

**OCCUPANCY AGREEMENT
FOR
CARETAKER AT GREENWOOD CEMETERY**

THIS OCCUPANCY AGREEMENT ("Occupancy Agreement") is made this 15th day of January, 2015 (the "Effective Date") by and between the CITY OF ORLANDO, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, herein referred to as the "City", and [REDACTED] herein collectively referred to as the "Caretaker".

WHEREAS, Greenwood Cemetery, located near E. Anderson Street and S. Hampton Avenue in Orlando, Florida (the "Cemetery"), is owned and operated by City for the purpose of providing a cemetery;

WHEREAS, as a part of the Cemetery there exists a caretaker residence, [REDACTED] ("Caretaker Residence"), to provide a residence for a caretaker for the Cemetery, as an added security measure;

WHEREAS, City desires to allow Caretaker to occupy the caretaker residence so there is a caretaker living adjacent to the Cemetery, who will provide services to City in exchange for use of the Premises; and

WHEREAS, Caretaker has agreed to continue to live in the Premises pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other valuation consideration, the receipt and sufficiency of which are hereby acknowledged, City and Caretaker agree as follows:

1. **OCCUPANCY AUTHORIZATION.** City does hereby authorize Caretaker to occupy the caretaker residence. (In this agreement references to "Premises" shall mean and refer solely to the platted lot on which the caretaker residence and related improvements are located, having a street address of [REDACTED])

2. **OCCUPANCY PERIOD.** The period of occupancy shall commence January 15, 2015 (the "Commencement Date") and shall end on December 31, 2016 (the "Expiration Date"). The period of occupancy may be renewed if mutually agreed to in writing by the parties for two (2) terms of two (2) years each, but there is no automatic right to a renewal. The City's Real Estate Division Manager is hereby authorized to execute any extensions or modifications of this agreement without further City Council approval. Notwithstanding the foregoing, either party may terminate this Occupancy Agreement, without cause, upon thirty (30) days prior written notice to the other party.

3. **CARETAKER DUTIES.** In exchange for the right to occupy the Premises, Caretaker agrees to perform the following tasks for City:

City Council Meeting: 1-12-15
Item: B7 Documentary: 150112-807

- (A) Provide security, by checking the Cemetery and buildings located therein between the hours of 5:00 pm and 7:00 pm. Caretaker shall be visibly present in the Cemetery during those hours Mondays through Fridays. Caretaker shall do likewise during the weekends at least once every 8 hours between the hours of 7:00 am and 7:00 pm.
- (B) Lock the gates to the Cemetery every evening at 7:00 pm, and unlock them before 7:00 am Saturdays and Sundays.
- (C) Immediately report any and all unusual activities occurring within the Cemetery to Greenwood Cemetery Manager at (407) 383-1105 or 407-246-2616 and, if appropriate, law enforcement authorities. If an emergency should occur, Caretaker shall also immediately contact the City's Real Estate Management Department (407-246-2653 or 407-246-2655).
- (D) To the extent Caretaker interacts with Cemetery visitors and members of the public, Caretaker shall do so in a polite and considerate manner.

Caretaker shall commence performance of the foregoing duties immediately after both parties have executed this Occupancy Agreement.

4. USE OF PREMISES. The Premises shall be used and occupied solely by Caretaker to be used exclusively for conducting related business activities of the Cemetery and as a residence; provided however, no part of the Premises shall be used at any time during the period of occupancy for the purpose of carrying on any other business, profession, or trade of any kind. Caretaker shall not allow any other person, other than Caretaker's immediate family or transient relatives and friends who are guests of Caretaker, to use or occupy the Premises without first obtaining City's written consent to such use. Caretaker shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

5. ASSIGNMENT AND SUB-LETTING. Caretaker shall not assign this Occupancy Agreement, or grant any license to use the Premises or any part thereof without the prior written consent of City. Consent by City to one such assignment or license shall not be deemed to be a consent to any subsequent assignment or license. An assignment or license without the prior written consent of City or an assignment by operation of law shall be absolutely null and void and shall, at City's option, terminate this Occupancy Agreement.

6. ALTERATIONS AND IMPROVEMENTS. Caretaker shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of City. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Caretaker shall, unless otherwise provided by written agreement between City and Caretaker, be and become the property of City and remain on the Premises at the expiration or earlier termination of this Occupancy Agreement.

7. **DAMAGE TO PREMISES.** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the negligence of Caretaker, this Occupancy Agreement shall terminate upon such occurrence, except for the purpose of enforcing rights that may have then accrued hereunder. Should a portion of the Premises thereby be rendered uninhabitable, City shall have the option of either repairing such injured or damaged portion or terminating this Occupancy Agreement. In the event that City exercises its right to repair such uninhabitable portion, such part so damaged shall be restored by City as speedily as practicable, and the Occupancy Agreement shall continue according to its terms. In the event of damage by fire or other casualty such that the Premise are uninhabitable, Caretaker's responsibility to perform services under **Section 3** above shall abate until the Premises is rebuilt or repaired.

