

Legislative #

130847

AMENDED AND RESTATED CONTRACT FOR SALE AND PURCHASE

Whereas, the below named parties entered into a Contract for Purchase dated October 1, 2015 (the "Original Contract") for the property described in Section 1 below; and

Whereas, the parties amended the Original Contract by First Amendment to Contract for Purchase dated February 5, 2016 (the "First Amendment"); and

Whereas, the parties desire to further amend the Original Contract; and

Whereas, upon execution of this Amended and Restated Contract for Sale and Purchase, the Original Contract and First Amendment shall automatically terminate and be of no further force and effect, without requiring any further action by either party.

PARTIES: the City of Gainesville, Florida, a municipal corporation, whose address is Post Office Box 490, Station 06, Gainesville, Florida 32627 ("Seller"), and **Horizon Hospitality Management Inc., a Georgia for profit corporation** whose address is 4555 Mansell Road, Suite 300, Alpharetta, Georgia 30022 ("Buyer"), hereby agree that Seller shall sell and Buyer shall buy the following described Real Property (collectively "Property") pursuant to the terms and conditions of this Amended and Restated Contract for Sale and Purchase and any riders and addenda ("Contract"):

1. DESCRIPTION:

(a) Legal description: Block 1, Range 2, Map of Gainesville, Florida, recorded in Deed Record H, Page 383, of the Ancient Records of Alachua County, Florida. (Currently Tax Parcel # 14574-000-000, and commonly referred to as City Parking Lot #10)

(b) Street address: 150 SW 2nd Avenue, Gainesville, Florida 32601.

2. PURCHASE PRICE (U. S. currency): \$1,078,500

PAYMENT:

(a) Deposit paid in October 2015 and held in escrow by the City \$25,000

(b) Additional deposits to be made to City as described in Section 4a \$75,000

(c) Other: N/A

(d) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject to adjustments or prorations. \$978,500

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

a. If this Contract is not executed by and delivered to all parties on or before October 27, 2016, the Deposit will, at Seller's option, be returned and this offer withdrawn.

b. The effective date of this Contract ("Effective Date") will be the date when the last one of the following has occurred: Buyer has signed this Contract, the City Commission has approved this Contract and authorized its execution, and Seller has executed this Contract.

Buyers Initials: _____

Sellers Initials: _____

c. Upon execution of this Amended and Restated Contract for Sale and Purchase by both parties, the Original Contract and First Amendment shall be deemed automatically terminated and of no further force and effect, without requiring further action by either party.

4. a. **DEPOSITS:** On or before the dates specified below, the Buyer shall make additional deposits to the City in the amounts specified below. The original deposit and additional deposits (collectively, the “deposits”) shall be credited to the Purchase Price at Closing. However, if Buyer fails to satisfy any of the performance benchmarks specified in Section 4b (after written demand from City and 5 day cure period to satisfy the benchmark), this Contract shall automatically terminate, without further action necessary by either party, and Seller shall retain all deposits paid to date.

On or before February 1, 2017, Buyer shall make an additional deposit of \$25,000.

On or before June 1, 2017, Buyer shall make an additional deposit of \$25,000.

On or before October 30, 2017, Buyer shall make an additional deposit of \$25,000.

b. **PERFORMANCE BENCHMARKS:** On or before the dates specified below, the Buyer shall obtain and provide to Seller appropriate documents that evidence that Seller has satisfied each performance benchmark specified below. The documents shall be executed by the duly authorized representative of the party providing the commitment to the Buyer and shall state with specificity the nature of the commitment and may state generally that the commitment is subject to terms and conditions as disclosed to the Buyer. Upon providing the documents, Buyer will thereafter use reasonable diligence to satisfy the terms and conditions and proceed to Closing. If Buyer fails to satisfy a performance benchmark, then the City Manager, or his designee, may provide written demand (in accordance with Section 20) for performance to Buyer. Buyer shall have 5 days (after receipt, as defined in Section 20) to satisfy the performance benchmark, failing which this Contract shall automatically terminate, without further action necessary by either party, and Seller shall retain deposits paid to date as specified in Section 4a.

Deadline (on or before)	Performance benchmark
11/11/2016	(1) Letter(s) of Intent from all lenders and equity partners
2/1/2017	(2) Title Commitment (3) Submit complete application for hotel franchise (4) Complete survey (5) Provide plan for property due diligence as required by Buyer, its lenders, equity partners and hotel franchisor
6/1/2017	(6) Approval of hotel franchise (7) Complete all property due diligence as required by Buyer, its lenders, partners and hotel franchisor (8) File complete application for all necessary City planning, zoning and development approvals
10/30/2017	(9) Binding Commitments to Fund and Close from all lenders and equity partners (10) Approval of all necessary City planning, zoning and development approvals

Buyers Initials: _____

Sellers Initials: _____

5. **TITLE EVIDENCE:** On or before February 1, 2017:
 X (a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see Standard A for terms); or
 (b) Abstract of title or other evidence of title (see rider for terms), shall be obtained by (CHECK ONLY ONE): (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
 X (2) Buyer at Buyer's expense.
6. **CLOSING DATE:** This transaction shall be closed and the closing documents delivered on or by November 30, 2017 ("Closing"), unless modified by other provisions of this Contract.
7. **RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title by special warranty deed, free and clear of all liens, encumbrances, mortgages, taxes, or assessments of any kind or nature, subject only to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7½ feet in width as to the side lines); taxes for year of Closing and subsequent years; provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for a hotel with retail, office and meeting space (the "Intended Use").
8. **SURVEY AND DUE DILIGENCE:**
- a. **SURVEY:** The Buyer shall have until February 1, 2017 to have the property surveyed at its expense. If the survey shows any encroachments upon or shortages in the land herein described or that the improvements located on the land herein described encroach on the land of others, a copy of such survey shall be furnished to the other party and the Seller shall have the time to cure such defect as the Contract allows to cure defects of title. Failure to so eliminate such encroachments shall be regarded as a default by the Seller.
- b. **DUE DILIGENCE:** Commencing on the Effective Date, Buyer and its engineers, architects, and other agents shall have until June 1, 2017 (the "Due Diligence Period") within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary in order for Buyer, its lenders, equity partners and hotel franchisor, to evaluate the physical characteristics of the Property, including environmental conditions, as well as such other matters as may be deemed by Buyer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Buyer's purchase of the Property for the Intended Use. For purposes of undertaking physical inspections and investigations of the Property, including but not limited to the Survey, Environmental Phase I, Environmental Phase II, soil studies, asbestos studies, topographical survey, land use and zoning review, water, sewer availability and capacity, ingress/egress, preliminary planning review, covenants and restrictions, coverage ratio, and construction time, Seller hereby grants to Buyer and its agents full right of entry upon the Property and any part thereof during the Due Diligence Period and, as long as this Contract has not been terminated, thereafter until Closing. Buyer, as a condition to its exercise of such right of entry, shall defend, indemnify and save and hold Seller harmless as the result of all claims and judgments arising out of the same incident or occurrence for any claim or judgment or portions against any and all loss, damage, liability, suit, claim, cost or expense (including reasonable attorneys' fees and reasonable

