

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: October 21, 2024

RE: **Transportation Infrastructure Improvement Agreement with LeFrois Builders South, Inc.**

Attached for your consideration is a Transportation Infrastructure Improvement Agreement with LeFrois Builders South, Inc. (LeFrois). LeFrois is developing a mix of office, commercial and industrial uses on approximately 127.38 acres generally located north of W. Pipkin Road and east of Airside Center Drive in south Lakeland. This development is subject to a small-scale land use amendment and rezoning action also on this agenda.

The development includes two internal access roads that are currently under construction by the property owner/developer, LeFrois. An east-west road extends Aviation Drive between Airside Center Drive and Old Medulla Road, and a north-south road connects the Aviation Drive Extension to West Pipkin Road. Combined, both roadways are currently called "Air Park Access Road," with final naming to occur prior to the opening of the roads to public traffic. The Air Park Access Road and other interconnections are intended to preserve the operational efficiency and capacity of the West Pipkin Road widening project that is scheduled for completion in 2025. West Pipkin Road is of particular significance for freight movement and high-capacity connectivity to Lakeland's urban core. To minimize local traffic and improve corridor efficiency and safety, access to sites on West Pipkin Road is controlled and cross-access to adjacent properties is required.

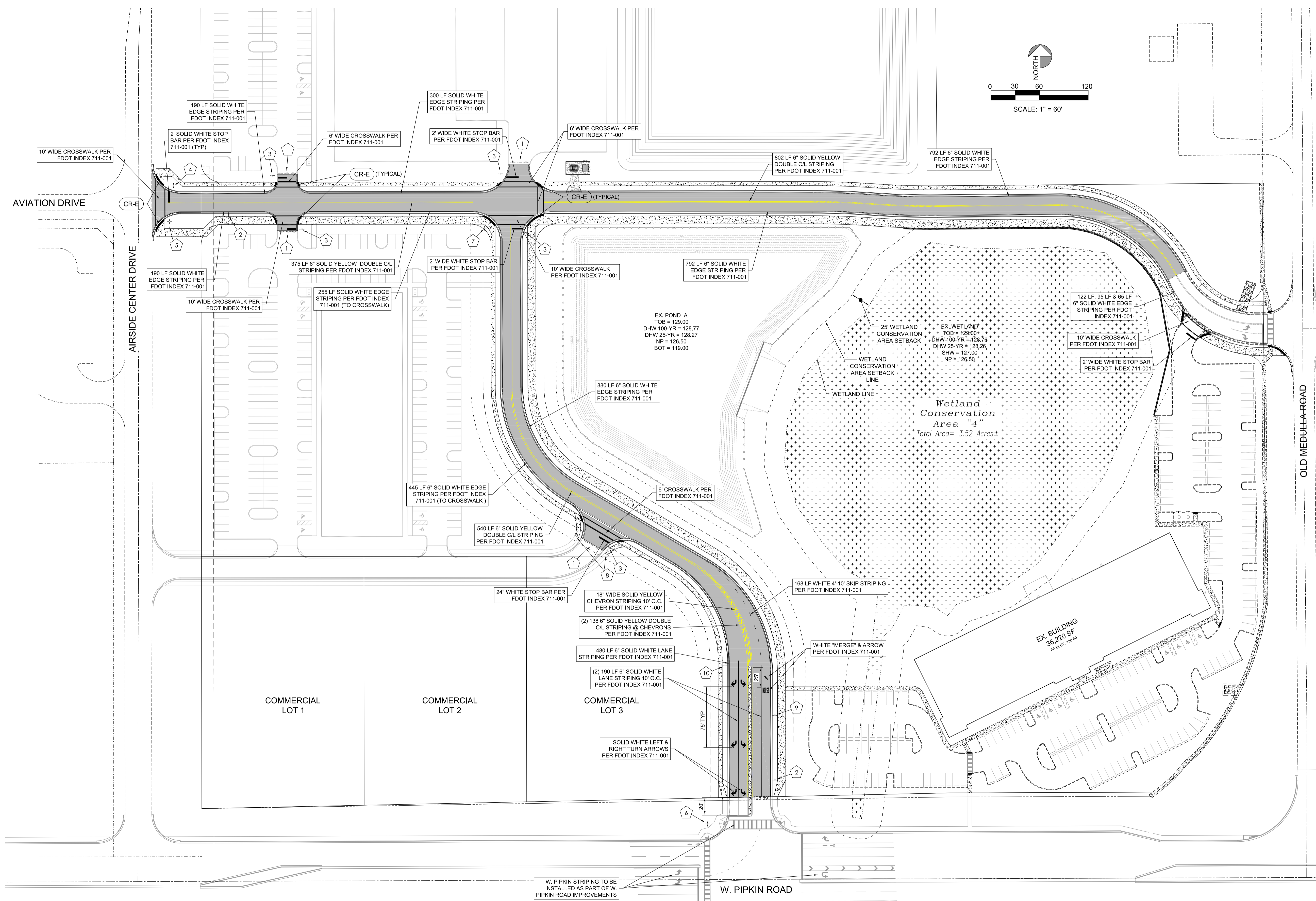
During the right-of-way acquisition phase for Polk County's West Pipkin Road four-lane widening project, LeFrois and the County coordinated the design and installation of a new traffic signal on West Pipkin Road at the north-south spine road for the development (Air Park Access Road). With this new signalized intersection, the West Pipkin Road design includes a full median at Old Medulla Road, restricting that intersection to right-in/right-out operations. At LeFrois' request, these two internal access roads will be dedicated to the City of Lakeland as public right-of-way upon completion by LeFrois and acceptance by the City.

