

Prepared By and Return To:
Jennifer S. Tobin, Esq.
Shutts & Bowen LLP
300 S. Orange Ave.
Suite 1000
Orlando, Florida 32801

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**SIDEWALK EASEMENT
(George Avenue)**

THIS SIDEWALK EASEMENT ("Agreement") is made and entered into this 22nd day of December 2016, by and between **MAITLAND MULTI FAMILY, LLC**, a Florida limited liability company, whose address is 1500 Cordova Road, Suite 300, Fort Lauderdale, Florida 33317 (together with its successors and assigns, "MMF"), and **CITY OF MAITLAND, FLORIDA**, a municipal corporation existing under the laws of the State of Florida, whose address is 1776 Independence Lane, Maitland, Florida 32751 (together with its successors and assigns, "City") (MMF and the City are sometimes referred to herein collectively as the "Parties").

WHEREAS, MMF is the fee simple owner of certain real property (the "MMF Property") more particularly described on Exhibit "A" attached hereto and incorporated herein located in the City of Maitland, Orange County, Florida

WHEREAS, the MMF Property is being developed by MMF as a mixed use project containing approximately 300 multi-family units and 45,000 s.f. of retail ("Project") in accordance with certain development approvals granted by the City. The Project fronts George Avenue.

WHEREAS, as a condition of those certain development approvals for the Project, the City has required that MMF construct a sidewalk along George Avenue in the area identified on Exhibit "B" attached hereto and incorporated herein ("Sidewalk Area"), and within the Sidewalk Area install and maintain certain sidewalk improvements, which have been approved by the City under separate plans on file with the City (the "Sidewalk Improvements").

WHEREAS, the development approvals also require that MMF grant an in-gross access easement for the benefit of the City and the public over the Sidewalk Area for pedestrian and bicycle ingress and egress over the Sidewalk Improvements to allow the City and the public to traverse and enjoy the Sidewalk Improvements while commuting along George Avenue.

WHEREAS, MMF desires to enter into this Agreement to provide to the City the access easement over and across the Sidewalk Area, subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the premises and respective covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Recitals and Defined Terms.** The foregoing recitals and defined terms are true and correct and by this reference are hereby incorporated into this Agreement.

2. **Grant of Sidewalk Easement.** MMF hereby grants, conveys, declares and establishes for the benefit, use and enjoyment of the City, and its successors and assigns, a perpetual, non-exclusive in-gross easement for bicycle and pedestrian ingress and egress over and across the Sidewalk Area ("Sidewalk Easement"). The purpose of the Sidewalk Easement is to permit the City and the public passage, use, and benefit of bicycle and pedestrian traffic over and across the Sidewalk Area for passage along George Avenue.

3. **Reservation of Rights.** MMF reserves to itself, successors, assigns, employees, contractors, licensees, guests and invitees the right to continue to use the Sidewalk Area for any uses and purposes which do not materially interfere with the use thereof by the City or the public in fulfilling the purposes for which the Sidewalk Easement is granted.

4. **Maintenance.** MMF, at MMF's sole cost and expense, shall be responsible for the maintenance, repairs, replacement and upkeep of the Sidewalk Area and the Sidewalk Improvements. In the event MMF does not maintain said Sidewalk Area and Sidewalk Improvements as required under this paragraph, when such has become a nuisance, the City shall have the right but not the obligation to access, maintain, repair, replace, and otherwise care for or cause to be cared for the Sidewalk Area and Sidewalk Improvements. In the event the City exercises this right, MMF shall be responsible to reimburse the City for the cost of maintenance, repair, replacement and care provided by the City and its agents, plus administrative costs and attorney fees incurred by or for the City. Said costs and fees shall be a lien or assessment upon the MMF Property. The City shall be held harmless from any liability if it makes any repairs, replacement, or otherwise cares for or causes to be cared for the Sidewalk Area and Sidewalk Improvements. Making such repairs or replacements does not create a continuing obligation on the part of the City to make further repairs or to maintain the MMF Property, Sidewalk Area, or Sidewalk Improvements.

5. **Termination.** This Agreement and the Sidewalk Easement may terminate when the City abandons the use of the Sidewalk Area for the purposes set forth in this Agreement. MMF may seek documentation of termination of the Sidewalk Easement and this Agreement from the City. MMF shall be permitted to record such documentation or instrument in the public records of Orange County, Florida.