Buyers Initials: _____

Sellers Initials: _____

attorneys' fees to enforce this indemnification) arising from the exercise by Buyer or its agents of Buyer's rights hereunder.

c. **INDEPENDENT EVALUATION:** Buyer shall utilize its own consultants, engineers and all other related professionals to make its own investigation and determination as to the accuracy or acceptability of any and all matters regarding the Property and the documents.

9. SPECIAL CONDITIONS:

a. **Parking:** The parties negotiated the terms of a thirty (30) year term License Agreement for Parking Spaces for 383 "floating" (not marked or fixed as to physical location) parking spaces, which is attached hereto and incorporated as **Exhibit A**. The parties expressly recognize that the License Agreement is contingent upon Closing on the Property.

In advance of entering into the License Agreement for Parking Spaces, Seller negotiated and executed a License Cancellation and Termination Agreement, which is attached hereto as **Exhibit B**, to terminate that certain License Agreement for Use of Parking Garage entered between the City of Gainesville and Kenneth and Linda McGurn (now MCG Parking LLC) on December 1, 2003, First Amendment dated April 13, 2004, and Second Amendment dated May 16, 2007. By its terms, the License Cancellation and Termination Agreement expires on November 1, 2016.

It is expressly recognized that Seller's ability to enter into a License Agreement for Parking Spaces with Buyer is contingent upon termination of the License Agreement for Use of Parking Garage and First and Second Amendments. As such, Seller shall work to negotiate an extension of the License Cancellation and Termination Agreement on or before November 4, 2016. The terms of the extension shall provide that the expiration date be extended to November 30, 2017.

If the Seller and MCG Parking LLC are unable to reach agreement on such extension, then the sole remedy shall be that the Buyer or Seller may thereafter, by written notice to the other, terminate this Contract and deposits paid to date shall be retained by the Seller.

b. **Post-Closing -- Development Requirements, Reverters, Security, Assignment, Mortgages and Mortgagee Rights/Obligations:** It is expressly recognized that the Buyer's commitment to timely completing a development on the Property after Closing was a material inducement to the Seller selecting the Buyer in the RFP process and entering into this Contract. **As such, the special warranty deed by which Seller will convey title to the Property shall include the language contained in this Section 9b in the same form as stated below and same shall survive the Closing.**

(1) **Development Requirements:** Buyer shall construct on the Property a mixed use development with a minimum of 8 stories to accommodate the following uses and quantities: a 180-220 room Embassy Suites hotel or other full service hotel ("Full-Service Hotel" being industry defined as a hotel with on-site high-end restaurant(s) and lounge(s), group meeting spaces with banquet facilities and additional selective amenities including, but not limited to, spas, elaborate banquet rooms, doormen, valet parking, extended room service, concierge services, and high-end boutique(s)); 9,000-11,000 square feet of retail; 13,500-16,500 square feet of office; and 22,500-27,500 square feet of meeting space; the development's

Buyers Initials: _____

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architectural and form components shall be consistent with Embassy Suites Hotels Gainesville Test Fit and Westin in Austin, Texas, as depicted in **Exhibit C** hereto, or other Full-Service Hotel. All of the foregoing is collectively referred to as the "Development."

(2) First Reverter Event: In the event Buyer fails to obtain all necessary permits and commence construction (construction is defined as above ground, vertical improvements) of the Development on or before January 1, 2018, Seller shall have the absolute right, but not the obligation, to cause title to the Property to revert to Seller, unless the commencement of construction is delayed by a riot, war on American soil, national emergency, strike, flood, hurricane, fire, or act of God (collectively referred to as "force majeure event"), such that Buyer is unable by reasonable diligence to avoid the delay. In the event of such delay, the deadline under this first reverter provision shall be extended by such reasonable time as necessary and equitable.

To exercise its right to this first reversionary interest, Seller shall record an Affidavit to that effect in the public records of Alachua County, Florida on or before May 1, 2018 (the "First Reversion Deadline Date") plus any extensions. Within a reasonable time after such recording, Buyer and Seller shall close on the transfer of the Property back to the Seller. At the Closing, Buyer shall execute a deed to Seller, Seller will return to Buyer the Purchase Price, less the Deposits which shall be retained by Seller as liquidated damages. The Buyer shall provide title insurance to the Seller and shall convey the Property back to the Seller free and clear of all encumbrances.

If Seller has not recorded such an affidavit on or before the First Reversion Deadline Date, then the first right of reversion shall expire, and the Property shall be automatically released of such reversion. In addition, Seller agrees to execute at Buyer's request a recordable release evidencing the expiration of such first right of reversion.

(3) Security:

- a. As security for Buyer's construction and completion of and conveyance of the Development, Buyer shall at the time of issuance of a building permit for the Development place with Seller a cash deposit or provide Seller a surety bond ("Security") in an amount that equals a sum that is at least 100 percent of the estimated construction cost of the Development, based on the permitted construction at the time of issuance of a building permit, and as verified and approved by the City Manager or designee. In the event Buyer has not completed construction of the Development by July 1, 2019, Buyer shall be deemed in default and Seller shall have the right without prior notice to Buyer to draw on the Security in such amount as Seller deems necessary to complete construction of the Development. Upon 25% completion, 50% completion, 75% completion, and 100% completion of the Development, Buyer may request and Seller shall then release and/or refund to Buyer an amount equal to the approved costs of such completed portion of construction. However, at no time shall the balance of the Security be reduced to less than 25% of the amount of the Security until all construction has been completed and approved by Seller. If Buyer completes the construction of the Development, then Seller shall release and/or refund to Buyer the remaining balance of the Security.
- b. In lieu of furnishing the Security described in a. above to the Seller, in the event any Mortgagee (as defined in (6) below) requires the Buyer and its construction contractor,

Buyers Initials: _____

Sellers Initials: _____

to provide Payment and Performance Bonds guaranteeing the Development will be completed and that payment will be made for all labor and materials (collectively, the "Surety Bond"), the Surety Bond may be used to satisfy the Security requirement. However, the Surety Bond must provide for enforcement by the City (such as by naming the City as an Additional Obligee), must be executed and recorded in the public records of Alachua County, must be issued by a surety insurer authorized to do business in the State of Florida and the Surety Bond must state on its front page:

1. The name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and the City.
2. The bond number assigned by the surety.
3. A description of the Development sufficient to identify it, such as a legal description or the street address of the property being improved, and a description of the Development improvements.

