



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: March 27, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *PS*
Real Estate Management Division

FROM: Alex Feinman, Leasing Program Manager *AF*
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Orange County, Florida and South Orlando Rowing Association, Inc. Lease Agreement and delegation of authority to the Real Estate Management Division to exercise renewal options required or allowed by the lease, as needed

PROJECT: Moss Park Rowing Lease – South Orlando Rowing Association
12901 Moss Park Road, Orlando, Florida 32832
Lease File #5076

District 4

PURPOSE: To continue to provide Orange County residents and students the opportunity to participate in the sport of rowing.

ITEM: Lease Agreement
Revenue: None
Size: 21,780 square feet
Term: 5 years
Options: Three, 5-year renewals

REVENUE: Account No.: 1050-068-1821-4725

APPROVALS: Real Estate Management Division
County Attorney's Office
Parks and Recreation Division
Risk Management Division

REMARKS: The County currently leases space at Moss Park to the South Orlando Rowing Association, Inc. (SORA). This Lease Agreement will provide for SORA's continued use of a portion of Moss Park for storage of their boats and rowing equipment and parking for their staff and students, so that SORA can continue to provide Orange County residents and students the opportunity to participate in the sport of rowing. SORA is also allowed shared, non-exclusive use of certain other park amenities.

The initial term of this Lease Agreement will commence upon approval by the Board and terminate five years thereafter. The lease term may be extended for three additional terms of five years each at the County's discretion.

~~APPROVED~~
~~BY ORANGE COUNTY BOARD~~
~~OF COUNTY COMMISSIONERS~~
APR 09 2019

ORANGE COUNTY, FLORIDA

AND

SOUTH ORLANDO ROWING ASSOCIATION, INC.

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of the last date executed below (the “**Effective Date**”), by and between Orange County, a charter county and political subdivision of the State of Florida, (“**Lessor**”) and South Orlando Rowing Association, Inc., a Florida non-profit corporation (“**Lessee**”).

WHEREAS, Lessor is the owner of certain property known as Moss Park (the “**Park**”); and

WHEREAS, the Lessee wishes to provide recreational opportunities to the community by allowing use of boat storage facilities at Moss Park in order to provide Orange County residents and schools with the opportunity and ability to participate in the sport of rowing; and

WHEREAS, Lessor continues to operate the Park; and

WHEREAS, Lessor previously entered into a lease agreement (the “**Lease**”) for recreation facilities with Lessee which was approved on February 7, 2012 by the Orange County Board of County Commissioners (“**BCC**”); and

WHEREAS, on January 11, 2013, Lessor approved Lessee’s request to exercise the first of two renewal options to extend the original Lease. The term of the first renewal commenced on February 7, 2013 and expired on February 6, 2014; and

WHEREAS, Lessee has been in possession of the premises with no active lease since February 6, 2014; and

WHEREAS, Lessee, though not under express lease agreement with the Lessor, has to date been operating under the terms and conditions of the Lease though expired; and

WHEREAS, Lessee desires a long-term lease agreement.

WITNESSETH:

1. **Leased Premises.** Lessor, in consideration of the payments to it by the Lessee of the rents herein contained, does hereby lease to the Lessee a portion of the property identified on the diagram attached hereto and incorporated herein by reference as Exhibit "A" (“**Premises**”) as laid out in the attachment (a) land survey. While this Lease Agreement (“**Agreement**”) remains in effect, Lessee is also hereby granted permission to use the

following facilities ("**Amenities**") within the Park for the Intended Use, within the limitations set forth:

- a) The roadways within the Park for ingress and egress to the Premises;
- b) The parking area for Lessee parking needs in the area identified in Exhibit "A" (Lessee for and on behalf of itself and all others present in the Park for events held by Lessee, agrees to park solely in the identified parking area);
- c) The area also identified in Exhibit "A" for the location of its storage unit, water access with surrounding areas, and boat dock (the "Facility"), which shall be determined and delineated by Lessor survey within one year of the Effective Date. Such survey will be at Lessor's expense.

