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INSTRUMENT # 1998884 15 PGS

2003 DEC 15 01:00 PM BK 2824 PG 843

J. K. "BUDDY" IRBY  
CLERK OF CIRCUIT COURT  
ALACHUA COUNTY, FLORIDA  
CLERK1 Receipt#170112



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6900

Prepared By:  
Jeffrey R. Dollinger, Esquire  
Scruggs & Carmichael  
1 SE First Avenue  
Gainesville, FL 32601

Return to:  
HOLDEN, RAPPENECKER, AND EUSANK, P.A.  
2772-S N.W. 43rd Street  
Gainesville, FL 32608-7488

**LICENSE AGREEMENT  
FOR USE OF PARKING GARAGE**

THIS LICENSE AGREEMENT is made and entered into on the date last signed below, by and between the City of Gainesville, hereinafter referred to as "City", and Kenneth R. McGurn and Linda C. McGurn, hereinafter referred to as "McGurn";

WHEREAS, the City has identified parking deficiencies in the downtown area; and

WHEREAS, the new Courthouse has generated the need for additional parking for jurors and users of the Courthouse and increased daytime business associated with the Courthouse; and

WHEREAS, availability of more downtown parking will support and generate business expansion and relocation downtown and the growth of multi-family residential uses, in furtherance of the City's redevelopment goals and objectives; and

WHEREAS, allocating additional parking to be available to customers of downtown commercial developments to the maximum extent feasible is in furtherance of the City's redevelopment goals and objectives; and

WHEREAS, to help meet these needs, McGurn made available "Property" currently owned by McGurn in close proximity to the Courthouse ("Property," being described in the attached Exhibit A), which is of a size and configuration to allow more parking to be provided at less cost than other alternative sites under consideration; and

WHEREAS, in exchange for McGurn conveying to the City the Property for purposes of locating and building the Garage thereon, the City agrees to grant McGurn a license for their use of certain spaces in the Garage to replace their existing parking that will be lost once construction of the Garage commences, and to provide parking for other downtown developments in the future; and

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WHEREAS, this license grants McGurn the use and control of "Replacement Spaces" and "Development Spaces" as defined herein, and those spaces, combined, shall be referred to as the "McGurn Spaces".

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **GRANT OF LICENSE.** The City grants McGurn a license for the use of the McGurn Spaces in the Garage, to replace McGurn's existing parking that was on the Property, and to provide parking for other downtown developments undertaken by McGurn or assigns in the future, upon the terms and subject to the conditions stated in this Agreement.
2. **CONSIDERATION.** The City grants this License to McGurn as partial consideration in exchange for McGurn conveying to the City title to the Property which is located in close proximity to the Courthouse for purposes of locating and building the Garage thereon, and also in exchange for McGurn's loss of parking spaces that presently exist on the Property.
3. **LICENSE PERIOD.** The term of this license shall commence upon the issuance of the Certificate of Occupancy for the Garage built upon the Property, and shall end 99 full years thereafter.
4. **REPLACEMENT SPACES; NUMBER AND LOCATION.** McGurn shall have the use of up to (see 6.c) 133 parking spaces in the Garage as "Replacement Spaces" given by the City in exchange for McGurn's loss of parking spaces that presently exist on the Property. The number of Replacement Spaces assumes the remaining parking spaces on properties owned by McGurn and lying just north of the Property can be reconfigured with appropriate access into 40 spaces, all meeting code requirements. If the code or approval boards do not allow all or part of the 40 spaces, or in the reasonable opinion of McGurn, code requirements make it uneconomical to provide the spaces, then whatever number cannot be provided will be replaced in the Garage at a ratio of 2 to 3, rounded down to the nearest whole number (i.e., 2.4 = 2 spaces, 3.55 = 3 spaces; or if 8 of the 40 proposed spaces cannot be reconfigured and used, then the 133 replacement spaces shall be increased by five ( $8 \times 2/3 = 5.3$ ) to 138 ("adjusted number")). The actual number of Replacement Spaces allocated to McGurn during each month of the term for use by McGurn, ("Monthly Users"), shall be designated each month by McGurn as provided in paragraph 6. The number of reserved Replacement Spaces shall not exceed 133, and the number of Replacement Spaces available to monthly parkers issued monthly permits or access cards, or similar authorization, shall not exceed 133 (or adjusted number) minus the number of spaces designated as reserved for that month, times 125% (e.g., if 12 Replacement Spaces are reserved, then maximum monthly permits =  $133 - 12 (121) \times 125\% = 151$ ).

Unless otherwise decided to the contrary by the parties, and except as provided for in

paragraph 7, Replacement Spaces shall not be reserved Parking Spaces at the Garage and no particular area of the Garage shall be reserved or limited for Monthly Users. Each Monthly User without a reserved space shall be entitled to park in any area of the Garage open to the general public on a "first come-first served" basis and no such Monthly User shall be entitled to any greater parking or other rights in the Garage than any member of the general public by virtue of this Agreement. The City shall have no obligation to police any reserved spaces.

