

This Instrument Prepared By:  
Sam Bridges, Land Rights Coordinator  
Public Works Department – MS# 58  
City of Gainesville  
Post Office Box 490  
Gainesville, Florida 32627

Tax Parcel 14002-000-000  
Section 5, Township 10 South, Range 20 East

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### Easement for Air Rights

This agreement (“Agreement”) is made the 1<sup>st</sup> day of December 2015, between the CITY OF GAINESVILLE, Florida, , a municipal corporation existing under the laws of the State of Florida, whose mailing address is Post Office Box 490, Station 46, Gainesville, Florida 32627 (“Grantor”) and CAPITAL ASSETS GROUP II, LLC, a Florida Limited Liability Company, whose post office address is 321 Southwest 13<sup>th</sup> Street, Gainesville, Florida 32601 (“Grantee”).

### Recitals

As is more particularly recited herein, Grantor is granting a non-exclusive easement for air rights to accommodate an over-street balcony the location of which is described below.

Grantor and Grantee desire to limit the use and occupancy of the airspace to a balcony under the terms and conditions set forth in this agreement;

In consideration of the covenants, conditions and agreements contained below, the parties agree as follow:

1. The foregoing recitals are incorporated here by reference as though fully set forth here as agreements of the parties.
2. Grantor grants to Grantee a non-exclusive easement appurtenant (“Easement”) in certain air rights for the benefit of Grantee’s parcels and use by Grantee for the construction, operation and maintenance of a balcony within the area described in Exhibit “A” (2 pages) attached hereto and made a part hereof, for the benefit of the property known as Heritage Oaks Apartments.

Grantor also grants to Grantee reasonable rights of ingress and egress upon the Premises as are necessary for the construction, maintenance, repair or replacement of the balcony, subject to normal coordination with the City for any necessary closing of all or part of the street. This Easement shall remain in existence for the life of the structure to which it is attached unless terminated as provided in this document.

3. The term of this Agreement commences with the execution date of this Agreement and expires in accordance with the provisions contained in paragraphs 9 and 10 below except that the parties agree that the rights conveyed under this easement document are subordinate to the eminent domain authority of any governmental entity.

4. Subject to the rights of Grantee pursuant to the terms of this Agreement, the City of Gainesville, its successors and assigns, reserves the right to the full use and enjoyment of the Premises for use as a public right-of-way.

5. Grantee shall be solely responsible for the use and enjoyment of the Easement and shall indemnify and hold Grantor and the City of Gainesville, their elected and appointed officials, employees and agents harmless from all costs, attorneys' fees and claims of damage to person, property or premises resulting from the use, occupancy and possession of the air rights over the Premises by Grantee or the rights of ingress and egress over the Premises as provided in paragraph 2.

6. Grantee shall provide Grantor with a certificate of insurance evidencing Grantor and the City of Gainesville as additional insureds on Grantee's comprehensive liability insurance policies prior to Grantee commencing construction of the balcony. Minimum acceptable coverage shall be \$500,000.00. Furthermore, Grantee shall maintain that certificate in full force, and provide evidence when requested, for the duration of the Easement.

7. Grantee shall at all times maintain the balcony and appurtenant structure in good repair and in safe condition; furthermore, Grantee shall also comply with all other laws, ordinances and regulations pertaining to the location, use, and occupancy of the balcony. In the event of an emergency where the balcony is damaged in a way that imperils the public safety, the City, after a reasonable attempt to notify Grantee, may repair or remove the balcony and charge Grantee for such repair or removal. Grantee agrees to pay for such emergency repair or removal within 30 days of receipt of invoice.

8. In the event the Premises are subjected to ad valorem taxation or fees by any governmental entity as a consequence of this Agreement, Grantee upon receipt of Grantor's written notice and demand, shall promptly pay that tax or fee and provide Grantor with evidence of that payment. Grantee may however contest that imposition of ad valorem tax and Grantor shall cooperate with Grantee in any such contest.

9. In the event of substantial destruction of the balcony, Grantee shall serve Grantor with written notice of Grantee's election whether or not it chooses to rebuild the balcony and of its need to use the air space, which is the subject of the Easement. If Grantee elects not to rebuild the balcony, or if Grantee does not so elect within 90 days, or if Grantee does not commence to so rebuild within 12 months of the date of the destruction, or if any Mortgagee does not elect to cure pursuant to paragraph 12 below, the Easement and any rights that Grantee shall possess by virtue of this Agreement shall automatically cease and terminate without further notice.