Before commencing construction on the Development, the Buyer shall provide to the City a certified copy of the recorded Surety Bond. The Surety Bond shall guarantee the performance of the construction work in the time and manner prescribed in the construction contract and the prompt payments to all persons defined in Section 713.01, Florida Statutes, who furnish labor, services, or materials for the work provided for in the construction contract. It is expressly recognized that the City being named as an Additional Obligee or otherwise being granted rights to enforce the Surety Bond, is done for the sole purpose of protecting the City's interest in the completion of the Development, and in no way creates any obligation, liability or expense on behalf of the City.

(4) Second Reverter Event: In the event of any one of the following occurs: a) Buyer, Surety or Mortgagee (as defined in (6) below) fail to complete the Development by July 1, 2019, with completion defined as issuance of a Certificate of Occupancy; b) Buyer defaults under the terms of the Surety Bond; or c) the Surety elects to tender payment of the amount of the Surety Bond to the Buyer instead of completing the construction of the Development, then the Seller shall have the absolute right, but not the obligation, to cause title to the Property to revert to Seller, unless the construction is delayed by a riot, war on American soil, national emergency, strike, flood, hurricane, fire, or act of God (collectively referred to as "force majeure event"), such that Buyer, Surety or Mortgagee is unable by reasonable diligence to avoid the delay. In the event of such delay, the deadline under this reverter provision for completing the Development shall be extended by such reasonable time as necessary and equitable. Apart from the above-described force majeure events, if for reasons beyond its control the Buyer, Surety or Mortgagee is unable to complete the Development by July 1, 2019, Buyer, Surety or Mortgagee may request in writing that the City Manager grant up to two (2) sixty (60) day extensions of the construction completion deadline upon substantial evidence of an excusable delay and that construction activities have consistently continued at the project site within the period of thirty (30) days prior to the construction completion deadline through the date of the extension request.

To exercise its right to this second reversionary interest, Seller shall record an Affidavit to that effect in the public records of Alachua County, Florida on or before November 1, 2019 (the "Second Reversion Deadline Date") plus any extensions. Within a reasonable time after such recording, Buyer and Seller shall close on the transfer of the Property back to the Seller. At the

Buyers Initials: _____

Sellers Initials: _____

Closing, Buyer shall execute a deed to Seller, Seller will return to Buyer the Purchase Price, less the Deposits which shall be retained by Seller as liquidated damages. The Buyer shall provide title insurance to the Seller and shall convey the Property back to the Seller free and clear of all encumbrances.

If Seller has not recorded such an affidavit on or before the Second Reversion Deadline Date plus any extensions, then the second right of reversion shall expire, and the Property shall be automatically released of such reversion. In addition, Seller agrees to execute at Buyer's request a recordable release evidencing the expiration of such second right of reversion.

(5) Assignment: Prior to receiving a Certificate of Occupancy for the Development, the Buyer may not sell, convey, assign, or otherwise transfer or dispose of any of its rights, title, and interest in the Property or the Development, or any duty or obligation of the Buyer pertaining to Property or the Development, or any part thereof without prior written consent of the Seller, which consent may be withheld by Seller in its sole and absolute discretion. However, Seller hereby acknowledges, consents and agrees that, without further notice to or consent of Seller, Buyer shall be entitled to assign all of its rights, title and interest in, to the Property and/or the Development to a subsidiary or affiliate, which is owned in whole or in part by Buyer or a subsidiary or affiliate of Buyer, under common ownership with Buyer, or controlled by Buyer, (the "Buyers Successor"), pursuant to a written assignment document, which shall include Buyers Successor's consent and agreement to be bound by all obligations of the Buyer as stated in the special warranty deed. Buyer or Buyers Successor shall provide the Seller with a copy of the written assignment document, together with the name and address of a contact person for purposes of notice to the Buyers Successor.

(6) Mortgage and Mortgagee's Rights and Obligations: The Buyer may, without prior written consent of Seller, mortgage its interest in the Property or Development, or any part thereof, to any party that lends money for the purchase of the Property and/or the costs of construction of the Development and requires a written, recorded mortgagee interest in the Property and/or the Development (a "Mortgagee"). Buyer shall promptly provide Seller with a copy of any recorded Mortgage and the name and address of a contact person for purposes of notice to the Mortgagee.

The Seller shall provide each Mortgagee with a copy of any Notice of Default and the opportunity to cure any event of default (including, but not limited to, the obligations to commence construction as set forth in Section 9b(2) and to complete construction as set forth in Section 9b(4)) on its own behalf or on behalf of the Buyer, provided, however, that if the event of default cannot practically be cured by the Mortgagee without the Mortgagee taking possession of the Property, then the Seller shall grant the Mortgagee such additional time as is reasonable necessary in order for the Mortgagee to obtain possession of the Property and cure such event of default, provided that the Mortgagee provides the Seller with documentation evidencing that the Mortgagee is diligently undertaking and proceeding to obtain such possession and cure such default to the Seller's reasonable satisfaction, but in any event, the Mortgagee shall not have more than one hundred (100) days from the end of the applicable cure period, to cure such breach. To avail itself of the opportunity to cure, Mortgagee shall indemnify, defend, and hold harmless the Seller from any and all damages, claims, suits, and liability of any kind that Buyer may have or assert against the Seller as a result of the Seller providing Mortgagee an opportunity

Buyers Initials: _____

Sellers Initials: _____

to cure.

