

PUBLIC PARKING SPACE LICENSE AGREEMENT

This Public Parking Space License Agreement (hereinafter "License Agreement") is made and entered into this _____ day of _____, 2016, by and between Collier Enterprises of Gainesville, Inc., a Florida corporation ~~238 Development LLC~~ ("Licensee"), and the City of Gainesville, a Florida municipal corporation, ~~hereinafter~~ ("City").

WHEREAS, on December 3, 2015, the City Commission authorized staff to develop and pursue a competitive process for the licensing of parking spaces in City Parking Lot #2, identified as Tax Parcel No. 14252-000-000 and located at 206 N.W. 2nd Street and bordered by N.W. 2nd Avenue, N.W. 3rd Avenue, and N.W. 2nd Street, Gainesville, Florida, and more specifically described in Section 2, below; and

WHEREAS, on April 21, 2016, the City Commission approved staff's ranking of a Collier Companies as the sole and top ranked respondent to Request for Proposals No. _____ and the RFP; authorized staff to negotiate a license agreement with the Collier Companies for parking on _____ with regards to City Parking Lot #2; subject to approval by the City Attorney and directed staff to return the negotiated document to the City Commission for final review and approval by the City Commission; and

WHEREAS, on September 27, 2016, the City of Gainesville Development Review Board approved Petition DB-16-38 SPL, for construction of a three story, mixed use building with 55 residential units and a three story 71 residential unit building ("the Development"), on property identified as Tax Parcels Nos. 14269-000-000, 14260-000-000 and 14260-001-000 that are immediately south of Lot #2 was approved by the City of Gainesville Development Review Board; and

WHEREAS, Exclusive use of Lot #2 is important to Licensee to provide sufficient parking for the Development.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein to be performed by the respective parties hereto and other good and valuable consideration, the parties mutually agree and covenant as follows:

Section 1. Term. This License Agreement shall be thirty (30) 40 years effective from date of execution, and subject to three (3) two 10-year extensions upon negotiation and mutual agreement of the parties and an escalator in line with CPI.

Comment [IT1]: We need to explain how Collier Companies became Collier Enterprises of Gainesville, Inc., from RFP to this Agreement.

Section 2. Legal Description. The Property (commonly referred to as City Parking Lot #2, or simply Lot #2) that is the subject of this License Agreement is described in Exhibit “A” to this License Agreement (the “Property”), and is depicted in Exhibit “B” to this License Agreement. In the event of conflict or inconsistency, Exhibit “A” shall prevail over Exhibit “B.”

Section 3. Use and Improvements. ~~Conditions associated with parking operations~~

a. ~~Licensee will be the entity constructing a project immediately to the south of City Parking Lot #2 and City Parking Lot #2. This License Agreement shall be for Licensee’s sole use for surface parking on the Property, consisting of 76 parking spaces, subject to the City’s reservation of air rights and right to construct structured parking for the City’s and/or public’s use at any time during the term of this License Agreement. City Parking Lot #2 The Property shall be used solely for restricted to vehicle parking for the term of the lease License Agreement. In addition, during construction of the Development (but not to exceed the first two years from execution of this License) the Property may also be used for construction staging. In the event the City constructs structured parking and displaces Licensee’s parking on the Property during construction of structured parking, City will make reasonable efforts to replace as many of Licensee’s spaces as possible. After construction, Licensee will be provided 76 parking spaces in the parking structure through the term of this License Agreement.~~

b. Any improvements to ~~City Parking Lot #2 in conjunction with the provision of vehicle parking~~ the Property (including but not limited to resurfacing, striping, curbs, or gates) shall require advance written approval by the City, shall be at the Licensee’s ~~option and cost and will need to~~ be done in compliance with ~~applicable appropriate~~ City regulatory requirements and permitting procedures, and shall be at Licensee’s own expense. Upon termination or expiration of this License Agreement, Licensee shall remove any improvements it constructed, if so requested by the City, and shall return the Property to the City ~~in substantially the same condition as at the commencement of the License Agreement, normal wear and tear excepted.~~

Section 4. ~~Compensation Payment For Parking Spaces; Payment of Taxes.~~ Licensee shall pay the City a flat rate of \$15,768 per year for use of the Property, upon execution of this Agreement, and upon each anniversary of the effective date, with such rate automatically ~~increased each year by the percent change in the Bureau of Labor Statistics Consumer Price~~

Index, all urban consumers, not seasonally adjusted, Southern region, all items (CPI) or zero whichever is greater. In no case may a negative CPI adjustment be applied to license the public parking spaces.

Section 5. Taxes and Fees. If Licensee's use of the Property causes the City or Licensee to the parking spaces or City lots as granted by this Agreement becomes subject to any federal, state or local property tax, sales, excise, or other tax or fee, Licensee shall timely pay such taxes or fees as they become due. Licensee agrees to indemnify and hold the City harmless from any property, sales, excise, other tax or fee or penalty that may be imposed attributable to this Agreement or Licensee's use of the Property the public parking spaces or City lots. Licensee may challenge the validity or amounts of any such tax or fee, provided Licensee shall pay all costs of such challenges and shall pay the taxes or fees if payment is required during the pendency of the challenge.

