

**LEGISTAR NO.**

**130354**

## SETTLEMENT AGREEMENT

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

WHEREAS, the City filed an application to rezone a 9.78 acre parcel (the "Homeless Center Parcel") that is located in the vicinity of 820 NW 53<sup>rd</sup> Avenue to develop a "One-Stop Homeless Center" and the City ultimately approved the rezoning application, as well as a design plat for the proposed development.

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

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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, Nalbandian also filed an action styled Nalbandian Properties, LLC and Ropen Nalbandian, Petitioners, v. City of Gainesville, a political subdivision of the State of Florida, Respondent, which is now on appeal in the District Court of Appeal, First District, State of Florida; Case No.: 2012-1671 (all litigation currently pending between the parties is hereinafter referred to collectively as the "Pending Litigation")

WHEREAS, as a result of the uncertainty of the Pending Litigation and the availability of an alternative site the City decided to cease its efforts to develop a homeless center at the NW 53<sup>rd</sup> Avenue site and to instead purchase certain real property from the State of Florida for development of a One-Stop Homeless Center at what is now known as the Gainesville Community Innovation Center (the "GCI Center") and the Parties entered into a Continuance and Settlement Agreement in October 2012 and a First Amendment to that Continuance and Settlement Agreement on December 20, 2012 (the "Previous Agreement").

WHEREAS, a dispute has arisen between the parties in regard to the Previous Agreement.

WHEREAS, the Parties desire to enter into a new Settlement Agreement superseding any and all previous agreements.

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:

1. The Previous Agreement shall be deemed null and void effective immediately and the parties shall be relieved and released from any covenants, duties and obligations whatsoever under the Previous Agreement.

2. Nalbandian will dismiss with prejudice the Pending Litigation (the parties to bear their own attorneys' fees and costs) brought against the City in regard to the One Stop Homeless Center.

3. In exchange for the City's covenants and obligations hereunder, including but not limited to the City's obligations specifically stated in paragraph 8 of this agreement, Nalbandian will pay to the City the sum of \$250,000, payable in five (5) equal installments of \$50,000, due as follows:

- a. \$50,000 on November 25, 2013.
- b. \$50,000 per year for the next four (4) years due and payable on November 25<sup>th</sup> of each year.

4. Nalbandian's payment shall be secured by a promissory note and first mortgage in favor of the City on 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. Nalbandian shall pay all documentary stamp tax, intangible tax, recording fee and any other expenses associated with recording the mortgage in the Public Records of Alachua County, Florida. Upon recording, Nalbandian shall send a recorded copy to the City. Nalbandian represents and warrants that Vital Properties, LLC, owns the Gain Parcel in fee simple, free and clear of any encumbrances that would take priority over the First Mortgage in favor of the City.

5. In the event the City does not close on the purchase of any part of the property comprising the GCI Center, and all negotiations regarding the City's purchase of any part of the

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GCI Center have ceased, then within thirty (30) days following written notice from the City, (i) Nalbandian shall transfer the Gain Parcel to the City free and clear of all encumbrances except for the mortgage in favor of the City contemplated hereunder and (ii) the City shall return to Nalbandian in lump sum all payments made under this agreement and pursuant to the promissory note and shall take all steps necessary to render the promissory note fully and completely satisfied.

6. The City shall cease all efforts to develop a One-Stop Homeless Center on the Homeless Center Parcel. (All parties acknowledge that this condition has been complied with).

7. As long as Nalbandian owns the Nalbandian Properties in fee simple the City -- on its own behalf, through an agent on its behalf or as an agent for any other party -- shall not file any petition to change the land use category or to change the zoning district for the purpose of locating a homeless center on a specific piece of property or specific properties located 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.

8. After the City's receipt of Nalbandian's first payment the City shall, pursuant to its right under the Fourth Amendment to the Purchase Agreement to acquire the Homeless Center Parcel, take all reasonable administrative steps to rezone the Homeless Center Parcel from Planned Development back to its I-2 zoning.

9. Release and Indemnification by City. Upon approval of this Agreement by the Commission, the City generally releases Nalbandian, including its current and former officers, individually, as well as Nalbandian's other current and former representatives, officers, employees and other agents (all of the foregoing, collectively, the "Nalbandian Releasees"), of

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and from any and all, disputes, claims, allegations, damages, and/or causes of action whatsoever, whether known or unknown, and whether legal, equitable, statutory, or otherwise (except for the obligations under this agreement), that the City had, or may have, from the beginning of time to the present day, against the Nalbandian Releasees as to the Previous Agreement and the Pending Litigation.