Lessee understands the Lessor's prior obligations to public use and existing partnerships. Lessee further understands that it enjoys no rights or entitlements which may infringe upon these or any other water sport activities. No improvements by Lessee may be erected upon the roadways and parking areas (or anywhere else within the Park and/or the Premises, as provided in Section 10(C) below) without prior written approval of the Manager of the Orange County Parks and Recreation Division (the "**Division**") and the BCC. No overnight parking by Lessee, its members or guests, shall be permitted without the prior written consent of the Lessor's Division's Manager.

2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing on the Effective Date, and terminating on the fifth (5th) anniversary of the Effective Date. Thereafter, this Agreement may be renewed for up to three (3) additional and consecutive terms of five (5) years each. Said renewal shall be on the same or substantially the same terms and conditions of this Agreement. Lessor's Real Estate Management Division, acting through its Manager, is authorized to exercise the Renewal Option on behalf of the Lessor.
3. **Communication.** Lessee's President shall be the official designated by Lessee to receive notices or communication from the Lessor. All communication by the Lessee with the Lessor must be made through the Lessee's President as provided in the Leadership Schedule listing, which shall be provided to Lessor every October 1. Communication, information or requests or notices from Lessor and Lessee must be made in writing to the Lessor's Division Manager and to the notice address of Lessee as contained in Section 28. On October 1 of each year Lessee will provide Lessor with a leadership schedule listing and a contact list indicating employees, authorities, directors and emergency contacts for Lessee.
4. **Rent.** Lessee shall pay to Lessor in lawful money of the United States of America,

monthly, all fees as prescribed by the Orange County Fee Directory. During weekday, school year operations, the use of one covered pavilion will be provided by Lessor at no charge. Unless otherwise directed, such pavilion will be Pavilion 3. Use of Park or Amenities, including the Premises, and/or during non-operating hours or on weekends will be charged according to Orange County Fee Directory as published. Lessee shall submit to Lessor's Division's Manager its audited financial statements to Lessor within one hundred and twenty (120) days of the close of Lessee's fiscal year. Such reports shall be audited by an independent certified public accountant.

5. **Insurance.** Lessee shall procure and maintain at its sole cost and expense, at all times throughout the term of this Agreement, the following insurance coverage through insurance carriers with an A.M. Best's Financial Strength Rating of A- VIII or better and authorized to do business in the State of Florida. Lessee shall provide Lessor with a certificate of insurance for all required coverage prior to the Agreement commencement date and shall provide renewal certificates upon renewal or replacement of any policy or upon the written request from Lessor. Lessee shall not cancel, alter or allow expiration or other termination of any coverage required herein without at least thirty (30) days prior written notice to Lessor. Any program of self-insurance maintained by the Lessee must be approved by the Lessor. These requirements, as well as Lessor's review or acceptance of insurance maintained by Lessee, are not intended to, and shall not in any manner, limit or qualify the liabilities or obligations assumed by Lessee under this Agreement.
 - a) Lessee shall maintain "all-risk" property insurance, including boats, trailers, furniture, fixtures, equipment, supplies, and any other property owned, leased, held, or possessed by Lessee, for the full replacement value of such property. Likewise, Lessee shall maintain "all-risk" property insurance, covering any improvements made to, on or within the Premises for the full replacement value of such improvements and any income in connection therewith until such time that the Lessee no longer holds an insurable interest to said improvements. Notwithstanding anything stated to the contrary herein, Lessee hereby agrees to waive and release Lessor from all claims related to or arising out of damage to its respective property, howsoever caused, to the extent the claim or damage is covered by its respective insurance. Lessee also agrees to require its respective insurance carrier to provide a waiver of subrogation in favor of the Lessor.
 - b) General liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate to cover the Lessee, Lessor and any others designated by Lessor against liability for all operations including but not limited to contractual, products

and completed operations, injury and/or death of any person or persons and for damage to personal property occasioned by or arising out of any construction, condition, use or occupancy of the Premises. The general liability policy must include sexual abuse and molestation coverage in the amount of not less than \$100,000 per occurrence. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit. Lessee agrees to endorse the Lessor as an Additional Insured with a CG 20 26 Additional Insured -- Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County Board of County Commissioners. Lessee's policy shall specifically cover potential watercraft and water activities.

c) Required Endorsements:

Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.

Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations

Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.

Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

d) Commercial auto liability in an amount not less than one million dollars (\$1,000,000) per occurrence to cover all owned, non-owned and hired vehicles including mobile equipment while being towed or stored on the Premises, on the most recent version of the ISO form as filed for use in Florida or its equivalent. In the event Lessee does not own automobiles, Lessee shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

e) Workers' compensation coverage for its employees with statutory Workers' Compensation limits, and no less than one hundred thousand dollars (\$100,000) for employers' liability. Said coverage shall include a waiver of subrogation in favor of Orange County and its officers, employees and agents. A waiver for this coverage will be considered on a case by case basis.

Lessee shall require and ensure that each and every contractor, sub-contractor, consultant, service provider either under this Agreement and/or providing services in or through the Facility, shall

secure and maintain insurance of the types and limits required under this Agreement (a) until completion of their respective services or (ii) for the duration of the Agreement and any extensions thereof.

When a deductible exceeds one hundred thousand dollars (\$100,000), Lessor reserves the right to request a copy of Lessee's most recent annual report or financial statement. For policies written on a "Claims-Made" basis, Lessee agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement. In the event the policy is cancelled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period ("SERP") during the life of this Agreement, Lessee agrees to purchase the SERP with a minimum reporting period of not less than two (2) years. Purchase of the SERP shall not relieve Lessee of the obligation to provide replacement coverage.

All such coverages shall be primary and contributory with any insurance or self-insurance maintained by the Lessor. Lessee shall provide current certificates of insurance evidencing all required coverage's prior to commencing any operation. Lessee shall notify the Lessor in writing, not less than thirty (30) days prior to any material change or non-renewal of any of the coverage's required in this Agreement, and such insurance provider shall be required to notify the Lessor no less than thirty (30) days prior to any cancellation of any insurance coverage.

Lessee shall provide to the Lessor current certificates of insurance evidencing all required coverage prior to execution and commencement of any operations/services provided under this Agreement. In addition to the certificate(s) of insurance, Lessee shall also provide copies of the additional insured and the waiver of subrogation endorsements as required above. For continuing service contracts, renewal certificates shall be submitted upon request by either the Lessor or its certificate management representative. The certificates shall clearly indicate that Lessee has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Lessor. Certificates shall specifically reference the respective Contract number. The certificate holder shall read:

Orange County Board of County Commissioners
Attention: Procurement Division
400 East South Street
Orlando, Florida 32801

Any request for an exception to these insurance requirements must be submitted, in writing, to Lessor for the approval of Lessee's Risk Management Division.

6. ***Safety and Protection of Persons and Property.*** The Lessee shall at all times initiate, maintain and supervise all safety precautions and programs in connection with its services or use of the Premises. The Lessee shall:

- a) Take all reasonable precautions to prevent injury to employees, including employees of Lessor and all other persons affected by their operations.

- b) Take all reasonable precautions to prevent damage or loss to property of Lessor, or of other vendors, consultants or agencies and shall be held responsible for replacing or repairing any such loss or damage.
- c) Comply with all ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:
 - i. Occupational Safety and Health Act (OSHA)
 - ii. National Institute for Occupational Safety & Health (NIOSH)
 - iii. National Fire Protection Association (NFPA)
 - iv. American Society of Heating, Refrigeration & Air-Conditioning Engineers (ASHRAE)
- d) Comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address listed below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

The Business Associate Agreement at rear and shall govern all matters necessary to enforce the provisions of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164 as applicable to this contract.

7. ***Intended Use of Premises and Amenities.*** Lessee may have exclusive use of the Premises for the operation and maintenance of a boat storage facility for Lessee's equipment, the area or areas of space between the boat storage facility and the boat dock and the operation and maintenance of a boat dock to provide access to the lake in the area identified in Exhibit "A". On a nonexclusive basis Lessee may use the Amenities for the purpose of operating recreational and instructional rowing programs, including rowing practices and events on the Lake and the other recreational activities specifically described in this Agreement ("**Intended Use**"). Lessee shall engage in no other use of the Premises and Amenities without the prior written consent of the Lessor. A sufficient number of Lessee employees, coaches, or designated adults, not to exceed a minimum ratio of 1 adult per 10 minors, or 1 leader per 20 adults, shall be present to provide adequate supervision during all Lessee activities on or about the Premises and Amenities. Lessee shall use extreme caution when participants in its programs are present in the Park, closely supervising and protecting them from all potential safety hazards. Lessee shall require that all of its patrons abide by Park rules. Lessee will not allow any of its

patrons to bring into the Park or otherwise consume alcoholic beverages or illegal substances in the Park, or make use of the Park for any unsafe or immoral purposes.

