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DDS: \$0 MDS: \$0 INT: \$0

This Instrument Prepared by:
W. James Gooding III
Gilligan, Gooding & Franjola, P.A
1531 SE 36th Avenue
Ocala, FL 34471

Record and Return to:
City Planning Department
201 SE 3rd Street
Ocala, FL 34471

Recording Fees: \$ _____

**AMENDMENT CONCERNING PAYMENT OWED UNDER PUD DEVELOPMENT
AGREEMENT [SHADY ROAD PUD]**

THIS AGREEMENT is entered into this February 17, 2015 (the "Effective Date"), by and between:

- City of Ocala, a Florida municipal corporation ("City")
- Roy T. Boyd III as Trustee of the Roy T. Boyd, Jr. Trust II (Revocable) U/T/A Dated March 8, 1984, as Amended and Restated by the Amended and Restated Boyd Trust II (Revocable) U/T/A Dated November 1, 1990, a/k/a Roy T. Boyd III, Trustee ("Owner").

WHEREAS:

- A. Owner; Thomas L. Croley ("Croley"); and City are parties to the following agreements:
- 1). PUD Development Agreement [Shady Road PUD] (the "Original Agreement") dated September 4, 2001, and recorded in OR Book 3097, page 597.¹
 - 2). First Amendment and Restated PUD Development Agreement [Shady Road PUD] (the "Restated Agreement") dated June 4, 2002, as recorded in OR Book 3285, page 502.
 - 3). Second Amendment to Restated PUD Development Agreement [Shady Road PUD]² (the "Amendment to Restated Agreement") dated November 21, 2003, as recorded in OR Book 3600, page 365.
- B. The Original Agreement, Restated Agreement and Amendment to Restated Agreement concern a residential real estate project (the "PUD Project") that was to be developed as a Planned Unit Development ("PUD") under the zoning provisions of the City Code of Ordinances ("City Code").
- C. At the time the Original Agreement was executed, the property to be developed as the PUD Project included a parcel (the "Tract A Parcel") referred to as, and described as, "Tract A" in the Original Agreement.

¹ All recording references refer to the public records of Marion County, Florida.

² Although named the Second Amendment, in fact, this was the first amendment to the Restated Agreement.

- D. Pursuant to the Restated Agreement, the Tract A Parcel was deleted from the proposed PUD Project.
- E. Pursuant to paragraph 19 of the Restated Agreement, Owner agreed to contribute the sum of \$75,000.00 (the "Contribution") to City to be used by City for the funding of the construction of improvements to Scott Springs Park, a City park located in the vicinity of the PUD Project and contiguous to the Tract A Parcel.
- F. Thereafter, City and Owner entered into negotiations concerning a possible exchange between Owner and City pursuant to which Owner would exchange the Tract A Parcel for other real property in the vicinity of the PUD project owned by City. Such exchange involved a possible credit, for the Contribution, against other amounts to be paid by Owner to City. Because of these negotiations, Owner never made the Contribution.
- G. The negotiations between Owner and City were not successful and thus Owner retained the Tract A Parcel.
- H. Pursuant to a Special Warranty Deed recorded in OR Book 5662, page 399, Owner conveyed a portion (the "DRA Tract") of the Tract A Parcel to City.
- I. Following the conveyance of the DRA Tract, Owner continues to own the portion of the Tract A Parcel (the "Remaining Parcel") as described and depicted on the attached **Exhibit A**.
- J. City and Owner desire to enter into this Agreement to modify Owner's obligations to make the Contribution and concerning other matters as specifically set forth herein.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Contribution Payment.

- 1.1. In consideration for Owner's conveyance of the DRA Tract to City, the amount of the Contribution is hereby reduced from \$75,000.00 to \$25,000.00. All further references in this agreement to the "Contribution" shall refer to the reduced amount of \$25,000.00.
- 1.2. Owner shall pay the Contribution to City upon the earlier of:
 - 1.2.1. Two years from the Effective Date of this Agreement; or
 - 1.2.2. The closing of the sale of the Remaining Parcel.

2. Miscellaneous Matters.

- 2.1. Any reference in any approved site plans for real property previously owned by Owner that could be interpreted as requiring the conveyance to City of the entire Tract A Parcel, instead of merely the DRA Tract, are hereby deleted and released. Owner has satisfied all obligations to City concerning a conveyance of the Tract A Parcel by conveying the DRA Tract to City.