10. WARRANTIES & COVENANTS OF SELLER:

a. **LITIGATION:** Seller covenants and warrants that, to the best of its knowledge, there are no suits, actions, or proceedings pending, whether involving governmental authority or private party, to which Seller is a party and relating to the ownership or operation of the Property, nor has Seller any knowledge of any contemplated actions; and Seller agrees to give Buyer prompt notice of any suits instituted between the date hereof and the closing date.

b. **SELLER'S OWNERSHIP:** Seller warrants and covenants that Seller has title to the exclusion of all other persons or entities to the fee simple interest in the Property, and the same shall be conveyed by Seller to Buyer at the closing; that Seller has an unrestricted right to so transfer, that there are no Contracts, leases or understandings affecting the Property or improvements thereon other than the Public Parking Space License Agreement (Gabison valet) dated April 1, 2015; the Rental Agreement for Gainesville City Lot 10 for Farmers Market dated March 10, 2015; and the Memorandum of Understanding between City of Gainesville and Shadow Health, Inc. dated February 26, 2013, all of which shall be terminated on or before the Closing.

c. **COMPLIANCE WITH LAW:** Seller warrants and covenants that, to the best of its knowledge, there are no violations of federal, state, or local law, regulations or ordinances affecting the Property and Seller covenants to cure any and all such violations, if such are found to exist, prior to closing.

d. **ZONING:** Seller warrants and covenants that the Property is presently zoned Central City District (CCD). Seller discloses and Buyer acknowledges that the Property is the subject of pending Petition PB-14-43-ZON to rezone the Property to T-6 Urban Core zoning district.

e. **CONDEMNATION:** Seller warrants and covenants that it has not received any written or official notice or otherwise been notified or have any knowledge of any condemnation proceedings against the whole or any part of the Property.

11. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard E. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

12. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.

13. ASSIGNABILITY: Buyer may not assign this Contract without the prior express written consent of Seller.

14. DISCLOSURES:

a. _____ CHECK HERE if the property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing and, if so, specify who shall pay amounts due after Closing: _____ Seller _____ Buyer _____ Other (see addendum).

Buyers Initials: _____

Sellers Initials: _____

- b. Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health unit.

- c. **Environmental Release and Environmental Indemnity.** Buyer acknowledges that this Section 14c was a negotiated part of the Contract and serves as an essential component of consideration for the same. **As such, the special warranty deed by which Seller will convey title to the Property shall contain the Environmental Release and Indemnity in the same form as stated below and same shall survive the Closing.**

(1) **Environmental Release.** Buyer acknowledges that, upon closing, Buyer is accepting and assuming full responsibility for the environmental condition of the property, and further acknowledges that Seller shall not be liable for any costs or claims attributable to the presence or Release (as defined herein), without regard to when the Release occurred, of Hazardous Substances (as defined herein) on, in, or beneath the property as described or referenced in the City of Gainesville's November 3, 2014 Request for Proposal – RFP No. ECOD 150026-FB Mixed Use Development For City Parking Lot #10 (“Contamination”), or from any Contamination or the Release of Hazardous Substances on the property that may have migrated from the property to any adjacent lands, air or waters. Buyer, on behalf of itself, its officers, directors, agents, representatives, parent companies, subsidiaries, affiliates, partners, and successors in interest, heirs, beneficiaries and assigns, past, present and future (individually and collectively, the “Releasers”), fully and finally and forever releases, acquits and discharges Seller and its officers, agents, insurers, representatives, and employees, past, present and future, from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, property damage, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys’ or consultants’ fees and any other claims, demands, damages, losses or causes of action of whatever kind or nature, which Releasers ever had, now have, or may have in the future on account of or arising from the presence of Contamination or the Release of Hazardous Substances on, in, or beneath the property, or that may have migrated from the property to any adjacent lands, air or waters, whether at law or in equity, whether under state law, federal law, regulation or Environmental Laws (as defined herein), whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, without any limitation or restriction whatsoever. The release embodied in this paragraph shall survive the Closing.

(2) **Environmental Indemnity.** Buyer agrees to indemnify, save harmless and defend Seller and its respective officers, insurers, agents and employees, past, present and future (individually and collectively, “Indemnitees”), from and against any and all liabilities, claims, demands, damages, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, appeals and reasonable attorneys’ and paralegals’ fees), which Indemnitees may hereafter incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, or adverse effects on the environment or any violation of federal, state or local laws, rules, regulations, ordinances, orders, permits, licenses, or lawful rulings resulting from or in any way related to: (a) the presence of Contamination or the Release of Hazardous Substances on, in, or beneath the property, or that may have migrated from the property to any adjacent lands, air or waters; or (b) the failure of Buyer to comply with any obligation that may arise after the closing under applicable Environmental Laws. The indemnity embodied in this paragraph shall survive the Closing.

Buyers Initials: _____

Sellers Initials: _____

(3) **Environmental Definitions.** When used herein, the term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise), requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directives or other requirements of any governmental authority relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, Contamination, or Hazardous Substances or any activity involving Hazardous Substances, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6921 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Federal Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; applicable state environmental laws; or any other applicable law, as the same may be amended from time to time.

When used herein, the term "Hazardous Substances" shall have the meaning ascribed to it in CERCLA; provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in CERCLA) any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

When used herein, the term "Release" shall have the meaning ascribed to it in CERCLA and shall also include (if not included within the definition contained in CERCLA) any spill, leak, emission, discharge or disposal of Hazardous Substances into the environment.

15. **MAXIMUM REPAIR COSTS:** Not applicable, vacant property.

16. **RIDERS; ADDENDA; SPECIAL CLAUSES:**

CHECK those riders which are applicable AND are attached to this Contract:

- CONDOMINIUM
- HOMEOWNERS' ASSOCIATION
- LEAD-BASED PAINT
- INSULATION
- "AS IS"
- Other Comprehensive Rider Provisions
- Addenda (Addendum Number 1)

Special Clause(s):

17. **STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"):** Buyer and Seller acknowledge receipt of a copy of Standards A through V on the reverse side or attached, which are incorporated as a part of this Contract.

18. **REAL ESTATE COMMISSION:** Seller and Buyer each represent and warrant to the other that it will be individually responsible for any commission or finder's fee for any broker, salesperson,

Buyers Initials: _____

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agent, or finder it has dealt with in connection with any of the transactions contemplated by this Contract. Seller and Buyer each agree to indemnify, defend (by counsel reasonably satisfactory to the indemnified party), save, and hold harmless the other from and against any and all losses, claims, damages, liabilities, Fees and Costs, and all other expenses related to, growing out of, or arising from, any claims or demands for any brokerage commissions or finder's fee alleged to be payable because of any act, omission, or statement of the indemnifying party. The terms of this Paragraph 18 shall survive the Closing.

19. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this Contract or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Contract, shall not be affected thereby, and all other terms, covenants, conditions and provisions of this Contract shall be valid and be enforced to the fullest extent permitted by law.
20. **NOTICE:** Any and all notices or demands by or from Seller to Buyer, or Buyer to Seller, shall be in writing. They will be served by certified mail. Receipt shall be conclusively deemed forty-eight (48) hours after the deposit of the notice or demand in the United States Mail, postage prepaid, addressed to the party to whom such notice or demand is to be given, as hereinafter provided, with a certified mail receipt therefore.

