination of this Agreement whichever occurs first. The Capacity Reservation Fee equals the total transportation impact fees which are being assessed against the Project as currently approved, and at current rates. No additional transportation impact fees shall be assessed against the Project as currently approved, in excess of the Capacity Reservation Fee, with respect to any building permits for the Project, issued prior to January 1, 2018. With respect to those building permits for the project, issued subsequently to January 1, 2018 the transportation impact fees may exceed the Capacity Reservation Fee, and said excess transportation impact fees shall be paid by Owner prior to the issuance of the applicable building permit. Upon receipt of such Capacity Reservation Fee from the Owner, the City shall issue a Capacity Reservation Certificate (the "Certificate") confirming reservation of transportation concurrency capacity (the "Capacity Reservation") for the Project under City Code in the amount of Twenty-Thousand, Five Hundred Seventeen (20,517) CMS Trips until October 30, 2019, subject to an extension of the timeframe for the Capacity Reservation pursuant to Paragraph 21 hereof. Due to the fact that the Owner is receiving a transportation impact fee credit to reduce the Owner's obligation to make the Fair Share Payment, as hereinafter defined, and in consideration for the vesting of transportation impact fee rates as described above and the reservation of transportation concurrency, the Capacity Reservation Fee is non-refundable."

3. Full Force and Effect of Agreement. Except as set forth in this Third Amendment, the terms and conditions of the Agreement remain unmodified and in full force and effect.
4. Severability. The invalidity or unenforceability of any term or provision of this Third Amendment or the non-applicability of any such term or provision to any person or circumstance shall not impair or affect the remainder of this Third Amendment.
5. Entire Agreement. This Third Amendment 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, supplemented, waived or changed orally, but only by a writing signed by each of the parties hereto.
6. Controlling Laws. This Third Amendment 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.
7. Effective Date. This Third Amendment shall become effective on the date of full and complete execution by the parties hereto.

**IN WITNESS WHEREOF**, this Developer's Agreement regarding transportation concurrency and road impact fees has been duly executed by the parties as of the day and year first above written.

TWO WITNESSES:

**GRAND NATIONAL JOINT VENTURE, LLC**,  
a Delaware Limited Liability Company

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

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

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

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

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, 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: \_\_\_\_\_

ATTEST:

**CITY OF ORLANDO, FLORIDA**

By: \_\_\_\_\_  
Denise Aldridge, City Clerk

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as Mayor / Mayor Pro Tem 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)

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

\_\_\_\_\_, 2017  
Roy K. Payne, Esq.  
Chief Assistant City Attorney

DRAFT