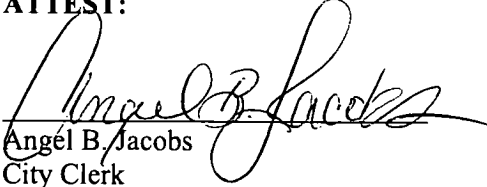
- 2.2. Owner has advised City that it intends to seek a rezoning of the Remaining Parcel.
 - 2.2.1. Such rezoning is entirely independent of this Agreement.
 - 2.2.2. City shall consider any such request in connection with the provisions of the City Code and applicable law.
 - 2.2.3. Nothing set forth herein shall obligate City to grant such rezoning.
- 2.3. By executing this Agreement, Roy T. Boyd III, individually, represents and warrants to City that:
 - 2.3.1. He is the sole Trustee of the Roy T. Boyd, Jr. Trust II (Revocable) U/T/A Dated March 8, 1984, as Amended and Restated by the Amended and Restated Boyd Trust II (Revocable) U/T/A Dated November 1, 1990; and
 - 2.3.2. He has the authority to execute this Agreement on behalf of the foregoing trust.
3. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
4. **Notices.**
 - 4.1. All notices, requests, consents and other communications (the foregoing collectively, "Communications") required or permitted under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such Communication) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:
 - 4.1.1. If to Owner: Roy T. Boyd II, 1720 SE 16th Avenue, Building #200, Ocala, FL 34471.

- 4.1.2. If to City: City of Ocala Planning Director, 201 SE 3rd Street, Ocala, FL 34471.
 - a. With a copy to: Director of City Recreation and Parks Department, 828 NE 8th Avenue, Ocala, FL 34470.
- 4.2. Each such Communication shall be deemed delivered:
 - 4.2.1. On the date of delivered if by personal delivery;
 - 4.2.2. On the date of facsimile transmission if by facsimile; and
 - 4.2.3. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which Communication is designated by the postal authorities as not delivered; or (d) the third business day after mailing.
 - 4.2.4. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- 4.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.
- 4.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
5. **Attorney's Fees.** If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
6. **Remedies.** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
7. **Successors and Assigns.** All covenants, Agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.

8. **Severability Clause.** Provisions contained in this Agreement which are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.
9. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
10. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
11. **Language.** Whenever used in this Agreement, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders where the context permits.
12. **Paragraph Headings.** The paragraph headings used in this Agreement are for convenience only, and shall not be used in interpreting or construing any provision of this Agreement.
13. **Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
14. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
15. **Time.** Time is of the essence of all of the provisions and terms of this Agreement.
16. **Entire Understanding.** This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties.
17. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

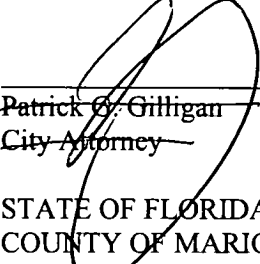
ATTEST:


Angel B. Jacobs
City Clerk

City of Ocala, a Florida municipal
corporation


Jay A. Musleh
President, Ocala City Council


Approved as to form and legality


Patrick G. Gilligan
City Attorney

W. James Gooding III
Assistant City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 19 day of February, 2015, by Jay A. Musleh, as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.


Notary Public, State of Florida
Name: Roseann J. Fusco
(Please print or type)

Commission Number:
Commission Expires:



ROSEANN J. FUSCO
MY COMMISSION # EE 107684
EXPIRES: July 30, 2015
Bonded Thru Budget Notary Services

Notary: Check one of the following:

- ☒ Personally known OR
☐ Produced Identification (if this box is checked, fill in blank below).
Type of Identification Produced: _____



Sharon L. Oliver

Witness

Sharon L. Oliver

Print Witness Name

Larry E. Young

Witness

Larry E. Young

Print Witness Name

Roy T. Boyd III as Trustee of the Roy T. Boyd, Jr. Trust II (Revocable) U/T/A/ Dated March 8, 1984, as Amended and Restated by the Amended and Restated Boyd Trust II (Revocable) U/T/A Dated November 1, 1990

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 10 day of February, 2015, by Roy T. Boyd III as Trustee of the Roy T. Boyd, Jr. Trust II (Revocable) U/T/A/ Dated March 8, 1984, as Amended and Restated by the Amended and Restated Boyd Trust II (Revocable) U/T/A Dated November 1, 1990.



SHARON L. OLIVER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE870209
Expires 3/31/2017

Sharon L. Oliver

Notary Public, State of Florida

Name: Sharon L. Oliver

(Please print or type)

Commission Number: EE870209

Commission Expires: 3-31-2017

Notary: Check one of the following:

☒ Personally known OR

☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

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