

PREPARED BY AND RETURN TO:

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

**THIS THIRD AMENDMENT TO DEVELOPER'S AGREEMENT REGARDING
TRANSPORTATION CONCURRENCY AND ROAD IMPACT FEES**, "Third Amendment," is made and entered into as of this ____ day of _____, 2015, 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 **DOUGLAS DEVELOPMENT SERVICES, INC.**, a Florida corporation, (the "Owner"), whose address is 101 S New York Avenue, Suite 210, Winter Park, Florida 32789.

W I T N E S S E T H

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 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, which the Original Agreement, as amended by the First Amendment and Second 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 the continued, ~~extremely~~ difficult economic conditions that exist in the real estate development market, the Florida legislature recently passed Florida House Bill 7023, "HB7023", which took effect on July 1, 2014, in order to provide, upon request of the property owners, an additional two (2) year extension to previous extensions allowed for permits or other authorizations under previous legislature; and

WHEREAS, pursuant to HB7023, Owner has requested an extension of its vesting period under the 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, 2016~~. January 1, 2018. With respect to any building permits for the Project, issued subsequently to ~~January 1, 2016~~, January 1, 2018 the rates in effect as of the date of the issuance of the applicable permit shall apply. 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, 2016~~ January 1, 2018 With respect to those building permits for the project, issued subsequently to January 1, ~~2016~~ 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, 2017~~ 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. Paragraph 21 of the Agreement is hereby amended as follows:

21. **Termination.** This Agreement shall automatically terminate and the parties shall be relieved of any further liability or obligations hereunder upon the Owner's failure to pay the Capacity Reservation Fee as required in Paragraph 2, herein; or on October 30, ~~2017~~ 2019 However due to the substantial contribution of the Owner to the construction of transportation improvements in the area that will benefit the general public, and due to the Owner's obligation to construct a substantial portion of the Project on or before October 30, ~~2017~~ 2019 and to continue the pace of construction, this Agreement may be extended as follows: so long as (i) at least fifty percent (50%) of the Project Trips have been utilized, by the issuance of permits, on or before October 30, ~~2017~~ 2019 this Agreement shall, upon written notice from the Owner to the City, be extended for a period of twenty-four (24) months, and (ii) at least seventy-five percent (75%) of the Project Trips have been utilized, by the issuance of permits, on or before October 30, ~~2019~~ 2021 this Agreement shall, upon written notice from the Owner to the City, be extended for an additional twenty-four (24) month period.

Either party may terminate this Agreement upon thirty (30) days written notice of the default of the other party under the terms hereof and failure of the defaulting party to cure such default within such thirty (30) day period; provided, however, that if any such default cannot reasonably be cured within such thirty (30) day period and so long as the defaulting party has commenced curing such default within such thirty (30) day period, the defaulting party shall be provided with such additional time as is reasonably necessary to cure such default. Upon termination, both parties shall be relieved of any further liability or obligations hereunder, except as set forth in Paragraph 4.

4 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.

5. 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.

6. 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.

7. 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.

8. 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:

DOUGLAS DEVELOPMENT SERVICES, INC., a
Florida Corporation

Print Name: _____

By: Douglas Development Services, Inc.

By: _____

Print Name: _____

Name: Douglas A. Hoeksema
Title: President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____, as _____ of both Douglas Development Services, Inc, a Florida Corporation, 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: _____

CITY:

ATTEST:

CITY OF ORLANDO, FLORIDA

By: _____
Alana C. Brenner, City Clerk

By: _____
Mayor

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

_____, 2015

Assistant City Attorney

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2015,
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)