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CITY OF JONESBORO  
300 South Church Street  
JONESBORO, AR 2401

The above space is reserved for Craighead County recording information.

## SIDEWALK EASEMENT AGREEMENT

### KNOW ALL PERSONS BY THESE PRESENTS:

**THIS SIDEWALK EASEMENT AGREEMENT** (the "Agreement") is executed and delivered by and between Tramontana Group I, LLC, a Delaware Limited Liability Company; 1666 North Avalon LLC, a Delaware Limited Liability Company; 4K's LLC, a Delaware Limited Liability Company and Martini-Pace, LLC, a Delaware Limited Liability Company, (hereinafter referred to individually and collectively as the "Grantors") and the City of Jonesboro, Arkansas, an Municipal Corporation of the State of Arkansas, (hereinafter referred to as "Grantee").

### RECITALS

A. Grantors are the owners of certain lands with improvements (the "Property") located within the city limits of the City of Jonesboro, Craighead County, Arkansas, commonly referred to as Caraway Plaza.

B. Pursuant to the terms of this Agreement, Grantors have agreed to grant to Grantee a perpetual non-exclusive ten foot (10') wide easement for the construction, operation, use and maintenance of a pedestrian sidewalk (the "Sidewalk") upon and across part of the Property as located in Craighead County, Arkansas, and being described in the attached Exhibit "A" (the "Easement Property").

C. Grantors and Grantee agree to execute and record this Agreement to confirm their respective rights and obligations with respect to the Sidewalk and the Easement Property.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors and Grantee covenant and agree as follows:

1. **Recitals Incorporated Herein.** The above recitals are incorporated in and made a part of this Agreement as fully as if set forth verbatim herein.

2. **Grant of Easement.** Subject to the terms and conditions as set forth in this Agreement, the Grantors do hereby dedicate, grant and convey unto the Grantee, and unto its successors and assigns, a perpetual non-exclusive ten foot (10') wide easement upon and across part of the Property, said easement being more particularly as described in Exhibit "A", which is attached hereto and incorporated herein. The use of the easement shall be for the sole purpose of constructing, maintaining, replacement and repair, at the sole cost of Grantee, a Sidewalk for the non-exclusive use by pedestrians in connection with the use of other sidewalks operated and maintained by Grantee on adjoining property. By execution of this Agreement and acceptance of the easement, Grantee accepts such dedication on behalf of its citizens and the public.

3. **Reservations by Grantors.** Grantors, its heirs, administrators, successors and assigns, reserve the absolute right to use the easement for any lawful purposes not inconsistent with or detrimental with the rights granted by this Agreement.

4. **Construction Phase of Sidewalk.** Grantee agrees that it will begin construction of the Sidewalk within twenty one (21) days from the date of the recording of this Agreement of public record and will complete construction within thirty (30) days thereof, subject to reasonable delays caused by adverse weather conditions, and that said Sidewalk shall be constructed in accordance with local, state and federal laws, including the Americans with Disabilities Act (ADA). Further, that during the construction phase, Grantee agrees that it will not close all the driveway entrances to the Property at the same time so that there is always available some public ingress and egress to the Property for motor vehicles from South Caraway Road.

Additionally, during the construction phase Grantee will be allowed to store, at its sole risk, its construction equipment in the parking lot area in front of the Fat City building.

5. **Maintenance, Repairs & Alterations.** Grantee shall, at its sole cost and expense, (i) promptly repair and restore any part of the Property disturbed by Grantee as a result of the exercise of its rights under this Agreement; (ii) shall consistently operate, maintain, replace and repair the Sidewalk in a good state of repair in accordance with all federal, state and local laws and applicable city ordinances; (iii) maintain the easement in a good clean condition; and (iv) be solely responsible for any drainage issues that may develop resulting from or relating to the Sidewalk or Grantee's use of the Easement Property.

Except under emergency circumstances, Grantee shall give a minimum of three (3) days prior notice to Grantors of its intent to enter into the Easement Property to perform any maintenance, repair, or other work allowed by this Agreement. Further, Grantee agrees that it shall not close all the driveway entrances to the Property during the performance of any such maintenance, repair, or other work so there is always available some public ingress and egress to the Property for motor vehicles from South Caraway Road. The parties agree that three (3) days prior notice is reasonable.