10. Release and Indemnification by Nalbandian. Upon approval of this Agreement by Nalbandian, Nalbandian hereby generally releases the City, including its current and former officials, individually, as well as City's other current and former representatives, officers, employees and other agents (all of the foregoing, collectively, the "City Releasees"), of and from any and all, disputes, claims, allegations, damages, and/or causes of action whatsoever, whether known or unknown, and whether legal, equitable, statutory, or otherwise (except for the obligations under this agreement), that Nalbandian had, or may have, from the beginning of time to the present day, against the City Releasees as to the Previous Agreement and the Pending Litigation.

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

12. Representation of Authority. Nalbandian represents and warrants to the City 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.

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13. 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.

14. Enforcement: In the event that any Party hereto must seek enforcement of the terms of this Agreement, the prevailing party will be entitled to recovery of its reasonable attorney's fees and costs from the non-prevailing party.

Signed, Sealed and Delivered  
in the presence of:

Paul Thelwies  
[Witness Signature]

Zabi Shudakov  
[Witness Signature]

MOGAS INVESTMENTS, INC.

By: Rogan Nalbandian  
Name: ROGAN NALBANDIAN  
Its: PRESIDENT

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 6 day of November, 2013. 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}



Linda Quicke  
SIGNATURE OF NOTARY

Linda Quicke  
Name of Notary (Typed, Printed or Stamped)

Initial: R.N.

Signed, Sealed and Delivered  
in the presence of:

Paul Thomas  
[Witness Signature]

Zohal Shudkovs  
[Witness Signature]

NALBANDIAN PROPERTIES, INC.

By: Ropen Nalbandian  
Name: ROPEN NALBANDIAN  
Its: PRESIDENT

STATE OF FLORIDA  
COUNTY OF ALACHUA

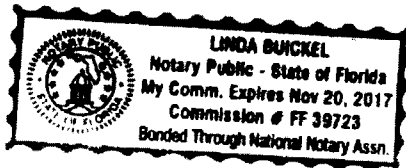
Sworn to and subscribed before me this 6 day of November, 2013. Such  
person did take an oath and: *(Notary must check applicable box).*

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

{Notary Seal must be affixed}

Linda Buickel  
SIGNATURE OF NOTARY  
Linda Buickel

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



Initial: RD



Signed, Sealed and Delivered  
in the presence of:

Paul Thelmas  
[Witness Signature]

Zebel Shudkovs  
[Witness Signature]

VITAL PROPERTIES, INC.

By: Rogan Nalbandian  
Name: ROGAN NALBANDIAN  
Its: PRESIDENT

STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 6 day of November, 2013. 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}

Linda Buickel  
SIGNATURE OF NOTARY

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

Initial: R.N.

Signed, Sealed and Delivered  
in the presence of:

Paul Thodekas  
[Witness Signature]

Zabal Shudkovs  
[Witness Signature]

ROPEN NALBANDIAN

Rogan Nalbandian

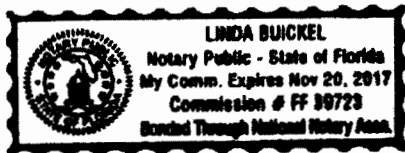
STATE OF FLORIDA  
COUNTY OF ALACHUA

Sworn to and subscribed before me this 6 day of November, 2013. Such  
person did take an oath and: (Notary must check applicable box).

- is/are personally known to me.
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- produced \_\_\_\_\_ as identification.

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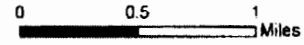
Linda Buckel  
SIGNATURE OF NOTARY  
Linda Buckel  
Name of Notary (Typed, Printed or Stamped)



Initial: R.N.

