

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

Easement for Air Rights

This agreement (“Agreement”) is made the _____ day of _____, 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 13th 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 1140, Station 46
Gainesville, Florida 32627

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

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

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

By: _____
Ed Braddy, Mayor

Attest: _____
Kurt Lannon, Clerk of the City Commission

Signed, sealed and delivered
in the presence of:

Witness
Print name: _____

Witness
Print name: _____

State of Florida
County of Alachua

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.

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:

John L. Fleming, Managing Member

Witness
Print name: _____

Witness
Print name: _____

State of Florida
County of Alachua

The foregoing instrument was acknowledged before me this ____ day of _____, 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.

Notary Public



Exhibit "A"

TEL: (352) 331-1976
TEL: (352) 414-4021

132 NW 76th Drive, Gainesville, Florida 32607
101 NE 1st Avenue, Ocala, Florida 34470
WWW.CHW-INC.COM

planning.surveying.engineering.construction.

DESCRIPTION

DATE: March 31, 2015

CLIENT: TRIMARK PROPERTIES

PROJECT NO: 15-0096

DESCRIPTION FOR: HERITAGE OAKS OVERHANG ENCROACHMENT

THAT CERTAIN 1.70 FOOT WIDE ENCROACHMENT LYING SEVEN (7) FEET ABOVE GRADE AND EXTENDING VERTICALLY AN ADDITIONAL TEN (10) FEET, SITUATED WITHIN THE RIGHT OF WAY OF NORTHWEST 12TH STREET (30-FOOT WIDE RIGHT OF WAY), SITUATED IN SECTION 5, TOWNSHIP 10 SOUTH, RANGE 20, CITY OF GAINESVILLE, ALACHUA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 18, UNIVERSITY TERRACE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "A", PAGE 115 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, AND A POINT LYING ON THE WEST RIGHT OF WAY LINE OF SAID NORTHWEST 12TH STREET; THENCE SOUTH 0°00'55" WEST ALONG THE EAST LINE OF SAID LOT 18 AND SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 1.43 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID EAST LINE AND SAID WEST RIGHT OF WAY LINE, SOUTH 89°59'05" EAST, A DISTANCE OF 1.70 FEET; THENCE SOUTH 0°00'55" WEST, A DISTANCE OF 19.60 FEET; THENCE NORTH 89°59'05" WEST, A DISTANCE OF 1.70 FEET TO AFOREMENTIONED EAST LINE OF LOT 18, AND WEST RIGHT OF WAY LINE; THENCE NORTH 0°00'55" EAST ALONG SAID EAST LINE AND SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 19.60 FEET TO THE POINT OF BEGINNING.