5. DEVELOPMENT SPACES: NUMBER AND LOCATION; EASEMENTS, ETC.

a. If McGurn undertakes a Development project(s) (defined for this agreement as a residential structure containing a minimum of 50 living units; or a commercial structure with a minimum building permit value of one million dollars) which is (are) built on property lying within 350 feet of any part of the Garage, within 25 years from the date the City acquires the Property, McGurn shall have the right to use and operate, as provided herein, "Development Spaces" exclusively for the use by the development project(s), up to 27% of the total number of spaces in the Garage, not to exceed 225 spaces. The Development Spaces shall be located on the fourth floor and then as needed on the fifth floor (or shall be located on the fourth floor and then as needed on the third floor, if the fifth floor is not constructed). Development projects may be built at different times as long as the number of Development Spaces licensed does not exceed 225 spaces. The exact number of spaces will be determined by applying to the project(s) the following parking allocations:

Multiple-family dwelling	1 space per bedroom
Theaters	1 space for each 4 seats
General offices	1 space for each 300 square feet of gross floor area
Medical and dental offices	1 space for each 200 square feet of floor area
Stores and personal services	1 space for each 250 square feet of floor area
Hotels and motels	5 spaces plus 1 for each guestroom
Eating and drinking establishments	3 spaces plus 1 for each 3 seats or 1 for each 200 square feet whichever is greater

b. During the 25 year period, at the request of McGurn, City shall grant McGurn access easements on the Property for any development project adjacent to the

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Garage on the block containing the Garage, to provide direct access to any part of the Garage, provided that the facilities constructed in said easements do not affect the structural integrity of the Garage, the design is attractive and compatible with the Garage and is approved by the City, all costs of such facilities are paid for by the project developer, and the easements and facilities meet all codes and do not interfere with the City's property or any of its easement rights. McGurn agrees that McGurn will indemnify and hold harmless City from any and all liability of whatsoever nature that might arise, result from, or be asserted against the City or the Property as a result of the actions undertaken by McGurn in construction, including but not limited to personal injury, damage to the improvements on the property, structural or otherwise, loss of revenue from the property, and any and all such other damages as may result from McGurn's actions. McGurn shall take all necessary precautions to protect the Property, its improvements, its patrons and the general public at large from loss, damage or injury during any such construction project and shall provide general liability insurance coverage and guarantees (other than personal) of a type and in amounts acceptable to the City, with City as the named additional insured or indemnitee, to protect City against losses occasioned by the acts of McGurn. It is further understood and agreed that during any period of construction by McGurn, the City's continued use of the Property and the Garage constructed thereon, with the exception of the areas included in the easements, shall remain uninterrupted. Any loss of spaces caused by the easements or facilities shall count as spaces licensed to McGurn. Such easements shall be in effect for as long as the Garage and structures that are connected to it are in existence; if either is damaged or destroyed, the easement shall continue as long as they are subsequently rebuilt within a reasonable period of time. At the expiration of the 25-year period described above, the City shall have no further obligation to provide additional access easements for adjacent projects.

- c. This license for these parking spaces shall not be used by City in determining what incentives, if any, to provide for the development project(s). The City shall consider each project on its own merits and apply all codes and applicable programs to such project as it would to any other similar project.
- d. McGurn agrees for itself, its successors and assigns, that any development within 350 feet of any part of the Garage, will be required to comply with all applicable regulations as they exist at the time of formal application for development; and McGurn shall make no claim in law or equity against City, its officers or employees, based on vested rights, equitable estoppel, interference with investment-backed expectations, inverse condemnation, or inordinate burden pursuant to § 70.001, Fla. Stat. (the Bert J. Harris, Jr. Private Property Rights Protection Act) if future regulations prevent or limit development within the 350 feet of any part of the Garage.

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6. **MCGURN'S COMMITMENT AND PAYMENT FOR SPACES.**

a. McGurn shall pay a monthly fee of \$17.45 per space, in addition to taxes and fees as described below, attributable to all spaces designated by McGurn. Effective October 1, 2005, such fee shall increase by the August 2004 to August 2005 percent change in the Bureau of Labor Statistics Consumer Price Index (1982-84 = 100) all urban consumers, not seasonally adjusted, Southern region, All Items (CPI). Each fiscal year thereafter the fee shall be similarly adjusted, utilizing the preceding August-to-August change. Provided however, that McGurn shall not pay more than 80% of the then prevailing monthly rental rate charged by the City for a parking space in the garage at the published monthly billing rate offered by the City. (e.g., if the City provides for a rate of \$20 a month, McGurn would pay no more than \$16 a month or  $\$20 \times 80\% = \$16$ ). If there is a discount for multiple months, McGurn shall be entitled to the same discount.

b. If McGurn's right to use/control parking granted by this Agreement (e.g., the right to use or sell or receive revenue from spaces, the license interest, or per space fee payments) becomes subject to any federal, state or local property, sales, excise, or other tax or fee, McGurn agrees to pay such taxes or fees as they become due. During the term of this license McGurn shall be responsible for collecting and remitting any applicable sales taxes on the "sale" of McGurn's spaces. McGurn agrees to indemnify and hold the City harmless from any sales, excise, other tax or fee or penalty that may be imposed attributable to other spaces controlled, used, or allotted to McGurn hereunder. If McGurn desires to challenge the validity or amounts of any such tax or fee, McGurn 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.

