

LAW OFFICES  
KOLODNY & PRESSMAN LLP  
11975 EL CAMINO REAL, SUITE 201  
SAN DIEGO, CALIFORNIA 92130-2542  
(858) 453-0309  
FAX (858) 453-9347

Robert J. Kolodny  
EMAIL: rkolodny@kolodnypressman.com

File 10000-041

September 5, 2007

Elise A. Smurzynski, City Administrator  
City of Shady Cove  
22451 Highway 62  
P.O. Box 1210  
Shady Cove, OR 97539

**VIA OVERNIGHT MAIL**

Re: **Modification to Exclusive Negotiation Agreement dated April 2, 2007  
between Shady Cove Municipal Corporation and Michael T. Malepsy  
("ENA")  
Land America Escrow Nos. 42g0422469 and 42g0422470**

Dear Elise:

This letter is intended to memorialize our telephone conference on August 30, 2007, between Mike Malepsy and myself ("Buyer"), and you on behalf of the City of Shady Cove (City). Mike Malepsy and I have created Flywater LLC, an Oregon LLC, which is owned 50% by Mike and Bonnie Malepsy and 50% by Bob and Martha Kolodny. Mike will be assigning the Escrow No. 42g0422470 to Flywater LLC which will be the ultimate Buyer in Escrow No. 42g0422470.

You suggested that Mike and the City confirm the following understanding, in principal, upon which the Buyer is relying. This letter is provided as an interim step in the process of formalizing the acquisition and development of the new proposed Shady Cove Park.

During our discussion, the following issues were discussed and agreed to in concept:

- 1. Pursuant to the ENA, Buyer has spent considerable sums of money to date and shall continue to do so in conducting various studies in trying to determine as part of the Buyer's due diligence process, the issues involved in proceeding in acquiring through the City as the City acquires simultaneously from ODOT the Property with a portion to be gifted by Buyer to the City ("Park Parcel") with the remainder of the Property to be developed by Buyer.*

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2. *To date, Buyer has deposited in Escrow No. 42g042270 the sum of \$57,500 which was authorized to be disbursed out of that escrow into Escrow 42g042269 (ODOT/City of Shady Cove escrow) and despite not yet completing all due diligence, Buyer has agreed to extend the respective escrows by depositing an additional \$57,500 into the Shady Cove escrow which will be transferred into the ODOT/City of Shady Cove escrow and released to ODOT resulting in a total deposits in the sum of \$115,000 on or before September 10, 2007. The release of the \$115,000 will extend the closing dates to January 10, 2008, for both escrows to close simultaneously.*
3. *It is Buyer's intention to proceed through the entitlement process with the City so that the property within the City will ultimately be zoned with R-2 zoning and possibly portions subject to City approval to be later zoned with an R-3 designation and to create a legal parcel for the Park Parcel at the approximate location and size of the Park Parcel as depicted previously to the City and as referenced in Exhibit A to this letter.*
4. *Upon completion by Buyer and approval by the City Planning Department and City Council of all entitlements for the ultimate development of the Property and creation of a separate legal parcel, the Park Parcel will be gifted to the City by Buyer. When all final entitlements are in place and subsequent to the installation of required improvements when all final entitlements are in place, the City shall have the option of:
  - (a) *receiving the undeveloped Park Parcel as a gift from Buyer, or*
  - (b) *delay receiving the Park Parcel as a gift from Buyer until the mutually agreed upon completion date for improvements to the Park Parcel are acceptable.**
5. *It is the intention of Buyer and City that after the above described escrows close and all of the required final entitlements have been received the legal lot of the Park Parcel will be created and when the City is ready to receive the Park Parcel it will be appraised taking into consideration the value of the Park Parcel and all site improvements. In addition to delivering to the City the Park Parcel as a gift, the City and Buyer acknowledge that the Buyer will also contribute up to \$200,000 which will include the cost of utilities and improvements toward the development of the Park Parcel. The \$200,000 will be gifted to the City on the earlier of December 31, 2011 or when 50% of the entitled property has been sold by Buyer to third party Buyers.*

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6. *In addition to gifting the Park Parcel to the City and the up-to \$200,000 gift, (including the cost of utilities) to cover part of the costs to develop the Park Parcel, the Buyer and City will negotiate in good faith to try to include all lots that are part of the property acquired by Buyer as part of Escrow 42g0422470 either in an assessment district and/or provide for a one-time (fund in an amount substantially less than the \$200,000 above-referenced gift) that will provide some additional funding to the City to defray a portion of the cost of the City continuing to maintain the Park.*

This letter is not intended to address all issues but to merely summarize the discussions to date and the fact that both City and Buyer agree in concept to the above points. It is specifically understood that both Buyer and the City will work in good faith to memorialize final agreements incorporating the terms referenced above as well as additional points to be agreed to by the parties by November 1, 2007. The City understands that in reliance on these understandings that Buyer will continue to expend considerable sums of money during its extended due diligence and pre-application process prior to the actual scheduled closing date.

Elise, pursuant to a Special Power of Attorney Mike Malepsy deposited with Channin Culley of Land America Title, I am authorized to sign this letter of understanding by Mike Malepsy, who is on vacation. Channin will so confirm or, upon request, provide you a copy. I believe both Mike and I are available to spend a day with you and appropriate City representatives in Shady Cove during the week of October 1, 2007 to further address issues and work to finalize a mutually acceptable first agreement.

If the above accurately reflects the understanding in principle, please have the City acknowledge below. Buyer will then release the additional deposit and instruct Land America to release the second deposit into ODOT/City of Shady Cove escrow so the \$115,000 can be released to ODOT by September 10, 2007.

