

## LIMITED USE AGREEMENT

This Limited Use Agreement (“**Agreement**”) is between **THE CITY OF CORAL GABLES**, a Florida municipal corporation (“**City**”) and **THE PALACE MANAGEMENT GROUP, LLC**, a Florida limited liability company (“**Developer**”).

### RECITALS:

City and Developer have entered into the following agreements pertaining to the leasing and development of certain real property located in the City of Coral Gables, Florida (“**Garage Property**”):

- (i) Parking Garage Lease and Development Agreement dated as of July 14, 2008;
- (ii) First Amendment to Parking Garage Lease and Development Agreement, dated as of June 12, 2009;
- (iii) Second Amendment to Parking Garage Lease and Development Agreement, dated as of March 22, 2011;
- (iv) Third Amendment to Parking Garage Lease and Development Agreement, dated as of June 7, 2011; and
- (v) Fourth Amendment to Parking Garage Lease and Development Agreement dated as of \_\_\_\_\_;

(all of the foregoing agreements are collectively the “**Garage Lease**”).

All terms used in this Agreement that are defined in the Garage Lease will have the meaning set forth in the Garage Lease unless otherwise stated.

Developer has completed the construction of the Developer Improvements and the Senior Housing Improvements as contemplated by the Garage Lease and the Senior Housing Lease, respectively, and the Garage Property is being used and operated as a parking garage (“**Parking Garage**”) with both a Public Parking Component and a Private Parking Component

City has submitted the Garage Property to condominium ownership pursuant to the Declaration of Condominium for the Andalusia Garage Condominium (“**Condominium**”), recorded on \_\_\_\_\_, 2015, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Miami-Dade County, Florida (“**Declaration**”). The Garage Lease is now subject to the terms and conditions of the Declaration.

The Garage Lease contemplated that Developer would use the Retail Space described in the Garage Lease for one or more uses permitted by the Garage Lease.

A portion of the Leased Property and Developer Improvements (including all of the Retail Space), as defined in the Garage Lease, is now Unit C of the Condominium (“**Unit C**”).

City and Developer have released Unit C from the Garage Lease, and Developer’s Lender has released Unit C from the Leasehold Mortgage encumbering the Garage Lease, so that City is now the owner of fee simple title to Unit C.

The City intends to use Unit C as an adult activity center (“**AAC**”) dedicated to the emotional, social, and physical well-being of the City’s older adult population (“**AAC Use**”).

The City will at all times have the right to use Unit C for any use permitted by the Declaration, as long as during the term of either the Garage Lease or the Senior Housing Lease, City does not permit any persons engaged in the development, operation or management of senior living facilities or related or ancillary services, (other than Developer and its affiliates) to participate in the operation or management of the AAC or to actively advertise or promote their facilities or services at the AAC.

City has asked Developer to allow the City's older population using the AAC ("AAC Users") to use certain facilities in the Senior Housing Project at specified times, and Developer has agreed to allow such use subject to the terms, conditions, and limitations set forth in this Agreement.

## AGREEMENT

For ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct, and are hereby incorporated by reference.

2. **Use of Senior Housing Facilities.** For as long as City uses Unit C for the AAC Use, City and the AAC Users will have the right to use the following specified facilities (collectively, the "Facilities") according to the schedule set forth.

2.1. **Fitness Center.** City and the AAC Users will have the right to use the fitness center located in the Senior Housing Project ("**Fitness Center**") up to two times per week, for a period of two consecutive hours each time.

2.2. **Movement Center.** City and the AAC Users will have the right to use the movement center located in the Senior Housing Project ("**Movement Center**") up to two times per week, for a period of two consecutive hours each time.

2.3. **Swimming Pool.** City and the AAC Users will have the right to use the swimming pool located in the Senior Housing Project ("**Swimming Pool**") up to two times per week, for a period of two consecutive hours each time.

3. **Scheduling of Facilities Use.** For each of the respective Facilities, City will submit to Developer for approval the specific days and hours of use requested by City. City will submit its request at least 30 days prior to its initial use of each of the Facilities. Developer will not unreasonably withhold or delay its approval. The approved schedule for use of the Facilities in effect at any time will be referred to as the "**Use Schedule.**"

3.1. **Use Schedule Changes.** After the initial Use Schedule has been established, any change in scheduling desired by either party will be submitted to the other party for its review and approval at least 30 days prior to the requested change, with approval not to be unreasonably withheld or delayed.

3.2. **Peak Hours.** Developer's disapproval of days and hours of use requested by City, which days or hours are during periods of "peak use" by residents of the Senior Housing Project, will not be considered unreasonable.