McGurn acknowledges City's tax exempt status. In the event that City is required to pay taxes, real or personal, on the Property, due in whole or in part to McGurn's rights to or use of the Property under this Agreement, then McGurn shall reimburse the City within 30 days of such payment for McGurn'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 McGurn's pro-rata share. McGurn's percent share shall be determined by dividing the average number of designated McGurn spaces each month during the tax year, divided by the average of the number of parking spaces in the Garage each month during the tax year. The resulting percentage shall be multiplied by the amount of taxes paid and the amount reimbursed by McGurn.

McGurn may request the City to assign any rights of the City needed for McGurn to challenge the validity or amount of any such tax or fee. The City may assign such rights as are necessary, or may choose to challenge the validity or amount itself, with or without a request from McGurn, to the extent the City has standing

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to do so. The City and McGurn agree that if the City challenges the validity or amount of such tax or fee on its own, McGurn may seek to intervene into any such challenge and the City does not object to McGurn asserting standing to intervene, so long as such is not adverse to the City's interests. In the event the City brings such challenge pursuant to a request by McGurn, McGurn shall pay for the expenses, attorney's fees and costs incurred by the City in such proceedings. If McGurn requests the City to make such challenge and the City in bad faith and without legal justification refuses to do so, then McGurn shall not be required to pay (and shall be reimbursed for any payment already made on behalf of the City) any fees or taxes the City becomes liable for (or McGurn has paid on behalf of the City) as a result of McGurn's rights to or use of the Property under this Agreement.

- c. At the commencement of the Term, McGurn shall notify the City of the number of Replacement Spaces to be provided to McGurn and shall deliver to the City a written designation of the number of reserved spaces and number of access cards for the ensuing month. Upon its receipt of McGurn's written designation of the number and type of Monthly Users, the City shall issue/authorize monthly parking permit(s) and/or access cards applicable to such month to McGurn. Thereafter, at any time that McGurn shall request a change in the number or character of Replacement Spaces McGurn shall notify City of such change by the fifteenth day of the month immediately preceding the calendar month for which the change is to be effective. McGurn shall only be required to pay for the number of Replacement Spaces and Development Spaces (See 7B) McGurn designated each month. After McGurn designates, McGurn shall pay for such spaces, whether or not such spaces or permits/cards are actually used by a vehicle.

7.

#### ASSIGNMENT AND USE OF MCGURN AND CITY SPACES

- a. **REPLACEMENT SPACES AND CITY SPACES.** City acknowledges that McGurn desires the McGurn Spaces be managed so as to maximize the net revenue to McGurn and support further downtown redevelopment. McGurn acknowledges that the City's use of the Garage and its assignment of the parking spaces may not maximize its net revenues because it operates the Garage for the benefit of the general public and must also meet other obligations including providing juror parking, public safety personnel parking, employee parking, etc. Both parties agree to, in good faith, work towards accomplishing the following in regard to Replacement and City Spaces:
1. The City and McGurn will limit the assignment of reserved spaces because they are undesirable due to the difficulty of assigning appropriate locations and enforcing reserve requirements.

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2. First floor parking is the most convenient and valuable parking that should not be restricted or reserved without good cause, and the higher the floor the less desirable the parking and that neither party's parking shall be located in undesirable locations without agreement of the other party.
3. Patterns and types of parking will change over the years and both parties agree to work together to maximize the usage and net revenue of the Garage.
4. Technology may change during the duration of this License that necessitates changes not presently contemplated, and both parties agree to adjust to accommodate such technology in order to be fair to both parties.
- b. **DEVELOPMENT SPACES.** Development Spaces for multiple family dwellings shall be reserved and can be designated by McGurn for each of the Development Projects, in the numbers and locations described in paragraph 5, upon issuance of a certificate of occupancy for completed projects, or certificate of occupancy for completed units. Other Development Spaces shall be designated as provided in 6(c), but shall not be restricted as to location unless otherwise agreed. Development Spaces may not be sold, or provided to other than occupants (lessees, owners) of the Development Projects and their guests, customers or clients depending on the type of Development Project. Other than residential projects, Development Spaces shall be subject to the same restrictions as Replacement Spaces as described in paragraph 8. Use of Non-residential Development Spaces shall generally be by a combination of access cards or validation. Any charges for users at any one time in excess of the number of Development Spaces would be paid by McGurn at the published hourly rate. Development Spaces that are not reserved shall be available for night or special event parking and revenue sharing. McGurn shall pay for designated Development Spaces on a monthly basis, including in the first payment a pro rata payment for the period of time between the designation and the first of the next month.
8. **OPERATION OF SPACES.** Use of McGurn Spaces shall be provided through a system utilizing such features as access cards, validation credits, reserved spaces, sharing revenue for day, night or special events as described below, or as mutually agreed to from time to time by the City Manager and McGurn. McGurn and City acknowledge that spaces are used at different times by different people and thus Replacement and City Spaces may produce revenue by selling the spaces multiple times each day and overselling based on expected usage. Other considerations include whether monthly parkers have access only during specified hours and then pay additional amounts if they park at other times such as 1) monthly day parkers also parking at nights, or 2) on weekends or 3) monthly nighttime parkers also parking during the day. Therefore, McGurn may end up with different combinations of access cards, validation credits or

