

## **VENUE LICENSE AGREEMENT**

This Venue License Agreement (this “Agreement”) is between the City of Clearwater, Florida, a municipal corporation of the State of Florida (the “City”) and Ruth Eckerd Hall, Inc., a Florida not-for-profit corporation (“Licensee” and collectively with the City, the “Parties”).

### **BACKGROUND**

The City is the owner of Coachman Park, located at 301 Drew Street in downtown Clearwater, which the City is redeveloping to include a garden, playground, greenspace, and gateway plaza, a 4,000 seat covered, waterfront amphitheater venue with additional lawn seating for approximately 5,000 guests (the entirety of the Coachman Park complex, surrounding real estate, parking areas, and improvements, the “Park”). The amphitheater, including covered seats, stage, backstage, dressing rooms, lawn seating area, restrooms, and vendor areas, which areas are described and depicted on attached Exhibit A, but excluding those areas outside the blue and red fence perimeter depicted on Exhibit A, shall be referred to in this Agreement as the “Venue.” Licensee has the necessary experience in the business of providing entertainment management services of a public venue. The City desires to license the Venue to the Licensee and engage Licensee to provide quality venue management services for concerts and other events, including booking and scheduling services, production, marketing services, ticketing services and food and beverage services for the express purpose of enhancing the public use and enjoyment of the Venue.

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

### **Article I. License of Venue**

1.1 License. The City hereby grants to Licensee a license (the “License”), for the purposes set forth in this Agreement, to enter upon, use, occupy and exercise complete and exclusive control of the Venue to use all rights of access to the Venue, and to utilize all City Assets for each event. “City Assets” means the Venue and any furniture, fixtures, equipment, or assets supplied by the City, including, but not limited to stage, temporary stage, floor, sound system, lighting system, stage rigging, dressing area, stage equipment, barricade, seating, cabling, communications and information systems equipment, and all appurtenant items owned by the City and located at the Venue. Notwithstanding the foregoing, the parties agree as follows: (a) at all times the City remains the owner of the City Assets; and (b) no real property interest is conveyed to Licensee under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Licensee may perform maintenance and cleaning services at the Venue and on any City Assets, and any maintenance, improvements, or replacements to any City Assets shall be reimbursed by the City upon request by the Licensee.

### **Article II. Appointment of Licensee and Duties**

2.1 Engagement of Licensee. The City hereby engages the Licensee and authorizes it to take sole, entire, exclusive charge of operating the Venue, and City hereby agrees that it will

not engage or assign any rights to another entity for the operation of the Venue, in whole or in part, including but not limiting to operating and programming activities during the Term. The Licensee hereby accepts the engagement and authorization and agrees to use its reasonable, good faith efforts in light of market conditions and attendance patterns to secure, devise and promote live entertainment and special events appropriate to the operation of the Venue (such events, and any other events excluding City Events, the “Licensee Events”). Licensee will have sole administrative and operational control over all events and activities conducted at the Venue, and sole artistic control over Licensee Events. In addition to Licensee’s own presentations, Licensee is responsible for entering into agreements with third parties to use the facility and providing operational services for all parties using the facility, including the City. Events shall be produced and promoted in accordance with standard practices acceptable and common to the industry. Further, completion of construction of the Venue and turnover to the Licensee shall be a condition precedent to the effectiveness of any Licensee obligations hereunder.

2.2 Duties of Licensee. Licensee, at Licensee’s cost, shall take such actions and perform such duties as Licensee deems necessary and desirable for the management and operation of the Venue, including, but not limited to the following:

(a) *Brand Development.* Licensee, at its own expense will engage a marketing firm to facilitate branding and positioning of the Venue. Deliverables include development of Venue name, logo, style guide, promotion plan and media campaign, to be mutually agreed upon by City and Licensee in their reasonable discretion. Licensee is responsible for selection of firm, determination of services and expense of such services. Ownership of any deliverables will transfer to the City at the end of the renewal term.

(b) *Marketing.* The Licensee is responsible for advertising, marketing and promotion of the Licensee’s presentations at the Venue. Marketing services for events are negotiated between the event organizer and Licensee, in Licensee’s sole discretion. Licensee will coordinate with the City on inclusion of Venue activities in the City’s communications and promotional efforts, except when closed to the public or prohibited by the event organizer. Licensee reserves the right to promote its management of the Venue and events on the Licensee’s website, media channels, collateral and other public communications for the purposes of institutional advertising, promotion, ticket sales and event services.

(c) *Employment of Personnel.* During the Term, the Licensee shall, at its sole cost and expense, select, train, schedule, and employ at the Venue such number of employees, as it deems necessary or appropriate to satisfy its responsibilities hereunder. Such employees shall not be deemed to be employees of the City. The employees shall be subject to the sole direction of the Licensee, who shall have authority to hire, terminate, discipline and discharge any and all personnel working for the Licensee at the Venue.

(d) *Event Bookings and Rentals.* Licensee shall be solely responsible for Venue calendar, scheduling, and event bookings. Licensee shall develop and maintain all schedules for events held at the Venue, but the Licensee must produce a minimum of thirty-five (35) events per year, beginning in calendar year 2024, with no maximum. Each day of a performance hosted or arranged by the Licensee shall count as an “event” for purposes of this subsection. City Events

shall not count toward the minimum number of events. The Parties understand and agree that Licensee shall be empowered to negotiate all agreements and set fee schedules in a manner deemed by Licensee to be appropriate.

(e) *Property Security for Events.* During preparation, occurrence, and clean-up/tear down of any concert or live event at the Venue, Licensee may reasonably restrict access to the Venue to patrons and other persons authorized by Licensee. Licensee shall be responsible for hiring and supervising on-site security and public safety personnel for the Venue during events (“Onsite Security”). To the extent that City police, fire, and/or emergency medical personnel are required, the City Manager shall notify the Licensee of the staffing level required for each event within thirty (30) days of the Licensee providing actual notice to the City Manager of the upcoming event. With respect to rates, the rate paid to the shall be the City’s minimum “extra duty” or “off-duty” rate established in the City’s collective bargaining agreements, if applicable; if a collective bargaining agreement is silent as to rate, the rate shall be determined by the City Manager and communicated to the Licensee at the same time as the staffing level. The City and Licensee agree that staffing levels will vary based on expected attendance and activity, but the parties do not intend for City requirements to exceed customary levels or cost for venues of similar capacity. The Licensee is strictly prohibited from holding any event at the Venue without first requesting a security review by the City Manager or in violation of the City Manager’s security determination.

(f) *Cleaning for Events.* The Licensee shall be responsible for providing and supervising all cleaning services to the Venue, except as otherwise provided in this Agreement.

(g) *Food and Beverage Services.* Licensee shall have the exclusive right to operate or contract for the operation of food and non-alcoholic beverage services, suite services (if any), concession services, vending services and the service and sale of alcoholic beverages, at all areas of the Venue. However, the Licensee shall be prohibited from serving alcoholic beverages that compete with the Venue Sponsor’s beverage products. Licensee shall comply with and observe all federal, state, and local laws, ordinances, and regulations as to sanitation, serving hours of alcohol, and the purity of food and beverages or otherwise relating to its operations. Any and all profit or loss derived by said food and beverage services will be property of Licensee for any events.

(h) *Operational Services.* Licensee shall direct all services required to stage (set-up and tear-down) the Venue for each event including, without limitation, services involving the stage area, event floor, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. Licensee shall hire and manage all management staff, ticket sales personnel, ushers, and other personnel required for the operation of the Venue including; but not limited to, ticket-taking, novelty sales, program distribution and assistance to patrons. Any expenses related to such services shall be borne by the Licensee with respect to any Licensee Events, except to the extent the Licensee determines to charge third parties for such expenses. Costs for such services will be borne by the City with respect to City Events as provided in Licensee’s standard usage policy, which will apply to such City Events.

(i) *Negotiate with Third Parties.* Licensee may exclusively negotiate, execute, deliver and administer any and all licenses, occupancy agreements, rental agreements,

booking commitments, catering and concession agreements, decorating agreements, supplier agreements, service contracts and all other contracts and agreements in connection with the entertainment management, promotion and production at the Venue, all in a manner deemed by the Licensee to be appropriate.

(j) *Parking Facility at the Venue.* On days on which the Licensee is holding or managing an event, and on any single day preceding the day on which the Licensee will hold or manage an event, the Licensee shall staff and control the parking lot on the north side of the Venue and depicted on Exhibit A (the “Venue Parking Lot”), and the City shall permit use by patrons of the Venue and by the Licensee. During all other days and times, the Venue Parking Lot shall be controlled by the City, and neither the Licensee nor the Licensee’s patrons shall have any right of access unless expressly granted by the City. The City shall, in the exercise of reasonable discretion, design and erect signage or other markers reasonably appropriate to facilitate the enforcement of this subsection.

(k) *Pedestrian Safety and Traffic Control.* Licensee will pay for public safety personnel needed on-site at the Venue for the safety of pedestrians entering and utilizing the Venue. Licensee will work in good faith with City to maximize opportunities to alleviate congestion through incentivizing patrons to arrive early, communicating best routes and parking options, and encouraging alternative transportation such as ride share, Jolley Trolley, water taxi, etc.

(l) *Compliance with Laws.* In the operation of the Venue, the Licensee shall materially comply with all laws, ordinances, and regulations applicable to it with respect to operation of the Venue, including noise ordinances, as amended from time to time.

(m) *Program Sponsorships.* Licensee shall negotiate, administer, and execute in the Licensee’s name, all Program Sponsorships and shall be responsible for all expenses associated with securing and servicing such Program Sponsorships. For purposes of this Agreement, “Program Sponsorships” means individual gifts, foundation grants, public grants, or other program-related and event-related donations for Licensee Events including but not limited to individual events, presentations, educational programs, community events (provided that they do not constitute City Events), and event series. The Licensee shall notify the City Manager at least thirty (30) days prior to agreeing or committing a Program Sponsorship to any corporate or business entity that has not previously been reviewed by the City Manager. The City Manager shall, in the exercise of reasonable discretion, review the proposed Program Sponsorship for two purposes: first, to determine whether the proposed Program Sponsor competes with any Venue Sponsor with whom the City has an existing partnership or with whom the City is presently negotiating; and second, to determine whether the proposed Program Sponsorship qualifies as governmental speech, and if so, whether the message associated with or from that Program Sponsor is incompatible with the values or message the City desires to convey at its Venue. The Licensee may, at its sole option, make this notification informally by telephone call to the City Manager in lieu of written or electronic correspondence. If the City Manager finds that either conflict exists, (s)he will veto the Proposed Sponsorship by notifying the Licensee within ten (10) days. The Licensee will decline to enter into any Program Sponsorship so vetoed. If the City

Manager fails to respond or expressly veto the Proposed Sponsorship within ten (10) days, the Licensee may proceed with the Program Sponsorship, in the Licensee's sole discretion.

(n) *Ticketing and Customer Information.* Licensee shall implement ticketing system of its choice that will serve as the exclusive ticketing system of Venue. Licensee is responsible for all revenues and expenses associated with ticketing system. Tickets will be available for sale through the Licensee's regular sales channels and on-site on the day of an event. Licensee may at its own discretion provide a temporary ticket booth and/or kiosks at the Venue. Licensee shall determine service fees and any other ticket surcharges it wishes to and, except as otherwise set forth herein, all income and expense derived from such tickets and fees are property of Licensee. Event organizers may contract ticketing services according to Licensee's fee schedule. For ticketed City Events, set-up fees will be waived with charges limited to labor and credit card fees. Licensee is responsible and has sole custody of customer information including but not limited to transactional history, phone numbers, email, and mailing addresses, in material compliance with the Licensee's privacy policy and applicable law.

(o) *Maintenance.* Licensee shall be responsible for maintenance of all assets owned by the Licensee and shall keep such assets in good repair, normal wear and tear excepted, and shall report any known issues related to the Venue or any other City Assets. Licensee shall, in consultation with the City, conduct periodic risk management inspections. If and to the extent that any maintenance or repairs are performed on the City Assets, for or on behalf of the City, such maintenance or repairs shall be performed in a good and workmanlike manner and in material compliance with applicable laws. Any repairs made to City Assets for and on behalf of the City, shall be reimbursed within thirty (30) days of written request to the City.

(p) *Rules.* Licensee shall establish and enforce, in its sole discretion, rules to ensure health, safety, welfare and decorum in the use of the Venue consistent with industry standards.

(q) *Licensee Asset.* The Licensee shall provide assets of the classes set forth on Exhibit B, and may provide certain other assets it deems necessary or convenient in the operation of the Venue (the "Licensee Assets").

(r) *Venue Management.* Licensee retains exclusive use of the Venue and Licensee Assets and therefore, shall exclusively provide any food and beverage, operational, and ticketing services, for all events, including City Events, unless otherwise agreed by the Parties.

(s) *Sustainability measures.* The Licensee shall, in consultation with the City's sustainability coordinator or other designated City employee, and in the exercise of reasonable discretion, develop a sustainability plan to ensure that the Venue utilizes sustainable and environmentally friendly practices. The Licensee shall report its sustainability plan to the City Council at a public meeting within ninety (90) days of the effective date of this agreement.

### **Article III. Responsibilities of City; City Events**

3.1 Initial Construction of Venue. City shall be responsible, at its sole cost and expense, for the designing, planning, permitting, and construction of the Park, and specifically the Venue and related improvements, which activities shall be conducted in good and workmanlike manner. The City shall make good faith efforts to ensure that the initial construction of the Venue takes place in a timely manner in order to ensure the ability of the Licensee to take possession with sufficient time to install Licensee Assets prior to such date as provided in Section 3.2, below, and conduct its first major concert, the date of which will be determined in good faith between the Licensee and the City.

3.2 Pre-Opening Access. City shall provide adequate time for Licensee to install Licensee Assets. Licensee will provide City with an installation timeframe by April 1, 2023, and shall provide temporary access for installation of Licensee Assets on a date mutually agreed by the parties, provided that such date shall be no later than June 10, 2023. It is understood that the City is responsible for content and cost of a grand opening event, scheduled for July 4, 2023. In keeping with Licensee's exclusivity with respect to the Venue, the City shall use Licensee for support services for the grand opening event, including but not limited to stage operations, concessions, and other operational services. The City shall reimburse the Licensee for any labor, supply, and other out-of-pocket costs and expenses incurred by the Licensee in supporting the grand opening event.

3.3 Securing the Venue. The City shall take all reasonable and necessary actions to secure the Venue, and all portions thereof including all restrooms, the stage, and the covered seating area, when not in use for events or preparation therefor. Such actions shall include, but not be limited to, locking doors, fencing, and otherwise restricting access to the public as necessary and/or reasonably requested by the Licensee to ensure the physical security of all City Assets and Licensee Assets at the Venue.

3.4 Payments to Licensee. City covenants and agrees that it shall provide to Licensee such sums as it is required to pay to Licensee as required under Sections 3.5 and 3.11 of this agreement,

3.5 Venue Sponsorships and Associated Benefits. The City shall negotiate, administer, and execute in the City's name, all Venue Sponsorships and Park Sponsorships. For purposes of this Agreement, "Venue Sponsorships" means sponsorships for naming rights for the Venue and any portion thereof, including suites, sections, concession areas, etc., pouring rights, and any other sponsorship associated with the physical Venue and fixed infrastructure to the extent owned by the City. The City shall engage a professional third-party sponsorship marketing entity to source such Venue Sponsorships and Park Sponsorships with proceeds remitted to the City. The City and any sponsors shall work in good faith with the Licensee in the negotiation, administration and execution of any Venue Sponsorships or Park Sponsorships. The benefits available to the Venue Sponsor, and compensation owed to the Licensee, shall be governed by the following terms:

(a) The Venue Sponsor shall receive ten (10) tickets to each Licensee event, for the Venue Sponsor's sole use. These ten (10) tickets shall be located in the front section or highest price section of Venue seating, as determined by the Licensee in the exercise of reasonable discretion.

(b) In return for providing these tickets to the Venue Sponsor, the Licensee shall be compensated in an amount equaling the base printed value of each ticket, prior to or without considering or adding any surcharges, donations, or fees.

