

**LICENSE AGREEMENT
FOR USE OF PARKING GARAGE**

This LICENSE AGREEMENT (“Agreement”) is entered into effective this ____ day of _____, 2018 by the CITY OF GAINESVILLE, FLORIDA, a municipal corporation (hereinafter “City”), and Trimark Properties, LLC, a limited liability corporation, (hereinafter “Licensee”).

WHEREAS, Licensee desires to use the City’s Southwest Downtown Parking Garage, located at 105 SW 3rd Street, Gainesville, Florida (hereinafter “Garage”); and

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

NOW, THEREFORE, the parties hereto agree as follows:

1. **USE AND LOCATION.** The license granted hereby shall be for the use of 100 parking spaces in the Garage (“Parking Spaces”) or another City location mutually agreed upon by the City and the Licensee. The Garage is a five-story building located at 105 SW 3rd Street, Gainesville, Florida. The Parking Spaces shall be for the non-exclusive use by the tenants of Trimark Properties and related companies, and for no other purpose. These spaces shall not be designated or marked within the Garage and shall be “floating” spaces within the Garage. City reserves the right to prohibit users for cause.
2. **EFFECTIVE DATE AND CONDITIONS.** The City shall provide unlimited 24/7 access to the Licensee for the Parking Spaces. Licensee shall be required to manage the list of users and comply with management guidelines as stipulated by the City in accordance with system requirements in effect, and with new stipulations as required due to changes or upgrades to the operating system.
3. **TERM.** Provided Licensee 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. 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. Licensee shall have the right to renew this current Agreement under that same terms and conditions set forth this agreement for three (3) subsequent five (5) year periods by providing written notice to exercise such option at least 180 days prior to expiration of current agreement in effect.
4. **LICENSEE’S COMMITMENT AND PAYMENT FOR SPACES.**
 - a. Licensee shall pay to the City, on or before the first (1st) day of January every year during the term of this Agreement, starting on August 1, 2018, an annual fee equal to eighty percent (80%) of the advertised monthly public rental rate in effect on January 1 of the year being paid for each of the Parking Spaces for 12 months (the “Annual Fee”), in addition to taxes and fees as described below. Licensee will be notified in advance of any proposed fee adjustments.

The Annual Fee shall be mailed to the City of Gainesville, Attn: Billing and Collections Supervisor, PO Box 490, Station 47, Gainesville, FL 32627, and must be received by the City no later than the 15th day of January. Failure to make timely payment will result in a late fee as set forth in paragraph 5 below.

- b. Licensee agrees to pay any federal, state or local property, sales, excise, or other tax or fee, as they become due. Licensee agrees to indemnify and hold the City harmless from any sales, excise, other tax or fee or penalty that may be imposed attributable to Parking Spaces. If Licensee desires to challenge the validity or amounts of any such tax or fee, Licensee 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. Licensee 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 Licensee's rights to or use of the Garage under this Agreement, then Licensee shall reimburse the City within thirty (30) day of such payment for Licensee'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 Licensee's pro-rata share. Licensee's share shall be determined by dividing the number of 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 Licensee 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. Licensee may request the City to assign any rights of the City needed for Licensee 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 Licensee; to the extent the City has standing to do so. The City and Licensee agree that if the City challenges the validity or amount of such tax or fee on its own, Licensee may seek to intervene in any such challenge and the City does not object to Licensee asserting standing to intervene, so long as such is not adverse to the City's interests. In the even the City brings such challenge pursuant to a request by Licensee, Licensee shall pay for the expenses, attorney's fees and costs incurred by the City in such proceedings.
5. **LATE CHARGE.** Licensee agrees to pay a late charge of 18% per annum on any rent, or other charge ten or more days past due. All payments received shall first be applied to any past due amounts and then to current charges. No payment by Licensee or acceptance by City of a lesser amount than the full payment, and late charges shall be deemed to be other than partial payment of the full amount due. City may accept such partial payment without prejudice to City's right to recover the balance due and payable and to pursue any other remedy provided in this Agreement.

6. **OPERATION OF SPACES.** Licensee agrees that as part of its rules and regulations for its tenants, it shall require that each tenant abide by rules and regulations promulgated by the City applicable to the Garage (the "Rules and Regulations"), as same may be amended from time to time. City shall issue to the Licensee a copy of the Rules and Regulations at the time this Agreement is executed. City shall post a copy of the Rules and Regulations in a conspicuous place in the Garage.
7. **INSURANCE.** The Licensee 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 licensee, its agents, tenants, and sub-licensees within the Garage and shall be in a form, substance and amount acceptable to the City. For the purpose of the foregoing sentence, Licensee is not considered to be the City's licensee. The policy shall have an annual aggregate limit of not less than \$5,000,000, or such additional amount as reasonably required by the City and shall name the City as additional insured.
6. **DAMAGE OR DESTRUCTION OF GARAGE.** If the Garage is destroyed through casualty or otherwise during the term of this Agreement, the City shall have the option of repairing or rebuilding the Garage; however, if the City does not elect within one hundred eighty (180) days to re-build or repair the Garage, then this Agreement will be deemed terminated as of the end of the 180 days and neither party shall have any further obligations under its terms. In the event the City does elect to rebuild or repair the Garage, then any Garage repaired or rebuilt on the Garage property shall provide the number of spaces specified in paragraph 1, above for use by Licensee. Should the City elect to rebuild or repair the Garage, any insurance proceeds shall be used by the City to repair or reconstruct the Garage as necessary during the term of this Agreement. For purposes of this paragraph "destroyed through casualty or otherwise" means destruction which exceeds 75% of the Garage's then physical value as determined by an M.A.I. appraisal provided by the City.
7. **DEFAULT.**
 - a. In the event 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. Licensee's Default. The Licensee'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 Licensee ("Notice of Default"), and the Licensee's failure to cure such Event of Default within thirty (30) calendar days from the date of Licensee'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 Licensee's cure period shall be extended, so long as Licensee has commenced to cure such Event of Default