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revenue sharing for more than the specified number of Replacement Spaces. The City and McGurn will continue to meet and work together to assure McGurn is provided the opportunity to maximize the use of the McGurn Replacement Spaces in a way that will also further use of the Garage by jurors and the general public. Specific examples of how the operation and use of the Replacement Spaces could work using McGurn's Replacement Spaces are:

- a. If McGurn designates all the Replacement Spaces as reserved 24 hours a day, then McGurn would receive 133 access cards. When the Replacement Spaces are reserved, the holders of these monthly permits/access cards must park in the marked spaces.
- b. If McGurn's Replacement Spaces are only available to monthly parkers, then McGurn would receive 166 access cards (133 plus 25% to account for normal overselling). Any charges for monthly users at any one time in excess of 133 (or the adjusted number per paragraph 4) would be paid by McGurn at the published hourly rate. The number of McGurn reserved spaces, if any, would correspondingly lower the number of access cards and the number at which charges would be incurred.
- c. If McGurn's 133 (or adjusted number) Replacement Spaces are only available for hourly parkers and validated parking for businesses, then the revenue from hourly parkers and validated parking for businesses would be prorated between the City and McGurn based on the spaces sold in the garage on each day versus the number of spaces available to hourly parkers. If 500 spaces are available for hourly and validated parking and McGurn has 133 spaces available for hourly and validated parking, then the City would pay McGurn 27% ( $133/500$ ) of the revenue collected from hourly and validated parking.
- d. If all McGurn's replacement spaces would be validated parking for businesses, then McGurn would be given credit against validated parking charges as long as no more than 133 cars or the adjusted number per paragraph 4 were validated and in the Garage at any one time. Any charges for cars in the garage at any one time in excess of the number of Replacement Spaces would be paid to the City by McGurn at the City's published hourly rate.
- e. Replacement Spaces may be used in any agreed to combination of the systems described above as long as the City is given due notice as required by Section 6c. For example, with a total of 133 spaces, McGurn could designate 25 as reserved spaces with assigned access cards, 50 could be designated for monthly parkers with McGurn selling monthly permits (based on the oversell provision), McGurn could sell 62 spaces (i.e., 125% of 50), and the remainder of the McGurn spaces (58 spaces) would be designated for hourly parking and validated business parking.

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f. If the Garage is open at night, or for special events, as designated by the City, at a flat rate, then the revenue from flat rate parkers would be prorated between the City and McGurn based on the number of McGurn spaces available for flat rate parking and the total number of spaces in the Garage available for flat rate parking. For example, if 800 spaces are available for flat rate parking and McGurn has 100 spaces not reserved and available for flat rate parkers, then the City would pay McGurn 12.5% (100 divided by 800) of the revenue collected that evening.

g. Under any mechanism or combination of mechanisms used, the City shall have the right to ensure that regardless of impact on McGurn's use of, or revenue received from, Replacement Spaces, that in all cases, parking spaces, on a daily basis from 7:00 a.m. to 6:00 p.m., excluding Saturdays, Sundays and holidays, may be guaranteed available for use by 112 jurors, and in addition 263 parking spaces may be guaranteed available to the general public for rental on terms and rates as determined by the City.

h. McGurn and all of McGurn's Monthly Users will abide by rules and regulations promulgated by City applicable to the Garage (the "Rules and Regulations") provided that (a) such Rules and Regulations shall not be enforced in a discriminatory manner to the detriment of McGurn or the Monthly Users and (b) that any amendments to such Rules and Regulations shall not materially impair the rights and privileges of McGurn and the Monthly Users under this Agreement. City shall issue McGurn and each Monthly User a copy of the rules and regulations together with the initial monthly permit or access cards. McGurn agrees that all leases it enters into with any occupants of Development Projects or any party which permit such occupants to become Monthly Users shall contain a provision requiring such occupants and all parties becoming Monthly Designated Users through such occupants to abide by the Rules and Regulations. City shall post a copy of the Rules and Regulations in a conspicuous place in the Garage.

Notwithstanding anything to the contrary in this Agreement, if any person entitled to McGurn's Spaces shall fail to comply with the Rules and Regulations from time to time applicable to the Garage, City, at its option, may terminate that person's right to park in the Garage. If such event shall occur, City shall notify McGurn of such termination and McGurn or the Development Space user may then designate a substitute person to park in the Garage.

9. **NO WAIVER OF REGULATORY AUTHORITY.** This Agreement does not confer any development rights to construct any improvements on the 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 Property.