The attached Transportation Infrastructure Improvement Agreement is intended to formalize LeFrois' responsibilities for the design, construction and dedication of Air Park Access Road to the City, as well as the City's responsibilities for the maintenance of the improvements following that conveyance.

It is recommended that the City Commission approve the attached Transportation Infrastructure Improvement Agreement with LeFrois Builders South, Inc. and authorize

the appropriate City officials to execute the Agreement and all associated instruments necessary to finalize the transaction.

Attachments



SIGNAGE & STRIPING NOTES

- ALL PAVEMENT MARKINGS AND SIGNAGE SHALL BE IN ACCORDANCE WITH THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS" (LATEST EDITION), AND THE LOCAL REGULATORY STANDARDS.
- ALL PAVEMENT MARKINGS / STRIPING WITHIN FDOT RIGHT-OF-WAY AND ON APPROACH TO THE R-O-W SHALL BE THERMOPLASTIC.
- ALKALINE BASE THERMOPLASTIC COMPOUND WILL BE USED ON ALL THERMOPLASTIC PAVEMENT MARKINGS.
- THE RAISED PAVEMENT MARKER ADHESIVE FOR USE ON ASPHALT ROADWAYS SHALL BE A BITUMINOUS ADHESIVE.
- ANY PAVEMENT MARKINGS ON THE CONCRETE PORTION OF THE DRIVEWAY, INCLUDING CROSSWALKS, SHALL BE HIGH CONTRAST MARKINGS WITH BLACK BORDER CONTRAST, IF THE PAVEMENT IS ASPHALT, THEN NO BORDER CONTRAST IS NEEDED.
- TYPICAL PARKING SPACE SHALL BE STRIPED WITH A 6" WHITE STRIPE.
- BULLNOSE ENDS OF TRAFFIC CALMING ISLANDS SHALL BE PAINTED YELLOW.
- THE SIGN LOCATIONS SHOWN ARE APPROXIMATE AND MAY REQUIRE FIELD ADJUSTMENT AS DIRECTED BY THE ENGINEER.
- REFER TO FDOT STANDARD PLANS FOR ROAD CONSTRUCTION: INDEX 706-001 FOR RAISED PAVEMENT MARKERS AND INDEX 711-001 FOR PAVEMENT MARKINGS.

