

Prepared By and Return To
Jennifer F. Cerasa
4365 Andromeda Loop North
Suite 360
Orlando, Florida 32816-0015

TEMPORARY NONEXCLUSIVE CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

THIS TEMPORARY NONEXCLUSIVE CONSTRUCTION EASEMENT AND ACCESS AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2017, by and between by and between the **UNIVERSITY OF CENTRAL FLORIDA** its Board of Trustees whose address is 4000 Central Florida Boulevard, Orlando, Florida 32816-0015 (the "**UCF**") in favor of the **CITY OF ORLANDO, FLORIDA**, a municipal corporation of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida 32801 ("**City**"). (UCF and City are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**").

WITNESSETH:

WHEREAS, UCF and the City previously entered into that certain Memorandum of Understanding UCF Downtown Orlando Campus dated February 8th, 2016 (the "**MOU**") which generally outlined each Parties obligations regarding the development of the UCF Downtown Orlando Campus; and

WHEREAS, Paragraph 12 of the MOU specifically outlines the City's obligation to modify existing storm water infrastructure to support the proposed development of the campus; and

WHEREAS, UCF subsequently entered into an Purchase and Sale Agreement dated April 24, 2017 with the City wherein UCF agreed to accept the donation of that certain parcels of real property located in Orange County, Florida, as more particularly described therein; and

WHEREAS, the City conveyed Site 1 / Lot 3 on May 8th via Special Warranty Deed, as recorded in the Public Records of Orange County, Florida, Document Number 20170261214 (the "**Property**"); and

WHEREAS, UCF is desirous to grant the City a Temporary Non Exclusive Construction and Access Easement over a portion of the Property, as more particularly described and depicted in Exhibit "A" (the "**Easement Area**") to allow the City to perform its obligations with respect to the modification of the existing storm water infrastructure as set forth in the MOU (the "**Work**"); and

WHEREAS, until such time as the Work is complete, UCF desires to grant to the City a temporary, nonexclusive construction and access easement on, upon, over, under, across and

through the Easement Area to the extent necessary to complete the necessary modifications to the storm water infrastructure Master Drainage System.

NOW, THEREFORE, for an in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do here by agree as follows:

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

2. **Grant of Temporary Construction Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee, its successors and assigns, a temporary, nonexclusive easement on, upon, over, under, across and through the Easement Area for access, ingress, egress and construction for purposes of completing the Work.

3. **Term of Easement.** Upon the earlier of (i) December 31, 2017, or (ii) completion of the Work, this Agreement shall automatically terminate and be extinguished and all rights in the easements granted by this Agreement shall immediately revert to UCF, its successors, transferees and assigns, without further action of the City or UCF being required. Upon terminations of this Agreement, as provided herein, and upon request by UCF, the City shall promptly execute and deliver to UCF a document in recordable form confirming termination of this Agreement and the easements herein.

4. **Insurance.** During the term of this Agreement, the City shall require any contractors performing work for City on the Easement Area, to maintain general liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted. Said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming UCF as additional insured, as its interests may appear, in a combined-single limit of not less than \$1,000,000.00 with respect to bodily injury or death and property damage. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by UCF. The City is self-insured and shall provide UCF with evidence of its self-insurance coverage.

5. **Soil and Water Management Plan.** The City recognizes that the Property is the subject of a Soil and Water Management Plan dated June 23, 2017, as prepared by Terracon Project No. H1177088A and acknowledges it has received a copy of same. The City agrees to abide by the Soil and Water Management Plan in connections with its Work and use of the Easement Area.

6. **Indemnity.** The City, to the extent expressly permitted in Florida Statutes 768.28, hereby agrees to defend, indemnify and hold harmless UCF, its officials, agents and employees from and against any and all claims, suits, judgments, demands, cost and expenses, including

attorneys' fees related to this Agreement, as well as those claims, suits, judgments, demands, cost and expenses that may have occurred in connection with the Work or use of the Easement Area prior to the execution of this Agreement, arising directly or indirectly out of or caused in whole or in part by any act or omission of the City, its contractors, agents and employees, excepting those acts or omissions arising out of the negligence or negligent omission or intentional misconduct of UCF, its designated agents, employees, consultants, representatives, contractors (and their subcontractors, employees and materialmen), licensees, guests, and invitees. The language contained in this section 6 is not intended as a waiver of the City's sovereign immunity under section 768.28, Florida Statutes.

7. **Rights and Obligations of UCF and City.** The Parties acknowledge and agree that any rights granted hereunder shall be exercised by the Parties only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto. The Parties covenant and agree that neither party shall discharge into or within the Property, any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permits, except in accordance with such laws, ordinances, rules, regulations and permits.

8. **No Public Dedication.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any public use whatsoever.

9. **Beneficiaries of Easement Rights.** The easements set forth in this Agreement shall be for the benefit and use of, the City, its successors and assigns, and City's agents, lessees, employees, consultants, representatives, contractors (and their subcontractors, employees and materialmen), licensees, and providers of emergency services.

10. **Amendment.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida.

11. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given (i) three (3) days after depositing with the United States Postal Service, postage prepaid, (ii) one day after depositing with a nationally recognized overnight courier service, or (iii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, E.S.T. or E.D.T., as applicable), to the address listed above or to such other address as either Party may from time to time designate by written notice in accordance with this paragraph.

12. **Use of Property.** It is acknowledged and agreed that the easement granted under this Agreement is not an exclusive easement and that UCF shall have the right to use and enjoy the Property in any manner not inconsistent with the easement rights created herein.

13. **Effective Date.** The Effective Date of the Agreement shall be the last day that this Agreement is signed by either Party.

14. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the relates to its Work or use of the Easement Area, subject to the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any proceeding brought hereunder shall be Orange County, Florida. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint ventures or render either of said parties liable for the debts or obligations of the other. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns. The rights, privileges and easements granted and conveyed hereunder shall be a burden upon the Property and exist for the benefit of Grantee, its successors and assigns.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Easement of the Effective Date.

UCF

Witnesses (two are required):

UNIVERSITY OF CENTRAL FLORIDA ITS
BOARD OF TRUSTEES

Printed name: _____

By: _____
Name: William F. Merck II
Title: Vice President for Administration and
Finance and Chief

Printed name: _____

Approved as to form and legality
For the use and reliance of the
UCF only

_____, 2017

Associate General Counsel

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____, of _____, who is/are personally known to me or who has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida

Print/Type Notary Name

Serial Number:
My Commission Expires:

CITY

Witnesses (two are required):

Printed name: _____

Printed name: _____

CITY OF ORLANDO, FLORIDA
a municipal corporation of the State of Florida

By: _____

Name: _____

Title: _____

Approved as to form and legality
For the use and reliance of the
City of Orlando only

_____, 2017

Assistant City Attorney

ATTEST:

City Clerk

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____, of _____, who is/are personally known to me or who has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida

Print/Type Notary Name

Serial Number:

My Commission Expires:

SKETCH & DESCRIPTION

EXHIBIT "A"

DESCRIPTION:

A PORTION OF LOT 3, CREATIVE VILLAGE, REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGES 19 AND 20 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 3, BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF W LIVINGSTON STREET; THENCE S89°44'30" E ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 730.40 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE S00°24'05"E, ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 120.13 FEET; THENCE DEPARTING SAID EAST LINE, N89°40'17"W A DISTANCE OF 100.00 FEET; THENCE S00°24'05"E, A DISTANCE OF 83.95 FEET; THENCE N89°40'17"W, A DISTANCE OF 632.75 FEET TO THE WEST LINE OF SAID LOT 3; THENCE N00°15'30"E, ALONG SAID WEST LINE, A DISTANCE OF 203.17 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3.23 ACRES, MORE OR LESS.

SURVEYORS NOTES:

1. This is not a boundary survey.
2. Bearings shown hereon are based on the South Right of Way line of W Livingston Street, being S89°44'30"E, assumed. All distances shown are in US Survey Feet.
3. This sketch was prepared without the benefit of a title insurance report. There may be other easements or documents affecting this property that a search of the public records will reveal.
4. Additions or deletions to this sketch is prohibited without written consent of the signing party.
5. Symbols shown hereon are not to scale and for informational purposes only.

I hereby certify that this sketch has been prepared under my direction and that this sketch has been prepared in accordance with the adopted "Standards of Practice" as required by Chapter 5J-17 Florida Administrative Code pursuant to Section 472.027, Florida State Statutes.

Richard D. Allen
Professional Surveyor and Mapper No. 6922
This survey is not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

SEE SHEET 2 FOR SKETCH



CITY OF ORLANDO

Survey Services Section
400 South Orange Avenue, 8th Floor
Orlando, Florida 32802
p. 407.246.3319 f. 407.246.2892

Project Number: 17-245

Requested By: W POWELL

Date of Survey: NA

Approved By: RDA

Drafted By: MER

Checked By: RDA

Date Drawn: 8/09/2017

Scale: 1" = NA

Sheet:

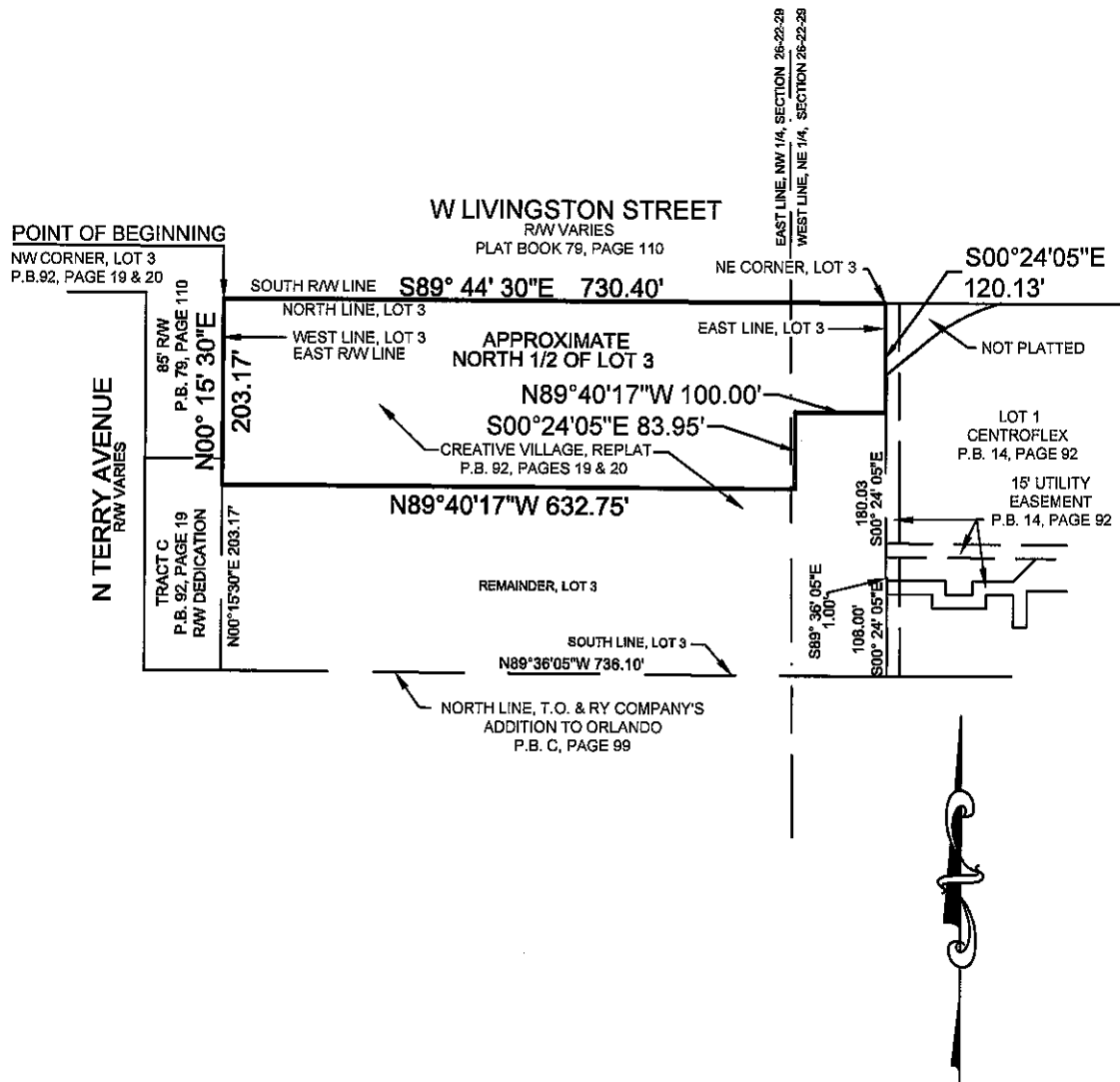
1

of

2

SKETCH & DESCRIPTION

EXHIBIT "A"



SEE SHEET 1 FOR DESCRIPTION & NOTES



CITY OF ORLANDO

Survey Services Section
400 South Orange Avenue, 8th Floor
Orlando, Florida 32802
p. 407.246.3319 f. 407.246.2892

Project Number: 17-245

Requested By:

Date of Survey: NA

Approved By: RDA

Drafted By: MER

Checked By: RDA

Date Drawn: 8/09/2017

Scale: 1" = 200'

Sheet:

2 of 2