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10. **INSURANCE.** Each party shall be responsible for providing, through an insurance policy or program of self-insurance, liability coverage for any loss or damages which may be caused by acts or omissions of that party, its agents and licensees. For the purpose of the foregoing sentence, McGurn is not considered to be the City's licensee. McGurn's policy, or program of self-insurance, shall have an annual aggregate limit of not less than \$1,000,000, and shall name the City as an additional insured. If the Garage is damaged or destroyed during the term of this License, the City agrees to repair the Garage or rebuild a Garage on the Property so that McGurn shall retain the benefits of this License. The License term shall be extended for any period that McGurn is deprived of use of the spaces and is not provided reasonably nearby replacement spaces. Any Garage repaired or rebuilt on the Property shall provide a minimum of 723 spaces. The City shall be responsible to assure that an insurance policy, or a program of self-insurance, is in full force and effect for the replacement value of the Garage, and that any insurance proceeds shall be used by the City to repair or reconstruct the Garage as necessary.
11. **LIMITATION ON LICENSE.** The City shall provide the spaces to McGurn as required by this License so long as the City can also provide at least 400 other Garage spaces for use by the public (including use by jurors). If at least 400 parking spaces for use by the public (including use by jurors) are not made available, the City has the option to provide McGurn a number of the spaces allocated to McGurn in the Garage in nearby (walking distance) locations, so as to leave the City with at least 400 spaces within the Garage. Under no circumstances shall the obligation to provide parking spaces required be deemed to compel the City to exercise its taxing power or the power of eminent domain.
12. **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 (1) when physically received by personal delivery or (2) when delivered by United States certified or registered mail, return receipt requested, postage prepaid, or (3) when delivered by a commercial courier service such as Federal Express, addressed to the respective parties at the following addresses:
- |  |   |
|--|---|
| <p><b>CITY:</b><br/> City Manager<br/> City of Gainesville<br/> Post Office Box 490<br/> 200 E University Avenue<br/> Gainesville, Florida 32602</p> | <p><b>MCGURN:</b><br/> Kenneth R. McGurn<br/> McGurn Investment Company<br/> Post Office Box 2900<br/> 101 SE 2<sup>nd</sup> Place, Suite 202<br/> Gainesville, Florida 32602</p> |
|--|---|
13. **ASSIGNABILITY.** McGurn has the right to assign all or a portion of its license rights in the Replacement Spaces and Development Spaces. Any assignment shall be subject to the terms of this agreement and to all obligations associated with such parking spaces, and assignee shall automatically be deemed to have assumed such obligations. Any lease

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of McGurn spaces in the ordinary course of business shall be subject to this Agreement but shall not require the lessee to assume the obligations within this Agreement. Any user of the spaces shall be subject to such rules and regulations adopted by the City for the normal operation of the Garage. If McGurn assigns all or a portion of its Replacement Spaces or Development Spaces, and the assignee of the spaces defaults in the performance of the obligations arising under this Agreement regarding the assigned spaces, then the City shall timely notify McGurn of such default and McGurn shall have the opportunity, but not the requirement, to cure such default. If the assignee's default is for non-payment of monthly fees for designated spaces, or charges for excess hourly/validated parkers, the City shall have the right to deny access to all of said assignee's spaces (turn off cards, refuse validations or involved revenue sharing) while McGurn has the opportunity to cure such default. McGurn's obligation to pay fees or charges to effect a cure shall not exceed two months payment otherwise owing. Once McGurn cures the default, the City shall consider McGurn's assignment of such spaces to be void and of no further force or effect, and the City shall acknowledge that the assigned spaces have been returned to the control of McGurn for use by McGurn as permitted by this Agreement.

**14. DEFAULT AND REMEDY.**

- a. **By McGurn.** McGurn shall use and operate the McGurn spaces as permitted under this Agreement and such use shall not interfere with the City's use of its parking spaces. McGurn acknowledges the City may not have an adequate remedy at law if McGurn defaults under any provision of this Agreement, and therefore the City shall have the right to seek injunctive and declaratory relief to the extent needed to prevent McGurn from further defaulting under this Agreement and as needed to prevent the City from suffering irreparable harm. City shall also have any other remedy available under law, including the right to deny access to the Garage for those using the spaces under this Agreement or withhold revenue from such spaces and recovery of damages if and when appropriate.
- b. **By City.** The City acknowledges that McGurn may not have an adequate remedy at law if the City defaults under any provision of this Agreement, and therefore McGurn shall have the right to seek injunctive and declaratory relief to the extent needed to prevent the City from further defaulting under this Agreement and as needed to prevent McGurn from suffering irreparable harm. McGurn shall also have any other remedy available under law, including the recovery of damages if and when appropriate.

- 15. SEVERABILITY.** If any portion of this Agreement is found 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, and then the remainder of this Agreement shall remain in full force and

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effect.