If you have any questions or if we do not accurately state what was discussed in the meeting, please notify me accordingly.

Sincerely,

KOLODNY & PRESSMAN LLP

*Bob Kolodny* individually & on behalf  
of Mike Malepsy  
Robert J. Kolodny

RJK:PW  
Cc: Mike Malepsy  
Steve Rich, Esq.

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**Acknowledgement**

This letter accurately describes the conceptual understanding to date between Buyer and the City of Shady Cove, a Municipal Corporation. The City and Buyer will work in good faith to finalize a more formal Agreement incorporating the terms of this letter and the Exclusive Negotiation Agreement between Buyer and the City entered into on April 12, 2007 with the target date to complete the final definitive agreements of November 1, 2007 resulting in Escrow No. 42g0422469 and Escrow No. 42g0422470 simultaneously closing on January 10, 2008 with the ultimate Agreement insuring the City the gift of the Park Parcel.

The City of Shady Cove,  
a Municipal Corporation

By: 

Dated: September 6, 2007

By: \_\_\_\_\_

Dated: September \_\_\_\_, 2007

Exhibit A  
to Exclusive Negotiation Agreement  
dated April 2, 2007

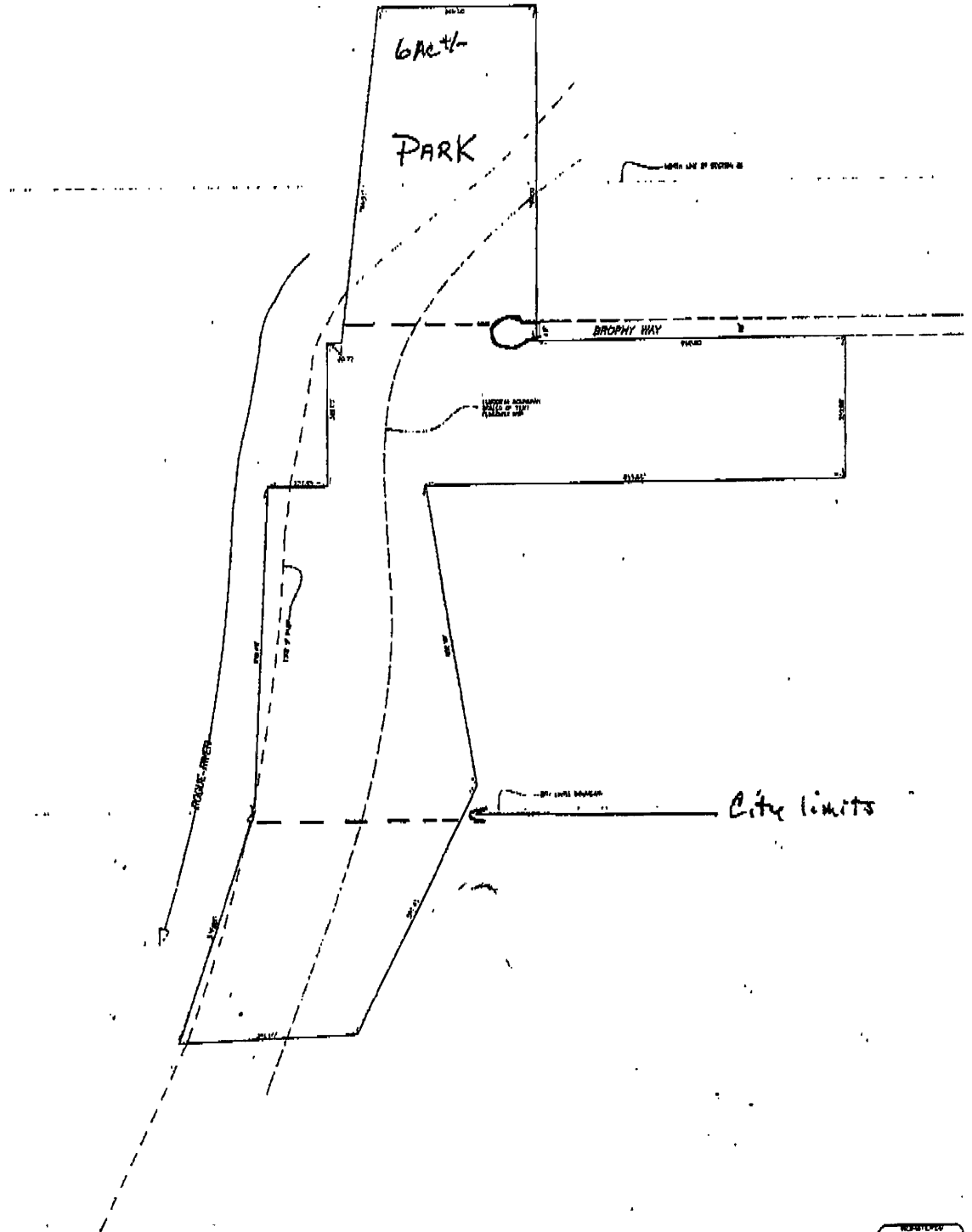
WORK MAP

PREPARED FOR:  
Mike Mulaney  
P.O. Box 1004  
Shady Cove, OR. 97530

LOCATION:  
Tax Lot No  
341W 2A - 400  
City of Shady Cove  
Jackson County, Oregon

PREPARED BY:  
Walker Surveying  
18704 Hwy. 67  
Eagle Point, OR. 97524

DATE:  
March 6, 2007



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Walker Surveying*  
DAVID WALKER  
18704 HWY 67  
EAGLE POINT, OR 97524