

MERCY DRIVE COMMUNITY CENTER LEASE

THIS LEASE is made and entered into this _____ day of _____, 2018 (Effective Date), by and between ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida (COUNTY), and the CITY OF ORLANDO, FLORIDA, a municipal corporation existing under the laws of the State of Florida (CITY), hereinafter collectively referred to as the "Parties".

RECITALS

- A. Parties entered into a Mercy Drive Community Center Lease dated December 3, 1991, as amended by the First Amendment to Lease Agreement dated November 29, 2011, hereinafter collectively referred to as the "Original Lease," for the COUNTY's lease from the CITY of approximately 6.63 acres of land for the construction and operation of a social services facility by COUNTY named the Hal Marston Community Center (Facility); and
- B. Pursuant to the Original Lease, the COUNTY constructed and continues to own and operate the Facility on the real property described on **Exhibit "A"**, attached hereto, and incorporated herein, by reference, (Leased Premises); and
- C. The Original Lease expired on December 31, 2016, however, with CITY's permission, COUNTY remains in possession of the Leased Premises and shall pay all sums due or which may become due or result from COUNTY's use of the Leased Premises after the expiration date.
- D. COUNTY is not in default as to the terms and conditions of the Lease and the Parties desire to enter into this new lease (Lease) for the COUNTY'S continued operation of the Facility on the Leased Premises pursuant to the terms and conditions set forth herein; and
- E. The Facility is located adjacent to the CITY's Northwest Community Center (Center), and the Facility and Center will share parking.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the CITY hereby leases and demises the Leased Premises to the COUNTY, subject to the conditions hereinafter expressed.

- 1. **Recitals.** The above recitals are true and correct and are incorporated herein and form a material part of this Lease.
- 2. **Leased Premises.** City does hereby lease, let and demise unto COUNTY and COUNTY does hereby lease from City the Leased Premises being legally described and also shown and outlined on **Exhibit "A"** in its present "AS-IS" condition, which COUNTY acknowledges is in good condition and repair as of the Effective Date. The Leased Premises consist of approximately 1.23 acres, including the approximately nineteen thousand four hundred sixty-eight (19,468) square foot Facility thereon, all located at 3933 Mercy Drive, Suite B, Orlando, FL 32808.

3. **Term.** The initial term of this Lease shall be for a period of approximately ten (10) years, commencing on the Effective Date of the Lease and end on December 31, 2028 (Term). The Term may, upon mutual agreement of the parties, be extended for two (2) additional terms of five (5) years each. At the expiration of the Term of the Lease the Facility and all improvements located upon the Leased Premises shall become property of the CITY. The Manager of COUNTY's Real Estate Management Division is hereby authorized, on behalf of COUNTY, to execute written instruments acknowledging extensions of the term of this Lease, pursuant to this Section 3. The CITY's Real Estate Manager is hereby authorized, on behalf of CITY, to execute written instruments acknowledging extensions of the term of this Lease, pursuant to this Section 3.
4. **Rent.** As rental, the COUNTY agrees to pay the CITY the sum of One Dollar (\$1.00) per year, plus any applicable tax, due and payable upon execution of the Lease and annually thereafter. In addition to the rent above specified, the COUNTY shall obtain all permits and licenses required by law or ordinance and pay all fees, if any, therefore. Such rental shall be payable only from funds arising from sources other than ad valorem taxation.
5. **Utilities.** The COUNTY shall be solely responsible for all utility charges billed or charged against or for the Leased Premises or any improvements located thereon.
6. **Taxes.** The COUNTY shall pay any and all taxes or special assessments which may be levied or assessed upon the Leased Premises. The COUNTY shall pay any and all taxes on its own personal property and leasehold interest.
7. **Use of Leased Premises.** The COUNTY shall use the Leased Premises solely for the operation of the Facility and associated improvements (including, but not limited to, parking lots, driveway, fences, landscaped realty, and retention areas). The Leased Premises shall at all times conform to the Mercy Drive Community Center Design and Construction Agreement entered into by the Parties. The CITY shall have access to the Leased Premises during regular business hours of the Facility (except in the event of an emergency). The COUNTY shall own the Facility during the Term of the Lease. Upon the expiration or earlier termination of the Lease, the Facility and associated improvements located on the Leased Premises shall become the property of the CITY. COUNTY shall surrender possession of the Leased Premises to CITY in good condition, normal wear and tear excepted, failing which CITY may restore the Leased Premises to such condition and COUNTY shall pay the cost thereof to CITY on demand.
8. **Shared Parking.** The Facility and Center shall share parking so that employees and visitors of Center and Facility may utilize the parking spaces shown on **Exhibit "B"**, attached hereto, and incorporated herein, by reference.
9. **Amenities.** The COUNTY may use the Center's recreational amenities consisting of basketball courts, a tot lot and swimming pool, provided that such use is scheduled in advance and does not interfere with the operation of the Center and its programs.
10. **Compliance with Laws.** The COUNTY agrees that in its use of the Leased Premises, the COUNTY will comply with all present and future laws, ordinances and regulations of the