AS TO BUYER: Nim Patel
Horizon Hospitality Management, Inc.
4555 Mansell Road, Suite 300, Alpharetta, Georgia 30022

AS TO Seller: City Manager	COPY TO: City Attorney
City of Gainesville	City of Gainesville
P.O. Box 490, MS 6	P.O. Box 490, Station 46
Gainesville, Florida 32627	Gainesville, Florida 32627

21. **ENTIRE CONTRACT:** This Contract and Exhibits thereto, constitute the entire understanding between the parties hereto with respect to the subject matter hereof and cannot be changed, modified, amended, terminated or any provision hereof waived except by an instrument in writing signed by the parties hereto.
22. **CAPTIONS:** The parties mutually agree that the headings and captions contained in this Contract are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Contract.
23. **COUNTERPARTS:** This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
24. **GOVERNING LAW:** The Laws of the State of Florida shall govern this Contract, notwithstanding its conflict of laws provisions. Venue shall be in Alachua County, Florida.
25. **APPROVALS:** This Contract is contingent upon approval by the Gainesville City Commission.

Buyers Initials: _____

Sellers Initials: _____

- 26. **RELATIONSHIP:** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the City and the Developer. The Developer cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.

- 27. **BANKRUPTCY.** If, at any time prior to Closing or during the reverter periods, there shall be filed by or against Buyer in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Buyer's property, this Contract shall be deemed canceled and terminated prior to such filing. Buyer agrees to notify Seller in writing of its intent to file for bankruptcy at least 30 days prior to such filing, and Buyer shall vacate the Property prior to such filing, unless the City agrees otherwise. In the event of bankruptcy by Buyer, neither Buyer nor any person claiming through or under Buyer by virtue of any statute or of any order of any court shall be entitled to close on the purchase of the Property or take possession or remain in possession of the Property, but shall vacate and surrender the Property. The terms of this Paragraph 27 shall survive the Closing and shall be included in the special warranty deed.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

SELLER:

CITY OF GAINESVILLE, FLORIDA, a municipal corporation,

By: _____
Anthony Lyons, City Manager

Date: _____

WITNESSES:

Name

Print Name

Name

Print Name

APPROVED AS TO FORM AND LEGALITY

City Attorney
City of Gainesville

Buyers Initials: _____

Sellers Initials: _____

BUYER:

HORIZON HOSPITALITY MANAGEMENT INC.

Date: _____

Date: _____

WITNESSES:

Name

Print Name

Name

Print Name

DEPOSITS : Deposits under Paragraph 2(a) received (Checks are subject to clearance):

_____, Escrow Agent

By: _____

Buyers Initials: _____

Sellers Initials: _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph 8 and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying the defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachment on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

C. WOOD DESTROYING ORGANISMS: Not applicable, vacant land.

D. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph 8 hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

E. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

F. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for

Buyers Initials: _____

Sellers Initials: _____

improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing of this Contract.

G. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the title insurance, or, if no title insurance, designated by Seller.

H. TIME: In computing time periods of less than six (6) days, Fridays, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided herein which shall end on a Friday, Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. of the next business day. **Time is of the essence in this Contract.**

I. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments.

J. EXPENSES: Buyer will pay taxes and recording fees on notes, mortgages and financing statements, and recording fees for the deed. Seller will pay taxes on the deed and recording fees for documents needed to cure title defects. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph 6.

K. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

L. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

M. INSPECTION, REPAIR AND MAINTENANCE: N/A, vacant land.

Buyers Initials: _____

Sellers Initials: _____

N. RISK OF LOSS: Not applicable, vacant land.

O. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

P. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

Q. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer, and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

R. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer

Buyers Initials: _____

Sellers Initials: _____

may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

S. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

T. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph 8 and those otherwise accepted by Buyer. Personal property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

U. OTHER CONTRACTS: No prior or present Contracts or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

V. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

Buyers Initials: _____

Sellers Initials: _____

LICENSE AGREEMENT FOR PARKING SPACES

THIS LICENSE AGREEMENT ("Agreement") is made and entered into on this 5 day of January, 2016, by and between the City of Gainesville, a municipal corporation of the State of Florida ("City") and Horizon Hospitality Management Inc., a Georgia for profit corporation whose address is 2950 Mansell Road, Alpharetta, Georgia 30022 ("Developer").

RECITALS:

WHEREAS, Developer has purchased from the City certain real property located at 150 SW 2nd Avenue, Gainesville, Florida 32601 (currently Tax Parcel # 14574-000-000, and commonly referred to as City Parking Lot #10) (the "Property"); and

WHEREAS, Developer desires to develop the Property as a mixed use development with a minimum of 8 stories to accommodate the following uses and quantities: a 180-220 room Embassy Suites hotel or other full service hotel, with 9,900-10,100 square feet of retail, 13,500-16,500 square feet of office, 22,500-27,500 square feet of meeting space (the "Project"), and in connection therewith, Developer desires for the City to provide parking for the Project, primarily at the City's Southwest Downtown Parking Garage located at 105 S.W. 3rd Street, Gainesville, Florida (the "Garage"); and

WHEREAS, the City is the owner and operator of the Garage; and

WHEREAS, the Developer has requested certain rights from the City and the City is willing to grant said rights, under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **RECITALS.** The recitations set forth in the Recitals above are true and correct and incorporated herein by reference.
2. **CONSIDERATION.** In consideration for this Agreement, the Developer agrees to pay to the City in accordance with paragraph 6, below.
3. **USE OF PARKING SPACES.** The license granted hereby shall be for the use of 383 parking spaces primarily located in the Garage ("Developer Parking Spaces"). The 383 Developer Parking Spaces shall be for the exclusive use for the Project, and for no other purpose. These spaces shall not be designated or marked in a particular physical location and shall be "floating" spaces. Upon issuance of a certificate of occupancy for the Project, the City shall provide 383 access cards to the Developer to provide access to the Developer Parking Spaces each month. Until the time that a certificate of occupancy is issued for the Project, the City reserves the right to lease or use these parking spaces as it deems fit.



At any given time, if additional or alternate parking spaces are needed for the City to meet its obligations under this Agreement, the City may utilize City Lot #13 directly to the north of the Property or other lots or public parking spaces in the Central City District for parking for the Project. The City's compliance with its parking obligations under this Agreement shall be determined with regard to *actual* demand for and availability of parking, and not with regard to *conceptual* availability based on agreements.