6. **Indemnification.**

(a) **Indemnification by City.** The City shall indemnify and hold harmless MMF for the claims brought by third parties against MMF for property damage, bodily injury, and death caused by the negligence of the City or of the City's agents or employees. The City's liability to MMF under the preceding sentence shall not include punitive damages. Additionally, the City shall not be liable pursuant to this indemnity to pay any claims or judgments over the limits of §768.28(5), Florida Statutes.

(b) **Indemnification by MMF.** MMF shall indemnify and hold harmless the City for the claims brought by third parties against the City for property damage, bodily injury,

and death caused by the negligence of MMF or MMF's officers, agents, or employees arising out of or in any way connected with the Sidewalk Area or Sidewalk Improvements.

7. **Title to Property.** MMF has good and indefeasible fee simple title to and possession of the Sidewalk Area and has good and lawful right to grant this Easement.

8. **Covenants Run with the Land.** This Agreement, and the rights and interests created herein, shall be appurtenant to, and run with title to the MMF Property and are a burden on the MMF Property, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns in title.

9. **Joinder and Consent.** Mortgagees, if any, holding prior liens on the Sidewalk Area, shall execute a joinder and consent or non-disturbance agreement, to be recorded, which instrument subordinates the positions of the mortgagee(s) so that, in the event of foreclosure, sale, or conveyance, the mortgagee(s) would continue to recognize the easement rights of the City. MMF shall provide a copy of the recorded instrument to the City.

10. **General Provisions.** The parties further agree to the following general provisions:

(a) **Captions and Applicable Law.** The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify or be used to interpret or construe the meaning or intent of the parties as to any of the terms and provisions hereof. This Agreement shall be governed, enforced and construed in accordance with the laws of the State of Florida. Venue for any action arising out of this Agreement shall be Orange County, Florida. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

(b) **Legal Proceedings.** In the event that either party hereto hires an attorney to enforce any term of this Agreement, the party prevailing in said dispute, enforcement action or legal proceeding shall be entitled to recover reasonable attorneys', paralegals' and other professionals' fees (including those incurred on any re-hearing or appeal) and costs incurred incidental thereto from the party not prevailing in said legal proceedings.

(c) **Enforcement and Remedies.** If either party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting party shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to (i) bring an action for the recovery of damages in a court of competent jurisdiction, and/or (ii) bring an action for specific performance in a court of competent jurisdiction. However, no breach of this Agreement shall entitle any person to cancel, rescind or otherwise terminate this Agreement. The failure to enforce any of the terms or provisions of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

(d) **Entire Agreement, Modification or Termination.** This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof. The terms and provisions of this Agreement may be modified or terminated only by a written instrument signed by the parties hereto.

(e) **Construction.** Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

[Signature Pages and Exhibits Follow]

IN WITNESS WHEREOF, MMF and the. City have caused these presents to be signed in each respective party's name this _____ day of _____, 2016.

MAITLAND MULTI FAMILY, LLC,
a Florida limited liability company

By: 
Michael D. Baumann, its Manager

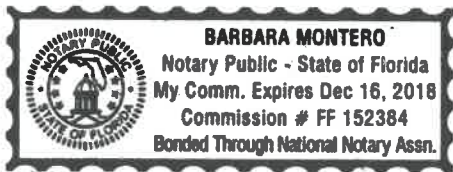
WITNESSES:



Print Name: Michael Fellner


Print Name: Greg Baumann

STATE OF Florida
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22 day of DECEMBER, 2016, by Michael D. Baumann, as the Manager of Maitland Multi Family, LLC, a Florida limited liability company, on behalf of said entity. Said person is personally known to me or produced _____ as identification.




Signature of Notary

Signed, sealed and delivered
in the presence of:

CITY OF MAITLAND, a Florida
municipal corporation

By: _____

Name: _____

A. Dale McDonald, Mayor

Print Name: _____

Print Name: _____

ATTEST:

Maria Waldrop, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of
_____. 20____, by A. Dale McDonald, as Mayor of the City of Maitland, a Florida municipality
corporation, who is personally known to me.

