

**RETURN DOCUMENT TO:**

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

**LAKE NONA AGREEMENT**

**THIS TRANSPORTATION MITIGATION AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered as of the Effective Date (as defined herein) by and among **Lake Nona Property Holdings, LLC**, a Florida limited liability company, whose address is 9801 Lake Nona Road, Orlando, Florida 32827 (hereinafter referred to as the “**Lake Nona**”) and **City of Orlando, Florida**, a municipal corporation existing and exercising powers by virtue of the laws of the State of Florida, and whose address is 400 South Orange Avenue, Orlando, FL, 32801 (hereinafter referred to as the “**City**”).

**WITNESSETH:**

**WHEREAS**, Lake Nona is the master developer of a certain project located in the City of Orlando, Florida known as the Lake Nona Development of Regional Impact/Planned Development (the “**Lake Nona DRI**”); and

**WHEREAS**, the City adopted the Fourth Amended and Restated Development Order for the Lake Nona Development of Regional Impact on August 6, 2007 as recorded on December 4, 2007 in Official Records Book 9522, Page 525, as amended by that certain First Amendment to the Fourth Amended and Restated Development Order for Lake Nona Development of Regional Impact on March 17, 2008 as recorded on March 26, 2008 in Official Records Book 9640, Page 1888, all in the Public Records of Orange County, Florida (collectively, the “**Development Order**”); and

**WHEREAS**, Narcoossee Road is currently a four-lane segment of divided highway between SR 528, “Beachline,” and SR 417, “GreeneWay; and

**WHEREAS**, pursuant to Section 4.18(C) of the Development Order, Lake Nona is required to design and construct the six-laning of Narcoossee Road, “Narcoossee Project,” from The Beachline to the GreeneWay; and

**WHEREAS**, in the alternative, the Development Order gives Lake Nona the option to request that the City construct the Narcoossee Project on the condition that Lake Nona contribute certain funding to the City for said construction; and

**WHEREAS**, the estimated cost of the Narcoossee Project is approximately Twenty-Three Million Dollars (\$23,000,000.00), but parties agree that Lake Nona’s contribution to the City, under the Development Order, for the construction of the Narcoossee Project is Eight

Million Dollars (\$8,000,000.00), which constitutes the “Third Mitigation Payment” as that term is defined in the Development Order; and

**WHEREAS**, per the Development Order, the Third Mitigation Payment, and the design costs for the Narcoossee Project, qualify for transportation impact fee credits; and

**WHEREAS**, on May 19, 2015, the City and Lake Nona Central, LLC entered into the Transportation Agreement and Agreement Regarding State Grant Funds, “USTA Boulevard Agreement”, which provided for the City’s contribution of Four-Million Dollars (\$4,000,000.00) to Lake Nona to offset a portion of Lake Nona’s cost to construct USTA Boulevard; and

**WHEREAS**, On April 29, 2015, the State of Florida, Department of Transportation, “FDOT” and the City entered into an Economic Development Transportation Project Fund Agreement (Off-System), “FDOT Agreement”, which provided for FDOT’s contribution of approximately Two-Million Two-Hundred Forty-Six Thousand Three-Hundred Twenty Dollars (\$2,246,320.00) towards Lake Nona’s cost of constructing USTA Boulevard; and

**WHEREAS**, the City’s contribution of funding under the USTA Boulevard Agreement and FDOT’s contribution of funding under the FDOT Agreement did not fully reimburse Lake Nona for its cost to construct USTA Boulevard; and

**WHEREAS**, the City intends to construct traffic calming improvements, “Improvements,” in the Lake Nona South neighborhood, commonly known as Laureate Park; and

**WHEREAS**, City and Lake Nona agree that Lake Nona will fund the City’s costs to construct the Improvements in the amount of Seventy-One Thousand, Five Hundred Thirty Dollars and Ninety-Seven (\$71,530.97); and

**WHEREAS**, Lake Nona and the City desire to memorialize their understandings.

**NOW THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, and the mutual agreements hereinafter set forth, Lake Nona and City hereby agree as follows:

1. **Recitals.** The parties acknowledge and agree that the recitals set forth above are true and correct and are incorporated herein by this reference.
2. **Narcoossee Project.** Lake Nona has initiated, and will diligently pursue completion of, the design of the Narcoossee Project, “**Plans**,” at its cost not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000.00) consistent with the terms of the Development Order. Lake Nona estimates that the Plans will be complete by November 1, 2018. In the event the design costs exceed \$3,500,000.00, Lake Nona agrees to fund the design costs in excess of \$3,500,000.00 so long as Lake Nona receives a corresponding reduction in the Third Mitigation Payment. By way of example, if Lake Nona funds \$4,000,000.00 of design costs, then the Third

Mitigation Payment shall be equal to \$7,500,000.00. In addition to general roadway design criteria, the parties agree that the Plans will include, though not exclusively:

Lake Nona Boulevard and Narcoossee Road Intersection – Provide dual left turn-lanes from east bound Lake Nona Blvd. to north bound Narcoossee Road;

Dowden Road and Narcoossee Road Intersection – Provide dual left turn-lanes from east bound Dowden Road to north bound Narcoossee Road;

Moss Park Road and Narcoossee Road Intersection – Provide a designated left turn-lane from west bound Moss Park Road to south bound Narcoossee Road;

Falcon Parc Boulevard and Narcoossee Road Intersection – Median opening shall be redesigned with restricted turning movements;

Additional multi-use bicycle trail – consisting of a 12 ft-wide asphalt surface where possible.

Reclaim Water Line.

The Development Order further provides that reasonable costs actually incurred by Lake Nona to complete design of the Narcoossee Project qualify for transportation impact fee credits, “**Credit**,” consistent with Ch. 56, City Code.

At ninety percent (90%) completion, Lake Nona will submit the Plans to the City for review and approval. Within thirty (30) days of submittal, City will either approve the Plans in writing or provide written comments to Lake Nona. Lake Nona will incorporate any such comments into the Plans as applicable, and within twenty (20) days of receiving the comments, resubmit the Plans to the City for review and approval. Within ten (10) days of the City’s written approval of the Plans, Lake Nona will ensure that the design consultant certifies the Plans to the City and will submit to the City an electronic copy and three signed/sealed sets of hard copy Plans.

To establish the amount of the Credit, Lake Nona will, within thirty (30) days of the City’s written approval of the Plans, submit to the City for City’s review and approval, a request for credit based on costs actually incurred by the Lake Nona to complete the design of the Narcoossee Project. The request will include the amount of the credit and all documentation in support thereof, including invoices. City may request additional information which Lake Nona will provide. If City has an objection to any element of the request for credit amount, City will notify Lake Nona and City and Lake Nona agree to cooperate in good faith to resolve the issue.

The Third Mitigation Payment shall be delivered to the City in accordance with the procedure set forth in Section 4.18(C) of the Development Order; except, however, Lake Nona’s payment of the Third Mitigation Payment will not occur until the City has expended at least Six Million Dollars (\$6,000,000.00) of the City’s funds. Within thirty

(30) days after the City's notice to Lake Nona that it has expended at least Six Million Dollars (\$6,000,000.00) of the City's funds on construction of the Narcoossee Project, Lake Nona will begin payment of the Third Mitigation Payment in the amount of \$8,000,000.00, unless said amount is adjusted downward in the event the design costs exceed \$3,500,000.00 as provided herein. Payment of the Third Mitigation Payment will occur in installments as follows: City will submit invoices to Lake Nona, no more frequently than monthly, for the payment of costs related to the Narcoossee Project. Lake Nona will pay the City within twenty (20) days after receipt of the invoice. Lake Nona will make said payments to the City until the full amount of the Third Mitigation Payment has been expended. Per the Development Order, the Third Mitigation Payment qualifies for transportation impact fee credits. City agrees to establish a transportation impact fee credit account in the name of Lake Nona in incremental amounts based on installments of the Third Mitigation Payment, to be utilized consistent with the terms of Ch. 56, City Code. However, upon written notice from Lake Nona to the City, the City will establish an advance transportation impact fee credit account, "Advance Account," in an amount equal to fifty percent (50%) of the Third Mitigation Payment. City's agreement to establish the Advance Account is based on Lake Nona's obligation to fully fund the Third Mitigation Payment under this Agreement.