Developer agrees that as part of its rules and regulations for its employees, guests, and tenants, it shall require that they abide by rules and regulations promulgated by the City applicable to the Garage (the "Rules and Regulations"), as same may be amended from time to time. City shall issue to the Developer a copy of the Rules and Regulations at the time Developer is issued the access cards and at each time the Rules are amended.

In the event the City exercises its right of reverter contained in the Special Warranty Deed for the transfer of the Property from the City to the Developer, then this Agreement shall be deemed terminated upon City recording the Affidavit evidencing the reversion of title.

4. MAINTENANCE AND IMPROVEMENTS. If the Developer should desire a higher level of maintenance of, or improvements to, the Garage, the Developer may make a written request to the City, specifying the total cost of the work. The City may approve or deny such request in its sole discretion. Any proposed physical improvements to the Garage shall be subject to the control and approval by the City as to engineering, architectural design, and other aspects. Any work will be done by the City through its contracts and/or procurement process, subject to payment by the Developer. Any costs for work not included in the City's regular, budgeted maintenance of the Garage, that is requested by Developer pursuant to this paragraph shall be the sole responsibility of, and paid by, the Developer.

5. TERM. Provided Developer is not otherwise in default (beyond any applicable cure periods) of its obligations hereunder, and except as otherwise provided in this Agreement, the term of this Agreement is thirty (30) years, subject to extensions upon negotiation and mutual agreement of the parties.

Notwithstanding the foregoing, in the event the Project is destroyed through casualty or otherwise, or the Project otherwise ceases to exist, the City shall send a written notice to Developer inquiring as to whether the Project will be rebuilt and Developer shall have ninety (90) days from the date it receives such written notice from the City in which to decide whether or not to rebuild the Project and notify the City of such election. In the event the Developer elects not to rebuild the Project in substantially the same form and use, or does not make an election within such time frame, then the license granted hereby shall automatically terminate. If Developer does elect to rebuild, and rebuilds within eighteen (18) months of the Project being destroyed, then the license granted hereby shall continue in effect in accordance with its terms, provided the Developer is not otherwise in default of this Agreement. For purposes of this paragraph "destroyed through casualty or otherwise" means destruction which exceeds 75% of the Project's then physical value as determined by an M.A.I. appraisal provided by the

Developer. During the period of time the Project is being rebuilt the City may lease or use the Developer Parking Spaces as it deems fit and no payment is due from Developer.

6. DEVELOPER'S COMMITMENT AND PAYMENT FOR SPACES.

- a. Each month during the term of this Agreement, the Developer shall pay the City for 383 parking passes, regardless of whether the Developer actually uses less than such number of passes. The amount due shall be based on the actual usage and daily rate for hotel guest parking and the actual usage and monthly rate for employees, as described below and as illustrated by way of example in Exhibit A, attached hereto and incorporated. For the hotel guest parking passes, the Developer shall be responsible for payment to the City the higher of \$7 per day or 47% of what the Developer charged its hotel guests for parking passes. For the employee parking passes, the Developer shall be responsible for payment to the City at a monthly rate of \$20 per employee parking access card. The monthly rate shall increase to \$22.50 for the second year of the Agreement, \$25.00 for the third year, \$27.50 for the fourth year, and \$30 for the fifth year. After the fifth year, the monthly rate shall be the higher of \$30 or the monthly public parking rate for the Garage then in effect, as set by the City. Developer shall pay to the City on or before the thirtieth (30th) day of each month the appropriate amount due and owing for the preceding month, in a single combined payment for the total amounts due for parking for the month. All payments due under this paragraph shall be hand delivered or mailed to SW Downtown Parking Garage, 105 S.W. 3rd Street, Gainesville, Florida 32601. Developer shall maintain records of the number of guests each day who are issued parking passes, and shall make such records available to the City upon request. Developer is responsible for managing the use of its parking spaces and purchasing any equipment and/or software as necessary to interface and coordinate with City parking operations for purposes of implementing this Agreement without additional cost or administrative burden upon the City.

Developer acknowledges City's tax-exempt status. In the event that City is required to pay taxes, real or personal, on the Garage, due in whole or in part to Developer's rights to or use of the Garage under this Agreement, then Developer shall reimburse the City within thirty (30) days of such payment for Developer's pro rata share of said taxes based on receipt of sufficient documentation from City indicating the amount of taxes paid and the calculation of Developer's pro rata share. Developer's share shall be determined by dividing the number of Developer Parking Spaces licensed hereunder each tax year, divided by the total number of parking spaces in the Garage during such tax year. The resulting percentage shall be multiplied by the amount of taxes paid attributable to the parking operations of the Garage and such amount shall

be reimbursed by Developer to the City. Failure to pay its pro rata share of the taxes shall be considered a default under this Agreement.

7. **ASSIGNMENT.** Developer may not assign this Contract without the prior express written consent of Seller.
8. **NO WAIVER OF POLICE POWERS OR GRANT OF DEVELOPMENT RIGHTS.** This Agreement does not confer any development rights, or grant any development permits or orders as these terms are defined in Chapter 163, F.S., to construct any improvements on the Garage property. By entering into this Agreement, the City does not waive its police powers, or ordinances, or regulations relating to the development and use of the Garage.
9. **INSURANCE.** The Developer shall be responsible for providing, through an insurance policy, liability coverage for any loss or damages which may be caused by acts or omissions of the Developer, its employees, officers, contractors, agents, invitees and licensees within the Garage. The policy of insurance shall be issued by an insurance company with a minimum AM Best Rating of A VII, and shall be in a form, substance and amount acceptable to the City. The policy shall have an annual aggregate limit of not less than \$5,000,000, or such additional amount as reasonably required by the City and shall name the City as an additional insured.
10. **DAMAGE OR DESTRUCTION OF GARAGE.** If the Garage is destroyed through casualty or otherwise during the term of this Agreement, the City shall have the option of repairing or rebuilding the Garage; however, if the City does not elect within one hundred eighty (180) days to re-build or repair the Garage, then this Agreement will be deemed terminated and void ab initio at the end of the 180 days and neither party shall have any further obligations under its terms. In the event the City does elect to rebuild or repair the Garage, then any Garage repaired or rebuilt on the Garage property shall be subject to this Agreement. The City shall maintain an insurance policy, or a program of self-insurance, in full force and effect for the replacement value of the Garage. Should the City elect to rebuild or repair the Garage, any insurance proceeds shall be used by the City to repair or reconstruct the Garage as necessary during the term of this Agreement, and the expiration of this License Agreement shall be tolled for the length of time that the City could not provide parking for the Developer in the manner required by the License Agreement. For purposes of this paragraph "destroyed through casualty or otherwise" means destruction which exceeds 75% of the Garage's then physical value as determined by an M.A.I. appraisal provided by the City. In the event that destruction of the Garage negatively impacts Developer parking space allocation, the City will cooperate with Developer as to seeking parking alternatives within reasonable proximity of the Garage, but the City will be under no obligation to procure such parking or pay or compensate Developer for displaced or replacement parking.
11. **NOTICES.** Any notice or demand which must or may be given under this Agreement or by law shall be in writing and shall be deemed to have been given: (i) when physically

received by personal delivery; or (ii) when delivered by United States certified or registered mail, return receipt requested, postage prepaid; or (iii) when delivered by a commercial courier service such as Federal Express, addressed to the respective parties at the following addresses:

CITY:

City of Gainesville
City Manager
Post Office Box 490
200 E University Avenue
Gainesville, Florida 32602

DEVELOPER:

Horizon Hospitality Management, Inc.

