

This instrument prepared by:
City Attorney's Office
P.O. Box 1110
Gainesville, Florida 32602
(352) 334-5011

Air Rights Easement

THIS EASEMENT ("Easement") is made this _____ day of _____, 2008, between the CITY OF GAINESVILLE, Florida, a municipal corporation existing under the laws of the State of Florida, whose mailing address is Post Office Box 490, Station 46, Gainesville, Florida 32602 ("Grantor") and SOUTHWEST SECOND AVENUE, LLC, a Florida limited liability company, whose mailing address is 408 West University Avenue, Suite 602, Gainesville, FL 32601 ("Grantee").

Recitals

WHEREAS, Grantor and Grantee have executed a License Agreement for Use of Parking Garage dated July 12, 2007 (the "License Agreement") wherein Grantor has agreed to convey an easement for air rights to accommodate a pedestrian walkway bridge between property to be developed as "The Palms", which is located at 230 S.W. 2nd Avenue and a parking garage owned by the Grantor located at the 100 block of S.W. 2nd Street, Gainesville, Florida (the "Garage") under certain conditions; and

WHEREAS, this Air Rights Easement ("Easement") is granted for the sole purpose of allowing Grantee to construct and use a pedestrian walkway bridge between the Garage and The Palms as provided in the License Agreement; and

WHEREAS, Grantor and Grantee desire to limit the use and occupancy of the airspace to the aforesaid pedestrian walkway bridge under the terms and conditions set forth in this Easement;

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained below, the parties agree as follows:

1. The recitations set forth in the Recitals above are true and correct and incorporated herein by reference.

2. Grantor grants to the Grantee a non-exclusive easement appurtenant in certain air rights for the benefit of Grantee's parcel and for use by Grantee in the construction, operation and maintenance of a pedestrian walkway bridge within the area described as follows and as further depicted on Exhibit "A" to this Easement. Grantor also grants to Grantee reasonable rights of temporary ingress and egress over and upon

the immediate surrounding premises as are necessary for the construction, maintenance, repair or replacement of the walkway. This Easement shall remain in existence unless terminated as provided in this document and in the License Agreement for Use of Parking Garage between the Grantor and the Grantee.

3. The term of this Easement commences with the execution of this Easement and shall be coterminous with the term of the License Agreement.

4. Subject to the rights of Grantee pursuant to the terms of this Easement, the Grantor, its successors and assigns, reserves the right to the full use and enjoyment of the surrounding premises for use as public ingress/egress to the Garage.

5. Grantee shall be solely responsible for the use and enjoyment of the Easement and shall indemnify and hold Grantor and its elected and appointed officials, employees and agents harmless from all costs, attorneys' fees and claims of damage to person, property or premises resulting from the use, occupancy and possession of the air rights by Grantee and Grantee's tenants, guests or invitees, or the right of temporary ingress and egress over the surrounding premises as provided in paragraph 2.

6. Prior to commencing construction of the walkway, Grantee shall provide Grantor with a certificate of insurance, which evidences Grantor as an additional insured on Grantee's comprehensive liability insurance policies, to be acquired in amounts satisfactory to the Risk Manager of Grantor. Furthermore, Grantee shall maintain that certificate in full force, and provide evidence when requested, for the duration of the Easement. Grantee shall at all times maintain the walkway in good repair and in safe and attractive condition; furthermore, Grantee shall also comply with all other laws, ordinances and regulations pertaining to the location, use, and occupancy of the walkway. Prior to commencing construction of the bridge, Grantee shall provide, in writing from Finrock Design-Manufacture-Construct, Inc. (hereinafter "Finrock"), confirmation that Finrock has approved the location of the connection of the bridge into the garage.

In the event of an emergency where the walkway is damaged in a way that imperils the public safety, the Grantor, after a reasonable attempt to notify Grantee, may repair or remove the walkway and charge Grantee for such repair or removal. Grantee agrees to pay for such emergency repair or removal within 30 days of receipt of invoice. If Grantee elects not to rebuild the walkway within 30 days, or if Grantee does not commence to so rebuild within 90 days of the date of destruction, the Easement and any rights that Grantee shall possess by virtue of this Easement shall automatically cease and terminate without further notice.

7. In the event the pedestrian walkway bridge becomes subject to any federal, state or local property, sales, excise, or other tax or fee, Grantee agrees to pay such taxes or fees as they become due. Grantee agrees to indemnify and hold the Grantor harmless from any sales, excise, other tax or fee or penalty that may be imposed which are attributable to the Grantee's use of the pedestrian walkway bridge and/or this Easement. If Grantee desires to challenge the validity or amounts of any such tax or fee,

Grantee shall be permitted to do so, as described below, but shall pay the taxes or fees if payment is required during the pendency of the appeal.