6. **Obstructions and Existing Improvements.** Other than the Sidewalk, Grantee shall not place, construct or allow obstructions, such as buildings, utilities, signs, fencing, shrubbery, trees or any other type of obstructions within the Easement Property without prior written approval of Grantors, which can be withheld in Grantors' sole discretion. Further, Grantee agrees that during the construction phase that Grantee will modify in a good state of repair the Grantors' watering system to provide sufficient water to existing landscaping, from time to time, and at no time shall Grantee interfere with any of the Grantors' existing entrance monuments or other improvements. Grantee shall also obtain any and all approvals required from holders of any existing easements or other rights related to the Easement Property.

7. **Other Obligations of Grantee.** Grantee additionally warrants and agrees to the following terms:

- (a) That at all times hereto, Grantee shall maintain in good repair the drainage pipe that runs parallel with the Property and the Sidewalk along South Caraway Road;
- (b) That upon execution of this Agreement Grantee will reimburse to Grantors their costs in the amount of Four Thousand Dollars and no/100 (\$4,000.00); and
- (c) That all costs and expense of the Sidewalk and the granting of the easement to Grantee, including but not limited to title work and recording fees, shall be paid by the Grantee.

8. **Indemnification.** Grantee shall indemnify, defend and hold Grantors, their heirs, administrators, officers, directors, members, tenants, employees, attorneys, agents, successors and assigns, harmless against any and all expense, claim, loss, causes of action or liability asserted or alleged by any third party against Grantors or otherwise incurred by Grantor arising out of or related to (a) any breach of the terms of this Agreement by Grantee, (b) the use of the Sidewalk by the public, (c) the construction and maintenance of the Sidewalk, or (d) otherwise related to the Sidewalk.

9. **Warranties of Grantors.** Grantors have been duly authorized by all necessary action from the members of their respective Limited Liability Company to execute and deliver this Agreement and to consummate the transactions contemplated hereby. Further, Grantors warrant to Grantee that, other than all matters of record or apparent, Grantors have not granted any interest in the Easement Property to any third parties.

10. **Warranties of Grantee.** Grantee warrants to Grantors that Grantee has been duly authorized by all necessary corporate and other action to execute and deliver this Agreement by the governing body of Grantee and to consummate the transactions contemplated hereby and that no other corporate proceedings of Grantee are necessary with respect thereto.

11. **Other Conditions.** This Agreement is conditioned upon the expressed consent of Grantors' lender, U.S. Bank National Association, as successor-in-interest to Bank of America, National Association, successor by merger to LaSalle Bank National Association, as Trustee for the Registered Holders of GMAC Commercial Mortgage Securities, Inc., Mortgage Pass-Through Certificates, Series 2005-C1.

12. **Default and Remedies.** If either party defaults under this Agreement and does not cure such default within ten (10) business days after receipt of written notice from the non-defaulting party, then in that event, the non-defaulting party shall have the right to exercise all remedies available at law or in equity, including the recovery of reasonable attorney fees and

costs. The failure of a party to exercise any of the rights herein granted herein shall not be construed as a waiver or abandonment thereof.

13. **Complete Agreement.** This Agreement contains the entire agreement between Grantors and Grantee with respect to the transactions contemplated herein and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings. Further, this Agreement may be amended or terminated at any time by mutual agreement only in writing executed by Grantors and Grantee.

14. **Assignments.** This Agreement and the rights, interests or obligations hereunder may not be assigned by Grantee, by operation of law or otherwise, without the prior written consent of the Grantors, which may be held in Grantors' sole discretion, however, Grantors may assign this Agreement. This Agreement shall inure to the benefit of and be binding upon the Grantors and the Grantee and their respective permitted heirs, administrators, successors and assigns.

15. **Binding Effect.** The covenants, agreements and conditions contained or expressed in this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

16. **Notices.** All notices and other communications required or permitted hereunder shall be in writing (including telefax, electronic mail or similar writing) and shall be given as follows:

(a) If to Grantors, to:

Martin Ensbury  
1334 Parkview Avenue #100  
Manhattan Beach, CA 90266  
[martin@mlcommercialproperties.com](mailto:martin@mlcommercialproperties.com)  
Fax: (310) 546-8755

(b) If to Grantee, to:

Attn: Mayor's Office  
Jonesboro City Hall  
300 South Church  
Jonesboro, Arkansas 72401  
Fax: (870) 933-4619

17. **Counterparts, Facsimile and Email.** This Agreement can be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or scanned, email transmission of any signed original document and/or retransmission of any signed facsimile or scanned, email transmission will be deemed the same as the delivery of the original.

