

ORDINANCE NO. 3143-19

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE LEASE OF THE EASTERN 33 FEET OF THE CITY OWNED STORM WATER RETENTION AREA SERVING ISRAEL SIMPSON COURT HAVING ORANGE COUNTY TAX PARCEL IDENTIFICATION NUMBER 06-22-30-3724-13-001; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, Section 2.11 of the Charter of the City of Winter Park, Florida, requires City Commission approval by ordinance to lease, convey or authorize by administrative action the lease or conveyance of any lands of the City; and

WHEREAS, the City owns fee simple title to real property identified to wit ("Leased Premises"):

THE EAST 33 FEET OF THE CITY STORM WATER RETENTION POND PROPERTY SERVING ISRAEL SIMPSON COURT HAVING ORANGE COUNTY TAX PARCEL IDENTIFICATION NUMBER 06-22-30-3724-13-001.

; and

WHEREAS, Z Properties Group, Inc. has requested to lease the Leased Premises for use as and development of off-street parking for a building upon Z Property Group, Inc.'s adjacent property that has no vehicular parking at the present time; and

WHEREAS, the City Commission deems it advisable and in the best interest of the public and citizens of the City to lease the Leased Premises to Z Properties Group, Inc. and its tenant in accordance with the Lease Agreement attached as Exhibit "1" to this Ordinance ("Lease Agreement").

NOW, THEREFORE, BE IT ENACTED THE CITY OF WINTER PARK:

SECTION 1. The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.

SECTION 2. The City Commission of the City of Winter Park hereby approves the Lease Agreement attached hereto as Exhibit "1". The Mayor is hereby authorized to execute the Lease Agreement for the City of Winter Park.

SECTION 3. This Ordinance shall constitute the authorization by the City Commission pursuant to Section 2.11 of the Charter of the City of Winter Park, Florida, for the lease of the Leased Premises.

SECTION 4. CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.


SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 13th day of May, 2019.



Mayor Steve Leary

ATTEST:



City Clerk, Cynthia S. Bonham

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("Agreement") is made and entered into this 13th day of MAY 2019, ("Effective Date") by and between CITY OF WINTER PARK, a Florida municipal corporation, whose address is Attn: City Manager, 401 South Park Avenue, Winter Park, Florida 32789 (hereinafter referred to as "City"), and The EARLY RISING LODGE #16, P.O. Box 172, Winter Park, FL, 32790 ("Early Rising") and Z PROPERTIES GROUP, INC., a Florida profit corporation, whose address is 271 N. Pennsylvania Avenue, Winter Park, Florida 32789 ("Z Properties") (Early Rising and Z Properties are collectively hereinafter referred to as "Tenants").

RECITALS:

WHEREAS, City owns in fee simple that certain real property identified by Orange County Tax Parcel Identification Number 06-22-30-3724-13-001 fronting on Israel Simpson Court and serving as the storm water retention area for street drainage ("City Property"); and

WHEREAS, Early Rising owns in fee simple that certain real property adjacent to the City Property located at 341 N. Pennsylvania Avenue, Winter Park, Florida and having Orange County Tax Parcel Identification Number 06-22-30-3724-00-160, ("Tenant's Property"); and

WHEREAS, Z Properties currently has a long term lease with Early Rising for the Tenant's Property and the building thereon; and

WHEREAS, Tenants have requested that City lease a portion of the City Property identified as the East 33 feet of the North 60.6 feet of the City Property ("Leased Premises") for use as a vehicular parking area to support the use and development of Tenant's Property; and

WHEREAS, City is willing to lease the Leased Premises to Tenants for vehicular parking pursuant to the terms, conditions and provisions contained herein.

NOW THEREFORE, in consideration of the Leased Premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The above referenced recitals are true and correct and hereby are incorporated into this Agreement.

2. Term and Renewals. The Term of this Agreement shall commence on the Effective Date and run for thirty (30) years thereafter. Thereafter, the Term of this Agreement shall automatically renew for additional five (5) year periods, unless either the City or Z Properties gives notice to the other of its intent to terminate this Agreement prior to the start of applicable 5-year renewal term.

3. Use. During the Term of this Agreement, Tenants shall have the non-exclusive right of possession and use of the portion of the Leased Premises (described at the East 33 feet of the North 60.6 feet of the City's Property) for the limited purposes of constructing and using

vehicular parking spaces for the benefit of Tenant's Property subject to the terms and conditions of this Agreement. The Leased Premises is generally shown on the sketch attached hereto as **Exhibit "A"**. The vehicular parking spaces shall be constructed by Tenants in the location and the manner as approved by the City. Tenants, at their expense, shall cause the permitting and installation of a solid (opaque) vinyl privacy fence along the perimeter of the City Property to screen the pond and vehicular parking area from the adjacent properties. Tenants' rights under this Agreement include the right of ingress and egress for Tenants and their respective authorized employees, guests and invitees to and from the vehicular spaces upon the Leased Premises and Tenant's Property by way of the designated paved connection. Prior to Tenants constructing the vehicular parking spaces and making the required changes to the storm water retention area and related improvements upon the Leased Premises, Tenants shall, at their expense, cause the design of and seek and obtain all necessary permits and approvals for such construction from the City and other State governmental entities, as applicable. Independent of the City's regulatory and permitting authority, as the owner of the Leased Premises, the City shall have the right of prior review and approval (or rejection) of Tenants' proposed construction plans for the Leased Premises. After City approval of the plans, Tenants shall make no other improvements to or redevelop the Leased Premises without City Commission approval. Tenants' construction and use of the Leased Premises shall not damage or interfere with the City's retention pond upon the City Property and its drainage conveyance, collection and storage functions. While Tenants are in possession, use and occupancy of the Leased Premises, Tenants agree to observe and comply with all restrictions, laws and ordinances affecting the City Property and use thereof. No portion of the Leased Premises shall count toward setback requirements, FAR, parking requirements, or other development requirements for the use, development, or redevelopment of Tenant's Property. Further, in the event of any change in the size, height, or structural components of the building on Tenant's Property, this Agreement shall terminate unless the City, in its sole discretion, agrees to continue this Agreement notwithstanding the foregoing change.

4. Maintenance/Repair. During the Term, Tenants shall, at their expense, maintain the grounds and landscaping of the entire City Property, including the retention pond located upon the City Property and the other grounds, including mowing, trimming, tree care and other maintenance and repair as may be necessary to ensure its proper functioning and aesthetic appearance. Further, Tenants agree to maintain the vehicular parking areas upon the Leased Premises in a clean, attractive and orderly condition, free of waste and debris. If Tenant fails to properly maintain and repair the Leased Premises, the City shall have the right, but not the obligation, to do so and assess such costs to Tenants by providing written notice to Tenants. The Tenants shall pay such costs within ten (10) days of receipt, failing which shall constitute a lien against the Leased Premises. Tenants shall pay all utility deposits and pay for all water and other utilities supplied to the Leased Premises, including power and other utilities and services supplied to the Leased Premises. Tenants shall be fully responsible for paying any ad valorem taxes, non-ad valorem taxes and special assessments that may be assessed arising out of this Agreement or Tenants' use of the Leased Premises. Tenants shall keep the City Property free from all liens arising out of any work performed, materials provided and obligations incurred by the Tenants related to the City Property.

5. Reservation of Use. The City fully retains the right of use of and access to the City Property (including the Leased Premises) for the purpose of inspection and ensuring the proper operation, maintenance and repair of the retention pond and other drainage improvements

upon the City Property. The City shall not be required to obtain Tenants' prior permission or give prior notice to Tenants in order for City or its employees or contractors to use or access the City Property or any part thereof (including the Leased Premises). Further, City reserves the right, at any time, to self-perform maintenance and repair activities to the retention pond and other drainage improvements upon the City Property in the event Tenants fail to perform their obligations hereunder and invoice Tenants for the costs thereof, which Tenants shall timely pay to the City within 10 days of the date of the invoice.

6. Rent. Tenants shall pay to City as rent for the City Property, the sum of \$750.00 per year ("Rent") to be paid on or before October 1st of each year during the Term hereof; provided however, the Rent for the 1st year under this Agreement shall be paid within five business days of the Effective Date and is to be pro-rated for a partial year of use. Rent shall be payable without notice or demand and without deduction, off-set, or abatement in lawful money of the United States to the City at the address stated herein for notices, or to such other persons or such other places as the City may designate to Tenants in writing. As a governmental entity, City is exempt from the payment of sales taxes, thus Tenants shall pay any sales taxes imposed as the result of this Agreement. The annual Rent amount above is subject to adjustment on October 1st of every year thereafter in an amount equal to an additional \$20.00 per year.

7. Possession. Upon paying the Rent and performing the terms, conditions and provisions of this Agreement, Tenants shall quietly have, hold and enjoy non-exclusive possession of the Leased Premises and all rights granted Tenants by this Agreement. Upon termination of the Term of this Agreement, Tenants agree to deliver up and surrender possession of the Leased Premises to City in as good or better condition (ordinary wear and tear excepted) as the same shall be at the Effective Date with the addition of any Tenants' improvements authorized by the City, except for personal property which shall be removed by Tenants.

8. Limitation on Liability. Tenants agree that City shall not be liable for any damages to any person or any personal property in or upon the City Property (including the Leased Premises) during the Term of this Agreement except to the extent such damage is caused by the gross negligence of City or City's employees. Tenants, jointly and severally, hereby indemnify and hold the City and its officers, employees and agents harmless from and against any and all Claims arising from Tenants' and their respective employees', guests' and invitees' use and occupancy of the City Property (including the Leased Premises) and from all activity, work, and things which may be permitted or suffered by Tenants in or about the City Property (including the Leased Premises). "Claims" includes damages, injuries, death, costs, attorneys' fees, lawsuits, expenses, liabilities and other adverse matters in any way relating to the City Property or Leased Premises, Tenants' use of the Leased Premises or City Property and the exercise of Tenants' rights under this Agreement. Except for City's grossly negligent actions, Tenants hereby assume all risk of damage to the City Property, including injury to any person in or about the City Property or Leased Premises from any cause.

9. Insurance. Tenants, at Tenants' sole cost and expense, shall procure and maintain commercial general liability insurance covering bodily injury and property damage with a combined single limit of at least Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability arising out of or in connection with Tenants' use, occupancy and maintenance of the City Property

(including the Leased Premises). Prior to the Effective Date, Tenants shall provide City with a Certificate of Insurance evidencing the coverage required by this Section and the Tenants shall cause the City to be an additional insured under such insurance policy.

10. Holding Over. If Tenants, with the City Manager's consent, remains in possession of the Leased Premises after expiration or termination of the term of this Agreement, such possession by Tenants shall be deemed to be a tenancy from month-to-month at a rental in the amount to be determined by the City Manager.

11. Assignment and Subletting. Tenants shall not assign, sell, convey, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of the City Property (including the Leased Premises) or this Agreement or Tenants' interest in this Agreement, without City Commission approval, in City's sole discretion, including, without limitation, in a situation where Z Properties is assigning, selling, conveying, transferring, subletting, mortgaging or otherwise transferring or encumbering any interest in all or any part of Tenant's Property.

12. Default. It is agreed between the parties hereto that if any Rent shall be due hereunder and unpaid, or if Tenants shall default and breach any other covenant or provision of this Agreement, including proper maintenance, the City, after giving Tenants thirty (30) days prior written notice of such default and an opportunity to cure, may re-enter the City Property and remove Tenants, any property and any and all persons therefrom in the manner allowed by law. The City may, in its sole discretion, either continue this Agreement in full force and effect and recover the rent and other charges as they become due or, in the alternative, terminate this Agreement. In addition, the City may recover all rent and any other damages and pursue any other rights and remedies, which the City may have against the Tenants by reason of such default as provided by law, including reasonable attorneys' fees. Any sums of money due and owing by Tenants to City hereunder shall accrue interest at the rate of twelve percent (12%) per annum until paid in full. Tenants shall be jointly and severally liable to the City for any amounts due to the City under this Agreement.

13. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees and costs of litigation, including through all appeals.

14. Binding on Successors and Assigns. Each provision of this Agreement performable by Tenants shall be deemed both a covenant and a condition. The terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors and assigns; provided, however, in no event shall Tenants have the right to, or in fact, assign, sublease or otherwise license or transfer this Agreement and Tenants' rights under this Agreement and the City Property to any person or entity without City's prior written consent, in City's sole discretion.

15. Notices. Any notice or demand to be given or that may be given hereunder shall be in writing and shall be (i) delivered by hand, or (ii) delivered through United States mail, postage prepaid, certified, return receipt requested and addressed to the parties at the address shown on Page 1 of this Agreement. Any notice or demand that may be given hereunder shall be

deemed complete (i) one (1) day after mailing of such notice or demand in the United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) upon hand-delivery to the appropriate address as herein provided. Any party hereto may change said address by notice in writing to the other parties in the manner herein provided.

16. Time. Time is of the essence of this Agreement. Neither party shall be required to perform any term, covenant or condition of this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, strike, lockout, material or labor restriction by any governmental authority, civil riot, and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

17. Applicable Law. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. The parties to this Agreement further agree that any and all litigation arising from the terms of this Agreement and the subject matter contained herein shall be filed and heard in a court of competent jurisdiction located in Orange County, Florida. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision. Nothing in this Agreement shall constitute a waiver of the City's sovereign immunity protections and defenses, or any other privileges, immunities, protections and defenses afforded to City or any of its officials, employees and agents by law.

IN WITNESS WHEREOF, the City and Tenants have hereunto set their hands and seals the day and year above written.
Signed, sealed and delivered in the presence of:

Witness Signature

Print

Witness Signature

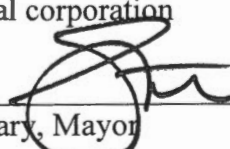
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Witness Signature

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CITY:

**CITY OF WINTER PARK, a Florida
municipal corporation**



Steve Leary, Mayor

Date: 5-13-19

TENANTS:

Z PROPERTIES GROUP, INC.

Zane Williams, Manager

Witness Signature

Date: _____

Print

The EARLY RISING LODGE #16

Witness Signature

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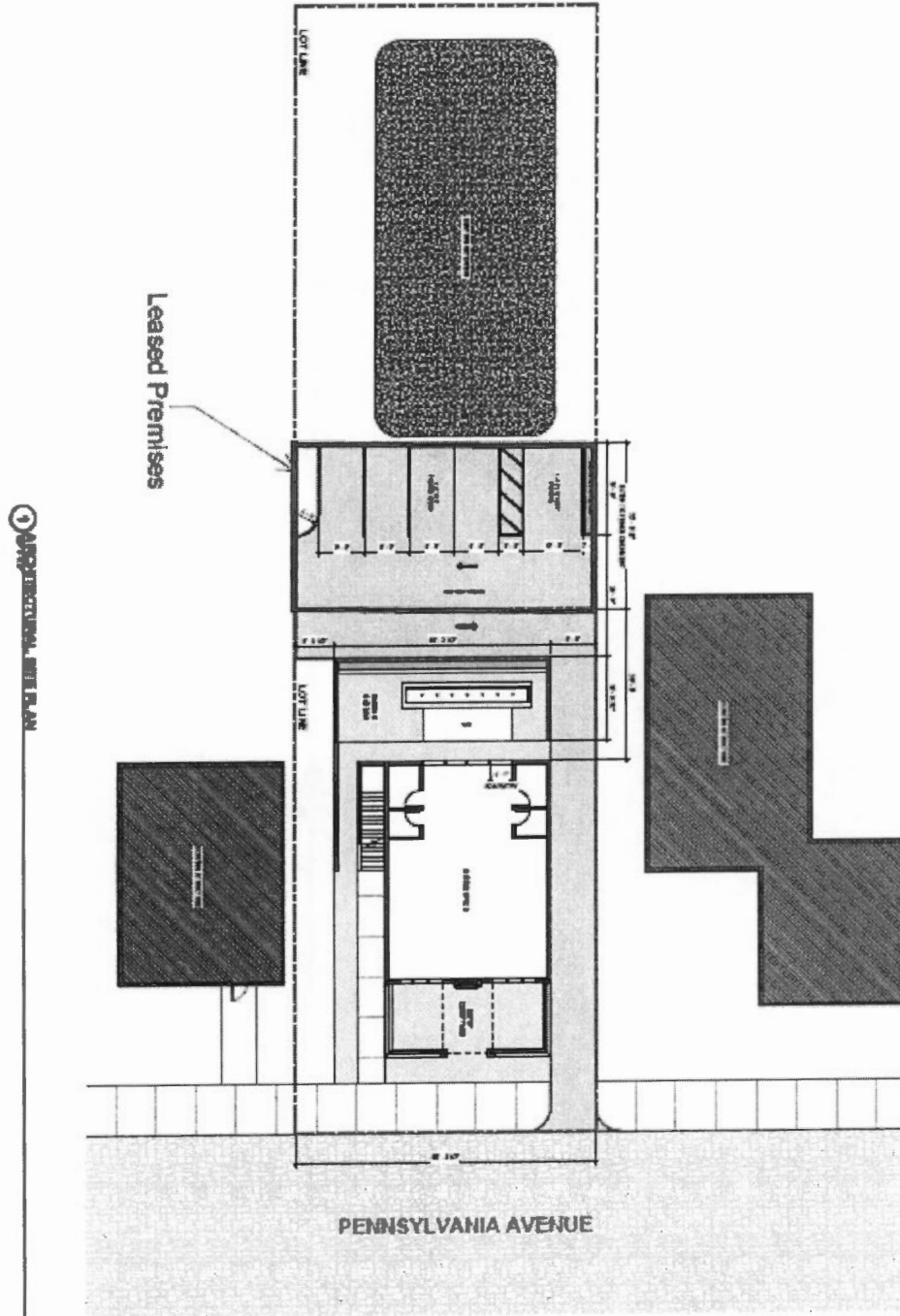
By: _____
Its: _____

Date: _____

Witness Signature

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EXHIBIT "A"



① ARCHITECTURAL SITE PLAN