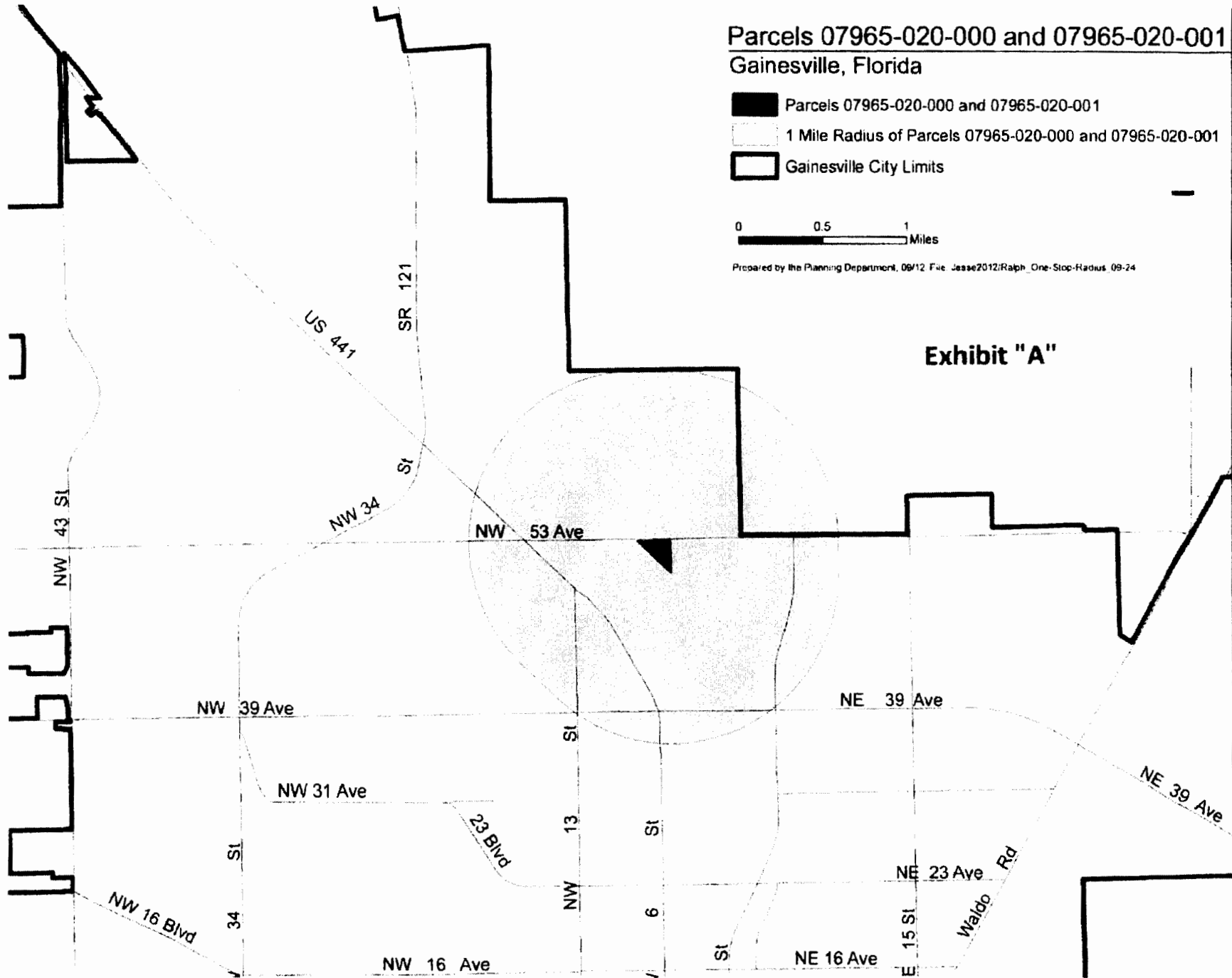
Parcels 07965-020-000 and 07965-020-001  
Gainesville, Florida

- Parcels 07965-020-000 and 07965-020-001
- 1 Mile Radius of Parcels 07965-020-000 and 07965-020-001
- Gainesville City Limits



Prepared by the Planning Department, 09/12 File: Jesse2012/Ralph\_One-Stop-Radius\_09-24

Exhibit "A"



**PROMISSORY NOTE**

\$250,000.00

Gainesville, Florida  
11/6, 2013

For value received the undersigned, Vital Properties, LLC, Ropen Nalbandian, Nalbandian Properties, LLC and Mogas Investments, Inc. (collectively, the "Maker") promises to pay to the order of CITY OF GAINESVILLE (the "Holder") in the manner herein specified, the principal sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) without interest. The said principal shall be payable in lawful money of the United States at such place as may hereafter be designated by written notice from the Holder to the Maker. Said principal shall be paid on or before the dates and in the manner following:

November 25, 2013	\$50,000.00
November 25, 2014	\$50,000.00
November 25, 2015	\$50,000.00
November 25, 2016	\$50,000.00
November 25, 2017	\$50,000.00

Maker shall have the privilege to prepay the principal sum at any time in full or part without penalty.

