

LEGISLATIVE #

170871B

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

MURAL EASEMENT

THIS MURAL EASEMENT ("Easement") is granted by **LM Gainesville, LLC**, a Delaware limited liability company, whose address is c/o Landmark Properties, 315 Oconee Street, Athens, GA 30601 ("Grantor"), and accepted by the **City of Gainesville**, a Florida municipal corporation, whose address is Post Office Box 490, Gainesville, Florida 32627 ("Grantee"). Grantor and Grantee are sometimes referred to herein, collectively, as the "Parties."

RECITALS

WHEREAS, Grantor is the owner of certain real property in Alachua County, Florida, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof ("Grantor Property"); and

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

WHEREAS, certain footings for the parking garage ("Parking Garage") constructed upon the Grantor Property encroaches onto the portion of the Grantee Property more particularly described on **Exhibit "C"** ("Encroachment Area") and by separate easement agreement has allowed Grantor to retain the use of such area for the purposes expressed in such easement agreement; and

WHEREAS, Grantor agrees, among other things, to grant Grantee this Easement to provide for the installation, maintenance, and exhibition of a mural ("Mural") on the north facing wall of the Parking Garage as described in **Exhibit "D"** ("Mural Area"); and

NOW THEREFORE, 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. **Recitals.** The foregoing recitals comprise a material part of this document and are incorporated herein.
2. **Grant of Easement; Consideration; Recordation.** Grantor does hereby grant and convey to the Grantee and Grantee hereby accepts an easement for the installation, maintenance, and exhibition of a Mural on the Mural Area under the terms established in this Easement. The Mural is to be installed, maintained, and exhibited by Grantor as provided herein, and Grantee's exercise of the easement rights granted to Grantee herein to install, maintain, and exhibit a Mural on the Mural Area are only to be exercised by Grantee as provided in Section 7 below in the event of Grantor's default. Grantor shall record this Easement in the Public Records of Alachua County, Florida, no later than 10 calendar days after Grantee delivers a fully-executed original of this Easement to Grantor.
3. **Mural.** Grantor shall maintain and exhibit the Mural on the Mural Area until termination of this Easement. Normal wear and tear associated with an external Mural is expected, and Grantor shall have no obligation to repaint all or any applicable portion of the Mural unless the Mural is either substantially damaged or has faded to less than fifty percent (50%) of the original color. No permits or other Grantee approvals shall be required for Grantor's installation, maintenance, or exhibition of the Mural after the Grantee's approval of the plans and specifications for the Mural. The parties specifically contemplate that the Mural may change from time to time. If Grantor desires to change the Mural, Grantor shall deliver to Grantee plans and specifications for such change, which plans and specifications shall include details regarding the artist or vendor selected by Grantor to complete the new or altered mural, for review and approval by Grantee, such approval not to be unreasonably delayed, conditioned or denied.
4. **Term.** The Easement shall continue until terminated in accordance with this paragraph. This Easement shall terminate automatically on the earlier to occur of the following events: (i) the destruction, demolition, or removal of the Parking Garage and its associated Mural Area; (ii) the alteration of the Parking Garage, with the prior express written consent of Grantee as described in Section 5 below, in a manner that precludes the exhibition of the Mural; (iii) a material change in circumstances that causes the exhibition of the Mural to substantially impede Grantor's reasonable use and enjoyment of the Parking Garage; or (iv) the parties' written agreement to terminate this Easement.
5. **Alteration of Mural.** Without the prior express written consent of Grantee, such consent not to be arbitrarily withheld, conditioned or delayed, Grantor will not undertake nor permit to be undertaken any alteration, construction, remodeling, demolition, or reconstruction of structures on the Grantor Property that would result in a material alteration of the appearance of the Mural on the Mural Area.
6. **Indemnification.** Grantor shall be solely responsible for the installation, maintenance, and exhibition of any Mural on the Mural Area and shall indemnify and hold Grantee, its elected and appointed officials, employees and agents harmless from all costs, attorneys' fees and claims of damage to any person, property, or premises resulting from the installation, maintenance, or exhibition of a Mural on the Mural Area, except for any loss, cost, claim or damage caused by the negligence or willful misconduct of Grantee or Grantee's agents.

7. **Default.** In the event of a violation of this Easement, and after written notice from Grantee to Grantor generally identifying the violation, and Grantor's failure to commence to cure such violation within 30 calendar days after such written notice (and thereafter diligently continue such curative work through to completion), Grantee, in order to insure the effective enforcement of this Easement shall have, and Grantor hereby grants, the following rights to Grantee:

- a. The right to undertake any remedial action Grantee deems necessary in relation to the installation, maintenance, or exhibition of a Mural on the Mural Area, and the right to receive from Grantor liquidated damages for reimbursement of such documented remedial actions in an amount not to exceed \$15,000.
- b. The right to seek any and all other legal and equitable remedies to enforce Grantor's obligations hereunder.

