

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE CITY OF CLEMSON, SOUTH CAROLINA, AUTHORIZING THE GRANTING AND TRANSFER OF PERMANENT ENCROACHMENT EASEMENT RIGHTS TO CCSHP CLEMSON, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE ALL LEGAL DOCUMENTS NECESSARY FOR THE GRANT AND TRANSFER.

WHEREAS, pursuant to S.C. Code Ann. §5-7-40, the City of Clemson, South Carolina, is authorized to own and possess real property and real property rights within and without the City's corporate limits; and

WHEREAS, pursuant to S.C. Code Ann. §5-7-40, the City of Clemson, South Carolina, upon such terms and conditions as such Council may deem advisable, may sell, alien, convey, lease or otherwise dispose of real property and real property rights; and

WHEREAS, CCHSP is the owner of certain real property located within the corporate limits of the City of Clemson, County of Pickens, State of South Carolina, and more particularly described on **Exhibit A**, attached hereto (the "Property"); and

WHEREAS, portions of the Property are contiguous to certain real property owned by the City either in a proprietary capacity or in its capacity as a governmental manager of public rights of way, such real property being in, on, over, and under the improved and unimproved areas in and adjacent to Fendley Street, Earle Street, and Foy Creek Drive (collectively "City Property"); and

WHEREAS, CCSHP intends to construct on the Property, a mixed-use planned development, which is identified in the approved development ordinance of the City of Clemson (Ordinance No. CC-2015-23 dated June 29, 2015) as the "Earle Street Apartments Clemson Planned Development" (the "Development"); and

WHEREAS, CCSHP has requested that the City allow Development, when constructed, to be situated, in part, upon City Property (the "Encroachments") in the areas (the "Encroachment Areas") identified and described on the plans attached hereto as **Exhibit B**, and incorporated herein (collectively, the "Encroachment Areas Drawings"); and

WHEREAS, it appearing that the requested encroachments and easement rights are for the stated and actual purposes of facilitating the construction and subsequent use and operation of the Development, in the Encroachment Areas as identified on the Encroachment Areas Drawings; and

WHEREAS, it appearing that the foregoing encroachments present no physical threat to the safety of pedestrians, motor vehicle drivers and passengers, or others in lawful use(s) of the City Property; and

WHEREAS, it appearing that the requested encroachments are compatible in use and design with City Property and will not decrease the value of other properties in the vicinity of the Property; and

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Mayor and City Council of the City of Clemson, South Carolina in council meeting duly assembled and with a proper quorum:

Section 1. Council hereby authorizes the Mayor to execute all legal documents necessary to grant and transfer to CCSHP, an exclusive easement in, on, over, and under each of the Encroachment Areas for the purposes of facilitating the Development's construction and maintenance and all improvements attendant thereto, including without limitation the vertical and lateral support of the buildings and other improvements included in the Development, and the ingress and egress for pedestrian traffic in, upon, over and through the Property, and the use of the Property and the buildings and other improvements included in the Development as hereafter shall be constructed for their intended uses.

Section 2. In connection with the foregoing easements, Council further authorizes the Mayor to execute all legal documents necessary for granting and transferring unto CCSHP, its successors and assigns, for the benefit of the Property, a non-exclusive easement in, on, over and under the City Property allowing CCSHP and its agents to enter upon the City Property at any time and from time to time to maintain, repair and replace all or any portion of the buildings and other improvements included in the Development, or any part thereof, as may be deemed necessary in CCSHP's reasonable discretion.