LEGEND

- BOUNDARY/PROPERTY LINE
- SIGN LOCATION
- CURB RAMP TYPE - FDOT INDEX 304

SIGN DATA

- 1 OM4-3 TEMPORARY END OF ROAD MARKERS
- 2 R2-1 SPEED LIMIT SIGN (25 MPH)
- 3 R1-1 STOP SIGN (30" x 30")
- 4 R1-1 STOP SIGN (36" x 36")
- 5 D3 STREET SIGN - ACCESS ROAD & AIRSIDE CENTER DRIVE
- 6 D3 STREET SIGN - AIRPARK COLLECTOR ROAD & W. PIPKIN ROAD
- 7 D3 STREET SIGN - AIRPARK COLLECTOR ROAD & ACCESS ROAD
- 8 R9-9 TEMPORARY SIDEWALK CLOSED SIGN
- 9 W9-2 LANE ENDS MERGE LEFT SIGN
- 10 R3-8 LANE MOVEMENT SIGN (LEFT LANE TURNS LEFT, RIGHT LANE TURNS RIGHT)

SIGNAGE & STRIPING NOTES

- ALL PAVEMENT MARKINGS AND SIGNAGE SHALL BE IN ACCORDANCE WITH THE FDOT DESIGN STANDARDS PLANS FY 2020-21 (LATEST EDITION), AND THE LOCAL REGULATORY STANDARDS.
- ALL PAVEMENT MARKINGS / STRIPING WITHIN THE PUBLIC (e.g., FDOT, COUNTY, CITY) RIGHT-OF-WAY AND ON APPROACH TO THE R-O-W SHALL BE THERMOPLASTIC.
- ALKALINE BASE THERMOPLASTIC COMPOUND WILL BE USED ON ALL THERMOPLASTIC PAVEMENT MARKINGS.
- IF ANY RAISED PAVEMENT MARKERS ARE USED THE ADHESIVE FOR USE ON ASPHALT ROADWAYS SHALL BE A BITUMINOUS ADHESIVE.
- ANY PAVEMENT MARKINGS ON THE CONCRETE PORTION OF THE ROADWAY, INCLUDING CROSSWALKS, SHALL BE HIGH CONTRAST MARKINGS WITH BLACK BORDER CONTRAST, IF THE PAVEMENT IS ASPHALT, THEN NO BORDER CONTRAST IS NEEDED.
- BULLNOSE ENDS OF TRAFFIC CALMING ISLANDS SHALL BE PAINTED YELLOW.
- THE SIGN LOCATIONS SHOWN ARE APPROXIMATE AND MAY REQUIRE FIELD ADJUSTMENT AS DIRECTED BY THE ENGINEER.

E. Everett Morrow, PE, State of Florida, Professional Engineer, License No. 30693

This item has been digitally signed and sealed by E. Everett Morrow, P.E. on the date adjacent to the seal.

Printed Copies of this document are not considered signed and sealed and the signature must be verified of any electronic copies.

REVISIONS:
 01/09/2020 REVISED PER COMMENTS (JEF), (JEF)
 05/10/2022 REVISED PER COMMENTS, (REMOVED ROUNDABOUT (JEF))
 07/26/2022 SHEET REPLOTTED (JEF)
 08/04/2022 REVISED PER COMMENTS (JEF)
 08/04/2022 REVISED PER COMMENTS (JEF)
 08/04/2022 REVISED PER COMMENTS (JEF)
 08/23/2023 SHEET REPLOTTED (JEF)
 08/23/2023 REVISED STREET NAME PER COMMENT (JEF)

DATE: 2019-11-19
 DRAWN BY: JEF
 CHECKED BY: EEM
 JOB NO.: 2190046

AIRPARK I ACCESS ROADS
 CITY OF LAKELAND, FLORIDA

SIGNAGE & STRIPING PLAN

RRL AIRPARK LLC
 P.O. BOX 230
 HENRIETTA, NY 14467-0230
 PHONE (877) 523-1647

LANDMARK
 Engineering & Surveying Corporation

8515 Palm River Road | Tampa, Florida 33619
 (813) 621-7841 | (813) 621-6761 (fax)
 www.lmesc.com | C.A. # 28014

Digitally signed by:
 Elbert E Morrow
 Date: 2024.03.10 07:48:25 - 04'00'

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14

7 **APPROVED**
 Subject to Conditions Noted
 Project No. SUB20-010
 Date: 04/23/24
 Page: 1 of 1

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TRANSPORTATION INFRASTRUCTURE IMPROVEMENT AGREEMENT

THIS AGREEMENT ("AGREEMENT") is made and entered by and between **LEFROIS BUILDERS SOUTH, INC.**, a Florida Corporation, with offices located at 1020 Lehigh Station Road, Henrietta, New York 14467 ("Developer"), and **CITY OF LAKELAND, FLORIDA**, a Florida municipal corporation, located at 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (the "City").

