

LEGISLATIVE #

170871A

Prepared by:
Sean M. McDermott, Esq.
CITY OF GAINESVILLE
Office of the City Attorney
P.O. Box 490, Station 46
Gainesville, FL 32627

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement"), is made and executed this ___ day of February, 2018, by and between the **City of Gainesville, a Florida municipal corporation**, whose address is Post Office Box 490, Gainesville, Florida 32627 ("Grantor"), and **LM Gainesville, LLC, a Delaware limited liability company**, whose address is c/o Landmark Properties, 315 Oconee Street, Athens, GA 30601 ("Grantee"). Grantor and Grantee are sometimes referred to herein, collectively, as the "Parties."

WITNESSETH:

WHEREAS, Grantee is the owner of a tract of land lying and being in the County of Alachua, State of Florida, as more particularly described on **Exhibit "A"** attached hereto ("Grantee Property"); and

WHEREAS, Grantor is the owner of a tract of land dedicated as a public right-of-way and lying directly adjacent to the Grantee Property as depicted on **Exhibit "B"** attached hereto ("Grantor Property"); and

WHEREAS, certain footings for the parking garage ("Parking Garage") constructed upon the Grantee Property encroaches onto the portion of the Grantor Property more particularly described on **Exhibit "C"** ("Easement Area"); and

WHEREAS, Grantor has agreed to grant an easement ("Easement") allowing Grantee to retain the portion of the Parking Garage located on the Grantor Property within the Easement Area, and for the use and occupancy thereof in connection with Grantee's operation of the Parking Garage.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement; Consideration.** Grantor hereby grants the Easement to Grantee, as an appurtenance to and for the benefit of the Grantee Property, solely for the retention of the portion of the Parking Garage located within the Easement Area (including the operation, maintenance and repair of the Parking Garage), and for the use and occupancy thereof in connection with Grantee's operation of the Parking Garage. If the Easement Area is used for any other purpose, Grantor shall have the option of immediately terminating this Easement.

Grantee shall not permit any use of the Easement Area in any manner that would obstruct or interfere with any public right-of-way, unless done in accordance with the Code of Ordinances of the City of Gainesville. Grantee shall further use and occupy the Easement Area in a safe and proper manner, shall not commit any waste thereon, and shall not cause or allow to be caused any nuisance or objectionable activity of any nature on the Easement Area. Grantee shall keep and maintain the Easement Area and any building or structure, now or hereafter erected thereon, in good and safe condition and repair at Grantee's own expense during the term of this Easement, and shall keep the same free and clear of any and all weeds, brush, or debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or a nuisance.

Grantee shall pay to Grantor the sum of seventy-five thousand and no/100 dollars (\$75,000) no later than five business days after Grantor delivers a fully-executed original of this Easement to Grantee.

2. **Term.** This Agreement and the Easement granted herein shall remain in full force and effect unless, by removal or destruction, the Parking Garage no longer encroaches onto the Easement Area, in which event this Agreement and the Easement created hereby shall automatically terminate and have no further force and effect. Notwithstanding the automatic termination of this Agreement pursuant to the terms of this Section 2, upon Grantor's request, Grantee shall execute a recordable instrument formally acknowledging such termination.
3. **Grantor Representations.** Grantor represents to Grantee that Grantor is lawfully seized of the Easement Area, and that all requisite actions and consents have been received by Grantor in order to bind Grantor to the terms hereof upon execution of this Agreement.
4. **Compliance with Laws.** Grantee agrees to use the Easement Area in compliance with all federal, state, and municipal laws, ordinances, rules, or regulations, now in effect or hereafter enacted or adopted ("Laws") and the Grantee agrees not to use, nor suffer or permit any person to use in any manner whatsoever, the Easement Area or any part thereof for any illegal purpose, or for any purpose in violation of any Laws.
5. **Indemnification.** Grantee shall indemnify, defend, save, and hold harmless Grantor and all of its officers, employees, and agents from any and all claims, losses, liabilities, damages, costs, and expenses of any nature, including without limitation attorney's fees and disbursements, arising from, out of, or related to the act, error, omission, or negligence of Grantee or its

officers, employees, or agents due to any accident, happening, or occurrence on the Easement Area or arising in any manner from the exercise or attempted exercise of Grantee's rights hereunder whether the same regards person or property of any nature whatsoever, and regardless of the apportionment of negligence. Notwithstanding anything to the contrary set forth in this paragraph, Grantee shall have no obligation to indemnify, defend, save or hold harmless Grantor or any of its officers, employees or agents, from any claims, losses, liabilities, damages, costs, or expenses resulting from any act, error, omission or negligence of Grantor or any of its officers, employees or agents.