If any single payment is not timely made, Holder may classify this Promissory Note as being in default. If Default shall occur on the part of the Maker in the payment of principal, in any installment, sum or amount or in the performance of any agreement contained herein then, at the option of the Holder of this Note, and after ten (10) days written notice within which Maker shall be allowed to cure, the principal sum then due and remaining unpaid shall immediately become due and collectible without notice, time being of the essence in this contract. Failure of the Holder to exercise said option shall not constitute a waiver of the right to exercise it in the event of subsequent defaults.

This Promissory Note will be construed in accordance with and governed by the laws of the State of Florida.

This Promissory Note will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Holder and Maker. The Maker waives presentment for payment, notice of non-payment, protest and notice of protest.

Vital Properties, LLC

By Ropen Nalbandian  
Ropen Nalbandian  
Its: PRESIDENT

Witness: Paul Thurdekoos  
Print Name: Paul Thurdekoos  
Witness Name: Zabel Thurdekoos  
Print Name: Zabel Thurdekoos

Nalbandian Properties, LLC

By Ropen Nalbandian  
Ropen Nalbandian  
Its: PRESIDENT

Witness: Paul Thurdikos  
Print Name: Paul Thurdikos

Witness Name: Zabel Thurdikos  
Print Name: Zabel Thurdikos

Mogas Investments, Inc.

By Ropen Nalbandian  
Ropen Nalbandian  
Its: PRESIDENT

Witness: Paul Thurdikos  
Print Name: Paul Thurdikos

Witness Name: Zabel Thurdikos  
Print Name: Zabel Thurdikos

Ropen Nalbandian  
Ropen Nalbandian

Witness: Paul Thurdikos  
Print Name: Paul Thurdikos

Witness Name: Zabel Thurdikos  
Print Name: Zabel Thurdikos

This document prepared by and  
after recording return to:  
Michael M. Bajalia, Esq.  
Bajalia Sanders, P.A.  
11512 Lake Mead Avenue  
Building 300, Suite 301  
Jacksonville, FL 32256

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between **VITAL PROPERTIES, LLC, a Florida limited liability company** ("Mortgagor"), whose address is 2815 NW 13<sup>th</sup> Street, Suite 243, Gainesville, Florida 32609 and **CITY OF GAINESVILLE, a political subdivision of the State of Florida** ("Mortgagee"), whose address is 200 East University Avenue, 4<sup>th</sup> Floor, Gainesville, Florida 32601.

### W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**, pursuant to and in consideration of Mortgagee's covenants and obligations under that certain Settlement Agreement between the parties dated \_\_\_\_\_, 2013, with a final payment date of November 25, 2017 (the "Maturity Date"), together with no interest thereon (the "Loan"), as evidenced by that certain Promissory Note of even date herewith, executed by Mortgagor and delivered to Mortgagee (the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein,

NOW, THEREFORE, to secure the performance by Mortgagor of all covenants and conditions of this Mortgage and the Note (the Mortgage and the Note sometimes referred to collectively herein as the "Loan Documents"), and in order to charge the properties, interests and rights hereinafter described with such payment and performance and for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, Mortgagor does hereby mortgage, sell, pledge and assign to Mortgagee:

### THE MORTGAGED PROPERTY

(A) All of that parcel of land in the County of Alachua, as more particularly described as follows:

**As per Exhibit "A" attached hereto  
(Parcel Identification No. 07872-003-001)  
Subject to all easements and restrictions of record**

to have and to hold the same, together with all the improvements now or hereafter erected on such property and all fixtures now or hereafter attached thereto, together with each and every of the tenements, hereditaments, easements, rights, powers, privileges, immunities and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions,

remainder and remainders, and also all the estate, right, title, interest, homestead, right of dower, separate estate, property, possession and claim whatsoever in law as well as in equity of Mortgagor of, in and to the same in every part and parcel thereof unto Mortgagee in fee simple.

(B) Together with a security interest in all personal property and fixtures affixed to or located on the property described in paragraph (A).

(C) Together with all rents, issues, profits, revenue, income and other benefits from the property described in paragraph (A) hereof to be applied to the indebtedness secured hereby, provided however, that permission is hereby given to Mortgagor, so long as no default has occurred hereunder, or under any of the Loan Documents, to collect, receive, and use such benefits from the property as they become due and payable, but not in advance thereof.

(D) Everything referred to in paragraphs (A), (B) and (C) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or any part of these properties is herein referred to as the "Mortgaged Property".