8. **ANIMALS.** Caretaker shall not permit domestic or other animals on or about the Premises without the written consent of City's Real Estate Division Manager, which may be withheld for any or no reason.

9. **UTILITIES.** Caretaker shall be responsible for arranging and paying for all utility services required on the Premises. Caretaker will either maintain phone service at the Premises or "cell-phone contact" to be available as needed for assistance at the Cemetery.

10. **HAZARDOUS MATERIALS.** Caretaker shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company, and shall comply with all laws, ordinances, rules and orders of boards or other authorities affecting the Premises.

11. **OCCUPANT'S INSURANCE.** Caretaker shall procure and keep in force during the period of occupancy a liability insurance policy covering the Premises, and shall provide City with a certificate of insurance evidencing such coverage, prior to occupying the Premises at the time of each renewal.

12. **INDEMNIFICATION.** City shall not be liable for any damage or injury of or to Caretaker, Caretaker's family, guests, invitees, agents or employees or to any other person entering the Premises or any building that is a part of or lies upon the Premises, or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Caretaker hereby agrees to indemnify, defend and hold City, its elected and appointed officials, employees and agents, harmless from any and all claims or assertions of every kind and nature. This indemnification includes, but is not limited to, Caretaker's performance of duties as required by **Section 3** of this Occupancy Agreement and any damage or injury which may be incurred by Caretaker, Caretaker's family, guests, invitees, agents or employees or to any other person for damages or injuries that arise from any contact, attack or interaction from or with any animals, domestic or wild, whether such damage or injury occurs on the Premises or off, and Caretaker shall hold harmless City from any and all claims or assertions of every kind and nature for any damages or injury Caretaker attributes to any absence or failure of fencing that may be on or surrounding the Premises.

13. **DEFAULT.** If City determines that Caretaker is in default of this Occupancy Agreement, City shall provide Caretaker with a notice of default, and Caretaker shall have a limited number of days to cure the default unless otherwise excepted: (a) for the failure to perform and fulfill the requirements of Section 3 of this Occupancy Agreement concerning Caretaker's responsibilities regarding the Cemetery, Caretaker shall have three (3) days to cure; (b) for activities in contravention of this Occupancy Agreement (including but not limited to having or permitting unauthorized pets, guests, or vehicles; or failing to keep the Premises clean and sanitary), Caretaker shall have seven (7) days to cure. If Caretaker fails to cure the default within the required time frame, City may immediately terminate this Occupancy Agreement, and Caretaker shall immediately vacate the Premises and return the keys to City. However, if Caretaker's default is of a nature that Caretaker should not be given an opportunity to cure the default (including but not limited to destruction, damage, or misuse of City's property by intentional act or a subsequent or continued unreasonable disturbance), City may deliver a written notice to Caretaker specifying the default and City's intent to terminate this Occupancy Agreement. In such event, City may terminate this Occupancy Agreement, and Caretaker shall have seven (7) days from the date that the notice is delivered to vacate the Premises. In the event of termination, Caretaker shall pay City the sum of Twenty-five and No/100 Dollars (\$25.00) per day as rent until Caretaker vacates the Premises, starting from the date this Agreement is terminated. In addition, if this Occupancy Agreement is terminated pursuant to this paragraph, City may, at City's option, exercise any and all rights and remedies available to City at law or in equity.

14. **INSPECTION OF PREMISES.** City and City's agents shall have the right at all reasonable times during the period of occupancy and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon, and for the purpose of making any repairs, additions or alterations as may be deemed appropriate by City for the preservation of the Premises. City and its agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for rent" or "vacancy" signs on the Premises at any time within forty-five (45) days before the expiration of this Occupancy Agreement. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions that do not conform to this Occupancy Agreement or to any restrictions, rules or regulations affecting the Premises.

15. **CITY'S MAINTENANCE RESPONSIBILITIES.** City shall assume the responsibility for maintenance of the exterior of the Premises, including the roof of the Premises, and shall be responsible for maintaining said exterior in a satisfactory condition for the purposes for which said Premises may be occupied by Caretaker. City shall not be responsible for the lawn or any of the landscaping. Provided, however, that the provisions of this section do not apply to any damage caused by fire, windstorm or other acts of God which are specifically covered by the provisions of Section 7. Caretaker shall remain responsible for any maintenance required, because of Caretaker's negligence and/or misuse.