4. **Conditions to Use of Facilities by City and AAC Users.** The rights of the City and the AAC Users to use Facilities as set forth in this Agreement will be subject to the following requirements, limitations, conditions and disclaimers:

4.1. **Supervision of AAC Users.** AAC Users visiting any of the Facilities must at all times be controlled and supervised by the City. City will be responsible for insuring that the Facilities are used substantially in accordance with the Use Schedule, and in accordance with the Use Regulations described below.

4.2. **Use Regulations.** Use of the Facilities by City and AAC Users will be subject to reasonable rules and regulations to be established by the Developer (“**Use Regulations**”). Developer will provide a copy of the Use Regulations to City for posting and distribution at the AAC, and will provide City with any additions or modifications to the Use Regulations as may be adopted from time to time. The Use Regulations will apply to all users of the Facilities, including the residents of the Senior Housing Project, and will be applied to all users of the Facilities in a non-discriminatory manner.

4.3. **City to Provide Liability Insurance.** City will provide evidence of liability insurance to cover its use of the Facilities as contemplated in this agreement. The City will carry and maintain a self-insured insurance program that is in compliance with Section 768.28 of the Florida Statutes. City will deliver a certificate of insurance to Developer prior to the commencement of the City’s use of the Facilities as permitted in this Agreement, and will add the Developer as an additional insured under the City’s insurance.

4.4. **Disclaimer of Liability.** Developer will not be liable for any loss, injury, death, or damage to any person or property suffered or sustained by City, or by any representative, employee, agent or invitee of the City, or by any AAC User as a result of or in connection with the use of Facilities pursuant to this Agreement. The foregoing disclaimer and waiver of liability will not limit in any way the liability of Developer or any Acceptable Operator for any loss, injury, death, or damage that is the result of the negligence or intentional misconduct of Developer or any Acceptable Operator.

4.5. **Indemnification.** To the extent permitted by Section 768.28 of the Florida Statutes, City will indemnify, defend (with counsel reasonably acceptable to the Developer) and hold harmless Developer, any Acceptable Operator, and any of their respective agents, employees or representatives against all claims for damages, losses, costs or expenses arising from, and to the extent of, the City’s negligence, or as a consequence of the breach or violation of this Agreement by City. This indemnification will survive the termination of this Agreement and the rights of City and the AAC Users under this Agreement. This indemnification is not intended to, and will not serve to, indemnify Developer or any Acceptable Operator for any claims for damages, losses, costs or expenses arising out of or in connection with the negligence or intentional misconduct of Developer or any Acceptable Operator.

5. **Facilities Not Open to the Public.** The Facilities are being made available for use by the City and AAC Users in accordance with this Agreement, and are not available for use by the general public.

6. **Developer’s Rights.**

6.1. **Right to Exclude Unlawful Users.** Developer will have the right at any time and from time to time to lawfully exclude and restrain any person who is not an AAC User from using the Facilities as permitted by this Agreement.

6.2. **Temporary Barriers.** Developer will have the right, after 30 days prior written notice to the City, to temporarily deny City and AAC Users access to the Facilities, to the extent reasonably necessary for Developer or the Acceptable Operator to maintain, repair, replace, or renovate any portion of the Facilities. No advance written notice to City will be required in the event of an emergency, but Developer will provide City with notice of any continuing closures after an emergency has occurred.

6.3. **Pool Closing.** Developer shall be permitted to permanently close the Swimming Pool, provided that if Developer decides to permanently close the Swimming Pool, Developer agrees to provide the City with written notice at least one year in advance of the closure.

7. **Grant of Use Rights Only.** This Agreement is intended to grant to City and the AAC Users a right of use only in the Facilities during the term of this Agreement, and does not grant to City or to any AAC User any easement or license rights in the Facilities.

8. **Events of Default and Remedies.**

8.1. **Developer Events of Default.** If Developer fails to comply with any of the covenants, conditions, or agreements which are to be performed or complied with by Developer under this Agreement, City will send written notice to Developer specifying the nature of the default. Developer will have a period of 45 days after receipt of the City's notice to cure the default. If Developer's default cannot be cured within the 45-day period, and Developer commences and is diligently pursuing a cure of the default, Developer will have an additional reasonable time within which to cure such default. If City has given Developer the required written notice, a 45-day cure period to cure the default, and an additional reasonable time period to cure the default, and the default remains uncured, only then will Developer's failure to cure the default set forth in the City's written notice be deemed an "**Developer Event of Default.**"

8.2. **City's Remedies.** Upon the occurrence of a Developer Event of Default, City will have the right to pursue all legal and equitable rights which City may have against Developer in connection with the Developer Event of Default.