10. In the event of Grantee's noncompliance with any of the specific conditions and restrictions contained in this Agreement, Grantee, upon receipt of Grantor's written notice and demand for compliance, shall provide Grantor with evidence of Grantee's compliance within 90 days of said receipt. If compliance cannot be reasonably completed within said 90 days, Grantee shall provide Grantor with evidence that work toward compliance has commenced and that compliance will be complete within a reasonable time. In the event Grantee fails to submit such evidence of compliance to Grantor within the time allowed, and if any Mortgagee does not elect to cure the condition pursuant to paragraph 12 below, the Easement and any rights that Grantee shall possess by virtue of this Agreement shall automatically cease and terminate without further notice.

11. Any rights derived by Grantee pursuant to this Agreement shall be solely for Grantee, its successors and assigns.

12. Grantor acknowledges that Grantee shall be mortgaging the property, which includes the over-street balcony, and collaterally assigning all rights of Grantee under this Agreement, to a financial

institution. Grantee shall not encumber the over-street balcony or assign all or part of Grantee's rights under this Agreement without the written consent of the Grantor, which shall not be unreasonably withheld or delayed. Grantor shall not impose any additional obligations, requirements, costs or fees merely as a condition of such consent.

Grantor shall have the right to terminate this Agreement in the event of default or substantial destruction of the over-street balcony upon 60 days written notice to any Mortgagee. Said Mortgagee shall give Grantor written notice of its election to cure or rebuild within the 60 day notice period and shall be granted a reasonable time to cure the default and/or commence rebuilding. Grantor may terminate this Agreement if such notice is not received or if the cure or rebuilding has not been completed within a reasonable time.

13. Grantor agrees not to amend or accept a surrender of this Agreement without the prior written permission of any Mortgagee consented to by the Grantor pursuant to paragraph 12, which permission shall not be unreasonably withheld or delayed.

14. No provisions of this Agreement nor any act of the City of Gainesville or Grantor shall be deemed or construed by any of the parties, or by third parties, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City of Gainesville or Grantor.

15. All notices pursuant to this Agreement shall be by certified mail, return receipt requested, addressed to the following:

If to Grantor: Clerk of the City Commission  
P.O. Box 490, Station 18  
Gainesville, FL 32627-0490

With copy to: City Attorney's Office  
P.O. Box 1110, Station 46  
Gainesville, Florida 32627

If to Grantee: Capital Assets Group II, LLC  
John L. Fleming, Managing Member  
321 Southwest 13<sup>th</sup> Street  
Gainesville, Florida 32601

16. The terms of this agreement shall be construed in accordance with the laws of the State of Florida.

Signed Sealed and delivered  
in the presence of:

CITY OF GAINESVILLE,  
a municipal Corporation of the State of Florida

Sharon D. Williams  
Witness  
Print name: Sharon D. Williams  
Devonia L. Andrew  
Witness  
Print name: DEVONIA L. ANDREW

Ed Braddy  
Ed Braddy, Mayor  
[Signature]  
Attest:  
Kurt Lannon, Clerk of the City Commission

State of Florida  
County of Alachua

APPROVED AS TO FORM AND LEGALITY  
By: [Signature] 11/2/16  
Sean M. McDermott  
Assistant City Attorney II  
City of Gainesville, Florida

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_, 2015 by Ed Braddy and Kurt Lannon, the Mayor and Clerk of the City Commission, respectively, of the CITY OF GAINESVILLE, a municipal Corporation of the State of Florida, on behalf of the corporation. They are personally known to me or have produced Driver's Licenses as identification and did not take an oath.



Devonia L. Andrew  
Notary Public

THE GRANTEE HEREBY ACCEPTS THE TERMS AND CONDITIONS SET FOR FORTH AND CONTAINED HEREIN.

Capital Assets Group II, LLC

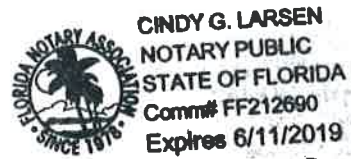
Signed, sealed and delivered  
in the presence of:

Valerie Quates  
Witness  
Print name: Valerie Quates  
Ashlee Henriquez  
Witness  
Print name: Ashlee Henriquez

[Signature]  
John L. Fleming, Managing Member

State of Florida  
County of Alachua

The foregoing instrument was acknowledged before me this 1 day of December, 2015 by John L. Fleming, Managing Member of Capital Assets Group II, LLC, on behalf of the entity. He is personally known to me or has produced a Driver's License as identification and did not take an oath.



Cindy G. Larsen  
Notary Public