WITNESSETH:

WHEREAS, DEVELOPER has an equitable interest in the real property located north of West Pipkin Road, east of the existing right of way for Airside Center Drive, and east of Old Medulla Road, as more specifically described in the legal description attached hereto as **Exhibit "A"** ("**Property**"); and

WHEREAS, DEVELOPER proposed to develop the Property as a mixed use non-residential development consisting of various office, commercial, and light industrial uses (the "**Project**"), as generally depicted on the Planned Development Site Plan, attached hereto as **Exhibit "B"**; and

WHEREAS, DEVELOPER is willing to construct certain transportation improvements at the Project's main entrance, Air Park Access Road, consistent with CITY'S design criteria and land development code requirements for public roads, as shown on **Exhibit "B,"** and with Polk County's design and construction schedule for West Pipkin Road; and

WHEREAS, DEVELOPER agrees upon completion of the Transportation Improvements, as defined below, to convey and/or dedicate same to the CITY; and

WHEREAS, this AGREEMENT is in the best interest of the public health, safety and welfare of City and provides a benefit to the residents of City.

NOW, THEREFORE, in consideration of the mutual covenants, premises and promises contained herein, the receipt, adequacy and sufficiency of which are hereby acknowledged, the CITY and DEVELOPER hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct in all respects and are expressly incorporated herein by reference.
2. **Effective Date.** The Effective Date of this AGREEMENT shall be the date on which the CITY executes this AGREEMENT.
3. **Transportation Improvements.** DEVELOPER shall undertake the design, engineering, permitting and construction of improvements to Air Park Access Road as depicted and described on the construction plans approved by the CITY as Project No. SUB20-010, incorporated herein by this reference (the "**Transportation Improvements**").

4. **Plans, Specifications, and Permits.**

A. DEVELOPER prepared and submitted to the CITY plans and specifications for the Transportation Improvements (“**Plans and Specifications**”), which have been approved by the CITY as Project No. SUB20-010. Any resubmittals of the Plans and Specifications as a result of changes required by the CITY shall be reviewed by the CITY in accordance with its standard review process. The Plans and Specifications, as may be amended, are a material part of this AGREEMENT and shall be used by DEVELOPER for construction of the Transportation Improvements.

B. The Plans and Specifications for the Transportation Improvements may be modified through the mutual agreement of DEVELOPER and the CITY through the permitting processes, and by change order as actual construction of the Transportation Improvements progresses. Proposed modifications will be provided by DEVELOPER to the CITY for review. To be effective and binding against the CITY, however, any and all such modifications and change orders must be in writing, executed by the CITY and DEVELOPER.

C. DEVELOPER shall design and construct the Transportation Improvements in a manner sufficient to satisfy the applicable government permitting requirements. It will be the responsibility of DEVELOPER to obtain any permits from any other governmental entity required for the construction of the Transportation Improvements.

5. **Construction Requirements.**

A. DEVELOPER has retained a contractor to construct the Transportation Improvements and entered into a Contract for Construction of the Improvements (the “**Construction Contract**”) with the selected contractor.

B. DEVELOPER has held a preconstruction meeting with the CITY and CITY approved commencement of construction.

C. **Drainage Retention Pond.** DEVELOPER has constructed a drainage retention area (the “Drainage Retention Pond”) on the Property which shall be used to provide stormwater retention for the Transportation Improvements. The Drainage Retention Pond shall be maintained in perpetuity in accordance with the requirements of the Southwest Florida Management District (the “SWFWMD”) by the DEVELOPER, its successors or assigns, at DEVELOPER’S cost. In addition, DEVELOPER shall provide the CITY with a non-exclusive drainage easement over and within the Drainage Retention Pond at the time of conveyance of the Transportation Improvements as contemplated in this Agreement.

D. **Airside Center Roadway.** After the Transportation Improvements are constructed and conveyed to and accepted by the CITY, DEVELOPER shall remove and dispose of 340 feet (more or less) of pavement beginning from the north right of way line of West Pipkin Road so that the properties alongside Airside Center Drive can access West Pipkin Road through the Air Park Access Road. The City shall be solely responsible for the design, permitting, and costs associated with the restoration of the area where DEVELOPER has removed the pavement.