Grantee may request the Grantor to assign any rights of the Grantor needed for Grantee to challenge the validity or amount of any such tax or fee. The Grantor may assign such rights as are necessary, or may choose to challenge the validity or amount itself, with or without a request from Grantee, to the extent the Grantor has standing to do so. The Grantor and Grantee agree that if the Grantor challenges the validity or amount of such tax or fee on its own, Grantee may seek to intervene in any such challenge and the Grantor does not object to Grantee asserting standing to intervene, so long as such is not adverse to the Grantor's interests. In the event the Grantor brings such challenge pursuant to a request by Grantee, Grantee shall pay for the expenses, attorney's fees and costs incurred by the Grantor in such proceedings.

In the event of Grantee's nonpayment of taxes or fees, including Grantor's expenses, attorney's fees, and costs, the Grantor reserves the right to terminate this Easement immediately by filing an affidavit in Alachua County's public records stating that this air rights easement is null and void.

8. In the event of Grantee's noncompliance with any of the specific conditions and restrictions contained in this Easement, Grantee, upon receipt of Grantor's written notice and demand for compliance, shall provide Grantor with evidence of Grantee's compliance within 30 days of said receipt. If compliance cannot be reasonably completed within said 30 days, Grantee shall provide Grantor with evidence that work toward compliance has commenced and that compliance will be complete within a reasonable time. In the event Grantee fails to submit such evidence of compliance to Grantor within the time allowed, and if any Mortgagee of The Palms or the pedestrian bridge or the Condominium Association associated with The Palms does not elect to cure the condition pursuant to paragraph 10 below, then the Grantor shall record as soon as practicable, in Alachua County's public records, an affidavit stating that this air rights easement is terminated and null and void.

9. Any rights derived by Grantee pursuant to this Easement shall be solely for Grantee, its successors and assigns.

10. Grantor acknowledges that Grantee shall be mortgaging The Palms property, which includes the pedestrian walkway bridge, and collaterally assigning all rights of Grantee under this Easement to a financial institution. Grantor further acknowledges that Grantee may create one or more condominiums on all or a portion of The Palms property, that the pedestrian walkway bridge might be common area and that all or part of Grantee's rights under this Easement might be assigned to the Condominium Association(s). Grantee shall not encumber the pedestrian walkway bridge or assign all or part of Grantee's rights under this Easement without the written consent of the Grantor, which shall not be unreasonably withheld or delayed so long as such Association is validly created and assumes all of the rights, responsibilities, duties and obligations of

Grantee. Any mortgage or other financial document shall be subordinate to the rights of the Grantor.

If Grantee creates one or more Condominium Associations, it shall include in the condominium documents a requirement that upon assignment of this Easement to the association(s), the association(s) must assume all obligations of Grantee under this Easement, including but not limited to providing indemnification and proof of insurance pursuant to paragraphs 5 and 6.

11. No provision of this Easement nor any act of the Grantor shall be deemed or construed by any of the parties, or by third parties, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Grantor. Additionally, no provision of this Easement shall be deemed or construed to grant 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 granting this Easement, the Grantor does not waive its police powers, or ordinances, or regulations relating to the development and use of the Garage property.

12. All notices pursuant to this Easement shall be by certified mail, return receipt requested, addressed to the following:

If to the Grantor: City Manager
City of Gainesville
P.O. Box 490
Gainesville, Florida 32602

With a copy to: City Attorney's Office
200 E. University Avenue, Suite 425
Gainesville, Florida 32601

If to Grantee: Southwest Second Avenue, LLC
408 West University Avenue, Suite 602
Gainesville, Florida 32601

13. The terms of this Easement shall be construed in accordance with the laws of the State of Florida.

In Witness Whereof, the parties here have duly executed this Easement as of the date written above.

GRANTOR:

WITNESSES

CITY OF GAINESVILLE

Print Name

Pegeen Hanrahan, Mayor

Print Name

ATTEST:

Kurt M. Lannon
Clerk of the Commission

**STATE OF FLORIDA
COUNTY OF ALACHUA**

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by PEGEEN HANRAHAN and KURT M. LANNON, Mayor and Clerk of the Commission, respectively, of the City of Gainesville, Florida, a municipal corporation, who are personally known to me and duly sworn, who acknowledged that as such officers, and pursuant to authority from said corporation, they executed the foregoing instrument and affixed the corporate seal for and on behalf of said corporation, as its act and deed, and for the uses and purposes set forth and contained in said instrument.

Print Name:

Notary Public, State of Florida

My Commission Expires:

Agreed to and Accepted by:

GRANTEE:

WITNESSES

Southwest Second Avenue, LLC

By:

Print Name

Title:

Print Name

Date:

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____, 2008 by _____, as _____ of Southwest Second Avenue, LLC, on behalf of such entity. He is personally known to me or did produce _____ as identification.

Print Name: _____

Notary Public, State of Florida

My Commission Expires: