LICENSE AGREEMENT
FOR USE OF PARKING GARAGE

THIS LICENSE AGREEMENT ("Agreement") is made and entered into on this _____ day of _____ 2007, by and between the City of Gainesville ("City"), a municipal corporation of the State of Florida and Southwest Second Avenue, LLC, ("Developer"), a Florida limited liability company.

RECITALS:

WHEREAS, Developer is the owner of certain real property within the Downtown Expansion Redevelopment Area; and

WHEREAS, Developer desires to develop the property as a residential condominium development to be known as "The Palms," consisting of approximately 48 two bedroom/two bath dwelling units (the "Project"); and in connection therewith, Developer intends to use the City's Southwest Downtown Parking Garage, 105 S.W. 3rd Street, Gainesville, Florida for parking for the project (the "Garage"); and

WHEREAS, the Project is a redevelopment project as that term is used in Chapter 163, Florida Statutes, and the Developer has entered into a Development Agreement with the Gainesville Community Redevelopment Agency ("CRA") dated March 5, 2007; and

WHEREAS, the City is the owner and operator of the Garage; and

WHEREAS, the Developer has requested certain rights from the City in the Garage 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 an Annual Fee as more particularly set forth below.

3. **USE AND LOCATION.** The license granted hereby shall be for the use of 96 spaces in the Garage ("Developer Parking Spaces"). The Garage is a four-story building located 105 S.W. 3rd Street, Gainesville, Florida. The 96 Developer Parking Spaces shall be for the non-exclusive use by the owners and residents of the Project, and for no other purpose. These spaces shall not be designated or marked within the Garage and shall be "floating" spaces within the Garage.

4. **EFFECTIVE DATE AND CONDITIONS**. This Agreement shall not become effective or in force unless and until the Developer shall have first obtained the last of all required governmental building permits to commence construction of the Project, in this case no later than six (6) months after receipt of final development approval by the City of Gainesville or January 31, 2008, whichever first occurs. In the event these conditions are not satisfied by January 31, 2008, then this Agreement shall be deemed terminated and void ab initio on that date. In addition, if prior to January 31, 2008 the conditions have not been satisfied and Developer elects not to further pursue its Project, then Developer shall also have the right to terminate this Agreement at such time upon written notice to the City.

The City shall provide access cards (or some other form of automated operation for access to the Garage that may be selected by the City for Garage operations) to the Developer for the Developer Parking Spaces to insure that, at all times, the Developer Parking Spaces shall be accessible. These access cards will not be provided to Developer, and access to the Garage under the terms of this Agreement will not be provided to the condominium unit owner, until the corresponding unit is issued a certificate of occupancy. Until that time, the City reserves the right to lease these parking spaces as it deems fit.

The Project must be constructed and completed, and all access cards requested by Developer, on or before January 30, 2009, subject to extension by the City Commission of the City, in its sole discretion and upon good cause shown. If these conditions are not met, then this agreement is automatically terminated and, for purposes of the Developer Parking Spaces in the Garage, they shall be treated as if this Agreement was never in effect. Completion of the project means the date on which the City of Gainesville Building Department has issued certificates of occupancy for all residential condominium units. In the event the Agreement becomes void or is terminated under this paragraph, then the City and Developer shall be relieved of all further obligations and duties under this Agreement with each party bearing its own costs and fees, the easement to the Garage shall be terminated, and the City shall have the option of requiring the Developer to remove the Bridge and restore the Garage walls at the sole cost and expense of the Developer upon 60 days advance written notice to 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 twenty (20) years or the life of the Project, whichever first occurs. For purposes of this Agreement, life of the Project means the Project is in existence, active use and operation. If either party wishes to terminate this Agreement at the end of the initial 20-year term without penalty, they may do so by providing notice, in writing, to the other party no less than 180 days prior to the expiration of the initial term. If Developer elects to terminate this Agreement at the end of the initial 20-year term, then the City has the option of requesting Developer to remove the Bridge referenced below and restore the Garage walls, within ninety (90) days and at the Developer's sole

expense, and the City shall record as soon as practicable, in Alachua County's public records, an affidavit stating that any air rights easement which has been granted is null and void. If neither party elects to terminate this Agreement within the prescribed time period, then this Agreement shall be automatically renewed for a second 20-year term. 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 in such written notice not to rebuild the Project in substantially the same form and use, then the license granted hereby shall automatically terminate, and Developer shall be required to remove the Bridge and restore the Garage walls, effective at the expiration of the aforesaid ninety (90) day period. If Developer does elect to rebuild, 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 Developer.

