

**FIRST AMENDMENT**  
**to**  
**DONATION AGREEMENT**  
**FOR TK BASIN AND PARK**

**THIS FIRST AMENDMENT** (Amendment) to the Donation Agreement (Agreement) that was made and entered into on the 10th day of September 2010 between the CITY OF ALACHUA, FLORIDA (City) and FIRST STREET GROUP, L.C. and 10.47, LLC (Donors) is dated the 27<sup>th</sup> day of March 2012, and agreed as follows:

**WITNESSETH**

**WHEREAS**, the Agreement was entered into for the public purposes recited therein and was recorded in Official Records Book 4088 at Page 290 of the Public Records of Alachua County Florida; and

**WHEREAS**, the Donors have diligently and faithfully performed the responsibilities set forth in the Agreement to date except for designing and constructing those Park Improvements described in Section 3 (B) within the time frames described in Section 3 (C) and then, within the time frame provided for in Section 3 (D), effecting the transfer to the City of the Park Improvements and property described and identified as the Park in the Agreement; and

**WHEREAS**, the parties (City and Donors) stipulate, agree and recognize the Park property described in the Agreement must be traveled upon and crossed in order for the City to maintain the Basin described and identified in the Agreement and it was and is the intent that such right of passage and use was and is established by the language of the Agreement and is specifically affirmed in this Amendment; and

**WHEREAS**, the City has performed all responsibilities called for in the Agreement with the exception of those conditioned upon the actions precedent of Donors described herein; and

**WHEREAS**, a continuing responsibility of City is to maintain the drainage Basin constructed by Donors and the ownership of which was transferred to the City by Special Warranty Deeds executed October 8, 2010; and

**WHEREAS**, the City recognizes, stipulates and agrees the economic conditions existing in the city, county, state and country have been unfavorable to and resulted in a dramatic decrease in the construction activity contemplated as supporting the need for the development of the facilities contemplated in Sections 3 (B), 3 (C) and 3 (D) of the Agreement; and

**WHEREAS**, the Donors have requested an extension of the time requirements set forth in Sections 3 (C) and 3 (D) of the Agreement in order to delay the investment of required capital and construct the facilities at a time when the contemplated demand for use occurs; and

**WHEREAS**, the City recognizes the poor state of the economy, lack of need for the described park facilities until improved economic conditions occur and that facilities constructed at this time will deteriorate over time and require ongoing costs of maintenance by City since City, pursuant to the Agreement, is required to take ownership of the property and facilities upon completion along with responsibility for continuing maintenance; and

**WHEREAS**, the City, based in the foregoing, finds it in the best interest of the Public, Donors and City to agree to the request of Donors to extend the time requirement set forth in Sections 3 (C) and 3(D) for a reasonable time .

**WHEREAS**, Section 9 of the Agreement provides for amendment in writing and executed by the parties and the parties agree the amendment set forth herein is limited to those changes specifically stated and that the balance of the Agreement is unchanged and remains in full force and effect, including the agreement that this Amendment be recorded in the Public Records of Alachua County and, to the extent provided in the Agreement, shall be binding upon the City, Donors' successors in interest to the Property and run with the land.

**NOW** in consideration of the mutual benefit, promises and covenants herein contained, the City and Donors agree to amend the Agreement dated and made the 10th day of September 2010 as follows:

- I. The above recitals are true and correct and form a material part of this Amendment.
2. Section 3 (A), (C) and (D) of the Agreement shall be amended to read

“(A) Donors are responsible for the initial development of the TK Basin itself to serve the drainage needs of the proposed benefitting properties, a list of which and a map of where each is located are attached and incorporated as EXHIBIT F. The City shall upon conveyance and transfer of the Suwannee River Water Management District permit number ERP05-0067M , own, operate, and maintain the TK Basin facility to assure its function as a permitted regional stormwater management facility with the full costs of maintaining the TK Basin facility to be paid through the maintenance assessments imposed against the benefitting properties. City and Donors recognize and agree that City, through its agents, contractors and employees, will find it necessary to travel over, upon and across the Park property described herein in order to meet its maintenance obligations upon completion of the Basin and prior to transfer of ownership of the Park property to City. Therefore, Donors grant to City an easement across the Park property as necessary to perform the maintenance described.”

“(C) First Street’s final proposed design(s) of the Park Improvements shall be submitted to the City for approval and the City's written decision shall be provided within 30 days of design(s) submission. Approval of the design(s) shall not be unreasonably withheld. First Street shall accomplish design, design approval and all applicable permitting by March 1, 2016 or six (6) months from the beginning of construction of road improvements associated with the extension of NW 151 Blvd. from its present terminus to connection to US 441, which ever shall first occur. The construction shall be completed on the Park Improvements and conveyance to the City of the Park and Improvements by the Donors, as there interests appear, shall take place within twelve months of City approval of Design(s) but, in any event, no later than February 28, 2017. Construction easements or permits, if necessary, shall be provided by any applicable party and the parties shall cooperate in good faith to take all acts necessary so the Park Improvements may be implemented. The City shall not approve contractors but any selected must be duly licensed as appropriate by the State or Alachua County.”

"(D) Donors, as their interests may appear, shall transfer ownership of all Park Improvements and the Park, including any existing warranties, to the City within thirty (30) days after completion of Park Improvements but no later than March 29, 2017. Following transfer of the Park Improvements and the Park, Donors shall have no further obligations with regard to the Park and Park Improvements and the City shall thereafter be responsible for operating and maintaining the Park and the Park Improvements and this Agreement, including any amendment hereto, shall have no further force and effect."

**IN WITNESS WHEREOF**, the City Commission of the City of Alachua, Florida, First Street Group, L.C. and 10.47, LLC have caused this Amendment to the Agreement to be executed and delivered as of the date and year of the last signature.

CITY OF ALACHUA, FLORIDA

  
\_\_\_\_\_  
Glb Coerper, Mayor

Mar 27, 2012  
Date

ATTEST:

  
\_\_\_\_\_  
Traci L. Cain, City Manager / City Clerk

Approved as to form this 26<sup>th</sup> day of March 2012.

  
\_\_\_\_\_  
Marian B. Rush, City Attorney

FIRST STREET GROUP, L.C.

Philip L. Hawley  
Printed Name

MANAGER  
Title

WITNESSES:

Darryl J. Tampkins  
Print Name

Sandra E. Howe  
Print Name

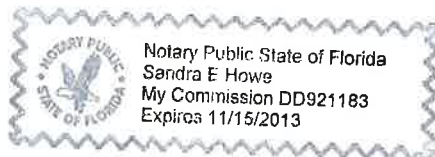
STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledge before me this 14 day of  
MARCH, 2012 by Phillip L. Hawley, as Managing Member  
of **FIRST STREET GROUP, L.C.**, on behalf of FIRST STREET GROUP, L.C. [ ☒ ] who is personally  
known to me or [ ] has produced \_\_\_\_\_ as identification.

Sandra E. Howe  
Signature of Notary

Sandra E. Howe  
Name of Notary

(Notary Seal)



10.47, LLC

Malley

JAMES McCauley  
Printed Name

Managing Member  
Title

WITNESSES:

Darryl J. Tompkins  
Print Name

Sandra E. Howe  
Print Name

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledge before me this 7<sup>th</sup> day of  
March, 2012 by James McCauley, as Managing Member  
of 10.47, LLC, on behalf of 10.47, LLC ☒ who is personally known to me or ☐ has produced  
\_\_\_\_\_ as identification.

Sandra E. Howe  
Signature of Notary  
Sandra E. Howe  
Name of Notary

(Notary Seal)