18. **Governing Law.** This Agreement shall be governed by, and construed and enforced with, the laws of the state of Arkansas, without regard to conflicts of law doctrines. Further, the parties expressly agree that in the event of the commencement of any litigation to enforce the terms of this Agreement that the venue of the action shall be maintained in Craighead County, Arkansas.

IN WITNESS WHEREOF, Grantors and Grantee have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

"GRANTORS"

**TRAMONTANA GROUP I, LLC**

By: \_\_\_\_\_

Name: Louis Alaia

Title: Manager

Date: \_\_\_\_\_

**1666 NORTH AVALON LLC, a Delaware Limited Liability Company**

By: \_\_\_\_\_

Name: Martin Ensbury  
**1666 NORTH AVALON LLC,**  
a California Limited Liability Company

Title: Manager

Date: \_\_\_\_\_

**4K'S LLC**

By: \_\_\_\_\_

Name: Jack Rode

Title: Manager

Date: \_\_\_\_\_

**MARTINI-PACE, LLC**

By: \_\_\_\_\_

Name: Robert Martini

Title: Manager

Date: \_\_\_\_\_

**"GRANTEE"**

The City of Jonesboro, Arkansas, hereby accepts the above Sidewalk Easement Agreement for municipal purposes subject to the terms, conditions and obligations stated therein.

**THE CITY OF JONESBORO**

By: \_\_\_\_\_

Name: Harold Perrin

Title: Mayor

Date: \_\_\_\_\_

**ATTESTED TO:**

By: \_\_\_\_\_

Name: Donna Jackson

Title: City Clerk

**ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of April 2015 before me, the undersigned duly commissioned Notary Public, qualified and acting within and for said County and State, appeared in person the within named LOUIS ALAIA on behalf of **TRAMONTANA GROUP I, LLC**, a limited liability company, and who stated they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this \_\_\_\_ day April 2015.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

[SEAL]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of April 2015 before me, the undersigned duly commissioned Notary Public, qualified and acting within and for said County and State, appeared in person the within named MARTIN ENSBURY on behalf of **1666 NORTH AVALON LLC**, a limited liability company, and who stated they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this \_\_\_\_ day April 2015.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

[SEAL]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of April 2015 before me, the undersigned duly commissioned Notary Public, qualified and acting within and for said County and State, appeared in person the within named JACK RODE on behalf of **4K'S LLC**, a limited liability company, and who stated they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this \_\_\_\_ day April 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[SEAL]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of April 2015 before me, the undersigned duly commissioned Notary Public, qualified and acting within and for said County and State, appeared in person the within named ROBERT MARTINI on behalf of **MARTINI-PACE, LLC**, a limited liability company, and who stated they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this \_\_\_\_ day April 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[SEAL]

## EXHIBIT "A"

A part of the property described by Special Warranty Deed recorded in Book 727 Page 712 and lying in the Southeast Quarter of the Northeast Quarter of Section 20, Township 14 North, Range 4 East, Jonesboro, Craighead County, Arkansas, described as follows: A 10 foot wide tract of land west of and adjacent to the existing West right-of-way line of Caraway Road as shown on the ALTA Survey recorded in Book C Page 163 on April 11, 2005 in the office of the Circuit Clerk in Craighead County, Arkansas, also being more particularly described as follows: Commencing at the Southeast Corner of the Southeast Quarter of the Northeast Quarter of Section 20, Township 14 North, Range 4 East, Craighead County, Arkansas, thence N 89°31'00" W a distance of 222.72 feet; thence N 01°18'00" E a distance of 244.57 feet; thence S 88°13'00" E a distance of 153.71 feet to the point of beginning; thence N 08°06'14" E a distance of 127.80 feet; thence S 84°04'06" E a distance of 2.86 feet; thence N 01°18'00" E a distance of 956.33 feet; thence S 89°42'00" E a distance of 10.00 feet to the existing West right-of-way of Caraway Road; thence along said right-of-way as follows: S 01°18'00" W a distance of 957.31 feet; N 84°04'06" W a distance of 2.89 feet; S 08°06'14" W a distance of 127.07 feet; thence leaving said right-of-way N 88°13'00" W a distance of 10.06 feet to the point of beginning.