16. **CARETAKER'S MAINTENANCE RESPONSIBILITIES.** Caretaker shall maintain the interior of the Premises, including but not limited to the windows, in the same condition as upon the acceptance of the Premises by Caretaker, normal wear and tear excepted, and shall make any repairs or additions at his own expense necessary for the utilization of the

Premises for the purposes described above, and to pay all expenses incurred in such repairs promptly when the same become due and payable. Any repairs or additions so made shall become part of the structure and the property of City. Further, Caretaker shall at his own expense, maintain the fixtures in the house, and also the Premises in good clean condition and repair, and shall also effect all required repairs to the plumbing, wiring, heaters, furnace, electric and gas fixtures, and all appliances, whether damage is due to misuse, waste, neglect or not. Caretaker also agrees that no signs shall be placed upon the Premises and no painting, repairs or alterations shall be done without the written consent of City. Caretaker shall also maintain the lawn and all other landscaping on the Premises.

17. **CONDITION OF PREMISES.** Caretaker stipulates, represents and warrants that Caretaker has examined the Premises, and that they are at the time of this Occupancy Agreement in good order, repair, and in a safe, clean and habitable condition. Caretaker shall accept the Premises "AS IS".

18. **ABANDONMENT.** If at any time during the period of occupancy Caretaker abandons the Premises or any part thereof, City may, at City's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Caretaker for damages or for any payment of any kind whatever. If City's right of reentry is exercised following abandonment of the Premises by Caretaker, then City shall consider any personal property belonging to Caretaker and left on the Premises to also have been abandoned, in which case City may dispose of all such personal property in any manner City shall deem proper and City is hereby relieved of all liability for doing so. BY SIGNING THIS OCCUPANCY AGREEMENT, CARETAKER AGREES THAT UPON SURRENDER OR ABANDONMENT, CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF CARETAKER'S PERSONAL PROPERTY.

19. **CARETAKER'S HOLD OVER.** Any holding over by Caretaker after the expiration of the period of occupancy shall be treated as a tenancy at sufferance, the rent for which shall be determined by calculating what the fair rental rate would be based upon comparable properties within Orlando, Florida, multiplied by two, prorated on a daily basis. In that event the tenancy at sufferance shall otherwise be on the terms and conditions set forth in this Occupancy Agreement, so far as applicable.

20. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Caretaker shall surrender the Premises in as good a state and condition as they were at the commencement of this Occupancy Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.

21. **QUIET ENJOYMENT.** Caretaker, upon payment of all of the sums referred to herein as being payable by Caretaker and Caretaker's performance of all Caretaker's agreements contained herein and Caretaker's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.

22. **MILITARY AND EMPLOYMENT STATUS DISCLOSURE.** On the Effective Date of this Occupancy Agreement, Caretaker hereby represents and warrants that

Caretaker is neither in the military service of the United States of America nor an employee of City in any capacity other than as Caretaker. Caretaker further acknowledges that Caretaker may not retain a position as Caretaker and also obtain another employment position with the City, holding both positions at the same time.

23. **RADON NOTIFICATION.** Pursuant to Florida Statute 404.056(8), the following disclosure is made: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in the building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon gas that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit."

24. **NOTICES.** Whenever notice or demand is to be given, such notice or demand shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid:

To City: Real Estate Management
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Phone Nos. 407.246.2563 & 407.246.2655
Laurie.Botts@cityoforlando.net

To Caretaker:



25. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of either City or Caretaker.

26. **NON-WAIVER.** No indulgence, waiver, election or non-election by City under this Occupancy Agreement shall affect Caretaker's duties and liabilities hereunder.

27. **SEVERABILITY.** If any provision of this Occupancy Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Occupancy Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

28. **BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

29. **ENTIRE AGREEMENT.** This Occupancy Agreement constitutes the entire agreement between the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Occupancy Agreement shall be deemed to exist or to bind either party hereto.

30. **WAIVER OF JURY TRIAL.** CITY AND CARETAKER HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS OCCUPANCY AGREEMENT, SPECIFICALLY BUT NOT LIMITED TO, ANY ISSUES INVOLVING CARETAKER'S OCCUPANCY OF THE PREMISES.

IN WITNESS WHEREOF, the parties have executed this Occupancy Agreement for Caretaker at Greenwood Cemetery on the day and year first written above.


CITY OF ORLANDO, FLORIDA

By: 
Mayor / Pro Tem

Attest:

By: 
Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

January 30, 2015.

Assistant City Attorney
Orlando, Florida

[REDACTED]

WITNESSES as to both Caretakers:

1. Sign Name: R. Melillo

Print Name: R. Melillo

2. Sign Name: Togie McNeely

Print Name: [Signature]

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 31 day of December, 2015 by [REDACTED] who are personally known to me or who have produced (type of identification) DL as identification.

[Signature]
Notary Public: _____
My commission Expires: _____



Signature Page
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