

STATE OF GEORGIA)
)
COUNTY OF RICHMOND)

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this First day of January, 2023, by and between Thomas H. Robertson, Jr., Thomas H. Robertson, III, Bryan M. Haltermann, Wilson Perry Huggins, as Trustees of the Trust of Oakland Park, collectively as lessor ("Lessor"), and Augusta, Georgia, a political subdivision of the State of Georgia, as lessee ("Lessee" or "Augusta");

WHEREAS, On April 18, 1959, Jonathan Meigs established "a park or public square" at 965 Hickman Road, Augusta Georgia; and

WHEREAS, The intent was for 965 Hickman Road, originally referred to as "Oakland Park," to be used for the sole or exclusive purpose of a park or public square for the comfort and convenience of the neighborhood, and for the property not to be appropriated in part or whole for any other use whatsoever; and

WHEREAS, On June 17, 1916, the Board of Trustees of Oakland Park leased the property to the City Council of Augusta for the full term of ninety-nine years and subject to renewal for a like term beginning on June 17, 2015; and

WHEREAS, On the expiration the lease, the original members of the Board of Trustees of Oakland Park had since deceased and all the trustee positions of the Trust were vacant; and

WHEREAS, A petition was brought in the Superior Court of Richmond County on January 4, 2017, and by order of Judge James G. Blanchard, Jr. dated March 30, 2017, the above-named individuals were duly appointed as the new trustees of the Trust of Oakland Park; and

WHEREAS, Said order also established criteria for future trustees, and empowered the existing trustees to appoint replacement trustees; and

WHEREAS, Lessor and Lessee desire to renew their lease, and desire that Lessee continue to maintain and operate Hickman Park under the aforementioned conditions and in the spirit of the original intent for 965 Hickman Road to be used solely and exclusive as park,

W I T N E S S E T H:

1. Premises. The Lessor, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter set forth, to be paid, kept and performed by the Lessee, does hereby lease unto the said Lessee, and said Lessee hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the following property known as "Hickman Park" (the "Premises") located at 965 Hickman Road, Augusta, Georgia 30904, being more particularly described on Exhibit "A", attached hereto and incorporated herein by reference.

2. Term. The term of this lease shall commence on the effective date of this lease, and shall terminate absolutely and without obligation on the part of Augusta each and every December 31st, unless terminated earlier in accordance with the termination provisions of the Agreement. This Agreement automatically renews on each January 1st, unless terminated in accordance with the termination provisions of the Agreement.

3. Rent/Consideration. The rent to be paid by the Lessee to the Lessor hereunder shall be One Dollar (\$1.00) per year, payable on or before the 31st day of January of each year during the term hereof. Further consideration for this Lease Agreement shall be the fulfillment of the original intent of the creator of the Trust, and the benefits conferred upon the public thereby.

4. Use of Premises. The Premises shall be only used solely and exclusively as a publicly accessible park and no part thereof shall be used for any other purpose. It is agreed that said property and the park facilities within shall at all times be operated, used, and maintained as recreational facilities. It is the specific intent and understanding of the parties hereto that this Lease arrangement is in accordance with the Georgia Recreational Property Act, OCGA 51-3-20 et seq., as Lessor is making the land available to the public without an admission fee or other

charge for recreational purposes. Pursuant to said Act, Lessor's liability toward persons entering the property for recreational purposes is intended to be limited in accordance with the Act.

5. Name. The Premises shall be named and designated as "Hickman Park."

6. Ownership: The premises shall remain the property of the Lessor throughout the term of the lease.

7. Special Conditions: Upon entering into this Lease Agreement, Lessee shall meet the following conditions:

(a) The Lessee shall adopt appropriate rules and regulations regarding the operation and use of said park. No vehicular traffic shall be allowed in any area of the park unless required for maintenance purposes, and in that case, only by official vehicles authorized by Lessee;

(b) The Lessee, in the maintenance of such park, shall preserve, restore and maintain the premises, building, and facilities in good condition, in a manner similar to the other parks in the Augusta system, including, without limiting the generality of its obligation, the planting and care of shrubbery, flowers and plants, with the right of the Lessee to construct trails, walkways and other improvements such as will tend to beautify the landscape or embellish the park and make the same more useful and attractive to the lovers of outdoor recreation;

(c) The Lessee shall cause to be prepared a site-specific master plan to guide future improvements or physical changes proposed for the park and the facilities within it. The plan shall be updated from time to time as needed. The initial plan and each update shall be subject to the approval of the Lessor, which approval shall not be unreasonably withheld.

(d) Lessor reserves the right to hold events, including but not limited to fundraisers, at the Premises to support the purpose of the Trust of Oakland Park. Lessor

shall follow Lessee's policies, procedures, and fee schedules for reserving, scheduling, planning, producing, and holding such events, and Lessor shall follow all applicable local, state, and federal laws and regulations during said events; and

(e) Lessor reserves the right, during the pendency of this Lease, to erect one (1) monument or plaque recognizing and commemorating Lessor's contributions to the park, and explaining the historical background of the Premises. The design of the aforementioned monument or plaque shall be agreed upon by the parties prior to installation.

8. Destruction of or Damage to Premises: If the Premises are damaged or destroyed by storm, fire, flood, lightning, earthquake, or other casualty which cannot, despite diligent, good faith efforts be repaired within One Hundred Eighty (180) days following the date on which such damage occurs, then Lessor may elect to terminate this Lease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the parties shall reasonably determine how long the repair and restoration will take. After the determination has been made that the casualty cannot be repaired within the aforesaid One Hundred Eighty (180) day period, Lessor shall have a period of thirty (30) days to terminate the Lease by giving written notice to the other party. Upon such termination, any parts or all of the improvements on the Premises that are irreparably damaged shall be removed by Lessee. Nothing in this paragraph shall affect the rights of the parties to terminate this agreement pursuant to the separate and distinct rights provided by the "Termination" provision below.

9. Assignment and Subletting: Lessor has entered into this Agreement, in part, on the basis of personal reliance in the integrity and qualifications of the Lessee. The Lessee agrees it shall not delegate, assign, subcontract, sublease, transfer, pledge, convey, sell, or otherwise dispose of the whole or any part of this Agreement or its right, title, or interest therein to any person, firm, or corporation without prior written consent of Lessor.

10. Signs: Lessee shall place no sign or signs upon Premises except with prior written consent of the Lessor. Any and all signs placed on the Premises, interior or exterior, by Lessee shall be maintained in compliance with rules and regulations governing such signs. Lessee agrees upon removal of said signs to repair all damages incident to such removal.

11. Repairs, Alterations and Additions: Any and all repairs, alterations and additions made to the Premises hereby leased by the Lessee, shall be and remain a part of said Premises hereby leased by the Lessee, and shall be surrendered to the Lessor by the Lessee at the expiration of the term of this Lease. Any alterations or additions to the Premises and any repairs, which may affect the physical appearance of the Premises, shall not be made without advance written consent by the Lessor. Any and all repairs, alterations and additions to the Premises shall be performed in a good and workmanlike manner using appropriate historic or new materials and equipment and in compliance with all safety codes and regulations, and applicable historic preservation standards. In the event that any repairs, additions, alterations or improvements are made by the Lessee through a contractor, the Lessee agrees that it will closely supervise such work and see that all laborers and materialmen are promptly paid so that no lien will accrue or be filed against the Premises; and in the event that the Lessee hires laborers and/or purchases material itself for the improvement of the Premises, it will promptly pay all charges for such labor and materials when the same become due so that no liens will accrue or be filed against the Premises and no claim can be asserted against Lessor for such payment. Lessor shall have the right to call upon the Lessee for a statement or other information concerning the payment of any contractor, laborer and/or materialman who may have furnished labor or materials for the improvement on the Premises and Lessee covenants and agrees that it will immediately give full information in regard to all such to the Lessor upon demand. Lessee, however, shall have the right to remove Lessee's personal property in the nature of trade and/or business fixtures from the Premises at the expiration of this Lease. To the extent that any act under this Lease would require a Certificate of Appropriateness as issued by the Augusta, Georgia Historic Preservation

Commission, it shall be the duty of Lessee to apply for and obtain such Certificate, and otherwise follow all requirements of the ordinances of Augusta, Georgia under Title 7, Chapter 4.

12. Utilities, Maintenance, and Insurance: Upon the execution of this lease, Lessee shall be responsible for any and all utilities, maintenance costs, and insurances on the Premises through the remainder of the Lease.

13. No Estate in Land: This contract shall create the relationship of Lessor and Lessee between the parties hereto and no estate shall pass out of Lessor during the term of the lease.

14. Termination: Upon failure of the Lessee to fulfill any of its obligations contained in this Lease or fail to substantially perform in accordance with the terms of this Agreement, Lessor in its sole discretion may, in the case of a termination for breach or default, allow Lessee a period of time in which to cure the defect. The Lessor shall send the Lessee written notice of such default. The Lessee shall have thirty (90) days from receipt of such written notice to cure the default described in the notice. Should the Lessee fail to cure the default within the thirty (90) day period, the Lessor shall have the option to terminate this Lease and, upon such termination, the Lessee shall immediately surrender possession of the Premises back to the Lessor in good condition, normal wear and tear excepted. Any such termination for default shall not in any way operate to preclude the Lessor from also pursuing all available remedies against Lessee and its sureties for said breach or default. Additionally, Lessor has the right to terminate this Lease if in any instance the Premises are no longer used for a park. Except as otherwise provided in this agreement, neither party shall be entitled to recover lost profits, special, consequential or punitive damages, attorney's fees or costs from the other party to this Agreement for any reason whatsoever.

15. Holding Over: In the event that Lessee or anyone claiming under Lessee shall continue occupancy of the Leased Premises after the expiration of the term of this Lease or any renewal or extension thereof without any agreement in writing between Lessor and less with respect thereto, such occupancy shall not be deemed to extend or renew the term of the Lease,

but such occupancy shall continue as a tenancy at will, from month-to-month, upon the covenants, provisions, and conditions herein contained.

16. Exculpation and Indemnification: The Premises are being leased to Lessee "AS IS", and Lessee accepts said Premises in its present condition and acknowledges that it has inspected the same and found the Premises to be suitable for its intended use of a recreational public park. If any repairs to the improvements located on the premises covered by this Lease are required during the term of this Lease, the cost of same shall be paid by Lessee. As set forth in Section 4 hereof, it is the intent and understanding of the parties that Lessor be afforded the protections of a landowner allowing access to land for recreational purposes under the Georgia Recreational Properties Act. To the extent such protection is revoked by future law or determined not to apply, it is an express condition of this Lease Agreement that Lessor, its officers, representatives, agents, and employees, shall be free from any and all claims, debts, demands, liabilities, or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury, or damage to any person or persons or damage or destruction of property or loss of use thereof, whether it be the person or property of Lessor or Lessee, their invitees, licensees, officers, representatives, agents, or employees, or any third persons, from any cause or causes whatsoever arising from any event or occurrence in or upon the Premises or any part thereof or otherwise arising from Lessee's operations and, Lessee shall indemnify and save harmless the Lessor, its officers, representatives, agents, and employees, against and from any and all such claims, demands, debts, liabilities, and causes of action including reasonable attorney's fees and costs to be incurred by Lessor in defending same.

Lessee specifically agrees that its operations shall be conducted in compliance with all federal, state and local environmental laws, rules and regulations. Lessee agrees to indemnify and hold harmless Lessor from and against all liabilities, losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, expert fees and reasonable attorneys' fees) which

may be incurred by, charged to or recovered from the foregoing (i) by reason or on account of damages to or destruction of the property of Lessor, or any property of, injury to or death of any person, resulting from or arising out of Lessee's use of the premises, or (ii) arising out of the failure of Lessee to keep, observe or perform any of the agreements or conditions of this Agreement. Either party will refer to the other party promptly upon notice thereof, any claim made or suit instituted against it which, in any way, affects the other party or their insurer. If Lessee shall defend or compromise following notice from Lessor under this Agreement, then Lessor shall have the right to compromise and defend the same to the extent of its interests, with all cost to be borne by Lessee.

17. Rights Cumulative: All rights, powers and privileges conferred hereunder upon Lessor shall be cumulative but not restrictive to those given by law.

18. Service of Notice: Any notice, demand, request, approval, consent, or other communication (hereinafter referred to as "notice"), which Lessor or Lessee may be required to permit to give to each other shall be in writing and shall be mailed in an official United States Post Office, certified or registered mail, return receipt requested, with adequate postage prepaid, to the other party at the address as each party as designated in this Lease or shall have changed by proper notice in writing to the other. Such addresses are as follows:

Lessee:
Augusta, Georgia
Office of the Mayor
535 Telfair Street, Suite 200
Augusta, GA 30901

With Copies to:
General Counsel
Augusta Law Department
535 Telfair Street, Building 3000
Augusta, GA 30901

Augusta Parks and Recreation Department
2027 Lumpkin Road
Augusta, GA 30906

Lessor:

Trust of Oakland Park
c/o Wilson Huggins
929 Hickman Road
Augusta, Georgia 30904

If notice is not an answer or reply to a previous notice from the other party, the time of rendition of such shall be the date when the receipt is signed, refused or returned unclaimed. If the notice is an answer or reply to a previous notice from the other party, the time of rendition of such shall be the date postmarked by the United States Postal Service. In the event of a postal strike or other interference with the regular delivery of mail, notices may be served in person or by telegram in lieu of certified or registered mail, but shall be effective upon receipt.

19. Waivers of Rights: Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

20. Inspection by Lessor: Lessor, its authorized officers, employees, agents or representatives shall have the right to enter upon the premises to make inspections during regular

business hours for open access areas, when a representative of the Lessee is present in enclosed or restricted access areas, or at any time in case of emergency and/or to determine whether Lessee has complied with and its complying with the terms and conditions of this agreement; provided, however, that said inspection shall in no event unduly disrupt or interfere with the operation of the Lessee.

21. Taxes: Lessee shall pay all personal property taxes legally assessed, if any, against its equipment, furniture or other personal property located on the Premises. The parties hereto note that, as of the date of this agreement, no property is deeded taxable against Lessor.

22. No Conflict: Lessee represents and warrants that it presently has no interest, direct or indirect, and covenants and agrees that it will not, during the term of this Agreement, acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of its duties and obligations hereunder. Lessee further covenants and agrees for itself, its agents, employees, directors and officers to comply fully with the provisions of the Official Code of Georgia (OCGA §§45-10-20 et. seq.) and the provisions of the AUGUSTA, GA CODE of Ethics governing conflicts of interest of persons doing business with Augusta, as such provisions now exist and may be amended hereafter. Lessee represents and warrants that such provisions are not and will not be violated by the Agreement or the Lessee's performance hereunder.

23. Prohibited Interests: No official of Augusta, Georgia who is authorized in such capacity and on behalf of Augusta, Georgia to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any contract, or any subcontract in connection with the Agreement, shall become directly or indirectly interested personally in this Agreement or in any part hereof. No officer or employee of or for Lessor who is authorized in such capacity and on behalf of Augusta, Georgia to exercise any legislative, executive, supervisory, or other similar functions in connection with this Agreement, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply contract, subcontract, insurance contract or any other contract pertaining to the Agreement.

24. Compliance with Applicable Laws: The Lessee's attention is directed to the fact that all applicable federal, state, and local laws, ordinances, and the rules and regulations of all authorities having jurisdiction over the work shall apply to the Agreement throughout, and they all will be deemed to be included in the Agreement the same as though herein written out in full. The Lessee shall keep itself and its employees fully informed of all laws, ordinances, and regulations in any manner affecting those engaged or employed in the work or the materials used in the work or in any way affecting the conduct of the work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If Lessee discovers any discrepancy or inconsistency in this Agreement in relation to any such law, regulation, ordinance, order, or decree, Lessee shall promptly report the same, in writing, to Lessor. Lessee shall at all times observe and comply with all such laws, ordinances, and regulations, and shall protect and indemnify Lessor and its agents against any all damages and claims arising out of any violation of such law, ordinance, regulation, order, or decree, whether by Lessee or its employees.

25. Severability: In the event any provision of this Agreement is held to be unenforceable for any reason, the remainder of the Agreement shall be in full force and effect and enforceable in accordance with its terms.

26. Installation of Equipment: Lessee is prohibited from installing any equipment on Lessor's property without prior written approval.

27. Authority: If either party hereto is a corporation, trust, a 501(c) 3 organization, or general or limited partnership, each individual executing this Agreement on behalf of such entity represents and warrants that he, she, or it is duly authorized to execute and deliver this Agreement on its behalf. If it is a corporation, trust or partnership, Lessee shall, within thirty (30) days deliver to Lessor evidence satisfactory to Lessor of such authority.

28. Independent Contractor: Lessee shall perform this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with that relationship or status. Nothing in this Agreement shall in any way be construed to appoint or

constitute Lessee as the agent, employee or representative of Lessor. The manner and method of completing the work undertaken by Lessee shall be determined in its sole discretion.

29. Lessee shall not use, store, keep, release, discharge, dispose of or spill any toxic or hazardous substances, wastes or materials on the Leased Property, nor use or store any such substance that will have any residual effect beyond the lease term.

30. Abandonment by Lessee: Should Lessee breach this Lease Agreement and abandon the property prior to the natural expiration of the lease term, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of the property, in which case Lessor shall be entitled to enforce all Lessor's rights and remedies under this Lease Agreement including the right to recover rent as it becomes due.

31. Open Records: The Lessor acknowledges that all records relating to this Agreement and the services to be provided under this Agreement may be a public record subject to Georgia's Open Records Act. (O.C.G.A. § 50-18-70, et seq.). Lessor shall cooperate fully in responding to such request and making all records, not exempt, available for in section and copying as provided by law. Lessee shall notify Lessor immediately of any request made under the Open Records Act and shall furnish Lessor with a copy of the request and the response to such request.

32. Governing Law: This Agreement shall be governed and interpreted by the laws of the State of Georgia.

33. Venue: All claims, disputes and other matters in question between the Lessor and the Lessee arising out of or relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. The Lessor, by executing this Agreement, specifically consents to venue in Richmond County and waives any right to contest the venue in the Superior Court of Richmond County, Georgia.

34. Time of Essence: Time is of the essence of this Agreement.

35. Entire Agreement: This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of either party to exercise any power given it hereunder, or to insist upon strict compliance by either party of any obligations hereunder and no custom or practice of the parties at variance with the terms hereof. This Agreement may only be amended by writing signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

AUGUSTA, GEORGIA (Lessee)

TRUST OF OAKLAND PARK (Lessor)

By: _____

By: _____

Name: _____

Name: _____

Title: Mayor _____

Title: _____

Date: _____

Date: _____

Attest: _____

By: _____

Lena J. Bonner, Clerk of Commission

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____