The failure of the Grantee to enforce any provision herein shall in no event be deemed a waiver of such provision or the right of the Grantee to thereafter enforce such provision.

8. **Right of Inspection.** The Grantor agrees that employees or agents of the Grantee shall be permitted at reasonable times (which shall be established in advance by at least five business days written notice to Grantor) to come upon Grantor Property and inspect the Mural Area for violations of any of the covenants in this Easement.

9. **Approvals.** Grantee hereby authorizes the City Manager, and any party designated in writing by City Manager to undertake such activities, to provide all Grantee consents and approvals contemplated in this Easement, including, without limitation, approval of plans and specifications for any changes to the Mural.

10. **Severability.** If any of the provisions of this Easement are determined to be unenforceable or void, this shall not in any way affect the validity or enforcement of any of the other provisions.

11. **Notice.** Any notices required by this Easement shall be made to the addresses first written above. Such notice or response shall be deemed given by either party when hand delivered or deposited for mailing by certified or registered U.S.P.S. mail, return receipt requested, addressed to the party to whom such notice or response is required to be given.

12. **Runs with the Land.** All provisions of this Easement shall be construed to be covenants running with the land, shall touch and concern the land and with every part thereof and interest therein, and all provisions shall be binding on the Parties hereto and on their successors and assigns and any subsequent owners of the Mural Area. Grantor agrees that the existence and binding nature of the restrictions contained in this Easement will be referenced by Grantor in any subsequent lease, deed, or legal instrument by which Grantor divests itself of title to or possessory interest in the Mural Area, or any part thereof.

13. **Interpretation.** This Easement 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 Easement must be brought and heard in Alachua County, Florida. The prevailing party in any such litigation shall be entitled to all costs thereof, including, but not limited to, reasonable attorneys' fees and court costs at all trial and appellate levels.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Easement.

Signed, sealed, and GRANTOR:
delivered

in the presence of:

LM Gainesville, LLC, a Delaware limited liability company

[Signature]
Name: Arhanda F. Henningsen Print

Signature: [Signature]

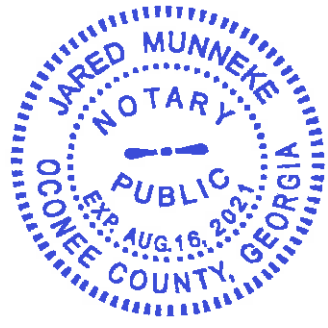
[Signature]
Name: Jim Fisher

Name: J. Wesley Rogers
Title: Authorized Signatory

STATE OF Georgia
COUNTY OF Oconee

The foregoing instrument was acknowledged before me this 9th day of February, 20 18, by J. Wesley Rogers (name), as the authorized signatory (title) of LM Gainesville, LLC (name of entity), an entity authorized to do business in the state of Florida, and who has acknowledged that he/she has executed the same on behalf of said entity, and that he/she was authorized to do so. He/She is personally known to me or has produced _____ as identification.

[Signature]
Notary Public, State of GA
My Commission Expires: 8/16/21



Signed, sealed, and **GRANTEE:**
delivered

City of Gainesville

in the presence of:

By: _____

Name: _____

Name: Anthony Lyons, City Manager

Name: _____

**STATE OF FLORIDA
COUNTY OF ALACHUA**

The foregoing instrument was acknowledged before me this ___ day of _____, 20_____, by Russ Blackburn, as the Executive Director of the Gainesville Community Redevelopment Agency, and who has acknowledged that he executed same on behalf of said Agency, and that he was authorized to do so. He is personally known to me.

Notary Public, State of Florida
My Commission Expires: _____

EXHIBIT "A"

EXHIBIT "A"

PARCEL A:

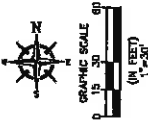
The Commercial Unit of the UNIVERSITY CORNERS COMMERCIAL CONDOMINIUM, together with an undivided interest in the common elements appurtenant thereto, according to the Declaration of Condominium of University Corners Commercial Condominium, recorded in Official Records Book 4451, Page 132, Public Records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

Together with the following:

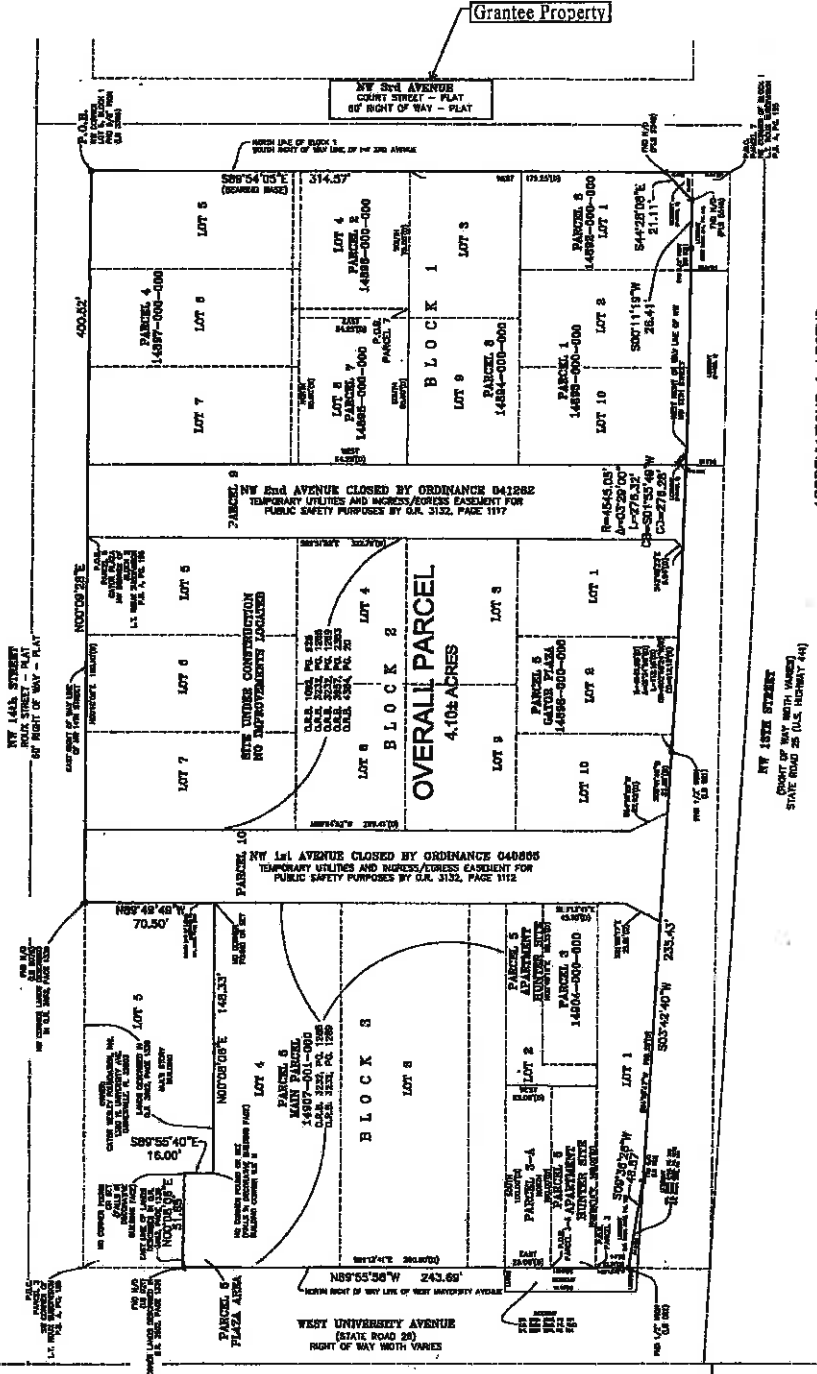
All rights and benefits under and pursuant to that certain Reciprocal Easement Agreement with Covenants to Share Costs for University Corners, dated August 12, 2016, recorded August 15, 2016 in Official Records Book 4453, Page 1065, of the Public Records of Alachua County, Florida.

EXHIBIT "B"

CONDOMINIUM EXHIBIT
BOOK 31, PAGE 82



UNIVERSITY CORNERS
COMMERCIAL CONDOMINIUM
SECTION 6, TOWNSHIP 10 SOUTH, RANGE 20 EAST
ALACHUA COUNTY, FLORIDA
OVERALL BOUNDARY EXHIBIT



ABBREVIATIONS & LEGEND

Table with 2 columns: Abbreviation and Description. Includes symbols for lot, parcel, block, street, easement, and other survey features.

SEE SHEET 2 OF 12 FOR
LEGAL DESCRIPTION

SHEET 3 OF 12

PREPARED BY
JOHNSTON'S
SURVEYING, INC.
1000 W. Highway 44
Alachua, Florida 32310-4400
(904) 887-3376 or (904) 887-4444

EXHIBIT "C"

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**

EXHIBIT "D"

THE STANDARD AT GAINESVILLE
EXHIBIT