federal, state and local governments with jurisdiction and that it will not use or allow the Leased Premises to be used for any illegal, unsafe or immoral purpose.

11. **Maintenance.** The COUNTY shall be solely responsible for maintenance, repair and upkeep of the exterior and interior of the Facility. The CITY shall be solely responsible for maintenance, repair and upkeep of the Center. The Grounds upon which the Facility and the Center are comprised of 16.36 acres, which will be maintained by the CITY. The Grounds are defined as all areas, excluding buildings, which rest within the 16 plus acre parcel and include but are not limited to the parking lots, athletic fields, retention areas, landscaping, security lighting for lots and Grounds, pool/pool house, tot lot, etc. (Grounds).

The CITY shall pay all maintenance costs for the Grounds, and the COUNTY shall reimburse the CITY for a portion of such costs as follows:

- A. The COUNTY shall reimburse the CITY for all maintenance costs relative to the Leased Premises and Grounds. These costs will be invoiced to the COUNTY on a quarterly basis for reimbursement to the CITY. The percentage of reimbursement will be 40.5% of the total maintenance costs for the Grounds.
 - B. The CITY shall hold harmless and indemnify the COUNTY from and against any and all liability, claims, demands, expenses, fees, fines, penalties and costs (including attorney's fees and attorney's fees on appeal) arising out of, or resulting from the negligent performance or intentional misconduct of the CITY pursuant to its maintenance obligations herein.
12. **Improvements.** The COUNTY has, prior to the Effective Date, made improvements to the Leased Premises in accordance with the Master Plan developed by Architect's Design Group and in conformance with the Mercy Drive Community Center Design and Construction Agreement between the parties. Any other improvements desired to be made by the COUNTY shall not be made without the prior written consent of the CITY; provided, however, that: (i) such consent shall not be unreasonably withheld, conditioned, or delayed; and (ii) the CITY hereby consents to the COUNTY's planned re-roofing of the Facility, information on which has been provided by the COUNTY to the CITY prior to the Effective Date. All improvements made shall be in conformance with the applicable building and fire safety codes. The COUNTY shall comply with §255.05 Florida Statutes for the construction and repair of all improvements. The COUNTY shall not allow any lien or claim of lien to be filed against the Leased Premises. All improvements erected or placed on the Leased Premises shall remain thereon and shall not be removed therefrom. At the expiration or termination of this Lease, all such improvements shall be the property of the CITY.
 13. **Fixtures and Personal Property.** The COUNTY, at its expense, may furnish the Facility with the fixtures and personal property necessary or convenient for the operation of the Facility. In addition, the COUNTY may furnish the tot lot with the fixtures and personal property necessary or convenient for the operation of the tot lot. At the expiration or termination of this Lease, the COUNTY may only remove its personal property from the

Leased Premises and tot lot, and all fixtures shall become the property of the CITY.