6.   **PEDESTRIAN BRIDGE**

   a.   EASEMENT FOR BRIDGE TO GARAGE**.** At the request of Developer, the City shall grant to Developer by separate instrument an air rights easement on, across and over the public right-of-way between the Garage and the Project, for the purpose of allowing Developer to construct and use a pedestrian walkway bridge from the Project to the Garage (the "Bridge"). The design and location of the Bridge shall be subject to the approval of the City and shall include a mutually agreeable enclosure that would prevent a person from throwing large objects from the Bridge to the underlying area. Also, the Bridge shall be architecturally compatible with the Garage and shall not affect the structural integrity of the Garage. The Developer acknowledges its responsibility to provide ADA compliant passage from the Garage to the Project. All costs of the Bridge shall be paid by the Developer. The Bridge shall meet all codes and not interfere with the City's property. It is further understood and agreed that during any period of construction of said Bridge by Developer, the City's continued use of the Garage, with the exception of the areas included in the easement, shall remain uninterrupted. Such easement shall be in effect coterminous with the term of this Agreement. In the event this Agreement is terminated and the Garage and Project are still in existence, active use and operation, then Developer may continue to have pedestrian access at no additional charge to the Bridge and the easement shall remain in existence; however, Developer shall have the continuing obligation to maintain the Bridge as provided in paragraph b. below. Alternatively, at the City's option, the Bridge shall be removed and the garage walls restored at the sole cost and expense of the Developer within 180 days of

notice to the Developer. If either the Garage or the Project is damaged or destroyed, the easement shall continue as long as the Garage or the Project are subsequently rebuilt, within a reasonable period of time, but in no event shall the period extend beyond 2 years from the date of the damage. Developer shall have the right to control access from the Garage to the Bridge, subject to approval by the City. In this regard, Developer shall have the right, at any time, to have access to the Bridge restricted by installation of a security door or other similar restriction, such that only residents and owners of the Project shall have access to and use of the Bridge. The City shall approve the location and security access technology for any such security doors and shall be provided with a means of access to the Bridge. Notwithstanding any provision to the contrary, the City does not waive any of its police powers exercised in the interest of the public health, welfare and safety.

b.   CONDITIONS OF BRIDGE. Developer shall at all times maintain the Bridge in good and attractive repair and in safe condition. The City and Developer agree that, beginning at the end of the 10th year of this Agreement and every five years thereafter, the Developer will retain a qualified licensed Professional Engineer to inspect the Bridge and to prepare a written report on the existing condition of the Bridge, its expected serviceability during the next five years, and recommendations for maintenance and repairs. A copy of the report shall be delivered to the City within 30 days of the date of the report and any identified repairs are to be completed by the Developer within 120 days of the date of the report. Furthermore, Developer shall also comply with all other laws, ordinances and regulations pertaining to the location, use, and occupancy of the Bridge. Notwithstanding any other provision of this Agreement to the contrary, in the event of an emergency where the Bridge is damaged in a way that imperils the public safety, the City, after a reasonable attempt to notify the Developer, may repair or remove the Bridge and charge Developer for such repair or removal. Developer agrees to pay for such emergency repair or removal within 30 days of receipt of invoice. Any unpaid amount shall be included in the next Annual Fee and shall be considered a part of the Annual Fee. The City acknowledges that Developer shall be mortgaging the Project for purposes of obtaining a construction loan(s) to build the Project, which includes the Bridge, and that the Bridge may be encumbered by such mortgage loan, but such mortgage loan shall be subordinate to this Agreement. The City further acknowledges that the Developer will create a condominium on all or a portion of the Project and that the Bridge might be common area and that all or part of Developer's rights under this Agreement might be assigned to the condominium association in accordance with Section 8 below.

