



CONSENT ITEM 070572

MEMORANDUM

Phone: 334-5011/Fax 334-2229
Box 46

Office of the City Attorney

TO: Mayor and City Commission

DATE: October 17, 2007

FROM: City Attorney

SUBJECT: Consideration of a First Amendment to the License Agreement for Use of Parking Garage and a Collateral Assignment of License Agreement to allow the Developer of The Palms condominium project to assign the rights to 96 parking spaces in the Southwest Downtown Parking Garage to Millennium Bank as collateral for purposes of financing the construction of the project.

Recommendation: The City Commission authorize the City Manager to execute the First Amendment to License Agreement between the City and Southwest Second Avenue, LLC and authorize the City Manager to execute the Collateral Assignment of License Agreement between Southwest Second Avenue, LLC, Millennium Bank, and the City of Gainesville, both Agreements subject to approval by the City Attorney as to form and legality.

In July 2007, the City and Southwest Second Avenue, LLC executed a License Agreement for Use of Parking Garage, whereby the City granted to the Developer of The Palms certain rights to 96 spaces in the City's Southwest Downtown Parking Garage for use by The Palms. The Developer is now requesting the City's consent to assign its (the Developer's) rights, as specified in the License Agreement, to Millennium Bank as additional collateral for the purposes of securing a construction loan for the project.

The License Agreement for Use of Parking Garage does not permit an assignment except to a condominium association created in connection with the project. Therefore, the License Agreement would have to be amended. In addition, the City is being requested to consent to the execution of a Collateral Assignment of License Agreement for Use of Parking Garage between Southwest Second Avenue, LLC and Millennium Bank.

The First Amendment would permit a collateral assignment of the rights provided for in the Agreement to Millennium Bank in the event the Developer defaults on his construction loan. In the event of such an assignment, the Amendment would also permit Millennium to further assign these rights to a successor owner taking title from Millennium on the condition that upon project completion, the successor owner relinquish title to the License Agreement to the condominium association created in connection with the project. There would be no further assignments past the condominium association and the assignment to the condominium association will also be

**FIRST AMENDMENT TO LICENSE AGREEMENT
FOR USE OF PARKING GARAGE**

This **First Amendment to License Agreement for Use of Parking Garage** is entered into on this ____ day of _____, 2007 by and between the **City Of Gainesville**, a municipal corporation of the State of Florida (hereinafter "City"), and Southwest Second Avenue, LLC, a Florida limited liability company (hereinafter "Developer").

WHEREAS, the parties previously entered into a License Agreement for Use of Parking Garage (hereinafter "Agreement") on July 12, 2007, whereby the City granted to Developer certain rights in the City's Southwest Downtown Parking Garage, located at 105 S.W. 3rd Street, Gainesville, Florida (hereinafter "Garage"), for parking for the residential condominium development to be known as "The Palms"; and

WHEREAS, Developer has requested an assignment of the Agreement and the City has agreed to such an assignment under the terms and conditions stated herein; and

WHEREAS, City and Developer therefore wish to amend the Agreement as described herein;

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable considerations, in hand paid, the receipt whereof is hereby acknowledged, City and Developer hereby agree as follows:

1. Paragraph 8 is amended to read as follows:

"8. **Assignment.** Developer may mortgage its interest in the Project, or any part thereof, for the purpose of financing the construction of the Project, to any Lender and, in connection therewith, assign any and all of Developer's rights under this Agreement to such Lender as additional collateral. Lender may further assign such rights, interests and benefits to a successor owner taking title from the Lender, and the City hereby consents to any such assignment provided, however, that upon completion of construction, title to the Agreement shall be assigned to the condominium association created in connection with the Project. Completion of construction is defined as the date on which the City of Gainesville Building Department has issued certificates of occupancy for all residential condominium units. Such assignment to the condominium association shall be subject to the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed so long as such association is validly created and assumes all of said rights, responsibilities, duties, liabilities and obligations of the Developer. The City shall respond to any such request for consent within thirty (30) days of when the request is made. Upon such assignment, which the assignee must assume in writing, the Developer shall provide a copy of the instrument of assignment to the