16. **GOVERNING LAW.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Florida.
17. **BINDING EFFECT OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their respective successors, assigns, agents, and beneficiaries, if applicable.
18. **EARLY TERMINATION.**

The City may terminate this License for any reason, upon so notifying McGurn at any time after seven years from the commencement of the term hereof, on the following conditions:

- a. Payment to McGurn of \$1,500,000 plus any change in the consumer price index (as defined in paragraph 6a) from July 1, 2003 to the date of the termination, and
- b. Provide for the replacement of the parking that McGurn needs by:
  1. Granting McGurn the right to lease up to 50 spaces in the Garage, under the same terms and conditions provided to the public, and
  2. Granting McGurn the right to lease in the Garage up to the number of spaces that have been designated by McGurn for projects under the Development Spaces provision, on the same terms and conditions provided to the public. If McGurn has undertaken a Development Project (the filing of a completed application for development plan review after zoning and land use changes, if applicable, have occurred, but before the requirement for application for a building permit; or the equivalent review process as may exist in the future) prior to receiving notice from the City, and a certificate of occupancy for the completed project or certificate of occupancy for completed units are issued within 4 years from the filing described above, then the number of spaces attributable to such shall then be added to the number of designated spaces described above.
- c. The City shall notify McGurn at least 90 days in advance of the effective date of termination under this section.

19. **DISPUTE RESOLUTION.**

- 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

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recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be submitted to non-binding mediation as hereinafter provided. The parties agree first to try in good faith to settle the dispute by mediation administered by a mediator selected by the parties before resorting to arbitration, litigation, or some other dispute resolution procedure. If the parties cannot agree on the appointment of a mediator, then each party shall appoint an attorney in practice in Alachua County and the two attorneys shall appoint a third practicing attorney. The three attorneys, by majority vote, shall then appoint the mediator.

- b. In the event of any alleged breach arising out of or relating to this Agreement, that is not resolved in accordance with a. above, the matter shall be settled by arbitration administered pursuant to the Florida Arbitration Code, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator shall be selected by the parties. If the parties are unable to agree upon the appointment of an arbitrator, then each party shall select an arbitrator and the two selected arbitrators shall appoint a third arbitrator. The three arbitrators shall comprise an arbitration panel and the majority decision of the panel shall represent the binding decision of the arbitrators.
- c. Except for the expenses and fees of the mediators and/or arbitrators which shall be shared equally by the parties, each party shall bear its own costs and attorney's fees in any proceeding under this section.

IN WITNESS WHEREOF, the parties executed this Agreement on the dates indicated below.

CITY: City of Gainesville

Wayne Bowers  
Wayne Bowers, City Manager

Date: 12-1-03

Approved as to Form and Legality

[Signature] 12/1/03

WITNESSES:

[Signature]  
signature of witness

CHARLES L. WATKINS  
printed name of witness

[Signature]  
signature of witness

Charles L. Watkins, Jr.  
printed name of witness

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STATE OF FLORIDA }  
COUNTY OF ALACHUA }

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of December, 2003 by Wayne Bowers, 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.

Charles I. Holden, Jr.  
name: Charles I. Holden, Jr.  
Notary Public, State of Florida



Charles I. Holden, Jr.  
MY COMMISSION # CC974170 EXPIRES  
January 12, 2005  
BONDED THRU TROY PAIR INSURANCE, INC.

MCGURN:

Kenneth R. McGurn  
Kenneth R. McGurn

Date: 12/18/03

WITNESSES:

Charles L. Huck  
signature of witness as to both

CHARLES L HUCK  
printed name of witness

Linda C. McGurn  
Linda C. McGurn

Date: 12-1-03

Charles I. Holden, Jr.  
signature of witness as to both

Charles I. Holden, Jr.  
printed name of witness

STATE OF FLORIDA }  
COUNTY OF ALACHUA }

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of December, 2003 by Kenneth R. McGurn and Linda C. McGurn, who are personally known to me or did produce a driver's license as identification, and who did not take an oath.

Charles I. Holden, Jr.  
name: Charles I. Holden, Jr.  
Notary Public, State of Florida



Charles I. Holden, Jr.  
MY COMMISSION # CC974170 EXPIRES  
January 12, 2005  
BONDED THRU TROY PAIR INSURANCE, INC.

Prepared by:  
Jeffrey R. Dollinger, Esq.  
P.O. Box 23109  
Gainesville, FL 32602



INSTRUMENT # 1998884  
15 PGS

**Exhibit "A"**

**Fee Parcel**

Commence at a found drill hole in concrete sidewalk marking the East right-of-way line for S.W. 3<sup>rd</sup> Street and the Southwest corner of that parcel as described in Official Record Book 1882, page 2143 of the Public Records of Alachua County, Florida and the point of beginning; thence along the South line of said parcel North 89°26'04" East a distance of 372.24 feet to a 5/8" rebar & cap (Brown) marking the intersection with the Westerly right-of-way line of S.W. 2<sup>nd</sup> Street; thence along said Westerly right-of-way line North 00°54'22" West a distance of 204.00 feet to a point marking a line parallel with and 204 feet North from the South line of said parcel; thence along said parallel line South 89°26'04" West a distance of 372.93 feet to a point marking the intersection with the Easterly right-of-way line of S.W. 3<sup>rd</sup> Street; thence along said Easterly right-of-way line South 01°06'00" East a distance of 204.01 feet to the point of beginning. Containing 1.75 acres, more or less.