E. The CITY may periodically inspect and monitor the work site during construction of the Transportation Improvements. If, during construction, the CITY finds the work, materials, or equipment are defective, the CITY will give DEVELOPER written notice of the defect and DEVELOPER agrees to correct the defective condition, if commercially reasonable, within thirty (30) days of DEVELOPER’S receipt of such notice. If DEVELOPER fails to correct the deficiency the CITY may take any action

necessary on DEVELOPER'S behalf, including correcting the deficiency, removing deficiencies, or utilizing CITY'S contractor to complete the work.

F. Upon completion of the work in accordance with the Plans and Specifications, DEVELOPER shall furnish a set of record drawings certified by the Engineer of Record that the Transportation Improvements have been completed in general conformance with the Plans and Specifications, as the same may be modified in accordance with the terms of this AGREEMENT. This certification shall include a statement that necessary inspections, tests, and physical measurements have been made, and that to the best of their knowledge, information and belief all materials entering into the work are in general conformance with the plans, or otherwise conform to or meet generally accepted professional practices. DEVELOPER shall also prepare and submit any required certifications to permitting agencies. In addition, DEVELOPER shall, at such time, provide the CITY with copies of records from the Transportation Improvement Project as each may request, including, but not limited to, Engineer of Record sealed Record Drawings.

G. Upon completion of the Transportation Improvements, DEVELOPER shall notify the CITY, in writing, of the completed construction and acceptance by the CITY.

6. **Conveyance of Transportation Improvements.**

A. DEVELOPER shall convey the Transportation Improvements to the CITY free and clear of all liens and encumbrances after the CITY inspector's letter indicating that the Transportation Improvements comply with the approved construction plans. As a condition of the CITY's acceptance of the Transportation Improvements, DEVELOPER shall provide a one-year maintenance warranty for the Transportation Improvements consistent with the CITY's standard maintenance warranty requirements for the dedication of roadways to the CITY.

B. Provided all such conditions are met, the CITY agrees to accept such conveyance without delay, and shall thereafter be responsible for the operation and maintenance of the Transportation Improvements so conveyed to the CITY, subject to the DEVELOPER's one-year maintenance warranty obligations. As part of the conveyance, the CITY agrees to provide DEVELOPER with any utility easements DEVELOPER may require for the installation of utilities for Project.

C. The CITY shall be responsible for the costs associated with the design, construction, and installation, except for the installation of conduit for electrical power to serve the CITY'S lights, of any and all streetlights along Air Park Access Road. DEVELOPER shall be responsible for the installation of conduit and screw anchor base and for the cost differential between aluminum and wood light poles.

D. At the time of conveyance, the DEVELOPER and CITY agree to enter into a maintenance and easement agreement for any landscaping, buffering, lighting, or other CITY required improvements along the Air Park Access Road (the "Maintenance Agreement").

7. **Development Approvals.** This AGREEMENT shall in no manner constitute a development approval regarding the Property or the Project.

8. **Approvals.** In those instances in which a party's approval, consent or satisfaction is required under this AGREEMENT, and a time period is not specified, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

9. **Insurance.**

- 9.1 Notwithstanding anything to the contrary in this AGREEMENT, DEVELOPER shall maintain, or cause its agents and contractors to maintain, Professional Liability Insurance in the amount of \$2,000,000.00 per occurrence and the Commercial General Liability, Comprehensive Auto Liability, and Workers Compensation coverages stated in 9.2, below.
- 9.2 DEVELOPER shall maintain, or cause its agents and contractors to maintain, the following types of insurance with at least the following minimum limits of liability:
- | | |
|------------------------------------|-------------------------------|
| Commercial General Liability: | \$2,000,000.00 per occurrence |
| Comprehensive Automobile Liability | \$1,000,000.00 per occurrence |
| Workers Compensation | Statutory Limits |
| Employers Liability | \$1,000,000.00 |
- 9.3 All insurance must be provided by a carrier licensed to do business in the State of Florida having an A.M. Best rating of at least the "A" category and size category of VIII. The CITY shall be named as additional insured on all General Liability and Automobile Liability policies on a primary and non-contributory basis. The General Liability, Automobile Liability and Workers' Compensation policies shall contain a waiver of subrogation in favor of CITY.
- 9.4 DEVELOPER shall provide CITY with original Certificates of Insurance satisfactory to CITY to evidence such coverage promptly following the execution of this Agreement and before any work commences on the Transportation Improvements. Coverage must commence on or before the first day work begins and remain in effect until at least the end of the warranty period.