Signature of Notary Public, State of Florida

Print Name:

My Commission Expires

EXHIBIT A

MMF PROPERTY

Lot 3 and Lot 4 of UPTOWN MAITLAND, according to the Plat thereof as recorded in Plat Book 62, Pages 129-130, Public Records of Orange County, Florida

EXHIBIT B

SIDEWALK AREA

(SEE NEXT PAGE)

Drawing name: S:\TDM\J\ The Estates at Maitland\DWG-Land\01122016_City Services Easement_Aurakatch.dwg DEW desc. & sketch Sheet 1 Dec 27, 2016 11:15am by: tcamden

LEGAL DESCRIPTION:

A PORTION OF LOT 4, UPTOWN MAITLAND, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 62, PAGE 129 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LYING IN SECTION 25, TOWNSHIP 21 SOUTH, RANGE 29 EAST, CITY OF MAITLAND, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF AFORESAID LOT 4; THENCE N00°14'36"W, ALONG THE EAST RIGHT OF WAY LINE OF U.S. HIGHWAY 17-92 (A 106.00 FOOT WIDE RIGHT OF WAY ALSO KNOWN AS ORLANDO AVENUE), A DISTANCE OF 25.90 FEET; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, S89°50'27"E, A DISTANCE OF 10.47 FEET; THENCE S00°09'33"W, A DISTANCE OF 5.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 7.00 FEET, A CENTRAL ANGLE OF 90°10'40", A CHORD BEARING OF S44°55'48"E AND A CHORD DISTANCE OF 9.91 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 11.02 FEET TO THE POINT OF TANGENCY; THENCE N89°58'52"E, A DISTANCE OF 118.94 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 14.00 FEET, A CENTRAL ANGLE OF 35°32'02", A CHORD BEARING OF S72°15'08"E AND A CHORD DISTANCE OF 8.54 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 8.68 FEET TO THE END OF SAID CURVE; THENCE N89°36'49"E, A DISTANCE OF 316.83 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SYBELIA PARKWAY NORTH (RIGHT OF WAY WIDTH VARIES) PER PLAT OF AFOREMENTIONED UPTOWN MAITLAND; SAID POINT ALSO BEING A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 23.00 FEET, A CENTRAL ANGLE OF 35°23'10", A CHORD BEARING OF S25°41'51"W AND A CHORD DISTANCE OF 13.98 FEET; THENCE SOUTHWESTERLY ALONG SAID WEST RIGHT OF WAY LINE AND THE ARC OF SAID CURVE A DISTANCE OF 14.20 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF GEORGE AVENUE (RIGHT OF WAY WIDTH VARIES) AND THE END OF SAID CURVE; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, S89°53'44"W, ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 455.19 FEET TO THE POINT OF BEGINNING.

CONTAINING: 5,827 SQUARE FEET, MORE OR LESS.

SURVEY NOTES:

1. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE NORTH RIGHT OF WAY LINE OF GEORGE AVENUE, AS BEING S89°53'44"W.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, ADJOINERS OR OTHER INSTRUMENTS OF RECORD.
3. THIS SKETCH MEETS THE APPLICABLE "STANDARDS OF PRACTICE" AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J17.050-.052, FLORIDA ADMINISTRATIVE CODE.
4. THIS IS NOT A BOUNDARY SURVEY.

Thomas Camden 12/27/16
 THOMAS R. CAMDEN DATE
 PROFESSIONAL SURVEYOR & MAPPER
 LICENSE NUMBER LS 7078
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

SHEET 1 OF 2

(SEE SHEET 2 FOR SKETCH OF DESCRIPTION)

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SKETCH OF DESCRIPTION
-OF-
SIDEWALK EASEMENT

A PORTION OF LOT 4, UPTOWN MAITLAND, PLAT BOOK 62, PAGE 129, LYING IN SECTION 25, TOWNSHIP 21 SOUTH, RANGE 29 EAST

CITY OF MAITLAND, ORANGE COUNTY, FLORIDA



131 WEST KALEY STREET
ORLANDO, FLORIDA 32806
PHONE: 321.354.9826 FAX: 407.648.9104
WWW.DEWBERRY.COM

CERTIFICATE OF AUTHORIZATION No. LB 8011

PREPARED FOR:

BCOM REAL ESTATE FUND, LLC

DATE: 12/21/16
REV DATE:
SCALE 1" = 40'

PROJ: 50088759
DRAWN BY: TRC
CHECKED BY: TRC

Drawing name: S:\ITEM\Jr The Estates of Malinda(DWG-Land)\22016_City Services Easement_sursketch.dwg DEW desc. & sketch Sheet 2 Dec 27, 2016 1:16pm by: lcomden