within said 30-day period and Licensee diligently undertakes and pursues such cure to completion, and further provided that the Licensee provides the City with documentation evidencing that the Licensee 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 Licensee'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 Licensee, then the Licensee shall have the right to require the City's specific performance under the terms and conditions of this Agreement.

d. **Licensee's Waiver.** Licensee's obligation to make payment in accordance with paragraph 4, above, is independent of each and every other covenant of this Agreement. Licensee agrees that the Licensee's damages for City's breach shall in no case be deducted from any payment due the City, nor set off for purposes of determining whether any fee is due in any action.

8. **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: (i) when physically received by personal delivery; or (ii) when delivered by United States certified or registered mail, return receipt requested, postage prepaid; or (iii) when delivered by a commercial courier service such as Federal Express, addressed to the respective parties at the following addresses:

Licensee: John Fleming
Trimark Properties
321 SW 13th Street
Gainesville, FL 32601

City: Deborah Leistner
City of Gainesville
PO Box 490 – MS 58
Gainesville, FL 32627-0490

9. **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 City's 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 Licensee's Parking Spaces is unavailable at any particular time.

10. **INDEMNIFICATION.** The Licensee, and its successors or assigns, agree to indemnify and hold harmless the City, its officials, employees, and agents 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, or the construction, operation, or use of the Garage.
11. **NO LIABILITY OR MONETARY REMEDY.** The Licensee 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.
12. **BANKRUPTCY.** In the event (1) an order or decree is entered appointing a receiver of the Licensee, its assignee, or its assets or (2) a petition is filed by the Licensee, or assignee, for relief under federal bankruptcy laws or any other similar law or status of the United States, which action is not dismissed, vacated or discharged within sixty (60) days after the filing thereof, then this Agreement shall automatically terminate.
13. **RESTRICTION ON RIGHTS GRANTED THROUGH LICENSE AGREEMENT.** This Agreement is intended to bestow upon the Licensee specific permissions regarding the use of City property and is not intended to convey any interest or exclusive possession of City property to the Licensee.
14. **ASSIGNMENT.** Licensee may not assign this Agreement, in whole or in part without the prior written consent of the City; such consent shall not be unreasonably withheld. All assignees shall comply with the terms of this agreement. In the event of an assignment, all terms of the Agreement shall remain unaltered except that all references to "Trimark Properties" shall be treated as substituted with the name of the Assignee.
15. **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 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.

16. **SEVERABILITY.** If any portion of this Agreement is found by a court of competent jurisdiction 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, then the remainder of this Agreement shall remain in full force and effect.
17. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding its conflict of laws provisions. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.
18. **BINDING EFFECT OF AGREEMENT.** This Agreement shall be binding upon the parties hereto, their respective successors, assigns, agents, and beneficiaries, if applicable.
19. **AMENDMENT.** Any changes or modifications to this Agreement shall be in writing and executed by both parties.
20. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the parties.

The remainder of the page is intentionally left blank.

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

CITY:

CITY OF GAINESVILLE

Witnesses:

By: _____
Anthony Lyons, City Manager

Print name of witness: _____

Date: _____

Print name of witness: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by Anthony Lyons, as the City Manager of the City of Gainesville, Florida, a municipal corporation, for and on behalf of the corporation, she/he is personally known to me or has produced _____ as identification.

Notary Public, State of Florida

Approved as to Form and Legality:

City Attorney

LICENSEE:

Trimark Properties, LLC
Name of Licensee

Witnesses:
Susanne Smith
Print name of witness: Susanne Smith

By: [Signature]
Name: John Fleming
Title: Managing Member

[Signature]
Print name of witness: Tyrone Johnson

Date: 5-22-18

STATE OF Florida
COUNTY OF Alachua

The foregoing instrument was acknowledged before me this 22nd day of May, 2018 by John Fleming as Managing Member of Trimark Properties, LLC for licensee and on behalf of the corporation, she/he is personally known to me or has produced _____ as identification.

[Signature]
Notary Public, State of Florida



PETER MCNIECE
MY COMMISSION # FF 124425
EXPIRES: September 18, 2018
Bonded Thru Budget Notary Services