8. ***Certification & Volunteer Screening.*** The Lessee agrees to provide the Lessor with proof that it will staff its facility with sufficient qualified staff over the age of 16. Proof of an annual local law enforcement background check (at the Lessee's expense) will be required for all adult staff and volunteers. Such verified proof for each adult will be required before a SORA gate pass will be issued to adults. Workers found to have criminal offenses for drug use; violent offenses with a weapon, child abuse, domestic violence or sexual abuse shall not be permitted to provide services under this contract. Any individual providing services under or relating to this Agreement may also be required to complete a background screening in compliance with Section 435.04 (Level 2 screening standards), Florida Statutes. Such screening shall be conducted at the Lessee's expense.
9. ***Utilities.*** Lessee agrees to pay all utility charges for the Premises and any costs associated with improvements or infrastructure necessary to provide utilities to the Premises. Any new connections shall be metered separately. Such charges will include phone, electrical, water, sewer, fire/life safety protection service, gross receipt taxes or any other cost that the local utility company may add to its monthly utility bill during the duration of this Agreement.
10. ***Lessee's Rights and Responsibilities.***
 - A) Lessee may use the Premises to store Lessee's boats and related equipment, and to provide and operate recreational and instructional rowing programs to Orange County residents, including rowing practices and events. Lessor and Lessee shall mutually agree upon the dates and times of the rowing programs, which shall be conducted regularly during those times when public schools are in session. Should Lessee desire to hold events, which will bring additional visitors to the Park, Lessee shall notify and obtain prior written permission from the Lessor's Division Manager
 - B) Lessee shall provide a written yearly schedule of all rowing programs, events, practices, and activities to the Lessor's Division Manager for his/her prior approval every January 1 and July 31. Lessee shall obtain prior written approval from the Lessor's Division Manager for any changes to the schedule. All rowing activities may only be conducted within the Park when an authorized Lessee representative or agent is present.
 - C) Lessee shall be responsible for the operation, repair and maintenance of the Premises, including the storage facility and dock. Maintenance and repair

shall include all services necessary to maintain the storage area and dock in as good a condition as when installed and the Premises in as good a condition as they were on the date of execution of this Agreement and prior to any extensions. Lessee shall also maintain the grounds surrounding each of those areas on a regular basis and ensure that the Premises remain clean and free of debris. After each use by Lessee of the designated parking area, Lessee shall clean up all trash in that area resulting from Lessee's use thereof and place debris in a closed container at a location authorized by the Lessor's Division Manager. All maintenance, repair, and cleanup shall be at Lessee's sole expense and will be subject to general inspection by the Lessor to insure Lessee's compliance. In the event Lessee does not repair, maintain, or clean any portion of the Premises after notice of the same by Lessor, Lessor may, but shall not be obligated to, repair, maintain, or clean any portion of the Premises. Lessor may then charge Lessee for the expense with an additional ten percent (10%) administrative fee.

- D) Lessee shall be prohibited from designing and/or constructing any structures on the Premises without Lessor's prior written authorization in the form of an amendment to this Agreement, which will require BCC approval, and obtaining all required permits.
- E) All Lessee vehicles, trailers, and buses shall be parked only in areas designated by the Lessor's Division Manager. Any equipment stored overnight must be secured behind locked and visually pleasing screen or other fence structure. Such screen or structure must be approved in writing by Lessor's Division Manager
- F) Lessee agrees that in its use of the Premises it will comply with all present and future valid federal, state, county, and city laws, ordinances, rules and regulations (including, but not limited to, those relating to safety and fire prevention), and that it will not use the Premises or allow the Premises to be used for any illegal, unsafe, or immoral purpose. Lessee shall insure that all persons using the Premises pursuant to this Agreement shall comply with all Park rules and regulations including, but not limited to, posted speed limits within the Park. Any person who violates the posted speed limit or other rules and regulations shall be denied admission to the Park for the day. Any person who violates the rules and regulations on three (3) occasions during the term of this Agreement shall be denied admission to the Park for a term of one (1) year.
- G) Lessee shall obtain and keep in force all permits and licenses required by

any governmental agency having jurisdiction thereof and pay all fees therefore.

- H) Lessee shall not unlawfully discriminate against any persons desiring to participate in any of the Lessee's programs, events and activities held on or about the Premises.
- I) With the prior, written consent pursuant to Section 10(D) above, Lessee, at its expense, shall have the right to make such improvements and alterations to the Premises as may be necessary to operate the rowing programs in a safe and efficient manner provided that such improvements and alterations are in conformity with general architectural criteria, building codes, and plans and specifications approved by the Lessor. In the event such improvements or alterations require it, Lessee, at its expense, shall obtain permits as required. Lessor's premises shall be subject to all state and local codes and ordinances, including fines and levies for non-compliance. All improvements and alterations to the Premises, including fixtures, but excluding equipment and personal property, shall become the property of the Lessor at the termination of this Agreement at the Lessor's election. Should Lessor elect not to retain any of such equipment or improvements, Lessee agrees to remove them from the Park as directed by Lessor, at Lessee's sole cost and expense prior to expiration of this Agreement. Further, all required improvements to the Park, related to the Premises, which are the result of the Lessee operations as contemplated herein, shall be at Lessee's sole cost and expense. Lessee shall enclose any portion of the Premises used to store equipment and/or rolling stock within either a six (6) foot stockade fence or enclosed building within six months of initial execution of this Agreement. All property should be contained within the stockade fence or visual screen.
- J) Lessee shall furnish and install personal property and equipment necessary for the operation of the Facility, including, but not limited to boats, oars, and training equipment (“**PP&E**”). Lessee shall keep the PP&E in good and safe condition. The PP&E shall remain the property of Lessee, and at the expiration or earlier termination of the Agreement, Lessee shall remove the PP&E from the Premises and shall repair any damage to the Premises resulting from such removal.
- K) Lessee shall insure that any release and waiver administered by lessee will include language also releasing Orange County Board of County Commissioners from claims. All consent forms, electronic and paper, shall

meet statutory requirement including that of FS 744.301.

11. **Hours of Operation.** The hours of operation of the rowing activities shall be preapproved by the Lessor's Division Manager. Lessee may access the Premises in order to operate the boat storage facility and rowing-related activities during park operating hours. No overnight activities shall be permitted under this Agreement. Lessee will end activities at park closing time and all participants will vacate the park within one hour of closing. Lessee will be responsible for locking exit gate upon departure.
12. **Parking.** Lessor hereby grants to Lessee use of the general parking facilities located upon the Premises. Said parking to be available to Lessee's employees and clients at all times during which the Lessee operates the Facility. In the event Lessee desires additional parking for special events, Lessee must receive written approval for the additional parking from the Division. Under no circumstances shall overnight parking be allowed on the Premises. No vehicle abandoned or disabled or in a state of non-operation or disrepair shall be left upon the property of the Lessor, and Lessee shall enforce this restriction against Lessee's employees, agents, visitors, licensees, invites, contractors and customers. Any vehicles deemed to be in violation of this section shall be removed from the property by Lessee at vehicle owner's expense. Notwithstanding anything to the contrary contained above, Lessor consents and agrees that towing equipment, to include two (2) program boat trailers and one (1) support or service trailer, shall be permitted to remain on the Premises during the Term.
13. **Entrance Fees.** Lessee shall pay to Lessor certain entrance fees: \$50 pass fee, per participant and or spectator per fiscal year (October 1-September 30), or a designated gate fee per visit according to the Orange County Fee Directory for entrance into the Park. A pass will be issued to each person that pays the required entrance fee which will allow them access into the Park for the purpose of attending and/or participating in activities or programs operated or held by Lessee within the scope of the Intended Use. If a park user does not have their pass, they will have to pay the designated gate fee upon entrance. Pass access will be verified with the practice or event schedule provided by Lessee. No after-hours gate codes will be supplied to Lessee.

The intent of this agreement is for the instruction and recreational use of Orange County citizens. Lessee agrees to pay the associated fee as prescribed in Orange County Fee Directory for each visiting team invited and organized by Lessee. All visiting teams will be under supervision of the Lessee at all times. All visiting teams must provide to Lessor required insurances prior to arriving on property.

14. **Access to Premises.** Lessee shall have unlimited access to the Premises during the Hours of Operation. Lessor, however, shall have no liability to Lessee, its employees, agents,

invitees or licensees for losses due to theft or burglary, unless caused by the negligent acts or omissions of the Lessor or its authorized agent. Lessor shall have no liability for damages done by unauthorized persons on the Premises and neither shall Lessor be required to insure against any such losses. Lessor shall not at any time be liable for damage to any property in or upon the Premises which results from power surges or other deviations from the constancy of electrical service or from gas, smoke, water, rain, ice or snow which issues or leaks from or forms upon any part of the Premises. Lessee shall cooperate fully in Lessor's efforts to maintain security within the Premises and shall follow all regulations promulgated by Lessor with respect thereto.

15. **Signs.** Lessee shall not install or locate any signs upon the Premises, Facility, Park, or right-of-way without first securing the written consent of Lessor's Division Manager, which shall not be unreasonably withheld. All sign installations must meet all applicable County regulations and zoning requirements. Any signs installed by Lessee with Lessor's permission shall be maintained in good repair and shall be removed and any building or grounds damaged therefrom shall be restored by Lessee at Lessee's expense. Lessee shall immediately remove any graffiti that might be placed on the property. In the event that Lessee fails to remove graffiti within 7 days of notification by Lessor, Lessor shall have the right to remove the graffiti and charge Lessee for all reasonable costs incurred, including a ten percent (10%) administrative fee.
16. **Liability for Programs and Events.** Lessee assumes all responsibility and liability for the programs and events it hosts upon the Premises. At all times during the term of this Agreement, Lessee shall procure and maintain Waiver of Liability from each participant of each and every event that takes place upon the Premises. Said waiver to be in form and substance as approved by Lessor's Risk Management Division.
17. **Interruption of Service.** Lessor does not warrant that any services to be provided by Lessor, or any third party, will be free from interruption due to causes beyond Lessor's reasonable control. In the event of temporary interruption of services or unavoidable delays in the making of repairs by a third party, the same shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises nor render Lessor liable to Lessee for damages. Unavoidable delays shall be deemed to include delays in the performance of any of the obligations contained in this Agreement resulting from acts of God, strikes, lockouts or other disturbances; acts of civil disobedience; orders of any kind of the government of the State of Florida or the United States of America or any of their departments, agencies or officials, or any civil or military authority, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.
18. **Compliance with Laws and Regulations.** Lessee shall comply with all Federal, State,

County and City laws, ordinances, rules and regulations affecting or respecting the use or occupancy of the Premises by the Lessee or the business at any time thereon transacted by the Lessee, and Lessee shall comply with all reasonable rules which may be hereafter adopted by Lessor for the protection, welfare and orderly management of the Premises and its lessees or occupants.

- a. All activities by Lessor and Lessee shall be consistent with the Sovereignty Submerged Lands Lease between the Board of Trustees for the Internal Improvements Trust Fund of the State of Florida and Orange County dated March 23, 2004, (as the same may be modified, and/or extended, from time to time) and the operations of the Park.
 - b. For so long as this Agreement is in effect, Lessee assumes all current and future responsibility for all ADA compliance related to the Premises, Lessee's storage facility, and the dock regardless of any provisions in this Agreement.
19. **Warranty of Quiet Enjoyment.** Lessee, upon keeping and performing the covenants of this Agreement to be performed by Lessee, shall peacefully and quietly hold, occupy, and enjoy said premises during said term without any let, hindrance or molestation by Lessor or any persons lawfully claiming under Lessor.
20. **Eminent Domain.** If the whole or any part of the Park shall be taken by any public authority under the power of eminent domain, so that the Lessee cannot continue to operate on the Premises, then the term of this Agreement shall cease as of the day possession is taken by such public authority. The amount awarded for any taking under the power of eminent domain shall belong solely to and be solely the property of the Lessor.
21. **Waiver.** No waiver of any of the covenants and agreements herein contained or of any breach thereof shall be taken to constitute a waiver of any other subsequent breach of such covenants and agreements or to justify or authorize the non-observance at any time of the same or of any other covenants and agreements hereof.
22. **Default.** Lessor shall have the right to terminate this Agreement if Lessee shall default in its performance of, or fail to comply with, any material term or condition of this Agreement, and shall fail to cure such default within thirty (30) days of receiving written notification from Lessor, which shall be in the form of a United States Postal Service Certified Mail. Without limiting the generality of the foregoing, each of following shall be considered an act of default, and grounds for termination:
- a) Loss of 501 C (3) status by South Orlando Rowing Association, Inc.

- b) Failure to maintain insurance as required by Section 5 of this Agreement, or any amendment hereto shall be the basis of immediate suspension of use of Premises by the Lessee's right to use the Premises for the time when insurance is not in place.
- c) Failure to perform or adhere to any of the provisions of this Agreement.

In the event Lessee defaults under Sections 22(a), 22(b), or 22(c) of this Agreement, Lessee shall cease operations immediately and shall not resume operations until said default is cured to the satisfaction of Lessor.

In the event of a default by any party of any of the terms or conditions hereof, the other party shall be entitled to full and adequate relief by any and all remedies permitted at law or in equity, including without limitation award of damages, injunction, and specific performance. Notwithstanding the foregoing, under no circumstances shall any party be liable for consequential, special, indirect, exemplary, or punitive damages in the event of default by such party hereunder. Subject to the limitations set forth in this paragraph, any remedies specifically provided by this Agreement shall be cumulative with and in addition to all other remedies permitted at law or in equity.

23. **Termination.** At any time after the initial five (5) year term of this Agreement (i.e. during any renewal term, as provided by Section 2 of this Agreement above), Lessor shall also have the right – in addition to the right of termination provided to Lessor in Section 22 of this Agreement above (i.e. upon a default by Lessee) – to terminate this Agreement, upon not less than one hundred eighty (180) days' prior written notice to Lessee, in the event that Lessor (in its sole discretion) has another *bona fide* public purpose for which Lessor desires to use the Premises, the Amenities, and/or the Park and which use and public purpose would be inconsistent (as determined by Lessor in its sole discretion) with the Lessee's continued use and occupancy of the Premises and/or the Amenities pursuant to this Agreement.
24. **Redelivery of Premises.** Lessee shall, on the expiration or early termination of this Agreement, deliver the Premises in as good order and condition as it now is or may be put by Lessor, reasonable use and ordinary wear and tear thereof and damage by fire or other unavoidable casualty, condemnation or appropriation excepted, and Lessee shall promptly surrender all keys to the Premises to Lessor.
25. **Indemnification.** To the fullest extent permitted by law, each party to this Agreement shall be solely responsible for all claims, including but not limited to, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature, arising out of its acts, errors and omissions in connection with this Agreement, or the acts, errors and omissions of anyone

acting under its direction, control, or on its behalf; and accordingly, each party shall, defend, indemnify and hold harmless the other party, its agents, employees and officers, at all times from and against any and all liability, loss or expense arising from said claims to the extent allowed by law. However, nothing contained herein shall constitute a waiver by Lessor of its sovereign immunity or the provision of Section 768.28, Florida Statutes.

26. **Assignment and Subletting.** Lessee may not assign or encumber its interest in this Agreement or in the Premises, or sublease all or any part of the Premises, to any other entity to occupy or use all or any part of the Premises without Lessor's prior approval, which shall not be unreasonably withheld, delayed or conditioned.

27. **No Liens.**

- a) Sales and Other Taxes. Lessee shall be responsible for collecting and paying any sales or use taxes imposed upon Lessee's activities by state or federal government. If such taxes are imposed on Lessee and not paid, then Lessor may terminate this Agreement pursuant to Sections 24 and 25 of this Agreement.
- b) No contractor or materialmen liens pursuant to Chapter 713, Florida Statutes, or other law, shall attach to the Premises. If such a lien is filed against Premises, Lessee shall pay or bond the amount claimed and have the lien removed as a claim against Premises within thirty (30) days of recording of any such lien.

28. **Notices.** All notices required under this Agreement to be given to Lessor shall be in writing and given to:

Orange County Board of County Commissioners
Attn: Real Estate Management Division
Post Office Box 1393
Orlando, Florida 32802

with a copy to:

Orange County Attorney
Post Office Box 1393
Orlando, Florida 32802-1393

Division Manager
Orange County Parks & Recreation
4801 West Colonial Drive

Orlando, Florida 32808

or at any other place as Lessor may designate in writing.

Any such notice required under this Agreement to be given to Lessee shall be in writing and given to:

South Orlando Rowing Association, Inc.

10524 Moss Park Road, Suite 204-611

Orlando, FL 32832

or at any other place as Lessee may designate in writing.

29. **Governing Law.** The Laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. Any litigation brought to enforce any of the terms or provisions of this Agreement shall be tried in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County.
30. **No Consent to Sue.** The provisions, terms, or conditions of this Agreement shall not be construed as consent of the State of Florida to be sued because of said leasehold.
31. **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby, and in lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there shall be added as a part of this Agreement a clause or provision as nearly identical to the said clause or provision as may be legal, valid and enforceable.
32. **Lessor's Right of Entry.** Lessor and Lessor's authorized representative, and contractors shall have the right to enter the Premises for any of the following purposes: to determine whether the Premises are in good condition and whether Lessee is complying with its obligation under this Agreement; or, to serve, post or keep posted any notices required or allowed under the provisions of this Agreement or, to make repairs to the Premises. Lessee shall enable access by providing Lessor's Division Manager with key or combination access to any locking mechanism into the Premises. Lessor shall have the right to waive such notice requirement in an emergency situation. Lessor shall not be liable in any manner for any inconvenience, disturbance, nuisance or other damage arising out of Lessor's entry on the Premises, except damage resulting from the acts or omissions of Lessor or its agents or authorized representatives. Lessor reserves the right to enter upon and across the Premises for the purpose of accessing property(ies) adjacent to the Premises.
33. **Cleanliness of Premises.** Lessee will not improperly or unlawfully store, handle, release,

or dispose of any refuse, trash or hazardous materials or contaminants in or upon the Premises other than those associated with the administration and execution of the rowing programming as contemplated herein. Lessee shall immediately notify Lessor and appropriate governmental agencies and authorities having jurisdiction if a release of such materials occurs, and shall take complete corrective action to clean and remove the material and restore the premises in compliance with procedures established by such authorities, and shall provide appropriate evidence of compliance.

34. **Radon Gas- Notice to Prospective Lessee.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon 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, pursuant to Section 404.056(8), Florida Statutes.
35. **Holdover.** If the Lessee remains in the Premises beyond the expiration or earlier termination of the Lease Term, the tenancy may, be extended for 3 months on a month to month basis under the same terms and conditions of this Agreement at the rental rate in effect during the last 30 days of the Lease Term and the renewal periods.
36. **Mold- Notice to prospective Lessee.** Lessee agrees to hold Lessor harmless to the fullest extent permissible under Section 768.28, Florida Statutes in the event any mold contaminants are discovered on the property. Lessee understands mold is a naturally occurring microbe and that mold should pose no health threat unless concentrated in high levels in a living environment. The Lessor agrees that in the event mold like contamination is discovered, this condition will be reported to the Lessee.
37. **Recording.** This Agreement may not be recorded unless the parties shall mutually agree to the recordation of a short form memorandum, attached hereto.
38. **Entire Agreement.** This Agreement document and Exhibit "A" constitute the entire agreement between the parties. No waiver, modification, additions or addenda to this Agreement shall be valid unless in writing and signed by both the Lessor and the Lessee.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement as of the last date executed below.

“LESSOR”
ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
Jerry L. Demings
Orange County Mayor

Date: 9/20/19

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

By: *Katie Smith*
Deputy Clerk

Printed Name: Katie Smith



Signed, sealed, and delivered
in the presence of:

“LESSEE”
SOUTH ORLANDO ROWING
ASSOCIATION, INC.,
a Florida non-profit corporation

Christy Puller
Print Name: Christy Puller

By: *David Keezel*
Print Name: David Keezel

Dustin Walker
Print Name: Dustin Walker

Title: President
Date: 3/20/2019