2950 Mansell Road
Alpharetta, Georgia 30022

12. **SEVERABILITY.** If any portion of this Agreement is found by a court of competent jurisdiction to be unenforceable, then the parties agree that if the deletion of such provision shall not affect the overall intent (nor materially impair the benefits negotiated by each party hereunder) of this Agreement, then the remainder of this Agreement shall remain in full force and effect.
13. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding its conflict of laws provisions. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.
14. **BINDING EFFECT OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their respective successors, assigns, agents, and beneficiaries, if applicable.
15. **DEFAULT.**
 - a. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the alleged breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
 - b. **Developer's Default.** The Developer's failure to comply at all times with its obligations contained herein shall be a material breach of this Agreement ("Event of Default"). Upon such Event of Default, the City shall provide written notice of such Event of Default to the Developer ("Notice of Default"), and the Developer's failure to cure such Event of Default within thirty (30) calendar days from the date of Developer's receipt of the Notice of Default shall, at the election of the City, result in the immediate termination of this Agreement.

c. **City's Default.** In the event that the City materially defaults in any of its respective obligations contained herein, and fails to cure such default within thirty (30) calendar days from the date of the City's receipt of written notice of such default from the Developer, then the Developer shall have the right to require the City's specific performance under the terms and conditions of this Agreement. This shall be the exclusive remedy available to the Developer.

d. **Developer's Waiver.** Developer's obligation to make payment in accordance with paragraph 6, above, is independent of each and every other covenant of this Agreement. Developer agrees that the Developer's damages for City's breach shall in no case be deducted from any payment due the City, nor set off for purposes of determining whether any fee is due in any action.

16. **LIMITATION OF LIABILITY.** Notwithstanding any provision of this Agreement to the contrary, nothing in this agreement shall be construed as a waiver of the City's sovereign immunity, and the liability of the City shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the City unless the claimant presents the claim in writing to the Risk Manager within 3 years after such claim accrues or the Risk Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the Risk Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues; provided, however, this shall only apply to an action for damages and not to any action for specific performance. Notwithstanding any other provisions of this paragraph, liability of the City is limited to the maximum sum of \$200,000 as the result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgment or portions thereof. In addition, this paragraph shall be construed to limit recovery against the City to only those damages caused by the City, and shall specifically exclude any attorney's fees or costs associated therewith. In regard to any claim of default under this Agreement, the City shall not be liable for any incidental, consequential, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, or under any indemnity provision.

17. **INDEMNIFICATION.** The Developer, and its successors or assigns, agree to indemnify and hold harmless the City and its elected and appointed officials from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal of any kind and nature arising out of or in any way connected with this Agreement, the construction, operation, and use of the Project, including, but not limited to the Garage.

18. **NO LIABILITY OR MONETARY REMEDY.** The Developer hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the City, and that the City bears no liability for direct, indirect or consequential damages.
19. **RELATIONSHIP.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the City and the Developer. The Developer cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. The Developer further represents and acknowledges that no one was paid a fee, commission, gift or other consideration by the Developer as an inducement to entering into this Agreement.
20. **PERSONAL LIABILITY.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the City in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the City hereunder.
21. **AMENDMENT.** This Agreement may not be amended, unless evidenced in writing and executed by all parties hereto.
22. **CAPTIONS.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.
23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.

IN WITNESS WHEREOF, the parties executed this Agreement on the dates indicated below.

CITY:

City of Gainesville

[Signature]
City Manager

Date: 1-29-16

Approved as to Form and Legality:

[Signature]

WITNESSES:

[Signature]
signature of witness
KAREN E PRUSS
printed name of witness

[Signature]
signature of witness
Kim Harris
printed name of witness

STATE OF FLORIDA }
COUNTY OF ALACHUA }

The foregoing instrument was acknowledged before me on this 27th day of January, 2015 by Anthony Lyons, as City Manager of the City of Gainesville, a Florida municipality, who is personally known to me or did produce a driver's license as identification, and who did not take an oath.

[Signature]
Name:
Notary Public, State of Florida



DEVELOPER:

By: HORIZON HOSPITALITY
MANAGEMENT INC., a Georgia for profit
corporation

By: Nimish Patel
Name: Nimish Patel
Title: CEO

Date: 1/5/16

WITNESSES:

[Signature]
signature of witness
James Redd
printed name of witness

[Signature]
signature of witness
Anna Ames
printed name of witness

STATE OF GEORGIA }
COUNTY OF FULTON }

The foregoing instrument was acknowledged before me on this 5 day of January, 2016 by Nimish Patel, as CEO of HORIZON HOSPITALITY MANAGEMENT INC., on behalf of such entity. He/she is personally known to me or did produce a driver's license as identification, and who did not take an oath.

