

**LEGISLATIVE #**

**130108A**

**FIRST AMENDMENT TO CONTINUANCE AND SETTLEMENT AGREEMENT**

This First Amendment to Continuance and Settlement Agreement (this "Agreement") is entered into between Mogas Investments, Inc., Nalbandian Properties, LLC, Vital Properties, LLC and Ropen Nalbandian on the one hand (collectively, "Nalbandian") and the City of Gainesville, on the other hand (the "City"). Nalbandian and the City are hereinafter collectively referred to as the "Parties."

**RECITALS**

WHEREAS, Nalbandian is the owner of a 7.82 acre commercial rental property located at 605 NW 53<sup>rd</sup> Avenue, Gainesville Florida, and a 4.18 acre commercial rental property located at 505 NW 53<sup>rd</sup> Avenue, Gainesville, Florida (the "Nalbandian Properties").

WHEREAS, the City has approved its application for a design plat and passed a rezoning ordinance in connection with a 9.78 acre parcel (the "Homeless Center Parcel") that is located in the vicinity of 820 NW 53<sup>rd</sup> Avenue for use in building a "One-Stop Homeless Center."

WHEREAS, on or about September 13, 2010, Nalbandian filed an action seeking declaratory and injunctive relief under Section 163.3215, Florida Statutes, in the Circuit Court of the Eighth Judicial Circuit, Alachua County, Florida, styled, Mogas Investments, Inc., Nalbandian Properties, LLC and Ropen Nalbandian, Petitioners v. the City of Gainesville, a political subdivision of the State of Florida, Respondent, Case Number: 10-CA-4963, Division K challenging the City's design plat application for the Homeless Center Parcel.

WHEREAS, on or about November 8, 2010, Nalbandian filed a second action seeking declaratory and injunctive relief under Section 163.3215, Florida Statutes, in the Circuit Court of the Eighth Judicial Circuit, Alachua County, Florida, styled, Mogas Investments, Inc., Nalbandian

Properties LLC and Ropen Nalbandian, Petitioners v. the City of Gainesville, a political subdivision of the State of Florida, Respondent, Case Number: 10-CA-6285, Division J challenging the City's rezoning ordinance for the Homeless Center Parcel.

WHEREAS, on or about September 28, 2011, the Court granted Nalbandian's motion to consolidate case number 6285 with case number 4963 with the later becoming the operative case number for the consolidated action (the "Consolidated Action").

WHEREAS, the Parties continued the trial of the Consolidated Action for a period of at least one hundred and twenty (120) days to enable the Parties the opportunity as outlined herein to explore a final resolution of their disputes.

WHEREAS, upon agreement of the parties, on September 25, 2012, the Court continued the consolidated action until February 25, 2013.

WHEREAS, the Parties desire to extend the trial date of the Consolidated Action and the dates for other actions pending in the cases styled Nalbandian Properties, LLC, Mogas Investments, Inc. and Ropen Nalbandian, Petitioners vs. City of Gainesville, a political subdivision of the State of Florida, Respondent, Case Number: 2012-CA-1317; Nalbandian Properties, LLC, and Ropen Nalbandian, Petitioners vs. City of Gainesville, a political subdivision of the State of Florida, Respondent, DCA Case Number ID12-1671, (collectively referred to as "global litigation") to enable the Parties the additional opportunity to explore a final resolution of all litigation between the Parties.

NOW THEREFORE in consideration of the foregoing, and the following agreements, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

Initial:   RN    
\_\_\_\_\_

1. Continuance Period. The Parties agree to continue the trial of the Consolidated Action and all deadlines related to the global litigation for a period of at least 60 days from July 1, 2013.

2. Gain Property Donation. Up to and including July 1, 2013 (the "Continuance Period") Nalbandian irrevocably offers to convey to the City in fee simple title to property commonly referred to by and among the Parties as the "Gain Parcel", Tax Parcel No. 07872-003-011, Alachua County, Florida consisting of approximately 41 acres (the "Gain Property Donation Offer"). The Gain Property Donation Offer expires on July 1, 2013 unless extended in writing by Nalbandian.

3. Site Location Efforts. During the Continuance Period, the City shall make meaningful and good faith efforts to locate an alternative site for the One-Stop Homeless Center. Prior to the conclusion of the Continuance Period, City staff shall make a formal presentation to the City Commission of such alternative site(s), even if the City Commission does not accept any of the sites as an alternative to the Homeless Center Parcel.

4. Army Corp of Engineers Permit. The Parties agree that during the Continuance Period, the City shall be entitled to continue to pursue obtaining a wetland permit for the Homeless Center Parcel, and equally, Nalbandian shall be entitled to oppose such efforts by the City before the Army Corp of Engineers. The Parties further agree that in the event the Army Corp of Engineers renders a decision during the Continuance Period, whether granting or denying the City a wetland permit for the Homeless Center Parcel, the Parties' obligations hereunder are not relieved and shall remain in full force and effect as otherwise provided herein.