8.3. **City Events of Default.** If City fails to comply with any of the covenants, conditions, or agreements which are to be performed or complied with by City under this Agreement, Developer will send written notice to City specifying the nature of the default. City will have a period of 45 days after receipt of the Developer's notice to cure the default. If City's default cannot be cured within the 45-day period, and City commences and is diligently pursuing a cure of the default, City will have an additional reasonable time within which to cure such default. If Developer has given City the required written notice, a 45-day cure period to cure the default, and an additional reasonable time period to cure the default, and the default remains uncured, only then will City's failure to cure the default set forth in the Developer's written notice be deemed a "**City Event of Default.**"

8.4. **Developer's Remedies.** If a City Event of Default occurs, Developer will have the right to pursue all legal and equitable rights which Developer may have against City in connection with the City Event of Default. As to any responsible persons or parties other than

City, Developer will have the right to pursue all legal and equitable rights which Developer may have against such other persons or parties arising out of or resulting from the City Event of Default.

8.5. **Defaults Limited to This Agreement Only.** City and Developer acknowledge and agree that the respective rights, duties and obligations of the parties under the Garage Lease and the Senior Housing Lease are separate from and independent of the respective rights, duties and obligations of the parties under this Agreement, and that a default under this Agreement will not constitute a default or Event of Default under the Garage Lease or the Senior Housing Lease.

9. **Termination.** This Agreement and the rights of City and AAC Users under this Agreement will terminate (without the need for any further action) upon the earlier of (i) termination or expiration of the Senior Housing Lease; (ii) termination of use of the Senior Housing Improvements for senior housing; (iii) loss of use of the Facilities by Developer due to condemnation; or (iv) termination or cessation of City's use of Unit C as an AAC.

10. **Notices.** All notices, demands, requests and other communications required under this Agreement must be given in writing and may be delivered (a) by hand, or (b) by certified mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Agreement may be sent by electronic mail provided that the electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

10.1. **Notices to Developer.** Notices to Developer under this Agreement must be sent to:

The Palace Management Group, LLC  
11355 SW 84<sup>th</sup> Street  
Miami, Florida 33173  
Attn: Mr. Oscar Roiz, Chief Financial Officer  
Telephone: 305 270 7000  
Email: oscar@thepalace.us.com

**With a copy to:**

Katz Barron Squitiero & Faust  
2699 Bayshore Drive, Suite #7  
Miami, Florida 33133-5408  
Attn: Marc L. Faust, Esq.  
Telephone: 305-856-2444  
Email: mlf@katzbarron.com

10.2. **Notices to City.** Notices to City under this Agreement must be sent to:

City of Coral Gables  
405 Biltmore Way  
P.O. Drawer 141549  
Coral Gables, Florida 33134  
Attn: City Manager  
Telephone: 305 460 5201  
Email: cswanson@coralgables.com

**With a copy to:**

City Attorney  
City of Coral Gables  
405 Biltmore Way  
P.O. Drawer 141549  
Coral Gables, Florida 33134  
Telephone: 305 460 5218  
Email: cleen@coralgables.com

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, Florida 33134  
Attn: Stephen J. Helfman, Esq.  
Telephone: 305 854 0800  
Email: shelfman@wsh-law.com

11. **Consent by Lender.** Lender has approved and consented to the terms and provisions of this Limited Use Agreement, as evidenced by the Lender's Consent attached hereto.

12. **Miscellaneous Provisions (in alphabetical order).**

12.1. **Amendment.** The Agreement may not be amended or modified, or any provision waived, except by a written document signed by both parties.

12.2. **Attorney's Fees.** In the event of any litigation between the parties to this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees, expenses, and costs, including, without limitation, paralegal fees, in-house attorneys' fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings. This provision will survive any cancellation or termination of this Agreement.

12.3. **Business Day; Computation of Time.** A "Business Day" in this Agreement is any day that the offices of the City are open for business. Any time period provided for in this Agreement which ends on a Saturday, Sunday or legal holiday observed by the City will extend to 5:00 p.m. (EST) of the next Business Day.

12.4. **Conflicts of Interest; City Representatives not Individually Liable.** No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Agreement. No elected official, representative or employee will participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will have any personal or contractual liability under any term or provision of this Agreement (as same may be amended) because of any breach of this Agreement, or because of his or her execution of this Agreement. The provisions of this Section will survive the termination of this Agreement.