AND

**Easement Parcels**

**Parcel 1:**

Commence at a found drill hole in concrete sidewalk marking the East right-of-way line for S.W. 3<sup>rd</sup> Street and the Southwest corner of that parcel as described in Official Record Book 1882, page 2143 of the Public Records of Alachua County, Florida; thence along the South line of said parcel North 89°26'04" East a distance of 372.24 feet to a 5/8" rebar & cap (Brown) marking the intersection with the Westerly right-of-way line of S.W. 2<sup>nd</sup> Street; thence along said Westerly right-of-way line North 00°54'22" West a distance of 204.00 feet to a point marking a line parallel with and 204 feet North from the South line of said parcel and the point of beginning; thence along said parallel line South 89°26'04" West a distance of 168.74 feet to a point; thence leaving said parallel line North 00°54'22" West a distance of 10.00 feet to a point; thence North 89°26'04" East a distance of 168.74 feet to a point marking the intersection with the Westerly right-of-way line of S.W. 2<sup>nd</sup> Street; thence along said Westerly right-of-way line South 00°54'22" East a distance of 10.00 feet to the point of beginning. Containing 0.04 acres, more or less.

**Parcel 2:**

Commence at a found drill hole in concrete sidewalk marking the East right-of-way line for S.W. 3<sup>rd</sup> Street and the Southwest corner of that parcel as described in Official Record Book 1882, page 2143, of the Public Records of Alachua County, Florida; thence along the East right-of-way line of S.W. 3<sup>rd</sup> Street North 01°06'00" East a distance of 204.01 feet to a point marking a line parallel with and 204 feet North from the South line of said parcel and the point of beginning; thence continue North 01°06'00" West a distance of 10.00 feet to a point; thence North 89°26'04" East a distance of 116.88 feet to a point thence South 01°06'00" East a distance of 10.00 feet to a point marking the intersection with a line parallel with and 204 feet North from the South line of said parcel; thence along said parallel line South 89°26'04" West a distance of 116.88 feet to the point of beginning. Containing 0.03 acres, more or less.

040001

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

**WHEREAS**, the City of Gainesville, hereinafter referred to as "City," and Kenneth R. McGurn and Linda C. McGurn, hereinafter referred to as "McGurn," have heretofore entered into a "LICENSE AGREEMENT FOR USE OF PARKING GARAGE," executed December 1, 2003; and

**WHEREAS**, the City and McGurn wish to amend said AGREEMENT to accommodate a request from Alachua County related to use of the Parking Garage by jurors;

**NOW, THEREFORE**, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

1. Subsection 8.g of the LICENSE AGREEMENT FOR USE OF PARKING GARAGE is hereby amended in its entirety to read as follows:

8.g. Under any mechanism or combination of mechanisms used, the City shall have the right to ensure that regardless of impact on McGurn's use of, or revenue received from, Replacement Spaces, that: in all cases, up to 560 free parking spaces may be guaranteed available for jurors, each five (5) day week (when legal holidays result in a week of less than five (5) days, the juror parking commitment will be adjusted to 112 times the number of days, excluding Saturdays, Sundays, and holidays remaining in the week); during 7:00 a.m. to 6:00 p.m. each day, excluding Saturdays,

Sundays, and holidays, provided that no more than 200 juror spaces may be guaranteed available on any one weekday.

- 2. Except as amended in Section 1 above, the License Agreement for Use of Parking Garage, executed December 1, 2003, remains in full force and effect.

**IN WITNESS WHEREOF**, the parties executed this Agreement on the dates indicated below.

**CITY:**

City of Gainesville, a municipal corporation

\_\_\_\_\_  
Wayne Bowers, City Manager

Date: \_\_\_\_\_

Approved as to Form and Legality:

*(Handwritten signature)*  
\_\_\_\_\_  
4/8/04

**WITNESSES:**

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
printed name of witness

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
printed name of witness

STATE OF FLORIDA     }  
COUNTY OF ALACHUA   }

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2004 by Wayne Bowers, 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

*(Handwritten mark)*

MCGURN:

*Kenneth R. McGurn*  
Kenneth R. McGurn

Date: 4/13/04

*Linda C. McGurn*  
Linda C. McGurn

Date: 4/13/04

WITNESSES:

*David Idleman*  
signature of witness as to both

David Idleman  
printed name of witness

*Karen Kim*  
signature of witness as to both

Karen Kim  
printed name of witness

STATE OF FLORIDA }  
COUNTY OF ALACHUA }

The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of April, 2003 by Kenneth R. McGurn and Linda C. McGurn, who are personally known to me or did produce a driver's license as identification, and who did not take an oath.

*Karen Kim*  
name:  
Notary Public, State of Florida



**EXHIBIT "A"**  
**SECOND AMENDMENT TO LICENSE AGREEMENT**  
**FOR USE OF PARKING GARAGE**

THIS SECOND AMENDMENT TO LICENSE AGREEMENT FOR USE OF PARKING GARAGE ("Amendment") is made this 15 day of May, 2007 by and between KENNETH R. MCGURN and LINDA C. MCGURN collectively "McGurn" and the City of Gainesville "City".