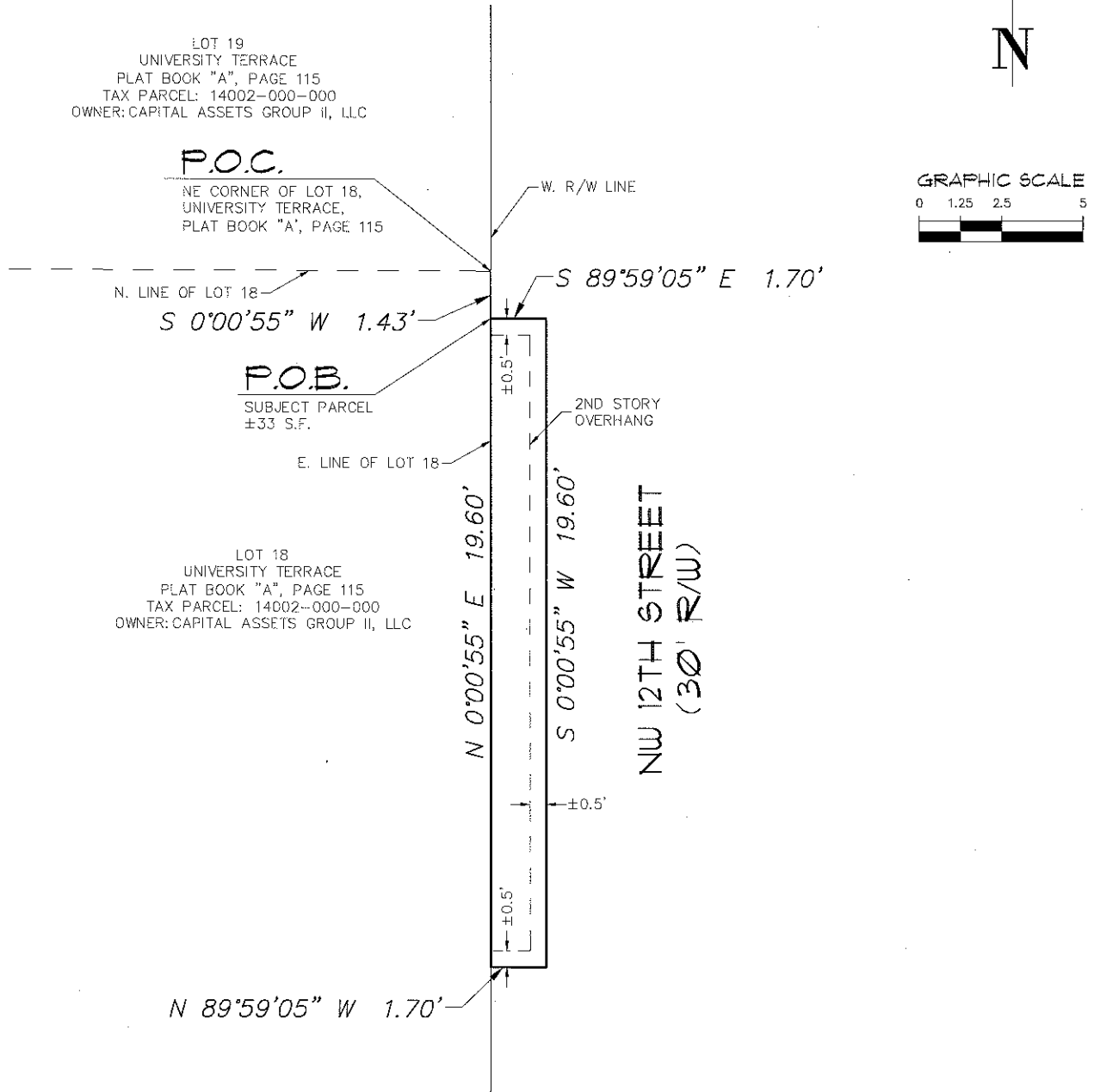
THE ABOVE DESCRIBED PARCEL CONTAINS 33 SQUARE FEET, MORE OR LESS.

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

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

SITUATED IN SECTION 5, TOWNSHIP 10 SOUTH, RANGE 20 EAST,
CITY OF GAINESVILLE, ALACHUA COUNTY, FLORIDA

SKETCH - NOT A BOUNDARY SURVEY



DESCRIPTION:
(SEE ATTACHED)

LEGEND:

S.F. = SQUARE FEET
P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
R/W = RIGHT OF WAY

SURVEYOR'S NOTES:

1.) BEARINGS SHOWN HEREON ARE BASED ON A VALUE OF N 00°00'55" E FOR THE W. R/W LINE OF NW 12TH STREET, AS SHOWN ON THE SURVEY PERFORMED BY TERRANCE J. BRANNEN, PROJECT NO. 01302-12, DATED 4/23/2012.

CERTIFIED TO:	TRIMARK PROPERTIES
---------------	--------------------

This map prepared by:
AARON H. HICKMAN 3/23/15
Certificate of Authorization No. L.B. 5075
NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

AARON H. HICKMAN 3/23/15
Professional Surveyor & Mapper Florida License No. 5791

DATE: 03/11/2014
TECHNICIAN: JTT
CHECKED BY: AHH
PROJECT NUMBER: 15-0096
SCALE: 1" = 5'
VERIFY SCALE BAR IS ONE HALF INCH ON ORIGINAL DRAWING
IF NOT ONE HALF INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

CHW
Professional Consultants

132 NW 76th Drive
Gainesville, Florida 32607
(352) 331-1876 / (352) 331-2476
www.chw-inc.com

est. 1988 **FLORIDA**
LB-5075