10. **Term and Nature of Agreement.** With the exception of warranty requirements, this AGREEMENT shall terminate upon satisfaction by the Parties hereto of their respective obligations contained herein. If DEVELOPER is unable to obtain all necessary approvals for the construction of the Transportation Improvements from the CITY, or any other governmental agency, or if DEVELOPER is unable to enter a Construction Contract for the Transportation Improvements, the DEVELOPER or CITY may terminate this Agreement. If this AGREEMENT is terminated, DEVELOPER shall not be liable for, and the CITY shall not seek from DEVELOPER, either damages or specific performance of this AGREEMENT; provided, however, that the conveyance of any property completed prior to the termination of this AGREEMENT shall not be affected. If DEVELOPER fails to begin construction of the Transportation Improvements on or before three (3) years from the Effective Date of this AGREEMENT, this AGREEMENT shall be null and void.

11. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e. telecopier device) or within three (3) days after depositing with the United States Postal Services, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: Director of Community and Economic Development
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, Florida 33801

Copy to: City Attorney
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, Florida 33801

Developer: LeFrois Builders South, Inc.
Mr. Rich LeFrois
1020 Lehigh Station Road
Henrietta, New York 14467

Copy to: Peterson Myers, P.A.
Mr. John B. ("Bart") Allen
225 E. Lemon Street
Lakeland, Florida 33803

12. **Public Records.** With respect to the services performed pursuant to this Agreement, DEVELOPER shall comply with the requirements of the Florida Public Records Law as specifically set forth in Florida Statute 119.0701.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT:

PHONE: 863-834-6264
E-MAIL: KEVIN.COOK@LAKELANDGOV.NET
ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT
228 S. MASSACHUSETTS AVE.
LAKELAND, FLORIDA 33801

In accordance with Section 119.0701, *Florida Statutes*, the Developer shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Developer shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Developer shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Developer does not transfer the records to the City. Developer shall, upon completion of the contract and dedication, transfer, at no cost, to the City all public records in possession of the Developer or keep and maintain public records required by the City to perform services pursuant to the contract. If the Developer transfers all public records to the City upon completion of the contract, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the contract, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

The failure of Developer to comply with Chapter 119, Florida Statutes, and/or the provisions set forth in this Article shall be grounds for immediate unilateral termination of the Agreement by the City; the City shall also have the option to withhold compensation due Developer until records are received as provided herein.

13. **Equal Opportunity Employment.** The DEVELOPER agrees that it will not discriminate and will provide in all contracts that its contractors will not discriminate against any employee or applicant for employment under this AGREEMENT because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin.

14. **Amendment.** This AGREEMENT may only be amended and modified by an instrument in writing executed by the Parties hereto or their successors or assigns.

15. **Severability.** If any part of this AGREEMENT is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

16. **Assignment and Successors.** This AGREEMENT shall be binding upon and the benefits and obligations of this AGREEMENT shall inure to all successors and assigns of the Parties to this AGREEMENT, regardless of the name of the successors or assigns. Among other third parties, DEVELOPER may assign its rights, obligations and responsibilities hereunder to an affiliated entity which may fund any of the obligations hereunder as a “cost” without further action of the parties. In the event that DEVELOPER assigns this AGREEMENT and its rights, obligations and responsibilities hereunder to a third party, DEVELOPER shall provide written notice to the CITY.

17. **Disclaimer of Third-Party Beneficiaries.** No right or cause of action shall accrue upon or by reason of this AGREEMENT, to or for the benefit of any third party not a formal party hereto, except any successors in interest of the DEVELOPER or the CITY.

18. **Governing Law and Venue.** In performing this AGREEMENT, each party will abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such party. This AGREEMENT shall be governed by and construed in accordance with laws of the State of Florida. In the event of any legal action concerning this Agreement, the parties agree that venue will be proper only in the courts of the Tenth Judicial Circuit, located in Polk County, Florida, or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys’ fees and costs.

19. **Counterparts.** This AGREEMENT may be executed in any number of counterparts each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

20. **Entire Agreement.** This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the Parties to be bound thereby.