City is responsible for permitting and constructing the Project in substantial conformance with the Plans and will initiate said construction within one-hundred eighty (180) days of Lake Nona's submittal of the Third Mitigation Payment.

The City will distribute funds from the City Account exclusively to pay the cost of constructing the Narcoossee Project. City will maintain records of the City Account consistent with the City's policies and procedures and sufficient for auditing purposes. Lake Nona may, at any time, upon five (5) days' notice, inspect all records maintained by the City related to the City Account.

4. **USTA Boulevard.** Per the terms of the USTA Boulevard Agreement and the FDOT Agreement, Lake Nona was obligated to construct USTA Boulevard and the City and FDOT were obligated to fund said construction. Lake Nona has completed construction of USTA Boulevard and the City has issued a Certificate of Completion evidencing the City's approval of the work and acceptance of the road for ownership/maintenance. Consistent with the terms of the USTA Agreement, the City contributed Four Million Dollars (\$4,000,000.00) to Lake Nona to partially offset Lake Nona's cost to permit, design and construct USTA Boulevard. Pursuant to the FDOT Agreement, FDOT contributed over Two Million Dollars (\$2,000,000.00) towards Lake Nona's construction of USTA Boulevard. The parties intended that the City's and FDOT's contribution would fully fund Lake Nona's cost of constructing USTA Boulevard. However, after reviewing the final costs for permitting, design and construction of USTA Boulevard and subtracting the total funds contributed by City and FDOT, City and Lake Nona agree there is a balance of One-Hundred-Seven Thousand One-Hundred Eighty-Seven Dollars and Thirty-Eight Cents (\$107,187.38), "Balance." City will pay the Balance to Lake Nona, by check or wire transfer, pending City Budget approval for fiscal year 2017/2018,

or after October 1, 2017, but within sixty (60) days of the Effective Date of this Agreement.

**5. Laureate Park Traffic Calming** This Agreement memorializes that the City will construct certain traffic calming improvements, “Laureate Park Project,” within Lake Nona’s Laureate Park neighborhood consisting of:

- A Raised Crosswalk on the East Leg of the intersection of Tavistock Lakes Blvd and Reymont St
- A Raised Crosswalk on the East Leg of the intersection of Tavistock Lakes Blvd and Granger Ave
- A Raised Crosswalk on the West Leg of the intersection of Tavistock Lakes Blvd and Benavente Ave
- A Raised Crosswalk on the East Leg of the intersection of Laureate Blvd and Benavente Ave
- A Speed Table adjacent to the Entrance Monument on Laureate Blvd
- A Raised Crosswalk on the East Leg of the intersection of Laureate Blvd and Granger Ave
- A Raised Crosswalk on the West Leg of the intersection of Laureate Blvd and Sachs Ave
- A Raised Crosswalk on the West Leg of the intersection of Laureate Blvd and Kellog Ave

The City’s estimated cost for construction of the Laureate Park Project was at approximately Seventy-One Thousand Dollars (\$71,000.00). City will design the Laureate Park Project and provide the final plans to Lake Nona for review and approval. Upon Lake Nona’s written approval of the Laureate Park Project plans, City will initiate construction. Upon the completion of construction, City will submit to Lake Nona a Certificate of Completion for the Laureate Park Project, which submittal will include an invoice outlining costs incurred by the City. Lake Nona will pay the City the amount of Seventy-One Thousand, Five Hundred Thirty Dollars and Ninety-Seven (\$71,530.97); by check or wire transfer within thirty (30) days of invoice submittal, within said thirty (30) day period.

