

SURFACE PARKING IMPROVEMENTS AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into on the _____ day of _____, 2016, by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 58, Gainesville, Florida 32627, (“City”), and **SOUTHPARK INVESTMENT GROUP, LLC**, a Florida limited liability corporation, whose address is 321 SW 13th Street, Gainesville, Florida 32601, (“Developer”).

WITNESSETH

WHEREAS, the City and the Developer entered into Contracts for the Purchase and Sale, both dated _____, 2016, to effect a land transfer between the City and the Developer for certain real property located in Alachua County, Florida; and

WHEREAS, the land transfer involves the City conveying to the Developer a certain portion of Alachua County Tax Parcel No. 13409-000-000, and the Developer conveying to the City a certain portion of Alachua County Tax Parcel No. 13337-000-000, both as further described in the respective Contracts for Purchase and Sale; and

WHEREAS, as additional consideration for the described land transfer, the Developer has agreed to construct an improved surface parking area for public use over approximately 25 feet of the northerly portion of City-owned Alachua County Tax Parcel No. 13409-000-000, adjacent to SW 5th Avenue; and

WHEREAS, the parties wish to set forth their agreement concerning the Developer’s obligation to construct an improved surface parking area in more detail.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the parties agree as follows:

1. Recitals. The recitals above comprise a material part of this Agreement and are hereby incorporated by reference.
2. Effective Date and Term. This Agreement shall become effective on the date the last of the parties executes this Agreement as indicated below, which shall be no later than **May 26, 2016**, and shall remain in effect until the parties have fully performed their obligations as set forth in this Agreement. However, this Agreement is contingent on the closing of both real property transfers between the City and the Developer as described above. In the event that closing does not occur on both real property transfers between the City and the Developer, this Agreement shall terminate and the parties shall be relieved of all obligations under this Agreement.

3. Surface Parking Improvements.

- a. The Developer shall, by no later than December 31, 2016, construct an improved surface parking area and accessory improvements for public use over approximately 25 feet of the northerly portion of City-owned Alachua County Tax Parcel No. 13409-000-000, adjacent to SW 5th Avenue, which improvements shall be located according to and in substantial compliance with the depiction shown in **EXHIBIT “1”** attached to this Agreement and made a part hereof.
- b. The Developer, at its sole expense, shall provide all design and engineering services, permitting services and construction services that are required to fully construct and receive all regulatory approvals for the surface parking improvements described in **EXHIBIT “1”**.
- c. The surface parking improvements and all construction plans, permits and other approvals obtained by the Developer shall be owned by the City or assignable to the City at no cost or expense to the City.
- d. The Developer may enter the property described in **EXHIBIT “1”** during normal business hours, and may also make arrangements to enter the property at other times after agreement from the City, in order to comply with the obligations as set forth in this Agreement.
- e. To secure the construction and conveyance of the improved surface parking area and accessory improvements for public use as described herein, the Developer shall no later than 30 days after the effective date of this Agreement provide the City with security in one of the forms specified in Section 30-186 of the City’s Land Development Code, which security shall be in an amount equal to 120 percent of the estimated total cost of construction and conveyance as agreed upon by both the Developer and the City.

4. Representations and Warranties of Developer. The Developer represents and warrants to the City that the following statements are true:

- a. The Developer is a validly existing entity under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, and has consented to service of process in the State of Florida.
- b. Each document to which the Developer is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Developer and neither the execution and delivery nor compliance with the terms and provisions: (i) requires the approval of any other party, except as have been obtained or as are noted herein, or (ii) contravenes any law, judgment, governmental rule, regulation or order binding on the Developer.
- c. Each document to which the Developer is or will be a party constitutes a legal, valid, and binding obligation of the Developer, enforceable against the Developer, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar

- laws that affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
- d. There are no pending or threatened actions before any court or administrative body against the Developer, or against any officer of the Developer, that question the validity of any document contemplated herein or that are likely to materially and adversely affect this Agreement or the financial condition of the Developer.
 - e. The Developer is financially capable of carrying out all obligations contemplated by this Agreement.
 - f. The Developer shall use its best efforts to perform this Agreement. In addition, the Developer will not violate any laws, ordinances, rules, regulations or orders that are or will be applicable to the construction of the surface parking area improvements.
5. 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 the other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
6. No Contract Zoning; No Contracting of Police Powers. The City is entering into this Agreement in its proprietary capacity as a purchaser or owner of property. Nothing contained in this Agreement shall be interpreted or construed as an approval, waiver or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment or any other governmental requirement that the City may have jurisdiction over in its regulatory capacity. Nothing contained in this Agreement shall be interpreted or construed as contracting away the exercise of the police powers of the City.
7. Release. No recourse shall be had for any damages or claims based upon any representation, obligations, covenant or agreement in this Agreement against any past, present or future officer, member, legal counsel, employee, director or agent, of the City, either directly or through the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, legal counsels, employees, directors or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. This section shall survive the termination or expiration of this Agreement.
8. Force Majeure. Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of act of God shall be deemed to be events of Force Majeure and such delays shall be excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required shall be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance

on the basis of Force Majeure shall give written notice to the other parties specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration . Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

9. Sovereign Immunity. The parties agree that nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity, as provided in Section 768.28, Florida Statutes, or otherwise.

10. Third Party Beneficiaries. This Agreement has been entered into for the benefit of the parties and there are no third party beneficiaries.

11. Bankruptcy. The filing by the Developer of a petition for relief under federal bankruptcy laws or any other similar law or statute of the United States, or the entry of an order or decree appointing a receiver of the Developer or its assets, shall not affect the City's rights under this Agreement.

12. Default; Remedy; Attorneys' Fees. There shall be a default if either party fails to comply with any obligation described in this Agreement. If a default occurs, upon giving **fifteen (15) days** written notice of such default, if the default has not been cured within the **fifteen (15) days**, the non-defaulting party may exercise any legal rights and remedies as are allowed at law or in equity to enforce this Agreement, including without limitation, specific performance. In any litigation or other proceeding, including appeals, arising out of this Agreement, including breach, enforcement or interpretation, the prevailing party in such proceeding, shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses.

13. Modification and Waiver. This Agreement may only be modified or waived in writing signed by all the parties. No course of dealing shall be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right. No waiver of a provision of this Agreement shall apply to any other portion of this Agreement. A waiver on one occasion shall not be deemed to be a waiver on other occasions.

14. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

To the Developer: SOUTHPARK INVESTMENT GROUP, LLC
321 SW 13th Street
Gainesville, Florida 32601

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

CITY OF GAINESVILLE

Sign: _____

By: _____

Print Name: _____

Anthony Lyons
Interim City Manager

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by Anthony Lyons, Interim City Manager of the City of Gainesville. He personally appeared before me and is: (check one of the below)

_____ personally known to me, or
_____ produced the following type of identification:

Executed and sealed by me on _____, _____.

Notary Public
Print Name: _____
My Commission expires: __/__/__

WITNESSES:

DEVELOPER

Sign: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by _____, as _____ for and on behalf of _____ . He/she personally appeared before me and is: (check one of the below)