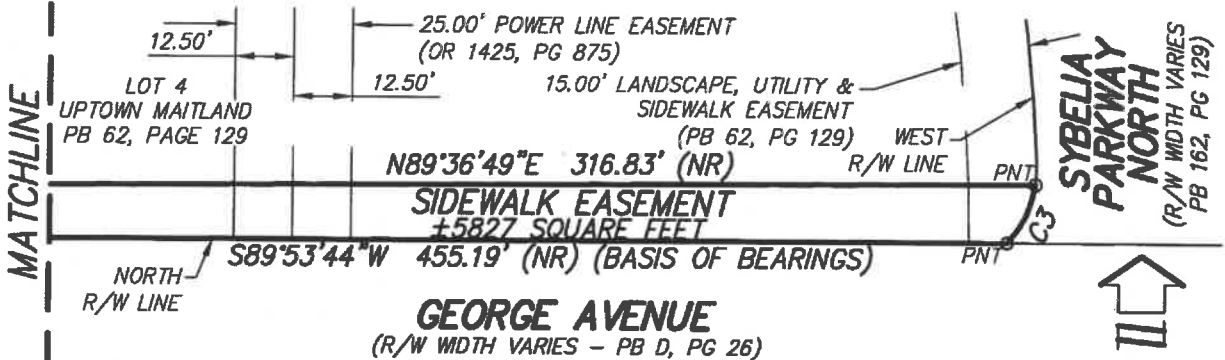
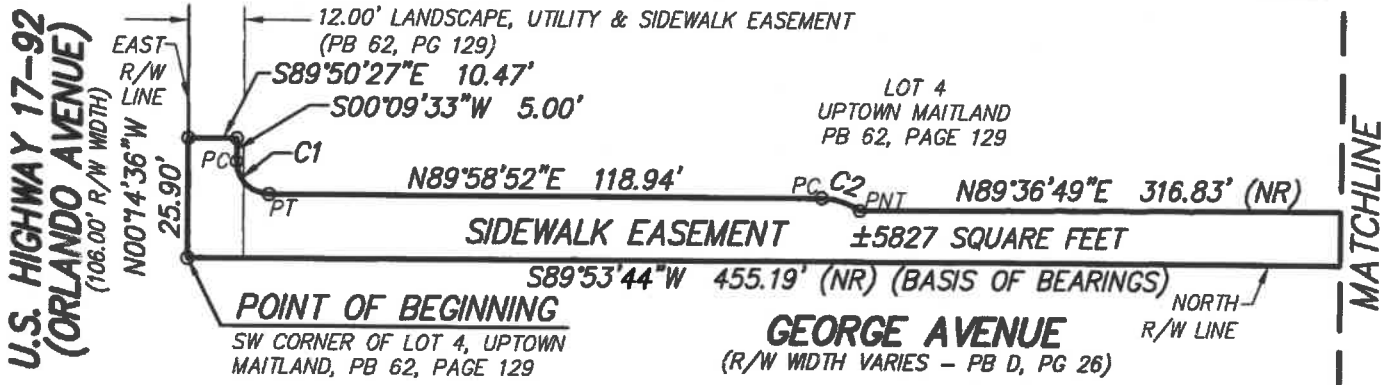


1 INCH = 40 FEET

LEGEND:

- LINE BREAK
- POC POINT ON A CURVE
- PC POINT OF CURVATURE
- PRC POINT OF REVERSE CURVATURE
- PT POINT OF TANGENCY
- R/W RIGHT OF WAY
- OR OFFICIAL RECORDS BOOK
- PG PAGE
- L LENGTH
- R RADIUS
- Δ CENTRAL ANGLE
- CB CHORD BEARING
- CH CHORD LENGTH
- TAN BRG TANGENT BEARING
- sf SQUARE FEET
- ac ACRES
- SEC SECTION

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C1	11.02'	7.00	90°10'40"	9.91'	S44°55'48"E
C2	8.68'	14.00	35°32'02"	8.54'	S72°15'08"E
C3	14.20'	23.00	35°23'10"	13.98'	S25°41'51"W



1 INCH = 40 FEET

SHEET 2 OF 2

(SEE SHEET 1 FOR DESCRIPTION OF SKETCH)

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SKETCH OF DESCRIPTION
—OF—
SIDEWALK EASEMENT

A PORTION OF LOT 4, UPTOWN MAITLAND, PLAT BOOK 62, PAGE 129, LYING IN SECTION 25, TOWNSHIP 21 SOUTH, RANGE 28 EAST

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CHECKED BY: TRC