**WITNESSETH:**

WHEREAS, McGurn and the City entered into that certain License Agreement For Use of Parking Garage dated December 1, 2003 and recorded in Official Records Book 2824, Page 843, of the Public Records of Alachua County, Florida (Parking Agreement); and

WHEREAS, McGurn and the City entered into a FIRST AMENDMENT TO LICENSE AGREEMENT FOR PARKING GARAGE dated April 13, 2004 in order to accommodate a request from Alachua County related to use of the Parking Garage by jurors (the "First Amendment"); and

WHEREAS, McGurn and the City desire to amend the terms of the Parking Agreement and First Amendment (hereinafter collectively the "Agreement") as hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The recitations set forth in the preamble of this Amendment are true and correct and incorporated herein by this reference.
2. All capitalized terms used herein shall have the same meaning ascribed to them in the Agreement except as otherwise specifically set forth herein.
3. In the event of any conflict or ambiguity by and between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Second Amendment shall control to the extent of any conflict or ambiguity.
4. McGurn and the City acknowledge that, in connection with the mixed-use project known as "Gainesville Greens" being developed on property commonly known as City Parking Lot #10, across SW 2d Street from the Garage, McGurn has agreed to assign to the Developer of such project ("Developer"), rights to the 225 Development Spaces contemplated in the Agreement with a certain reversionary right as provided in that certain license agreement between the City and the Developer dated 5-15-07, hereinafter "Gainesville Greens License Agreement". In this regard, Section 5, Section 7(b), and Section 18.b.2. of the Agreement are hereby deleted in their entirety. In addition, any other references to the term "Development Spaces" in the Agreement are hereby deleted.
5. The City acknowledges that, as part of the assignment of Development Spaces from McGurn to the Developer, Developer has agreed to pay to McGurn certain sums for the transfer of such

Development Spaces. In addition, the City acknowledges that in connection with the Gainesville Greens License Agreement, certain mechanisms have been agreed upon whereby should Developer default in the payment of sums due to McGurn, the City shall execute documents effectuating a return of the Development Spaces to McGurn, all in accordance with the specific procedures and provisions of the Gainesville Greens License Agreement. In this regard, the City and McGurn agree that in the event that such return is effectuated in accordance with the terms of the Gainesville Greens License Agreement, then the City and McGurn agree to amend the Agreement at such time to restore McGurn's rights to the Development Spaces. However, qualified Development Projects, as that term is used in the Agreement, shall mean any projects containing a residential or commercial structure with a minimum building permit value of two million dollars built on property lying within 350 feet of any part of the Garage undertaken by any developer after the date of this Second Amendment. Further, if there is a qualified Development Project that has not been undertaken because of the need for parking, McGurn agrees to give such project priority to enter into an agreement with McGurn to use the Development Spaces if such agreement can be entered into within six months of the return of the spaces to McGurn.

Additionally, McGurn understands and agrees that in the event the Agreement, as amended, is terminated prior to its natural expiration for any reason, then the Gainesville Greens License Agreement shall remain in effect and the Developer shall continue to have the right to use the Development Spaces subject to the terms of the Gainesville Greens License Agreement, as long as the Gainesville Greens License Agreement is still in force and effect.

6. This Second Amendment shall not become effective until and unless the Gainesville Greens License Agreement becomes effective pursuant to Section 16 of said Gainesville Greens License Agreement. If Gainesville Greens is not constructed and completed, then the Gainesville Greens License Agreement shall be automatically terminated, and for purposes of the Development Spaces in the Garage, the Gainesville Greens License Agreement and this Second Amendment shall be treated as if they were never in effect.

7. Except as modified hereby, the terms and provisions of the Agreement remain in full force and effect, are ratified and confirmed and incorporated herein by this reference.

8. The City agrees that unless Section 12 of the Gainesville Greens License Agreement is no longer effective, the City shall not amend Section 12 of the Gainesville Greens License Agreement, as to any rights of McGurn, without the prior written approval of McGurn, which approval shall not be unreasonably delayed, conditioned, or withheld.



IN WITNESS WHEREOF, the parties have executed this Amendment.

Witnesses:

Lieki F. Todd  
Print Name: Lieki F. Todd

Karen Kim  
Print Name: Karen Kim

MCGURN:

[Signature]  
KENNETH R. MCGURN

[Signature]  
LINDA C. MCGURN

Date: April 13, 2007

CITY:

CITY OF GAINESVILLE

Witnesses:

[Signature]  
Print Name: Robemery Skell

[Signature]  
Print Name: Laura Rawson

By: Russ Blackburn  
Name: Russ Blackburn  
Title: City Manager  
Date: 5-15-07

APPROVED AND FORN AND LEGALITY

By: [Signature]  
Marilyn J. Mason, City Atty.  
City of Gainesville, Florida

MAY 15 2007