

THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:

Chris Roper, Esq.  
Akerman, LLP  
P.O. Box 231  
Orlando, Florida 32802

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**THIRD AMENDMENT TO**  
**CONCURRENCY DEVELOPMENT AGREEMENT**  
**PURSUANT TO CHAPTER 163, FLORIDA STATUTES**

**THIS THIRD AMENDMENT TO CONCURRENCY DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 163, FLORIDA STATUTES** (“Third Amendment”) is made as of the Effective Date (defined below), by and between **THE CITY OF OCALA**, a Florida municipal corporation (“City”) having an address of 110 SE Watula Avenue, Ocala, Florida 34471, and **OCALA TROPHY, LTD.**, a Florida limited partnership (“Developer”), having an address of 3483 W. Woolbright Road, Boynton Beach, Florida 33436.

**RECITALS:**

**WHEREAS**, on or about December 20, 2005, the City and Developer entered into that certain Concurrency Development Agreement Pursuant to Chapter 163, Florida Statutes, as recorded in O.R. Book 4291, Page 1444 (the “Original Agreement”), as amended by that certain Amendment to Concurrency Development Agreement Pursuant to Chapter 163, Florida Statutes, as recorded in O.R. Book 5249, Page 0265 (the “First Amendment”), and as amended by that certain Second Amendment to Concurrency Development Agreement Pursuant to Chapter 163, Florida Statutes, as recorded in O.R. Book 6133, Page 0142, of the Public Records of Marion County, Florida (the “Second Amendment” and, together with the First Amendment and the Original Agreement, the “Agreement”); and

**WHEREAS**, as of the date of the Second Amendment, a total of 3,717 PM peak hour external trips were reserved for the development of the Heath Brook DRI (the “Trips”); and

**WHEREAS**, on or about August 21, 2018, the City adopted Resolution 2018-02 approving that certain Amended and Restated Development Order for the Heath Brook DRI, which approved a *de minimis* increase of 85 PM peak hour external trips reserved for the development of the Heath Brook DRI; and

**WHEREAS**, on or about \_\_\_\_\_, the City adopted Resolution \_\_\_\_\_ approving that certain First Amendment to Amended and Restated Development Order for the Heath Brook DRI, which approved an increase of 494 PM peak hour external trips reserved for the

development of the Heath Brook DRI, bringing the total number of PM peak hour external trips reserved for the development of the Heath Brook DRI to 4,296; and

**WHEREAS**, by its terms, Resolution \_\_\_\_\_ did not become effective until the date on which Developer conveyed (a) the OTL Right-of-Way, OTL Drainage Easement, and OTL Temporary Construction Easement to Marion County, Florida, and (b) the City Utility Easement to the City, all in accordance with (and as such terms are defined in) that certain Road Realignment, Contribution and Construction Agreement [SW 40<sup>th</sup> Avenue, Phase 1, OTL], dated \_\_\_\_\_, by and between Marion County, Florida, the City and the Developer (collectively, the “Conditions Precedent”); and

**WHEREAS**, the Conditions Precedent were satisfied by Developer on \_\_\_\_\_, which is also the date on which Resolution \_\_\_\_\_ became effective; and

**WHEREAS**, the City and Developer desire to amend the Agreement to reflect the new number of Trips reserved for the development of the Heath Brook DRI and such other matters as are more particularly set forth below; and

**WHEREAS**, the City Council of the City has published notice of its intent to consider entering into this Third Amendment and has held public hearings on \_\_\_\_\_ and on \_\_\_\_\_ to consider this Third Amendment.

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties hereby agree as follows:

1. **Recitals; Definitions.** The above referenced recitals are true and correct and are hereby incorporated into this Third Amendment. Capitalized terms not defined herein shall have the same meaning ascribed to them in the Agreement.
2. **Revised Definition of Development Order.** In order to reflect certain amendments to the Development Order that have taken place since the Agreement was last amended, the parties agree that the definition of “Development Order” as set forth in the Agreement is hereby amended to mean and refer to that certain Amended and Restated Development Order for the Heath Brook DRI approved by the City on August 21, 2018, and recorded at O.R. Book 6840, Page 824, Public Records of Marion County, Florida, as the same may be amended from time to time.
3. **Traffic Facilities Contributions.** The parties agree that each of the City and the Developer has satisfied its obligations as set forth in Section 3 of the Agreement.
4. **Capacity Reservation.** Paragraphs 5, 5.1, 5.2, and 5.3 of the Original Agreement and Section 2 of the Second Amendment are hereby deleted in their entirety and replaced with the following:

In consideration of the Developer's contributions set forth in paragraph 3 of this Agreement and in accordance with that certain Resolution \_\_\_\_\_ approved by the City on \_\_\_\_\_, which resolution approved the First Amendment to Amended and Restated Development Order for the Heath Brook DRI and became effective on \_\_\_\_\_, the City agrees that the Developer has reserved, for its benefit and for the benefit of owners of parcels within the Heath Brook DRI who are assigned such trips by the Developer, a total of 4,296 PM peak hour external trips for use within the Heath Brook DRI. The foregoing reservation of capacity is sufficient to allow the completion of the development approved for the Heath Brook DRI pursuant to the Development Order and shall not expire until this Agreement expires or is terminated.

5. **Duration of the Agreement.** In order to reflect certain extensions made in accordance with Section 252.363, including that certain extension notice provided by Developer to the City on May 26, 2021, Section 12 of the Agreement is hereby amended to extend the term of the Agreement to September 16, 2026. For avoidance of doubt, nothing herein shall preclude the term of the Agreement from being further extended in accordance with Section 252.363, Florida Statutes, or by mutual consent of the parties in accordance with Section 163.3229, Florida Statutes, or otherwise in accordance with law.

6. **Effect on Agreement.**

(a) The Agreement is amended to the extent set forth herein.

(b) Except as set forth herein, the Agreement is not amended or modified.

(c) Unless otherwise specified, all references to the Agreement shall be deemed to refer to the Original Agreement as amended by the First Amendment, the Second Amendment and this Third Amendment.

7. **Effective Date.** The Effective Date of this Third Amendment shall be the date it is recorded in the Public Records of Marion County, Florida.

8. **Recording.** This Third Amendment shall be recorded in the Public Records of Marion County, Florida, at Developer's expense.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

**THEREFORE**, Developer and the City have executed this Third Amendment as of the dates set forth in the signature blocks below.

**ATTEST:**

**“City”**

**City of Ocala**, a Florida municipal corporation

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form and legality

\_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney

STATE OF FLORIDA

COUNTY OF MARION

This instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of Ocala City Council, on behalf of the City, who ☐ is personally known to me OR ☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public – State of Florida

Print Name \_\_\_\_\_  
Commission Number \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**“Developer”**

**Ocala Trophy, Ltd.**, a Florida limited partnership

By: New Millennium Operating Corp., a Florida corporation, its General Partner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

This instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of New Millennium Operating Corp., a Florida corporation, as General Partner of Ocala Trophy, Ltd., a Florida limited partnership, on behalf of such entity, who ☐ is personally known to me OR ☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public – State of Florida

Print Name \_\_\_\_\_  
Commission Number \_\_\_\_\_  
My Commission Expires \_\_\_\_\_