

This instrument prepared by and after
recording return to:

Gregory D. Lee
Baker & Hostetler, LLP
200 S. Orange Ave, Suite 2300
Orlando, Florida 32801

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ACCESS AND MAINTENANCE EASEMENT AGREEMENT

THIS ACCESS AND MAINTENANCE EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____, 2017, by and between **CITY OF ORLANDO, FLORIDA**, a municipal corporation of the State of Florida (the "**City**"), whose mailing address is 400 South Orange Avenue, Orlando, Florida, 32801 and **THE ORLANDO UNION RESCUE MISSION**, a Florida corporation not for profit (the "**OURM**"), whose mailing address is 410 W Central Blvd, Orlando, Florida, 32801.

RECITALS:

A. City is the owner of the real property described on **Exhibit "A"** attached hereto and by this reference made a part hereof (hereinafter, the "**Property**").

B. The Property is approximately one (1) acre and is commonly known as Lake Notasulga located north of Arlington Street, west of John Young Parkway, south of Colonial Drive and east of Goldwyn Avenue.

C. The City recently acquired the Property and desires to restore it to a state where it could serve as a functioning drainage pond as well as an amenity for the neighboring residents.

D. OURM is the owner of the real property described on **Exhibit "B"** attached hereto and by this reference made a part hereof that lies directly north and contiguous to the Property (hereinafter the "**OURM Property**") and desires to assist the City with its efforts to restore and maintain the Property.

E. OURM recently purchased the OURM Property and intends to relocate and operate its men's facility on the OURM Property expanding on the services it provides that are available to greater Orlando community. As a result of this relocation, OURM would have the resources available to assist with the restoration and maintenance of the Property.

F. City desires to grant an access and maintenance easement to OURM and OURM desires to accept City's grant of the access and maintenance easement, all upon the terms and conditions more specifically set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises, the mutual

covenants of the parties contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and OURM intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Grant of Easement. City does hereby grant, dedicate, convey and assign to OURM, a perpetual, non-exclusive access and maintenance easement over, through and upon the Property, as and to the extent reasonably necessary to allow OURM to enter upon the Property for purposes of restoration and maintenance.

3. OURM Covenant. OURM hereby covenants and agrees it shall conduct all restoration and maintenance for the Property in a good workmanlike manner and shall coordinate such work with the City's Public Works Department.

4. Release and Discharge. City, its successors and assigns, does hereby release and forever discharge OURM from any and all claims, causes of action, costs, expenses and damages related to any activities of OURM involving the restoration and maintenance of the Property.

5. Indemnification. Subject to the provisions of Paragraph 4 above, each party hereto (and their respective successors and assigns) shall, at all times, save, defend and keep the other party free and harmless from any and all damage or liability occasioned by any act of negligence of the indemnifying party, or of any contractor, agent or employee of the indemnifying party, or arising out of or in connection with the exercise by such party of the rights granted pursuant to this Agreement, excepting, however, that no party shall be indemnified against loss or liability resulting from its own negligence or the negligence of its contractors, employees or agents, and also excepting, however, that nothing herein shall be construed as a waiver of the City's sovereign immunity.

6. Binding Effect. All terms and provisions of this Agreement are binding upon the parties hereto and their respective successors and assigns and all rights, privileges, benefits and burdens created hereunder are covenants running with the Property, binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

7. Term, Enforcement and Remedies.

a. This Agreement may be terminated by either party for cause after providing fourteen (14) days written notification to the other party of a breach of its covenants, obligations, promises or requirements set forth in this Agreement and after the breaching party fails to cure said breach or to undertake reasonable steps in good faith to cure said breach. This Agreement may be terminated by either party in the event that OURM should cease to occupy the OURM Property.

b. In the event either party breaches any of its covenants, obligations, promises or requirements set forth in this Agreement, the other party shall be entitled to pursue and enforce all remedies or rights specified in this Agreement, as well as any

remedies or rights that may otherwise be available at law and/or in equity.

c. 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. The parties acknowledge and agree that the pursuit by a party of any one remedy shall not operate as an election of remedies prohibiting the pursuit of other remedies established by this Agreement.

e. The parties acknowledge and agree that they have carefully considered and negotiated this Paragraph 7 concerning remedies upon possible breach or default and that in such negotiations each party has been represented by counsel of its choice.

8. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, whether suit be brought or not, and whether in settlement, in any declaratory action, in any bankruptcy case or proceeding, at trial or on appeal or at any rehearing.

9. 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.

10. Execution and Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

11. Governing Law/Venue. This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any action arising out of this Agreement shall be Orange County, Florida.

12. Notices. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall be (i) hand delivered, or (ii) sent by Federal Express or a comparable overnight mail service, or (iii) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, or (iv) transmitted by facsimile or telecopier, with a copy of such notice promptly delivered by one of the other approved methods specified herein, to City and OURM, at their respective addresses set forth below. Any notice delivered as aforesaid shall be deemed to have been given upon actual delivery of said notice at the appropriate address set forth below or upon refusal by the addressee to accept delivery of such notice. The

addressees and addresses for the purpose of this Paragraph 12 may be changed by giving notice of such change in compliance with this Paragraph 12. Unless and until such written notice is delivered, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

If to City: Real Estate Manager
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Attn: Laurie Botts
Telephone: (407) 246-2653
Facsimile: (407) 246-3129
Email: laurie.botts@cityoforlando.net

With a copy to: City Attorney's Office City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
Attn: Wesley Powell, Esq.
Telephone: (407) 246-3478
Facsimile: (407) 246-2854
Email: wesley.powell@cityoforlando.net

If to OURM: Orlando Union Rescue Mission
410 W Central Blvd.
Orlando, Florida, 32801
Attention: Freddy Clayton
Telephone: (407) 472-0631
Facsimile: (407) 425-7510
Email: fred.clayton@ourm.org

13. Paragraph Headings. The paragraph and sub-paragraph headings as herein used are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope of any section herein.

14. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

[REMAINDER INTENTIONALLY BLANK - SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, City and OURM have executed this Agreement and affixed their seals the day and year first above written.

"CITY"

CITY OF ORLANDO

By: _____
Buddy Dyer, Mayor of Orlando

ATTEST:

By: _____
Denise Aldridge, City Clerk

"OURM"

ORLANDO UNION RESCUE MISSION

Print Name: _____

Print Name: _____

By: _____

Name: _____

Its: _____

Date: _____

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of the Orlando Union Rescue Mission, on behalf of the organization. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Print Name: _____

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____