21. **Non-Waiver.** No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this AGREEMENT shall be deemed or construed to constitute consent or waiver, to or of, any other

breach or default in the performance of that party, of the same or of any other objection of performance incumbent upon that party. Failure on the part of either party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this AGREEMENT, at law, or in equity.

22. **Construction of Agreement.** This AGREEMENT shall not be construed against either party on the basis of it being the drafter of this AGREEMENT. The Parties agree that both herein played an equal part in negotiating the terms and conditions of this AGREEMENT. Captions and Paragraph headings in this AGREEMENT are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this AGREEMENT.

23. **Force Majeure.** Should the performance of this AGREEMENT by the DEVELOPER be prevented or delayed by any Act of God or other cause beyond the reasonable control of DEVELOPER, including but not limited to, floods, storm, fire, war, total or partial failure of transportation or delivery facilities, interruption of power, or by any law, regulation or order of any federal, state or local authority, DEVELOPER'S performance shall be excused to the extent it is thus prevented or delayed. Neither the lack of financial resources, budgetary requirements, crop revenues, harvesting schedules, nor such other errors, shall constitute a force majeure event sufficient to excuse nonperformance hereunder.

24. **Default and Opportunity to Cure.** If either Party materially defaults in its obligations under this Agreement and fails to cure the same within thirty (30) days after the date that the non-defaulting Party delivers notice of the default to the other Party, then the non-defaulting Party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the defaulting Party, and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

25. **Days.** The term "days" in this Agreement shall mean calendar days unless otherwise so noted. If a date for performance falls on a Saturday, Sunday or legal State of Florida or federal holiday, the date for performance shall be extended until the next calendar day that is not a Saturday, Sunday or legal Holiday.

26. **Miscellaneous.** This Agreement shall be subject to the following provisions:

- a. Each Party shall bear its own expense for any litigation resulting from this Agreement, which shall include but not be limited to attorney fees and applicable courts costs, including appellate proceedings.
- b. If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.
- c. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to develop the DEVELOPER'S Property shall not relieve the DEVELOPER, the CITY, or their respective successors in interest, of the obligation to comply with the laws governing such permit requirements, conditions, terms and regulations, except as otherwise provided herein.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT on the respective dates under each signature, by and through their authorized representatives.

OWNER: **CITY OF LAKELAND**

DEVELOPER: _____

BY: _____

H. William Mutz, Mayor

BY: _____

ATTEST: _____

Kelly S. Koos, City Clerk

ATTEST: _____

NAME: _____

(type)

Approved as to form and correctness:

_____, 20__.

Palmer C. Davis, City Attorney

EXHIBIT "A"
THE PROPERTY

DESCRIPTION: West Parcel

A portion of the Northeast 1/4 of Section 9, Township 29 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

COMMENCE at the Northeast corner of said Section 9; thence S.89°53'28"W., 63.00 feet along the Northerly boundary line of the Northeast 1/4 of Section 9 to the Westerly right-of-way line of OLD MEDULLA ROAD and the POINT OF BEGINNING; thence along said Westerly right-of-way line the following three courses: S.00°27'32"E., 35.00 feet; thence N.89°53'28"E., 13.00 feet; thence S.00°27'27"E., 901.14 feet to the Northeast corner of the property described in Official Records Book 9961, Page 1369 of the Public Records of Polk County, Florida; thence S.89°30'27"W., 607.79 feet along the Northerly boundary line of said property described in Official Records Book 9961, Page 1369 to the Northwest corner thereof; thence S.00°28'11"E., 430.27 feet along the Westerly boundary line of property described in Official Records Book 9961, Page 1369 to the Southwest corner thereof; thence N.89°30'23"E., 207.65 feet along the Southerly boundary line of property described in Official Records Book 9961, Page 1369 to the Northwest corner of property described in Official Records Book 2938, Page 679 of the Public Records of Polk County, Florida; thence S.00°26'40"E., 399.68 feet along the Westerly boundary line of said property described in Official Records Book 2938, Page 679 to the Southwest corner thereof; thence N.89°31'48"E., 400.19 feet along the Southerly boundary line of said property described in Official Records Book 2938, Page 679 to the Southeast corner thereof, said point being on the Westerly right-of-way line of OLD MEDULLA ROAD; thence along said Westerly right-of-way line the following course and curve: S.00°28'07"E., 515.62 feet to the beginning of a non-tangent curve concave to the Northwest having a radius of 359.26 feet; thence Southwesterly, 277.17 feet along said curve through a central angle of 44°12'16" (chord bears S.29°59'10"W., 270.35 feet) to the Northerly right-of-way line of PIPKIN ROAD; thence along said Northerly boundary line the following three courses: S.89°47'16"W., 253.21 feet; thence S.88°47'16"W., 213.33 feet; thence S.88°48'12"W., 708.27 feet to the Westerly boundary line of the property described in Official Records Book 10426, Page 2001 of the Public Records of Polk County, Florida; thence N.00°04'00"W., 2533.74 feet along the Westerly boundary line of said property described in Official Records Book 10426, Page 2001 to the Northwest corner thereof, said point also being on the Northerly boundary line of the Northeast 1/4 of said Section 9; thence N.89°53'28"E., 1281.30 feet along the Northerly boundary line of said property described in Official Records Book 10426, Page 2001 and said Northerly boundary line of the Northeast 1/4 of said Section 9 to the POINT OF BEGINNING.