[Signature]
Name: David Anderson
Notary Public, State of Georgia



EXHIBIT A

Example:

Monthly revenues collected for daily overnight guests (per the Agreement) = \$58,125

$$\mathbf{\$58,125 / (\$15^{[1]} \times 31^{[2]}) = 125}$$

$$\mathbf{383 - 125 = 258}$$

$$\mathbf{258 \times \$20^{[3]} \text{ per month} = \$5,160}$$

The total amount owed to the City for the month = (125 spaces x 31^[2] days/mo. x \$7^[4] = \$27,125) + (258 monthly spaces x \$20^[3] per month = \$5,160) = \$32,285

- 1 - Amount Developer charged hotel guests for parking for parking per day.**
- 2 - Number of days in that month.**
- 3 - Monthly rate that is applicable at that time.**
- 4 - Higher of \$7 per day or 47% of what Developer charged its hotel guests for parking per day.**

LICENSE CANCELLATION AND TERMINATION AGREEMENT

THIS LICENSE CANCELLATION AND TERMINATION AGREEMENT is made and entered into on the date last signed below, by and between the City of Gainesville, hereinafter referred to as "City," and MCG Parking I.L.C, hereinafter referred to as "MCG";

WHEREAS, on December 1, 2003, the City and Kenneth R. McGurn and Linda C. McGurn executed a License Agreement For Use of Parking Garage, for a 99 year term, granting McGurn the use of parking spaces in the City's Southwest Downtown Parking Garage located at 105 S.W. 3rd Street, Gainesville, Florida 32601; on April 13, 2004 the parties executed a First Amendment; on May 15, 2007 the parties executed a Second Amendment (collectively referred to as the "License Agreement"); and on August 9, 2012 Kenneth and Linda McGurn executed an Assignment of License to MCG in accordance with paragraph 13 of the License Agreement; and

WHEREAS, paragraph 18 of the License Agreement provides terms for early termination of the License; and

WHEREAS, the City has determined that it is fiscally and operationally prudent and in the public interest to effect an early termination of the License Agreement; and

WHEREAS, the parties desire to terminate all of their rights, duties and obligations to each other under the License Agreement, and release each other from all further responsibilities and liabilities under the License, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference into this Agreement as though set forth at length.

2. Termination of License Agreement. The License Agreement shall be immediately terminated upon the closing on the sale of City Lot 10 to Horizon Hospitality Management Inc., which closing is a contingency to this License Cancellation and Termination Agreement. MCG relinquishes its right to replacement parking under paragraph 18b of the License Agreement, and all things done and to be done under the License Agreement and any other independent, prior, contemporaneous, or subsequent written or oral agreements or understandings relating thereto, or to the license interest thereunder, shall be deemed to have been done, paid, performed and satisfied, as the case may be. The parties agree that neither one shall have any claim against the other for any sums owed, or to be owed, or for any performance to have been rendered or to be



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rendered, or for any reason or cause whatsoever relating to, arising out of, or in connection with the License Agreement.

3. Payment. City shall pay MCG the sum of approximately One Million Nine Hundred Fifty Three Thousand Five Hundred Seventy Nine Dollars (\$1,953,579.00), but in a precise amount as calculated in accordance with paragraph 18 of the License Agreement and based on the date of closing on the sale of Lot 10, as full and complete consideration for this cancellation and termination of the License Agreement. Payment shall be made upon the closing on the sale of City Lot 10 to Horizon Hospitality Management Inc.


4. Entire Agreement. This License Cancellation and Termination Agreement is the final and complete expression of the parties in regard to the subject of parking in the City's Southwest Downtown Parking Garage, and supersedes the terms of the License Agreement to the extent of any conflict. This License and Termination Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all of the parties hereto.

5. Expiration. If the closing on the sale of City Lot 10 to Horizon Hospitality Management Inc. does not occur by November 1, 2016, then this License Cancellation and Termination Agreement shall expire, and the terms of the License Agreement shall remain in full force and effect.

6. Recording. This Agreement shall be recorded in the Public Records of Alachua County by November 3, 2016, but only if the closing on the sale of City Lot 10 occurs.

IN WITNESS WHEREOF, the parties executed this License and Termination Agreement on the dates indicated below.


CITY OF GAINESVILLE:



ANTHONY LYONS, Interim City Manager
2-9-16

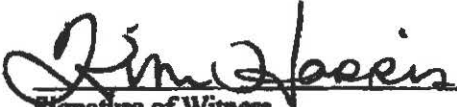
Date

WITNESSES:



Signature of Witness
KAREN E. PRUSS

Printed name of Witness



Signature of Witness
Kim Harris

Printed name of Witness

Approved as to Form and Legality:



City Attorney



STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me on this 9th day of February, 2016 by Anthony Lyons, as Interim City Manager of the City of Gainesville, a Florida municipality, who is personally known to me or did produce a driver's license as identification, and who did not take an oath.

Helen J. Harris
NOTARY PUBLIC
STATE OF FLORIDA



MCG PARKING LLC:

Kenneth R. McGurn
KENNETH R. McGURN
Managing Member
1/25/16
Date

Mary Ann Kelly
Signature of Witness as to both
Mary Ann Kelly
Printed name of Witness

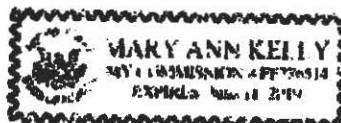
Linda C. McGurn
LINDA C. McGURN
Managing Member
1/25/16
Date

Mary Ann Kelly
Signature of Witness as to both
Mary Ann Kelly
Printed name of Witness

STATE OF FLORIDA
COUNTY OF ALACHUA

~~2016~~ The foregoing instrument was acknowledged before me on this 25th day of January, 2016 by Kenneth R. McGurn and Linda C. McGurn, who are personally known to me or did produce a driver's license as identification, and who did not take an oath.

Mary Ann Kelly
NOTARY PUBLIC
STATE OF FLORIDA



me

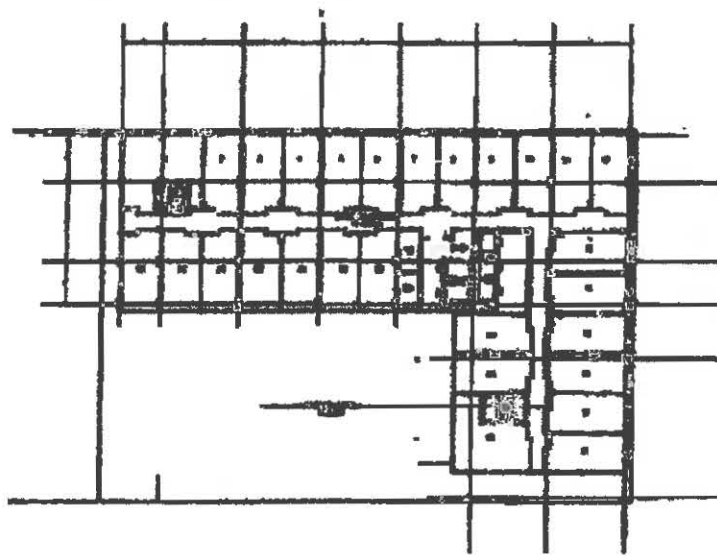
**City of Gainesville Mixed-Use Development
City Parking Lot # 10**

130847D





Design Process: Gainesville T³ 1003479



Le-shape

Atrium

Towers



Hexion Hospitality
Gainesville