PROVIDED ALWAYS, that if Mortgagor shall pay to Mortgagee all payments due under the Note at the times and in the manner stipulated therein, and fully perform the terms, covenants and conditions of this Mortgage and the other Loan Documents to be kept performed or observed by Mortgagor, then this Mortgage, shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

1. Compliance with Note and Mortgage; Warranty of Title. Mortgagor shall fully comply with all provisions of the Note and this Mortgage, and shall pay to Mortgagee the principal due under the Note. Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple and Mortgagor has lawful authority to convey, manage, and encumber the same as provided by the Mortgage, and does hereby so warrant.

2. Payment of Taxes and Liens. Mortgagor shall pay all the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature now on the Mortgaged Property or that hereafter may be imposed, levied or assessed upon the Note, this Mortgage, the Mortgaged Property or upon the indebtedness secured hereby. All such payments shall be made when due and payable according to law before they become delinquent and before any interest attaches or any penalty is incurred. Insofar as any indebtedness is of record the same shall be promptly satisfied and evidence of such satisfaction shall be given to Mortgagee.

3. Condemnation. If the Mortgaged Property or any non-deminimis part thereof shall be damaged or taken through condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State of Florida or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become

immediately due and payable. Mortgagee shall be entitled to all condemnation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such condemnation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee and Mortgagee, after deducting therefrom all its expenses, including, without limitation, attorneys' fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any condemnation awards, damages, claims, rights of action and proceeds as Mortgagee may require. Notwithstanding anything contained herein to the contrary, this provision shall not be in effect, in the event of a taking or damage to the Property which is de minimis in nature.

4. Mortgagee's Right to Make Certain Payments. In the event Mortgagor fails to pay or discharge any and all taxes, assessments, levies, liabilities, obligations and encumbrances in any way affecting or appertaining to the Mortgaged Property or any of the Loan Documents or the indebtedness secured hereby, Mortgagee may, at its option, pay or discharge such taxes, assessments, levies, liabilities, and obligations and encumbrances, or any part thereof. Mortgagee shall have no obligation on its part to determine the validity or necessity of any such payment and any such payment shall not waive or affect any option, lien, equity or right of Mortgagee under or by virtue of this Mortgage or any other Loan Documents. The full amount of each and every such payment shall be immediately due and payable and shall be secured by the lien of this Mortgage and any other instrument securing the Note. Nothing herein contained shall be construed as requiring Mortgagee to advance or expend monies for any of the purposes mentioned in this paragraph.

5. Payment of Expenses. Mortgagor shall pay all the costs, charges and expenses, including, without limitation, reasonable attorneys' fees, disbursements and cost of abstracts of title, incurred or paid at any time by Mortgagee due to the failure on the part of Mortgagor to promptly and fully perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Note and this Mortgage. Such costs, charges and expenses shall be immediately due and payable, whether or not there be notice, demand, attempt to collect or suit pending. All such costs, charges and expenses so incurred or paid shall be secured by the lien of this Mortgage and any other instrument securing the Note.

6. Event of Default. Any one of the following shall constitute an event of default hereunder.

(a) Failure by Mortgagor to pay, within those time frames set forth in the terms of the Note, any installments of principal due under the Note, or any other sums to be paid by Mortgagor under the Note or this Mortgage.



(b) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note or this Mortgage, where such failure shall continue beyond any applicable grace period provided therein.

(c) If Mortgagor: (i) files a voluntary petition in bankruptcy, (ii) is adjudicated a bankrupt or insolvent; or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes any admission in writing of its inability to pay its debts generally as they become due; or (vii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or (viii) any trustee, receiver or liquidator of Mortgagor of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

(d) Any breach of any warranty or material untruth of any representation of Mortgagor contained in the Note or this Mortgage.

(e) Any sale or conveyance or pledge of the Mortgaged Property or any portion thereof by the Mortgagor.

7. Acceleration. If an event of default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note to be due and payable immediately. Upon such declaration, such principal shall immediately be due and payable without demand or notice.

8. Remedies after Default. Upon the occurrence of a default hereunder, Mortgagee may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce payment of the Note or the performance of any term hereof or any other right; (ii) foreclose this Mortgage and sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction; (iii) collect all rents, issues, profits, revenue, income and other benefits from the Mortgaged Property; (iv) appoint a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenue, income, and other benefits thereof and apply the same as a court may direct and such receiver shall have all rights and powers permitted under law; and (v) pursue any other remedy available to it at law or in equity. Mortgagee shall take action either by such

proceedings or by the exercise of its power with respect to entry or taking possession, or both, as Mortgagee may determine.