Containing 65.50 Acres, more or less.

DESCRIPTION: East Parcel

A portion of the Northwest 1/4 of Section 10, Township 29 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

COMMENCE at the Northwest corner of said Section 10; thence N.89°50'01"E., 1338.89 feet along the Northerly boundary line of the Northwest 1/4 of said Section 10 to the Northeast corner of the West 1/2 of the Northwest 1/4 of said Section 10; thence along the Easterly boundary line of said West 1/2 the following two courses: S.00°24'39"E., 25.00 feet to the Southerly right-of-way line of MEDULLA ROAD and the POINT OF BEGINNING; thence continue S.00°24'39"E., 2512.75 feet to the Northerly right-of-way line of PIPKIN ROAD; thence along said Northerly right-of-way line the following two courses: S.89°54'02"W., 198.02 feet; thence N.86°37'50"W., 102.63 feet to the Westerly boundary line of the property described in Official Records Book 10429, Page 1752 of the Public Records of Polk County, Florida; thence N.00°21'56"W., 539.80 feet along said Westerly boundary line to the Northwest corner of said property described in Official Records Book 10429, Page 1752; thence S.89°54'02"W., 200.44 feet to the Northeast corner of property described in Official Records Book 4055, Page 200, of the Public Records of Polk County, Florida; thence S.00°22'01"E., 535.00 feet along the Easterly boundary line of said property described in Official Records Book 4055, Page 200 to the said Northerly right-of-way line of PIPKIN ROAD; thence along said Northerly right-of-way line the following six courses: S.89°54'02"W., 14.39 feet; thence S.52°47'57"W., 43.10 feet; thence S.89°54'02"W., 138.00 feet; thence N.53°08'07"W., 36.46 feet; thence N.89°10'05"W., 547.10 feet; thence N.37°10'32"W., 38.61 feet to the Easterly right-of-way line of OLD MEDULLA ROAD; thence N.00°27'27"W., 590.61 feet along said Easterly right-of-way line to the Southwest corner of property described in Official Records Book 4386, Page 319 of the Public Records of Polk County, Florida; thence N.89°53'50"E., 400.01 feet along the Southerly boundary line of said property described in Official Records Book 4386, Page 319 to the Southeast corner thereof; thence N.00°27'27"W., 1059.44 feet along the Easterly boundary line of said property described in Official Records Book 4386, Page 319 to the Northeast corner thereof; thence S.89°50'01"W., 400.01 feet along the Northerly boundary line of said property described in Official Records Book 4386, Page 319 to the Northwest corner thereof, said point also being the said Easterly right-of-way line of OLD MEDULLA ROAD; thence along said Easterly right-of-way line the following two courses: N.00°27'27"W., 765.79 feet; thence N.44°45'13"E. 69.51 feet to the said Southerly right-of-way line of MEDULLA ROAD; thence N.89°50'01"E., 1239.54 feet along said Southerly right-of-way line to the POINT OF BEGINNING.

Containing 61.88 Acres, more or less.

EXHIBIT "B"

PUD PLAN