7.   **DEVELOPER'S COMMITMENT AND PAYMENT FOR SPACES**.

    a.   Developer shall pay to the City, on or before the first (1st) day of January every year during the term of this Agreement, starting on January 1, 2009, , an annual fee, equal to eighty percent (80%) of the long term public rental rate in effect on January 1 of the year being paid, for each of the Developer Parking Spaces for 12 months (the "Annual Fee") , in addition to taxes and fees as described below. . The Annual Fee shall be mailed to the City of Gainesville, Billing and Collections, P.O. Box 490, Mail Station 47, Gainesville, Florida 32602-0490 and must be received by the City no later than the 15th day of January. Notwithstanding the foregoing, the Annual Fee shall not be increased by more than ten percent (10%) per year.

    b.   If use of the Developer Parking Spaces granted by this Agreement becomes subject to any federal, state or local property, sales, excise, or other tax or fee, Developer agrees to pay such taxes or fees as they become due. Developer agrees to indemnify and hold the City harmless from any sales, excise, other tax or fee or penalty that may be imposed attributable to Developer Parking Spaces. If Developer desires to challenge the validity or amounts of any such tax or fee, Developer 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.

    c.   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 reimbursed by Developer to the City. Any such tax shall be added to the Annual Fee and shall be considered a part of the Annual Fee due the City.

    d.   Developer may request the City to assign any rights of the City needed for Developer to challenge the validity or amount of any 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 Developer, to the extent the City has standing to do so. The City and Developer agree that if the City challenges the validity or amount of such tax or fee on its own, Developer may seek to intervene in any such challenge and the City does not object to Developer 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 Developer, Developer shall pay for the expenses, attorney's fees and costs incurred by the City in such proceedings.

8.   **ASSIGNMENT**. Developer may assign all of its rights and delegate all of its obligations under this Agreement to the condominium association created in connection with the Project, provided, however, such assignment shall be subject to the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed so long as such association is validly created and assumes all of said rights, responsibilities, duties, liabilities and obligations of the Developer. The City shall respond to any request for such a consent within thirty (30) days of when the request is made. Upon such assignment, which the assignee must assume in writing, the Developer shall provide a copy of the instrument of assignment to the City, and thereafter Developer shall be released from all further obligation or liability under this Agreement.

The City may assign all or part of its rights and obligations under this Agreement without the consent of the Developer, and thereafter the City shall be released from the assigned obligation or liability under this Agreement, provided that the City shall deliver written notice of said assignment to the Developer with all the pertinent information about the assignee.

9.   **OPERATION OF SPACES**. Developer agrees that as part of its rules and regulations for its unit owners, it shall require that such unit owners abide by rules and regulations promulgated by the City applicable to the Garage (the "Rules and Regulations"). City shall issue to the Developer a copy of the Rules and Regulations at the time Developer is issued the access cards. City shall post a copy of the Rules and Regulations in a conspicuous place in the Garage.

10. **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 Bridge or 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 or the Bridge.

11. **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 that party, its agents and licensees within the Garage and as a result of the construction, operation or use of the Bridge. 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. For the purpose of the foregoing sentence, Developer is not considered to be the City's licensee. The policy shall have an annual

1   aggregate limit of not less than $5,000,000, or such additional amount as reasonably
2   required by the City and shall name the City and CRA as additional insureds.
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4   12.   **DAMAGE OR DESTRUCTION OF GARAGE**. If the Garage is destroyed
5   through casualty or otherwise during the term of this Agreement, the City shall have the
6   option of repairing or rebuilding the Garage; however, if the City does not elect within
7   one hundred eighty (180) days to re-build or repair the Garage, then this Agreement will
8   be deemed terminated and void ab initio at the end of the 180 days and neither party
9   shall have any further obligations under its terms. In the event the City does elect to
10   rebuild or repair the Garage, then any Garage repaired or rebuilt on the Garage property
11   shall provide a minimum number of 96 parking spaces for use by the unit owners of the
12   Project. The City shall maintain an insurance policy, or a program of self-insurance, in
13   full force and effect for the replacement value of the Garage. Should the City elect to
14   rebuild or repair the Garage, any insurance proceeds shall be used by the City to repair
15   or reconstruct the Garage as necessary during the term of this Agreement. <u>For purposes</u>
16   <u>of this paragraph "destroyed through casualty or otherwise" means destruction which</u>
17   <u>exceeds 75% of the Garage's then physical value as determined by an M.A.I. appraisal</u>
18   <u>provided by the City.</u>
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20 13.   **NOTICES.** Any notice or demand which must or may be given under this Agreement or
21   by law shall be in writing and shall be deemed to have been given: (i) when physically
22   received by personal delivery; or (ii) when delivered by United States certified or
23   registered mail, return receipt requested, postage prepaid; or (iii) when delivered by a
24   commercial courier service such as Federal Express, addressed to the respective parties at
25   the following addresses:
26

     CITY: **DEVELOPER:**
     City Manager   Southwest Second Avenue, LLC
     City of Gainesville   P.O. Box 1527
     Post Office Box 490   Gainesville, Florida 32602
     200 E University Avenue
     Gainesville, Florida 32602

     CRA
     Executive Director
     Community Redevelopment Agency
     P.O. Box 490, MS 48
     Gainesville, FL 32602

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28
29 14.   **SEVERABILITY.** If any portion of this Agreement is found by a court of competent
30   jurisdiction to be unenforceable, then the parties agree that if the deletion of such
31   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.

15. **GOVERNING LAW AND VENUE**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

16. **BINDING EFFECT OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their respective successors, assigns, agents, and beneficiaries, if applicable.

17. **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 (the "Initial Cure Period") shall, at the election of the City, result in the immediate termination of this Agreement, provided, however, that if the nature of the Event of Default is such that it cannot reasonably be cured within such 30 day period, then Developer's cure period shall be extended, so long as Developer has commenced to cure such Event of Default within said 30-day period and Developer diligently undertakes and pursues such cure to completion, and further provided that the Developer provides the City with documentation evidencing that the Developer is diligently undertaking and pursuing such cure to the City's reasonable satisfaction (the "Extended Cure Period"). The failure to cure an Event of Default within the time period provided for above shall, at the election of the City, result in the immediate termination of this Agreement. If the City elects not to terminate the Agreement, the City shall have the right to require the Developer's specific performance under the terms and conditions 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.

    d.   **Developer's Waiver.** Developer's covenant to pay the Annual Fee to the City 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 Annual Fee due the City, nor set off for purposes of determining whether any fee is due in any action.

18.   **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. The City disclaims all liability in the event one or more of the Developer Parking Spaces is unavailable at any particular time.

19.   **INDEMNIFICATION.** The Developer, and its successors or assigns, agree to indemnify and hold harmless the City and CRA, 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 Bridge and the Garage.

20.   **BANKRUPTCY.** In the event (1) an order or decree is entered appointing a receiver of the Developer, its assignee, or its assets or (2) a petition is filed by the Developer, or assignee, for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty days after the filing thereof, then this Agreement shall automatically terminate.

21. **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.

22. **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.

23. **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.

24. **AMENDMENT.**   This Agreement may not be amended, unless evidenced in writing and executed by all parties hereto.

25. **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.

26. **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.

1 **IN WITNESS WHEREOF**, the parties executed this Agreement on the dates indicated below.
2

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

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4
5
6 STATE OF FLORIDA   }
7 COUNTY OF ALACHUA   }
8
9   The foregoing instrument was acknowledged before me on this _____ day of
10 _____, 2007 by _____, as City Manager of the City of Gainesville, a
11 Florida municipality, who is personally known to me or did produce a driver's license as
12 identification, and who did not take an oath.
13 _____
14 Name:
15 Notary Public, State of Florida

1

DEVELOPER: **WITNESSES:**

By: SOUTHWEST SECOND AVENUE,
LLC, a Florida limited liability company

_____
signature of witness as to both

By: _____   _____

                                              printed name of witness
Name: _____

Title:_____

                                              _____
                                              signature of witness as to both

Date: _____   _____

                                              printed name of witness

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4
5   STATE OF FLORIDA   }
6   COUNTY OF ALACHUA   }
7
8   The foregoing instrument was acknowledged before me on this _____ day of
9   _____, 2007 by _____, as _____of Southwest
10 Second Avenue, LLC, on behalf of such entity. He is personally known to me or did produce a
11 driver's license as identification, and who did not take an oath.
12
13
14 _____
15 Name:
16 Notary Public, State of Florida
17