6. Insurance. Grantee at its expense shall maintain at all times during the term of this Easement comprehensive public liability insurance protecting Grantee and Grantor against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the Easement Area arising out of the act, negligence, omission, nonfeasance, or malfeasance of Grantee or its officers, employees, or agents. Such insurance shall be carried in a minimum \$1,000,000 combined single limit for bodily injury or death and property damage. All such policies shall be issued by companies authorized to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be cancelled or modified unless Grantor is given at least thirty (30) calendar days' prior written notice of such cancellation or modification at the address written above. Grantee shall provide Grantor certificates showing such insurance to be in place and showing Grantor as additional insured under the policies. If self-insured or under a risk management program, Grantee represents that such minimum coverage for liability will be provided for the Easement Area.
7. Sovereign Immunity. Grantee and Grantor agree that nothing in this Easement is intended to be or shall be interpreted as a waiver of Grantor's sovereign immunity granted under Section 768.28, Florida Statutes.
8. Nature of Easement. The Easement granted by Grantor shall run in favor of Grantee, all successor owners of the Grantee Property, and their respective mortgagees, and the right of use and occupancy of the Easement Area granted hereunder shall also run in favor of all patrons of the Parking Garage. This Agreement shall run with the land, shall be an appurtenant right inuring to the benefit of the Grantee Property, and shall be binding obligation upon the Grantor Property.
9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of laws principles. The Parties submit to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court of the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Easement and agree not to assert by way of motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

10. Recitals; Entire Agreement; Modification. The recitals set forth above are incorporated herein by this reference as fully and with the same force and effect as if set forth herein at length. This Agreement contains the entire agreement between the Parties, and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein. Any amendments hereto must be in writing and signed by both of the Parties hereto (or their successors in ownership of the Grantee Property and Grantor Property.)

11. Attorney Fees. If either Party files suit or brings a judicial action or proceeding against the other for default or breach of any of the covenants, terms or conditions hereof, the prevailing party shall be entitled to receive its reasonable attorneys' fees, costs and expenses, whether incurred during pretrial, trial, appeal, collections, bankruptcy, or other level of proceeding.

12. Counterparts. This Agreement may be executed in counterparts. Each counterpart shall constitute an original document and evidence of the execution of this Agreement by the Party signing such counterpart. The combination of the counterparts shall constitute one agreement which shall not be effective and binding on either Party unless and until a counterpart has been signed by each Party to this Agreement

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE(S) TO FOLLOW]**

EXHIBIT "A"

PARCEL A:

The Commercial Unit of the UNIVERSITY CORNERS COMMERCIAL CONDOMINIUM, together with an undivided interest in the common elements appurtenant thereto, according to the Declaration of Condominium of University Corners Commercial Condominium, recorded in Official Records Book 4451, Page 132, Public Records of Alachua County, Florida, and all exhibits attached thereto, and any amendments thereof.

Together with the following:

All rights and benefits under and pursuant to that certain Reciprocal Easement Agreement with Covenants to Share Costs for University Corners, dated August 12, 2016, recorded August 15, 2016 in Official Records Book 4453, Page 1065, of the Public Records of Alachua County, Florida.