14. **Quiet Enjoyment.** Subject to the conditions stated in the Lease, the CITY covenants that the COUNTY shall have the right to the quiet and peaceable enjoyment of the Leased Premises, and that the CITY shall not disturb, interfere or abridge such right in any way.
15. **Non-Discrimination.** The COUNTY agrees that it shall not in the use of the Leased Premises discriminate against any person because of race, color, creed, sex, national origin, age or disability.
16. **Indemnity.** The COUNTY shall indemnify and hold harmless the CITY from and against any and all liability, claims, demands, expenses, fees, fines, penalties and costs (including attorneys' fees and attorneys' fees on appeal) arising out of, resulting from or in any way connected with the use and occupation of the Leased Premises (with the exception of the basketball courts) by the COUNTY.
17. **Insurance.** The COUNTY shall be solely responsible for the insurance costs for protecting the Facility and related improvements and it shall procure fire/hazard insurance in sufficient amounts to fully cover the replacement of the Facility and related improvements. The COUNTY shall procure liability insurance or maintain a self-insurance program with sufficient protective coverage for loss or damage from personal injury, bodily injury, wrongful death and property damage occurring on or about the Leased Premises, and the COUNTY's use of the parking lots and recreational amenities located outside the Leased Premises.
18. **Default.** In any of the following events, the CITY, at any time hereafter, shall have the right, at the CITY's election, immediately to terminate this Lease:
 - a. Violation of covenant: In the event the COUNTY shall fail to keep and perform or shall violate the terms, covenants and conditions of this Lease, and the COUNTY shall not have cured or corrected such failure or violation within thirty (30) days after written notice thereof shall have been given to the COUNTY (except that the COUNTY shall have such additional time to cure or correct such failure or violation if such failure or violation cannot reasonably be cured or corrected within thirty (30) days).
 - b. Abandonment: In the event the COUNTY shall vacate or abandon the Leased Premises or shall permit the same to remain vacant or unoccupied without the consent of the CITY first sought and obtained.
19. **Termination.** This Lease may be terminated at any time by mutual written consent of the Parties. This Lease may be further terminated as set forth herein. Upon any such termination, COUNTY shall, within fifteen (15) calendar days, surrender possession of the Premises to CITY and remove all of COUNTY's effects therefrom.
20. **Repossession.** Upon the occurrence of any or more of the events of default specified in Section 18 hereof, the COUNTY's right to possession of the Leased Premises shall terminate and the COUNTY shall surrender possession thereof immediately. In such

event, the COUNTY hereby grants to the CITY full and free license to enter into and upon the Leased Premises, or any part thereof, to take possession thereof with or without process of law, and to expel and remove the COUNTY or any other person who may be occupying the Leased Premises, or any part thereof, and the CITY may use such force in and about expelling and removing the COUNTY and said other persons as may reasonably be necessary and in accordance with applicable Florida Statutes; and the CITY may repossess itself of the said premises as of its former estate, but said entry of the Leased Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue hereof, nor a waiver of any covenant, agreement or promise in this Lease contained, to be performed by the COUNTY. The COUNTY shall make no claim of any kind against the CITY, its agents and representatives by reason of such termination or any act incident thereto, so long as said action does not violate state law.

The CITY may, if it so elects, pursue any other remedies provided by law for the breach of this Lease or any of its terms, covenants, conditions or stipulations. No right or remedy herein conferred upon or reserved to the CITY or the COUNTY is intended to be exclusive of any right or remedy, and each and every right and remedy given hereunder, or now or hereafter existing at law or at equity or by statute. Any and all property which may be removed from the Leased Premises by the CITY, pursuant to the provisions hereof or of law, may be handled, removed or stored by the CITY at the sole risk, cost and expense of the COUNTY, and the CITY shall in no event be responsible for the value, preservation or safekeeping thereof. (The COUNTY shall pay to the CITY upon demand any and all expenses incurred in the removal of said property and all storage charges against such property so long as the same shall be in the CITY's possession or control.)

The COUNTY shall allow the CITY, its officers, agents or employees free access to the Leased Premises for the purpose of examining the same to ascertain if they are in a safe, sanitary and slightly condition and good repair, to make repairs, renewals or restorations to the extent required or permitted to be made by the CITY under other sections of this Lease and near the end of the term hereof to exhibit the same to prospective tenants.

21. **Eminent Domain.** In the event of a total or substantial taking of the Leased Premises, any condemnation award shall be apportioned and both parties shall be released from the Lease. A substantial taking shall be defined as any taking which renders the Leased Premises unsuitable for the COUNTY'S uses existing at the time of the taking. In the event of a partial taking which leaves enough property for which the COUNTY may continue its use, then the condemnation award shall be apportioned and the Lease shall continue to be in effect.
22. **Assignment.** No assignment of this Lease or the COUNTY's rights hereunder, in whole or in part, shall be effective without the prior written consent of the CITY, and any purported assignment shall be void and without effect unless consented to in writing by the CITY. No sublease by the COUNTY of the Leased Premises, in whole or in part, shall be effective without the prior written consent of the CITY.

23. **Notice.** In every case where, under the provisions of this Lease, it shall be necessary or desirable for the COUNTY to give to or serve upon the CITY any notice or demand, it shall be sufficient to send a written or printed copy of said notice or demand by hand-delivery or United States mail, first class postage prepaid, addressed as follows:

If to CITY: City of Orlando, Florida
Attention: Real Estate Manager
400 South Orange Avenue
Orlando, Florida 32801
Phone: 407-246-2653
Fax: 407-246-3129
Email: Laurie.Botts@cityoforlando.net

with copy to: Families Parks & Recreation
Attention: Director
595 N Primrose Drive
Orlando, Florida 32803
Phone: 407-246-4320

If to COUNTY: Orange County, Florida
Attention: County Administrator
201 S. Rosalind Avenue, 5th Floor
Orlando, FL 32801

with copy to: Orange County, Florida
County Attorney's Office
Attn: County Attorney
201 South Rosalind Avenue
3rd Floor
Orlando, Florida 32801

with copy to: Orange County, Florida
Real Estate Management Division
Attn: Manager
400 East South Street
5th Floor
Orlando, Florida 32801

The Manager of COUNTY's Real Estate Management Division is hereby authorized, on behalf of COUNTY, to furnish any notice from COUNTY required or allowed under this Lease, pursuant to this Section 23.

24. **Entire Agreement.** This Lease constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements.
25. **Severability.** If any sentence, phrase, paragraph, provision or portion of this Lease is for

any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portion hereto.

26. **Controlling Laws:**

A. This Lease and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted.

B. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Lease, or any breach hereof, shall be Orange County, Florida.

27. **Force Majeure.** The parties shall use reasonable diligence to ultimately fulfill the intent of this Lease but shall not be liable to each other, or their successors or assigns, for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract, or otherwise for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to, Acts of God, or of the public enemy, acts of other government (including regulatory entities or court) in its sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, or failure or breakdown of transmission or other facilities.

28. **Amendments:** This Lease may be amended only by written instrument upon mutual consent of both parties.

29. **Limitations on Governmental Liability.** Nothing in this Lease shall be deemed a waiver of immunity limits of liability of either the COUNTY or the CITY beyond any statutory limited waiver of immunity or limits of liability contained in Section 768.28, Florida Statutes, as amended, or any other statute. Nothing in this Lease shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

[signature pages and exhibits follow]

IN WITNESS WHEREOF, the CITY and COUNTY have executed this Mercy Drive Community Center Lease on the day and year first written above.

CITY OF ORLANDO, FLORIDA

Mayor/Pro Tem

Print Name: _____

ATTEST:

Denise Aldridge, City Clerk

(SEAL)

APPROVED AS TO FORM AND LEGALITY
For the use and reliance of the City of Orlando,
Florida Only

_____, 2018.

Assistant City Attorney

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Date: _____

EXHIBIT A LEASED PREMISES

SKETCH OF DESCRIPTION

DESCRIPTION

PART OF LOT 1, MERCY DRIVE COMMUNITY CENTER ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 30, PAGES 98 & 99 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA,

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PLAT, BEING THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF MERCY DRIVE AND THE NORTH RIGHT OF WAY LINE OF W.D. JUDGE ROAD; THENCE N89°54'49"E ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 889.39 FEET FOR THE **POINT OF BEGINNING**; THENCE DEPARTING SAID RIGHT OF WAY LINE N00°17'04"W, A DISTANCE OF 289.16 FEET; THENCE N89°54'49"E, A DISTANCE OF 33.17 FEET; THENCE N43°52'40"E, A DISTANCE OF 22.90 FEET; THENCE N89°54'49"E, A DISTANCE OF 128.87 FEET; THENCE S00°17'04"E, A DISTANCE OF 305.64 FEET TO THE AFORESAID NORTH RIGHT OF WAY LINE OF W.D. JUDGE ROAD; THENCE S89°54'49"W ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 178.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 53,726 SQUARE FEET, 1.23 ACRES MORE OR LESS

SURVEYORS NOTES:

1. This is not a boundary survey.
2. Bearings shown hereon are based on the North Right of Way line of W D JUDGE ROAD, being N89°54'49"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 51-17 Florida Administrative Code pursuant to Section 472.027 Florida State Statutes.



Marcia E. Russell

Professional Surveyor and Mapper No. 6499

This sketch 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

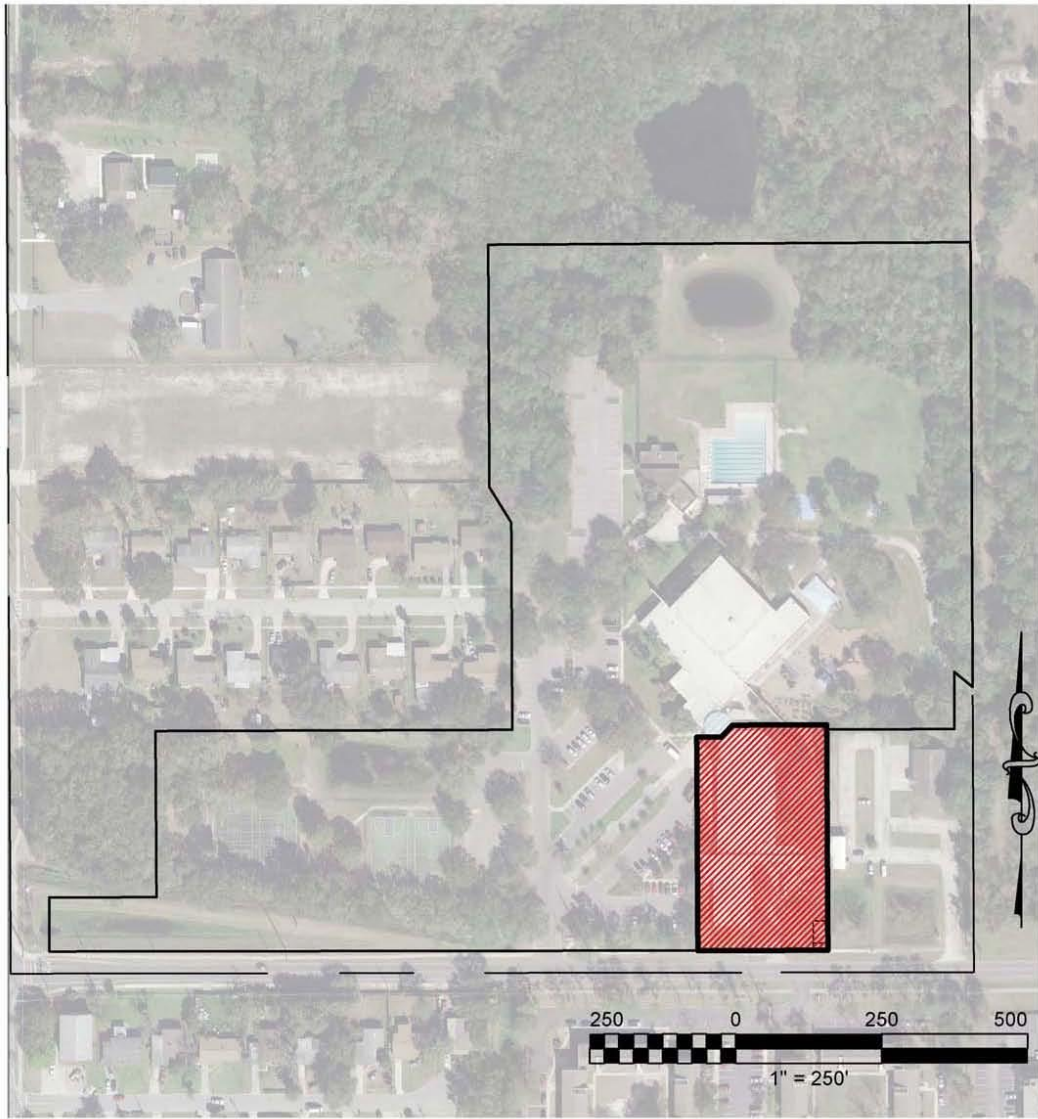
Project Number: 17-073	Drafted By: MER
Requested By: T MCNEALY	Checked By: RDA
Date of Survey: NA	Date Drawn: 6/05/2017
Approved By: RDA	Scale: 1" = NA

Sheet:
1 of 2

N:\GIS\EngSurvey\722\Marcia R\PROJECTS\17-052 JUDGE ROAD FOR TONIE\17-073 JUDGE ROAD.dwg 6/5/2017 Marcia E Russell

EXHIBIT A LEASED PREMISES

Exhibit A



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: ##-###

Requested By:

Date of Survey:

Approved By: RDA

Drafted By:

Checked By:

Date Drawn:

Scale: 1" =

Sheet:

1

of

1



LEASED PREMISES

**EXHIBIT B
SHARED PARKING**