**6. Notices.** All notices, instructions or objections to be provided under this Agreement shall be sent or delivered by overnight delivery service, hand delivery, or facsimile (with a confirmation of receipt) at the addresses set forth below or at such other addresses as the parties shall designate to each other in writing:

**LAKE NONA:** Lake Nona Property Holdings, LLC  
9801 Lake Nona Road  
Orlando, Florida 32827  
Attn: James L. Zboril, President  
Telephone: (407) 816-6598  
Facsimile: (407) 438-0207

With a copy to: Nelson Mullins Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attn: Sara W. Bernard, Esq.  
Telephone: (407) 839-4200  
Facsimile: (407) 650-0901

**CITY:** City of Orlando  
Office of City Attorney  
P.O. Box 4990  
400 South Orange Avenue  
Orlando, Florida 32802-4990  
Telephone: (407) 246-2295 (for verification of telecopy only)  
Facsimile: (407) 246-2854

With a copy: City of Orlando  
P.O. Box 4990  
400 South Orange Avenue  
Orlando, Florida 32802-4990  
Attn: F.J. Flynn, Transportation Planning Division Manager  
Telephone: (407) 246-3978 (for verification of telecopy only)  
Facsimile: (407) 246-3392

Any notice, instruction, objection, demand or document given shall be deemed to be given, delivered or made upon actual delivery of the same to the party to whom, the same is to be given, delivered or made.

7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective devisees, personal representatives, successors and assigns.
8. **Waiver; Modification.** The failure by any party to insist upon or enforce any of its rights shall not constitute a waiver thereof and nothing shall constitute a waiver of any party's right to insist upon strict compliance with the terms of this Agreement. Any party may waive the benefit of any provision or condition for its benefit which is contained herein. No oral modification of this Agreement shall be binding upon the parties and any modification must be in writing and signed by the parties hereto.

9. **Governing Law.** This Agreement is to be construed in accordance with the laws of the State of Florida and the laws of the United States. Venue for any proceeding brought as a result of this Agreement shall be in Orange County, Florida.
10. **Headings.** The paragraph headings set forth in this Agreement are for convenience of reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any paragraph herein.
11. **Time of the Essence.** Time, and timely performance, are of the essence of this Agreement and of the covenants and provisions hereunder.
12. **Effective Date.** When used herein, the term “Effective Date” shall mean the last date that either Lake Nona or the City executes this Agreement.
13. **Attorney’s Fees.** In the event legal proceedings are instituted by any party hereto to enforce, construe or interpret any provisions of this Agreement or to enforce the rights of any party arising under or by virtue of the execution of this Agreement, each party shall be responsible for its costs and expenses, including attorneys’ fees, paralegal fees, witness fees, expert fees, consultant fees and other professional fees, costs and expenses incurred whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration, bankruptcy, or administrative proceeding, or at trial or on appeal. This paragraph is intended to and shall survive termination of the Agreement for any reason whatsoever.
14. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which collectively shall be deemed one and the same document.
16. **Assignment.** This Agreement shall not be assigned by any party hereto without the prior written consent of the other party hereto.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the City and Lake Nona have executed this Agreement in manner and form sufficient to bind them as of the day and year written below.

Signed, sealed and delivered in the presence of the following witnesses:

**LAKE NONA PROPERTY HOLDINGS, LLC**, a Florida limited liability company

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

By:\_\_\_\_\_  
James L. Zboril, President

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

Date:\_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ORANGE

**PERSONALLY APPEARED** before me, the undersigned authority, \_\_\_\_\_, as \_\_\_\_\_, of Lake Nona Property Holdings, LLC, a FL limited liability company. He/she ☐ is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

**WITNESS** my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public  
Print Name:\_\_\_\_\_  
My commission expires:



ATTEST:

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

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

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

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017  
by \_\_\_\_\_, Mayor / Pro Tem and \_\_\_\_\_, City Clerk, who is  
personally known to me who did (did not) take an oath.

**WITNESS** my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

My commission expires: \_\_\_\_\_