EXHIBIT "B"

Depiction of the Grantor Property

[TO BE INSERTED]

EXHIBIT "C"

Legal Description of the Easement Area

[TO BE INSERTED]



DESCRIPTION

DATE: 4 APRIL 2017

CLIENT: LANDMARK PROPERTIES

PROJECT NAME: THE STANDARD AT GAINESVILLE

PROJECT NO: 15-0182

DESCRIPTION FOR: NW 3rd AVENUE CONCRETE FOUNDATION ENCROACHMENTS

A PORTION OF NW 3rd AVENUE RIGHT OF WAY (A 60 FOOT PUBLIC RIGHT OF WAY) LYING NORTH OF BLOCK 1, L. T. ROUX SUBDIVISION AS RECORDED IN PLAT BOOK A, PAGE 155 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, ALSO NOW KNOWN AS UNIVERSITY CORNERS COMMERCIAL CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 4451 AT PAGE 132 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA AND AS DEPICTED GRAPHICALLY IN CONDOMINIUM MAP BOOK 31 AT PAGE 80 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF LOT 5, BLOCK 1, OF SAID L. T. ROUX SUBDIVISION, NOW KNOWN AS SAID UNIVERSITY CORNERS COMMERCIAL CONDOMINIUM, FOR A POINT OF REFERENCE, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF SAID NW 3rd AVENUE WITH THE EAST RIGHT OF WAY LINE OF NORTHWEST 14th STREET, (A 60 FOOT RIGHT OF WAY), FOR A POINT OF REFERENCE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 55.55 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION AND THE **POINT OF BEGINNING**; THENCE RUN NORTH 01°17'13" EAST, ALONG THE TOP EDGE OF SAID CONCRETE FOUNDATION, A DISTANCE OF 1.02 FEET; THENCE CONTINUE ALONG THE TOP EDGE OF SAID CONCRETE FOUNDATION, SOUTH 88°12'12" EAST, A DISTANCE OF 18.99 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF CONCRETE FOUNDATION, SOUTH 02°30'22" EAST, A DISTANCE OF 0.45 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 28.35 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 02°59'36" EAST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 0.12 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 89°34'08" EAST, A DISTANCE OF 14.95 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 00°22'46" WEST, A DISTANCE OF 0.03 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY OF NORTHWEST 3rd AVENUE, A DISTANCE OF 3.77 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 88°31'54" EAST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 1.86 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 00°01'08" EAST, A DISTANCE OF 0.05 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 8.22 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 02°21'10" EAST, ALONG SAID TOP EDGE OF A

CONCRETE FOUNDATION, A DISTANCE OF 0.27 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, NORTH 88°57'20" EAST, A DISTANCE OF 20.59 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 01°44'00" EAST, A DISTANCE OF 0.68 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 15.52 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 07°47'28" EAST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 0.76 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 89°19'16" EAST, A DISTANCE OF 2.18 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION NORTH 03°43'43" EAST, A DISTANCE OF 1.35 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 86°18'51" EAST, A DISTANCE OF 18.49 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION SOUTH 03°30'01" EAST, A DISTANCE OF 0.93 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 15.03 FEET TO THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 00°16'02" WEST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 0.27 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, NORTH 88°03'21" EAST, A DISTANCE OF 20.63 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 04°48'42" EAST, A DISTANCE OF 1.01 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 18.41 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 01°52'19" EAST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 1.06 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, NORTH 89°44'29" EAST, A DISTANCE OF 12.82 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 00°27'35" EAST, A DISTANCE OF 1.13 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 18.22 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 02°14'23" WEST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, A DISTANCE OF 0.35 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION, SOUTH 87°11'23" EAST, A DISTANCE OF 7.37 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN SOUTH 89°54'05" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 22.25 FEET TO IT'S INTERSECTION WITH THE TOP EDGE OF A CONCRETE FOUNDATION; THENCE RUN NORTH 03°22'00" EAST, ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION 0.95 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION SOUTH 89°42'35" EAST, A DISTANCE OF 8.97 FEET; THENCE CONTINUE ALONG SAID TOP EDGE OF A CONCRETE FOUNDATION SOUTH 05°10'18" EAST, A DISTANCE OF 0.93 FEET TO IT'S INTERSECTION WITH THE AFOREMENTIONED SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE; THENCE RUN NORTH 89°54'05" WEST, ALONG SAID SOUTH RIGHT OF WAY LINE OF NORTHWEST 3rd AVENUE, A DISTANCE OF 257.13 FEET TO THE **POINT OF BEGINNING**.

**ALL AS SHOWN ON THE MAP
ATTACHED HERewith AND MADE
A PART HEREOF**