Licensee shall pay all intangible taxes, property taxes and assessments, and sales tax assessed against the City and/or the Licensee as a result of Licensee's operation, use and occupancy of the Property or personal property on the Property. Sales Tax on the fee for the use of the Property, in Section 4, above, and on the amount of ad-valorem property taxes, will be remitted to the City with the annual payment. An advance payment for ad-valorem property taxes and assessments will be estimated by City based on the prior year's tax bill or based on an estimate provided by the County Property Appraiser or County Tax Collector, and shall likewise be remitted to the City with the annual payment. Upon receipt of its property tax bill in November of each year, City will send Licensee a written statement reconciling the advance estimated payments made by Licensee for property taxes and assessments with the actual amount imposed on the Property by the Tax Collector. In the event the actual amount exceeds the amount paid by the Licensee to that date, Licensee shall pay the City the shortage amount. In the event the actual amount is less than the amount paid by the Licensee to that date, the City shall refund the overpayment to the Licensee. The payment to City or refund to Licensee shall be made within 30 days of the date of City's written statement or at such other time as is mutually agreed upon by the parties. All other taxes or assessments shall be at the sole expense of and paid directly by the Licensee.

Section 6. Insurance Requirements. Licensee agrees to maintain the following insurance coverage during the term of this License Agreement:

1. Comprehensive General Liability
Limits: \$1,000,000 ~~\$500,000~~ per occurrence

2. ~~Garage Keeper's Liability~~
~~Limits: \$500,000 Combined single limit~~
~~Minimum \$50,000 property damage per occurrence.~~

Such coverage shall be in a form acceptable to the City. Both the Licensee, and the City, its employees, officers, and agents shall be named as additional insureds with respect to general liability and a certificate indicating such shall be issued to the City prior to the execution of this License Agreement. The certificate of insurance will also provide that the insurance provider will give the City a minimum of ten (10) days' notice prior to the cancellation or alteration of any coverage. ~~During the term of this License Agreement the Licensee, or any subcontracting valet service performing service for the Licensee under this Agreement, will not use a vehicle hired or owned by the Licensee or subcontractor in the performance of this License Agreement.~~

Section 7. Default Termination. ~~This License Agreement may be terminated with or without cause at the will of either Licensee or City upon five (5) days' written notice to the other party. There shall be a default by Licensee if it fails to comply with any provision in this License Agreement. If a default occurs, upon giving thirty (30) days' written notice of such default to the Licensee, if the default has not been cured, the City may terminate the License Agreement.~~

Section 8. Notices. Any notice, acceptance, request, etc., from either party to the other shall be made in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in a United Postal Service mailbox or personally delivered with signed proof of delivery, addressed to the following persons:

Licensee: Collier Enterprises of Gainesville, Inc.
Attn: Nathan S. Collier and Andrew Hogshead
220 N. Main Street
Gainesville, FL 32601

City of Gainesville: Parking Operations Supervisor
SW Downtown Parking Garage
105 SW 3rd ST
Gainesville, Florida 32601

Section 9. Indemnification. Licensee shall indemnify the City, its officials, agents and employees, and hold it harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Licensee and other persons employed or utilized by the Licensee, or arising from or occasioned by the use of the Property by invitees of the Licensee.

Section 10. Sovereign Immunity. Nothing in this License Agreement shall be interpreted as a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes.

Section 11. Amendment; Recording. Any changes or modifications to this License Agreement shall be in writing and executed by both parties. This License Agreement, and any amendment thereto, shall within ten (10) days of execution be recorded by the Licensee in the Official Public Records of Alachua County, Florida. Licensee shall provide a recorded copy to the City.

Section 11. Restriction on Rights Granted Through License Agreement. This License Agreement is intended to bestow upon the Licensee specific permission regarding the use of City property and is not intended to convey any interest or exclusive possession of in City property to the Licensee.

Section 12. Assignment. This License Agreement is personal to the Licensee and may not be assigned by Licensee, except to a related entity of Licensee, upon notice to the City, and use of Lot #2 shall be restricted to serving the Development and shall be subject to all terms of this License Agreement.

Section 13. Entire Agreement. This License Agreement supersedes and replaces the Public Parking Space License Agreement dated April 1, 2015, and any and all other existing parking agreements between the Licensee and City, and constitutes the entire agreement and understanding between the parties.

Section 14. Applicable Law, Venue. The License Agreement and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Florida, except for its conflict of laws provisions. In the event of any legal proceedings arising from or related to this License Agreement, venue for such proceedings shall be in Alachua County, Florida.

IN WITNESS WHEREOF, the parties have caused this Public Parking Space License Agreement to be executed on the day and year first above written.

WITNESS:

COLLIER ENTERPRISES OF GAINESVILLE, INC. LICENSEE:

By: _____
Printed Name: _____

By: _____
Andrew J. Hogshead, President

By: _____
Printed Name: _____

WITNESS:

CITY OF GAINESVILLE

By: _____
Printed Name: _____

By: _____
Anthony Lyons, Manager

By: _____
Printed Name: _____

Approved as to Form and Legality:

Assistant City Attorney
City of Gainesville, Florida

[Add Exhibit "A" (Legal Description) and Exhibit "B" (sketch, or GIS pic)]