_____ personally known to me, or
_____ produced the following type of identification:

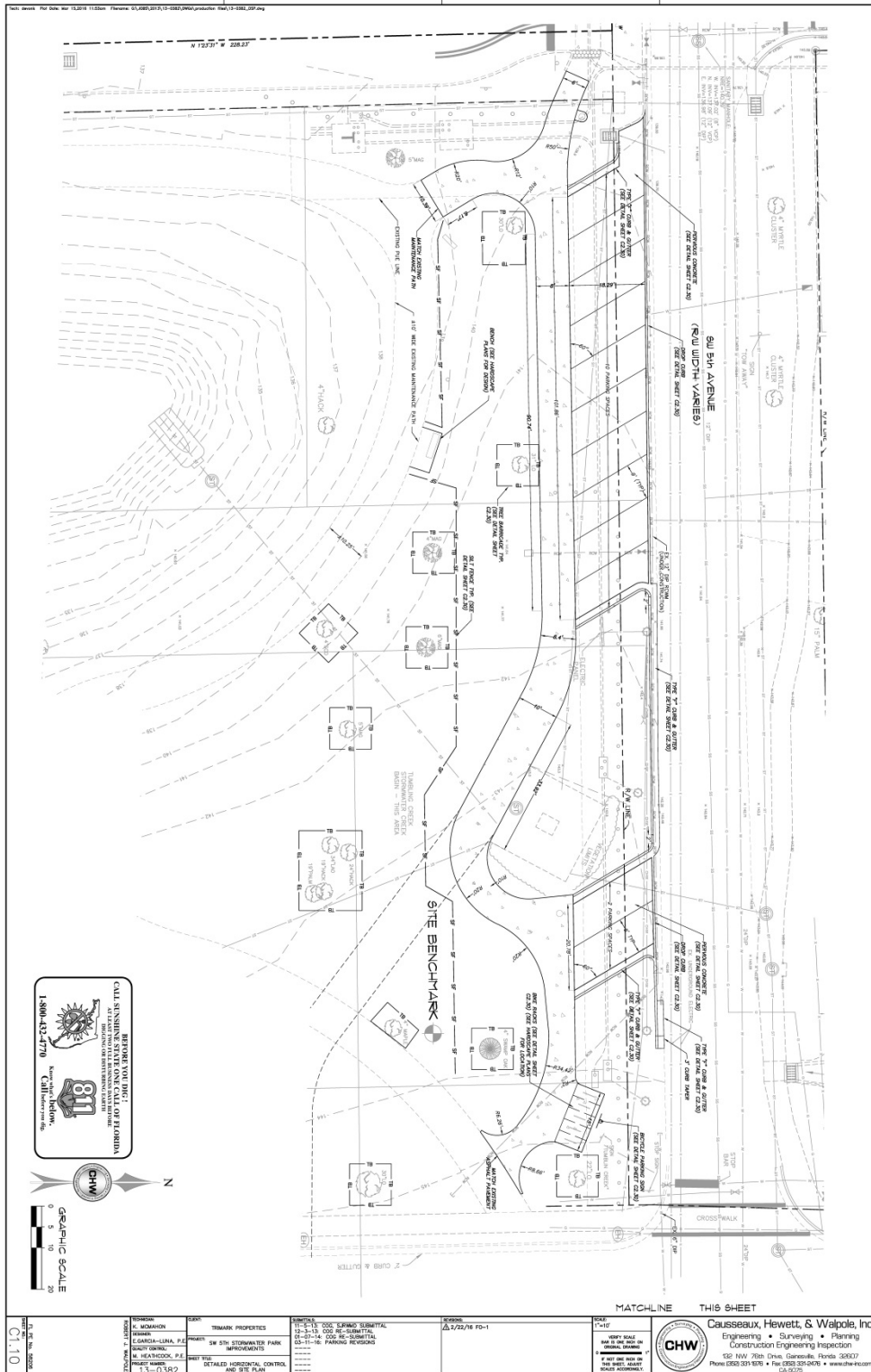
Executed and sealed by me on _____, _____.

Notary Public
Print Name: _____
My Commission expires: __/__/__

EXHIBIT “1”

CAUSSEAUX, HEWITT & WALPOLE, INC. - QUALITY ASSURANCE (QA) / QUALITY CONTROL (QC) REVIEW											
REVISION NO.	DATE	BY	REASON	DATE	BY	REASON	DATE	BY	REASON	DATE	BY
1	01/10/18	CHW	ISSUED FOR PERMIT								
2	01/10/18	CHW	REVISIONS TO PERMIT								
3	01/10/18	CHW	REVISIONS TO PERMIT								

Exhibit "1"



BEFORE YOU DIG:
CALL AN INSURANCE STATE ONE CALL OF FLORIDA
FOR A FREE CONNECTION TO ALL UTILITIES
1-800-433-4770
CALL before you dig.

CHW
GRAPHIC SCALE
0 5 10
IN = 50 FT

C1.10

REVISION	DATE	BY	REASON
1	01/10/18	CHW	ISSUED FOR PERMIT
2	01/10/18	CHW	REVISIONS TO PERMIT
3	01/10/18	CHW	REVISIONS TO PERMIT

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