9. No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon the occurrence of any default shall exhaust or impair any such right, power or remedy or shall be construed to waive any event of default or to constitute acquiescence therein.

10. Non-Exclusive Remedies. No right, power or remedy conferred upon or reserved to Mortgagee by the Note or this Mortgage is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note, now or hereafter existing at law, in equity or by statute.

11. Successors and Assigns Bound. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefits of their respective heirs, successors and assigns, whether or not so expressed.

12. Miscellaneous. In the event that any of the covenants, agreements, terms or provisions contained in the Note or this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note shall in no way be affected, prejudiced or disturbed thereby.

13. Obligation of Mortgagor. Mortgagor shall pay the cost of releasing or satisfying this Mortgage of record.

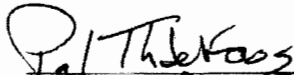
14. No Transfer. It is understood and agreed by Mortgagor that as part of the inducement to Mortgagee to make the loan evidenced by the Note, Mortgagee has considered and relied on the credit worthiness and reliability of Mortgagor. Mortgagor covenants and agrees not to sell, convey, transfer, or further encumber any interest in or any part of the Mortgaged Property without the prior written consent of the Mortgagee, and any such sale, conveyance, transfer, or encumbrance made without Mortgagee's prior written consent shall constitute an event of default hereunder. Mortgagor may substitute the Mortgaged Property with an irrevocable surety bond in the amount owing under the Promissory Note so long as Mortgagor informs Mortgagee in writing of such. It is further understood and agreed that any dissolution of mortgagor or any merger where mortgagor is not the surviving entity in any sale, conveyance or pledge of any interest in the Mortgagor to any other entity, individual, firm, partnership or corporation without the Mortgagee's prior written consent shall constitute an event of default hereunder.

15. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREIN.

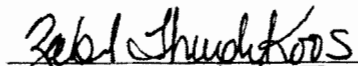
IN WITNESS WHEREOF, this instrument has been executed on the date first above written.

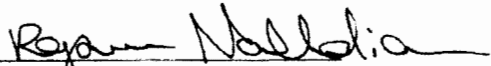
Signed, sealed and delivered  
in the presence of:

MORTGAGOR

  
Print Name: Paul ThurdeKos

**VITAL PROPERTIES, LLC,**  
a Florida limited liability company

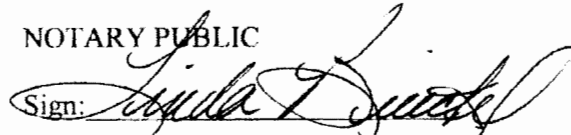
  
Print Name: Zabel ThurdeKos

By:   
Ropen Nalbandian  
Its PRESIDENT

STATE OF FLORIDA  
COUNTY OF Alachua

The foregoing instrument was acknowledged before me this 6 day of Nov, 2013, by **Ropen Nalbandian** as \_\_\_\_\_ of **Vital Properties, LLC, a Florida limited liability company**, on behalf of the company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

Sign: 

Print: Linda Biuckel

My Commission Expires:

(SEAL)



**EXHIBIT 'A'**

A PARCEL OF LAND LYING IN SECTIONS 13 AND 14, TOWNSHIP 9 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 13 FOR A POINT OF REFERENCE; THENCE RUN N 00°45'50" W ALONG THE WEST LINE THEREOF, A DISTANCE OF 1714.48 FEET; THENCE RUN S 89°16'31" W, A DISTANCE OF 82.74 FEET; THENCE RUN N 58°44'19" W, A DISTANCE OF 168.83 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE ABANDONED SEABOARD COASTLINE RAILROAD; THENCE RUN N 29°28'44"E ALONG SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 897.38 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 29°28'44"E ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 92.54 FEET; THENCE RUN N 89°17'56" E, A DISTANCE OF 2319.19 FEET; THENCE RUN S 00°41'10" E, A DISTANCE OF 864.98 FEET; THENCE RUN S 89°18'03" W, A DISTANCE OF 1708.92 FEET; THENCE RUN N 00°20'29" W, A DISTANCE OF 50.00 FEET; THENCE RUN S 89°43'14" W, A DISTANCE OF 49.99 FEET; THENCE RUN S 00°24'19" E, A DISTANCE OF 50.08 FEET; THENCE RUN S 89°19'48" W, A DISTANCE OF 283.14 FEET; THENCE RUN N 00°24'19" W, A DISTANCE OF 784.76 FEET; THENCE RUN S 89°17'56" W, A DISTANCE OF 327.54 FEET TO THE POINT OF BEGINNING.