LICENSE AGREEMENT FOR PARKING SPACES

THIS LICENSE AGREEMENT ("Agreement") is made and entered into on this ____ day of ___Janvery___ 2015, 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

2

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: **DEVELOPER:**

City of Gainesville   Horizon Hospitality Management, Inc.
City Manager
Post Office Box 490   _____
200 E University Avenue   2950 Mansell Road
Gainesville, Florida 32602   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

           WITNESSES:

_____
City Manager

_____
signature of witness

Date: _____

_____
printed name of witness

Approved as to Form and Legality:

_____
signature of witness

_____

_____
printed name of witness

STATE OF FLORIDA   }
COUNTY OF ALACHUA   }

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015 by _____, 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.

_____
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 of witness

James Redd
printed name of witness

signature of witness

Annel Ayres
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.

Name: _David Anderson_
Notary Public, State of Georgia

DAVID ANDERSON
FULTON COUNTY, GEORGIA
NOTARY PUBLIC
MY COMMISSION EXPIRES
JANUARY 29, 2016

9

EXHIBIT A

Example:

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

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

383 - 125 = 258

258 x $20^{[3]}$ 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.