**COLLATERAL ASSIGNMENT OF LICENSE AGREEMENT
FOR USE OF PARKING GARAGE**

THIS COLLATERAL ASSIGNMENT OF LICENSE AGREEMENT FOR USE OF PARKING GARAGE (this "Collateral Assignment") is entered into this ____ day of October, 2007, by and between **SOUTHWEST SECOND AVENUE, LLC, a Florida limited liability company**, whose mailing address is 408 West University Avenue, Suite 602, Gainesville, FL 32601("Assignor") and **MILLENNIUM BANK**, whose mailing address is 4340 W. Newberry Road, Gainesville, FL 32607("Lender") joined, for the limited purposes set forth herein, by the City of Gainesville, Florida, 200 East University Avenue, Gainesville, Florida, 32601 (the "City").

RECITALS

- A. On October 2nd, 2007, Assignor made and delivered a promissory note in the total face amount of SIX MILLION NINE HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$6,940,000.00) (the "Note") to Lender, and said Assignor is presently indebted to Lender under the terms of the Note.
- B. Lender has requested Assignor assign to Lender as additional collateral security for the payment of the Note, Assignor's interest in the LICENSE AGREEMENT FOR USE OF PARKING GARAGE (the "Agreement") for the portion of the Garage to be occupied by Assignor ("Developer Parking Spaces") for the Condominium project to be known as "The Palms" and located at 224 SW 2nd Avenue, Gainesville, Florida 32601.
- C. Assignor as Developer is entitled to use of a certain portion of the Garage under the Agreement.
- D. Assignor is willing to collaterally assign Assignor's interest as Developer in the Agreement as additional collateral security for the payment of the Note executed by Assignor in favor of said Lender.

prevailing party in any litigation between the Assignor and Lender, or mediation relating to this Assignment agreement between Assignor and Lender shall recover its reasonable attorneys' fees from the other party for all matters, including, but not limited to, appeals.

5. LENDER'S PROTECTION. If Assignor defaults in the performance or observance of the conditions or covenants of the Agreement hereby assigned, whether before or after any default in the performance or observance of the conditions and covenants of the Note, Lender, and Lender's successors or assigns, may, in Lender's sole and absolute discretion, take any remedy conferred or permitted under law to enforce the rights of Assignor under the Agreement. Lender shall add to Assignor's debt under the Note any costs advanced or incurred by Lender (including reasonable attorney's fees) in protecting its interests.

6. CITY'S JOINDER. THE CITY OF GAINESVILLE, (the City under the Agreement), joins in the execution hereof, for the sole and limited purpose of consenting to the foregoing collateral assignment to Lender, of Assignor's interest in the Agreement. The City acknowledges and accepts Lender's right to assume Assignor's rights in the Agreement in the event of Assignor's default on Assignor's obligations to Lender, on the express condition that Lender thereafter fully and completely assumes and performs all of the terms, covenants, conditions and obligations of the Developer under the Agreement including the completion of the Project pursuant to the Approved Plans as described in the Downtown Expansion Redevelopment Area Transformational Project Development Agreement recorded in Official Records Book 3581, Page 633 of the Public Records of Alachua County, Florida (the "CRA Agreement"), as the same may be amended from time to time. Additionally, the rights of Assignor in the CRA Agreement and in the Developer Parking Spaces shall be appurtenant to The Palms and may not be assigned for use in another project. Recognizing that should Lender accede to the rights of Assignor in the Agreement, Lender, not being a developer, will be assigning to a third party developer the obligation to complete The Palms in keeping with the CRA Agreement and will be assigning the rights under the Agreement to that third party developer. As a condition to the City joining in this Collateral Assignment, City requires as part of the assignment by Lender to a third party

IN WITNESS WHEREOF, the said Assignor has hereunto set its hands and seal on the date first above written.

Signed, sealed and delivered in the presence of:

Witness
Print: _____

Witness
Print: _____

Witness
Print: _____

Witness
Print: _____

Assignment Agreed to By:

Witness
Print: _____

Witness
Print: _____

ASSIGNOR:

SOUTHWEST SECOND AVENUE, LLC,
a Florida limited liability company.

By: _____
STEVEN MILES KINSELL
Managing Member

Date: _____

LENDER:
MILLENNIUM BANK

By: _____
Authorized Officer

Date: _____

CITY:
City of Gainesville

By: _____
City Manager

Date: _____