12.5. **Construction of Agreement.** Developer and City have participated fully in the negotiation and preparation of this Agreement, and, accordingly, this Agreement will not be more strictly construed against any one of the parties hereto.

12.6. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by both parties.

12.7. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and supersedes any prior written or oral agreements or communications between the parties.

12.8. **Force Majeure.** A party shall be excused for the period of any unavoidable delay in the performance of any obligations under this Agreement due to acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

12.9. **Further Assurances.** City and Developer agree to execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to fully effectuate the purposes of this Agreement.

12.10. **Governing Law; Venue.** The Agreement will be construed and enforced in accordance with Florida law. Venue for any litigation arising out of this Agreement will be in the Circuit Court of Miami-Dade County, Florida.

12.11. **Police/Regulatory Powers.** City cannot, and specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as they may relate to regulations of general applicability which may govern this Agreement. Nothing in this Agreement will create an affirmative duty of City to abrogate its sovereign right to exercise its police powers and governmental powers.

12.12. **Public Records Law.** Records subject to the provisions of Florida's Public Record Act, Florida Statutes Chapter 119 ("Chapter 119"), must be kept and maintained in accordance with Chapter 119. Developer acknowledges that records that are not exempt under Chapter 119 may be disclosed or produced by the City to third parties in accordance with requests submitted under Chapter 119 or court orders, without penalty or reprisal to the City for such disclosure or production. Developer agrees to assert, in good faith, on behalf of the City,

any relevant exemptions provided for under Chapter 119 for records in its possession. Developer agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes.

12.13. **Section and Paragraph Headings.** Section and paragraph heading are for convenience only and do not affect the interpretation of this Agreement.

12.14. **Severability.** If any part of this Agreement is for any reason held to be invalid or unenforceable, the rest of the Agreement will remain fully enforceable.

12.15. **Sovereign Immunity.** City does not waive any rights of sovereign immunity that it has under applicable law. This Agreement is subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (which statutory provisions and monetary limitations will apply as if the parties hereto had not entered into this Agreement). In no event will the City be liable for any consequential or punitive damages in connection with this Agreement.

12.16. **Successors and Assigns.** This Agreement will shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.17. **Third Party Beneficiaries.** Neither City nor Developer intends to directly or indirectly benefit a third party by this Agreement, including, without limitation, any AAC User. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and no third party (including any AAC User) will be entitled to assert a claim against any of the parties based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

12.18. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO (i) THIS AGREEMENT, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THIS AGREEMENT; (ii) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THIS AGREEMENT; OR (iii) THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Developer has executed this Agreement on the date set forth below.

**DEVELOPER:**

**THE PALACE MANAGEMENT GROUP,  
LLC, a Florida limited liability company**

By:   
\_\_\_\_\_  
Jacob Shaham, Manager

Dated: \_\_\_\_\_, 2015

IN WITNESS WHEREOF, Developer has executed this Agreement on the date set forth below.

By authority of Ordinance No. \_\_\_\_\_  
duly passed and adopted by the Coral Gables  
City Commission on \_\_\_\_\_, 2015.

ATTEST:

CITY:

**CITY OF CORAL GABLES**, a  
Florida municipal corporation

By: \_\_\_\_\_  
Walter J. Foeman, City Clerk

By: \_\_\_\_\_  
Catherine B. Swanson, City Manager

Dated: \_\_\_\_\_, 2015

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE AND  
BENEFIT OF THE CITY ONLY:

By: \_\_\_\_\_  
Craig E. Leen, City Attorney

**CONSENT BY MORTGAGEE**

TD BANK, N.A., a national banking association ("Mortgagee"), as the holder of the following described Mortgage encumbering the Garage Property, hereby consents to the foregoing Limited Use Agreement.

The "Mortgage" is comprised of the following documents, all recorded in the Public Records of Miami-Dade County, Florida:

- (i) Construction Loan Mortgage and Security Agreement made by Developer, as mortgagor, in favor of Mortgagee, dated July 28, 2011, and recorded July 29, 2011, in Official Records Book 27774, Page 2705; and re-recorded on September 26, 2011, in Official Records Book 27838, Page 1149;
- (ii) First Modification of Mortgage dated August 14, 2012, and recorded September 11, 2012, in Official Records Book 28265, Page 453;
- (iii) Second Modification of Mortgage dated June 20, 2013, and recorded June 25, 2013, in Official Records Book 28695, Page 1752.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee on the date set forth below.

TD BANK, N.A., a national banking association

By:   
Print Name: Linda K. Walker  
Title: Vice President  
Date: June 8, 2015