5. Acceptance of the Gain Parcel Donation Offer. Upon acceptance of Nalbandian's Gain Property Donation Offer by the City Commission, the City shall immediately cease all efforts to

develop the One-Stop Homeless Center on the Homeless Center Parcel. The City shall additionally not file a petition to seek a land use or zoning change in furtherance of, or connection with, development of a homeless center on any property within a one (1) mile radius of the Nalbandian Properties located on NW 53<sup>rd</sup> Avenue, Gainesville, Florida (Tax Parcel Nos. 07965-020-001 and 07965-020-000), such radius being reflected on Exhibit "A", which is incorporated herein by reference, as long as Nalbandian owns the Nalbandian properties in fee simple. Nalbandian shall convey the Gain Property to the City within ten (10) days of the City Commission's acceptance of the Gain Property Donation Offer in fee simple, free and clear of all liens and encumbrances accompanied by a title commitment issued by a Florida licensed title insurer agreeing to issue the City an owner's policy of title insurance in the amount of the purchase price paid by Nalbandian when Nalbandian purchased and first acquired title to the property. The City shall thereafter provide to Nalbandian an acknowledgment of the Gain Property Donation upon the filing of appropriate documentation necessary for Nalbandian to claim the fair market value of the donation as a tax deduction/credit, as Nalbandian deems to be in their best interests. The City makes no representation as to any claimed fair market value of the property. Additionally, upon acceptance of the Gain Property Donation Offer, the City shall, pursuant to its right under the Fourth Amendment to the Purchase Agreement to acquire the Homeless Center Parcel, file a petition with the City to rezone the Homeless Center Parcel from Planned Development back to its I-2 zoning and shall take all reasonable administrative steps to accomplish this rezoning.

6. Voiding of Agreement. Notwithstanding anything to the contrary herein, this Agreement may be rendered null and void upon the happening of any of the following events: (i) the City Commission does not accept the Gain Property Donation prior to the expiration of the

Initial:   R.M.

Continuance Period: (ii) prior to the expiration of the Continuance Period, the City provides notice to Nalbandian, that within sixty (60) days thereof, it intends to proceed with development of the One-Stop Homeless Center on the Homeless Center Parcel. In either such event, this Agreement shall be rendered null and void and the Parties shall be deemed to be in the same position as they were the day prior to the execution of this Agreement and the Parties shall be entitled to continue litigation of the Consolidated Action with all claims, rights, actions, causes of action and defenses that they otherwise had, it being the express intent of the Parties that this Agreement shall not be deemed by any reason whatsoever to be a release or waiver of any such rights, causes of action, or defenses.

7. Counterparts. This Agreement may be executed in counterparts with each such counterpart being considered an original.

8. Representation of Authority. The parties to this Agreement, represent and warrant to each other: that they are authorized to sign this Agreement; that they own and have not sold, pledged, hypothecated, assigned or transferred any of the rights granted within this Agreement. The parties agree to indemnify and hold each other harmless from all claims, liabilities, expenses of defense (including without limitation, attorneys' fees incurred), which may hereafter arise as a result of a non-party to this Agreement, asserting any rights against any party to this Agreement, in contravention to the representations and warranties within this Agreement.

9. Represented by counsel. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of this Agreement, that the provisions of this Agreement and the legal effect thereof have been fully explained to them, and that they have entered into this Agreement freely and voluntarily and without coercion or undue influence.

Initial:   R. M.    
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Signed, Sealed and Delivered  
in the presence of:

[Signature]  
[Witness Signature]

[Signature]  
[Witness Signature]

MOGAS INVESTMENTS, INC.

By: [Signature]  
Name: \_\_\_\_\_  
Its: President

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 20<sup>th</sup> day of December, 2012. Such person did take an oath and: *(Notary must check applicable box)*.

- is/are personally known to me.
- produced a current Florida driver's license as identification.
- produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

[Signature]  
SIGNATURE OF NOTARY

\_\_\_\_\_  
Name of Notary *(Typed, Printed or Stamped)*



Initial: R.M.

Signed, Sealed and Delivered  
in the presence of:

[Signature]  
[Witness Signature]

[Signature]  
[Witness Signature]

NALBANDIAN PROPERTIES, INC.

By: [Signature]  
Name: \_\_\_\_\_  
Its: President

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 20th day of December, 2012. Such person did take an oath and: *(Notary must check applicable box)*.

- is/are personally known to me.
- produced a current Florida driver's license as identification.
- produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

[Signature]  
SIGNATURE OF NOTARY

\_\_\_\_\_  
Name of Notary *(Typed, Printed or Stamped)*



Initial: R.N.



Signed, Sealed and Delivered  
in the presence of:

[Signature]  
[Witness Signature]

[Signature]  
[Witness Signature]

VITAL PROPERTIES, INC.

By: [Signature]  
Name: \_\_\_\_\_  
Its: President

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 20th day of December, 2012. Such person did take an oath and: *(Notary must check applicable box).*

- is/are personally known to me.
- produced a current Florida driver's license as identification.
- produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

[Signature]  
SIGNATURE OF NOTARY

Name of Notary *(Typed, Printed or Stamped)*



Initial: R.M.

Signed, Sealed and Delivered  
in the presence of:

[Handwritten Signature]  
[Witness Signature]

ROPEN NALBANDIAN

[Handwritten Signature]  
[Witness Signature]

[Handwritten Signature]

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 20th day of December 2012. Such person did take an oath and: *(Notary must check applicable box).*

is/are personally known to me.  
produced a current Florida driver's license as identification.  
produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

[Handwritten Signature]  
SIGNATURE OF NOTARY

Name of Notary *(Typed, Printed or Stamped)*



Initial: R.M.

Signed, Sealed and Delivered  
in the presence of:

Crystal G. Owens-White  
[Witness Signature]

[Signature]  
[Witness Signature]

CITY OF GAINESVILLE

By: [Signature]  
Name: Ross Blackburn  
Its: city manager

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 20th day of December, 2012. Such person did take an oath and: *(Notary must check applicable box).*

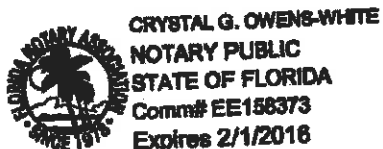
- is/are personally known to me.
- produced a current Florida driver's license as identification.
- produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

Crystal G. Owens-White  
SIGNATURE OF NOTARY

Name of Notary *(Typed, Printed or Stamped)*

3545.002#1038



Initial: RB