

## AMENDMENT TO DEVELOPER'S AGREEMENT

This AMENDMENT TO DEVELOPERS AGREEMENT (hereinafter, the "Amendment") is made and entered into this \_\_\_\_\_ day of December, 2014, by and between the CITY OF ORLANDO, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), whose address is One City Commons, 400 South Orange Avenue, Orlando, Florida 32801, and BAYWOODS ORLANDO, LLC, a Florida limited liability company (the "Owner"), whose address is 111 SW 3<sup>rd</sup> Street, Floor 6, Miami, Florida 33130-1926.

### WITNESSETH:

WHEREAS, the City entered into that certain Developers Agreement with Kalman Goldberg and Alma Goldberg, as trustees (and referred to therein as the "Owners/Developers"), dated August 12, 1974 and recorded among the official records of Orange County, Florida, at Official Records Book 2559, Page 691 (the "1974 Agreement"); and

WHEREAS, the 1974 Agreement addressed the annexation and planned development of certain real property located in the City of Orlando located south of Lake Underhill Road and west of Goldenrod Road now bearing Orange County Tax Parcel Identification Number 35-22-30-6400-02-441, as more particularly described in the 1974 Agreement (the "Property"); and

WHEREAS, the 1974 Agreement established that the Property could be developed consistent with that certain Development Master Plan dated December 18, 1973 (the "1973 Plan"), which included 334 patio homes and 288 mid-rise condominium units for a total of 622 units; and

WHEREAS, in addition to the development rights granted by the 1974 Agreement, the Property bears a City of Orlando zoning designation of R-1/RP with a Future Land Use Designation of RES-LOW and Owner is now the record owner of the Property; and

WHEREAS, in the over 40 years since the 1974 Agreement was approved by the City, the City has, on multiple occasions (including in a letter from City planner J.B. Williams, and dated December 18, 1979, and in Planning Official Determination LDC2005-00174 from Planning Official Dean Grandin and dated May 5, 2004), identified the following four options for the development of the Property:

1. Development of the planned development essentially as approved in 1974; or
2. Apply for minor amendments to the Development Master Plan and/or Developers Agreement; or
3. Apply for new planned development zoning for a new or substantially different development concept; or
4. Develop a single-family subdivision consistent with the Property's R-1 zoning; and

WHEREAS, Owner is prepared to proceed with development of the Property pursuant to that certain Baywoods Development Master Plan dated September 18, 2014, attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "2014 Plan"); and

WHEREAS, the City finds that the 2014 Plan depicts minor amendments to the 1973 Plan, and the purpose of this Amendment is to modify the terms of the 1974 Agreement to reflect current land development terminology and regulations; and

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, are incorporated herein by this reference, and form a material part of this Agreement. All Exhibits to this Agreement are incorporated herein by reference and form a material part of this Agreement.

2. **Minor Amendments.** The City finds that the 2014 Plan represents minor amendments to the 1973 Plan, and the 2014 Plan is hereby approved as the approved site plan for the Property. No master plan review process will be required based upon the vested rights afforded by the 1974 Agreement and 1973 Plan, though if developed in phases, each phase of development is subject to review and approval by administrative specific parcel master plan.

3. **Permitted Uses.** Consistent with the 2014 Plan, up to 334 detached single-family/patio homes and up to 288 townhomes may be developed on the Property. All nonresidential uses are prohibited.

4. **Two or More Story Buildings.** Section 9 of the 1974 Agreement provided, among other things, that “[a]ll buildings of two (2) or more stories shall have elevator service.” The foregoing portion of Section 9 is hereby deleted.

5. **Access Points to Surrounding Neighborhoods.** The City’s current Growth Management Plan and Land Development Code encourages pedestrian and vehicular connectivity between neighborhoods. Connectivity enhances transportation options, disperses traffic, and encourages neighborly interaction and natural crime-preventative surveillance. Notwithstanding anything to the contrary in the 1974 Agreement, the 1973 Plan, or the 2014 Plan, the Owner and City shall work cooperatively to connect vehicular and pedestrian ways in the Property to the existing road network in existing surrounding neighborhoods, except that Inca Street shall not connect directly into the Property’s new road network. The Owner shall be financially responsible for the onsite road infrastructure in accordance with normal City requirements.

6. **Landscaping.** Owner must meet or exceed the applicable requirements of Chapter 60 of the City’s Land Development Code regarding landscaping. Owner agrees to provide a minimum of 5-feet of landscaping to separate any sidewalk/internal walkway from any fence or wall.

7. **1974 Agreement.** Except as expressly modified in this Amendment, the 1974 Agreement remains in full force and effect and City and Owner ratify and affirm the 1974 Agreement as modified herein, except that references to obsolete or archaic sections of old City ordinances shall be deemed to be references to the current functionally equivalent City ordinance, if any.

8. **Notices.** Except as otherwise provided in this Amendment, whenever either party desires to give notice to the other, notice shall be sent to:

If to City: City of Orlando Planning Division  
400 South Orange Avenue Sixth Floor  
Orlando, Florida 32801

With a copy to: Kyle Shephard, Esquire  
City of Orlando  
400 South Orange Avenue  
Orlando, Florida 32801

If to Owner: Baywoods Orlando, LLC  
c/o Elliott Harris, P.A.  
111 SW 3<sup>rd</sup> Street, Floor 6  
Miami, Florida 33130

With a Copy to: Thomas R. Sullivan, Esquire  
Gray Robinson, P.A.  
301 E. Pine Street, Suite 1400  
Orlando, Florida 32801

Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission with confirmed answer back if by telecopy, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

9. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties, and shall run with the Property.

10. **Recordation of Agreement.** An executed original of this Amendment shall be recorded by Owner, at Owner's expense, among the Public Records of Orange County, Florida.

11. **Counterparts.** This Amendment may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

<p><b>CITY</b></p> <p>Attest:</p> <hr/> <p>Alana Brenner, City Clerk</p>	<p><b>CITY OF ORLANDO, FLORIDA</b></p> <hr/> <p>Mayor/Pro Tem</p> <p>APPROVED AS TO FORM AND LEGALITY for use and reliance by the City of Orlando, Florida, only.</p> <hr/> <p>Assistant City Attorney</p>
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State of Florida            )  
County of Orange         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ and \_\_\_\_\_, as the \_\_\_\_\_ and City Clerk of the City of Orlando, Florida, and who have acknowledged that they executed the same on behalf of the City of Orlando, Florida and that each was authorized to do so. Each is personally known to me or has produced \_\_\_\_\_ as identification.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name: \_\_\_\_\_

(Notorial Seal)

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

<p><b>WITNESSES</b></p> <p>Signed, sealed and delivered In the presence of:</p> <p>_____</p> <p>Print Name: _____</p> <p>_____</p> <p>Print Name: _____</p>	<p><b>OWNER</b></p> <p>BAYWOODS ORLANDO, LLC, a Florida limited liability company</p> <p>By: _____</p> <p>_____, its _____</p>
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State of Florida            )  
County of \_\_\_\_\_  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of BAYWOODS ORLANDO, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.

In witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name: \_\_\_\_\_

(Notorial Seal)

**Exhibit "A"**

**2014 Plan**