(c) In addition, each of these ten (10) tickets shall guarantee access at each event to the Premium Area located adjacent to the stage, and depicted on Exhibit "D" of this agreement, unless the Licensee has rented the Premium Area for the exclusive use by one party or one legal entity. Each time the Licensee rents the Premium Area for the exclusive use by one party or one legal entity for a particular event, the Licensee shall promptly notify the City and the Venue Sponsor.

(d) If the Venue Sponsor or Park Sponsor requests food and beverage or other services, the Licensee shall use best efforts to accommodate the request. To the extent that the request is accommodated, the Licensee shall be compensated at commercially reasonable rates.

(e) As to all compensation owed to the Licensee under this Section 3.5, the City will either, depending on its contractual relationship with its sponsor, compensate the Licensee or require the sponsor to compensate the Licensee. In either circumstance, the Licensee shall be compensated within sixty (60) days of providing a detailed invoice with pricing that aligns with the provisions of this Section 3.5.

(f) Subject to ticket availability, the Licensee shall afford the Venue Sponsor an opportunity to purchase additional tickets, beyond the ten (10) tickets described in this section. The timing of this opportunity shall coincide with a pre-sale period determined by the Licensee, in the exercise of reasonable discretion. Any additional tickets purchased by the Venue Sponsor pursuant to this provision shall be paid by the Venue Sponsor at full retail price, including any fees, surcharges, and taxes that would normally be assessed to any other retail purchaser.

3.6 Pedestrian Safety and Traffic Control. The City shall be responsible for any personnel deemed necessary for pedestrian safety and traffic control in the areas surrounding the Venue, including Coachman Park and downtown Clearwater.

3.7 Parking. City will permit the Licensee to use and manage the Venue Parking Lot and traffic accessing the backstage area at any time on a day in which an event being operated or managed by the Licensee is being held at the Venue, along with the day immediately preceding the day of the event. In acknowledgment of contractual obligations with tours and certain artists, the City will allow Licensee to reserve and utilize, free of charge, that portion on the south side of the west end of Drew Street, between the entrances to the Coachman Park Fishing Pier and the Waterfront Pier to accommodate, to park, secure, and provide power to tour buses and designated vehicles. City agrees to work with Licensee to close certain portions of Drew Street to traffic on show days, and on other days upon reasonable request of the Licensee for activities in support of any events. However, any closure of Drew Street's westbound lanes shall be accomplished in a

way that maintains a vehicle movement lane to accommodate emergency ingress to and egress from nearby properties.

### 3.8 City Assets and Maintenance.

(a) City shall supply and install all City Assets and any other equipment, furnishings and expendables required to operate the Venue other than the Licensee Assets; provided that Licensee may supply or install certain equipment, furnishings, or expendables for and on behalf of the City upon the City's request and at the City's sole cost and expense.

(b) City shall be responsible for repair, replacement, or alteration of City Assets, including but not limited to conditions related to equipment or structure failure, change in code requirements, recalls, fire safety, hurricane and emergency procedures, and conservation. City shall be responsible for landscape maintenance of the Venue in conjunction with the Park. City shall also ensure adequate services to maintain Coachman Park, more broadly, as a first-class municipal park.

(c) The City shall pay for, perform, direct and supervise any capital equipment and capital improvement purchases, repairs and maintenance to the extent provided by the City and will ensure any and all such repairs and maintenance obligations are performed in a good and workmanlike manner, in material compliance with applicable laws, and are performed on schedule and in a manner to ensure that the Venue remains a first-class Venue.

(d) The City has the right to enter all portions of the Venue to conduct inspections of its assets, perform its maintenance obligations, or otherwise carry out its rights under this Agreement; provided, however, that the City shall provide reasonable advance notice to the Licensee prior to entry upon the Venue and shall perform its obligations with minimal interference with or disruption to any Licensee Events or the Licensee's work under this Agreement, generally.

3.9 Signage. All permanent signage, including wayfinding signage, interior, exterior, and other permanent signs at the Venue and in Coachman Park shall be provided and maintained in good condition by the City. Notwithstanding the foregoing, the City shall work in collaboration with and in good faith with the Licensee to design the signage for the Venue.

3.10 Maintenance Fund. The City shall, on or before the Commencement Date, establish and maintain a separate account from the City's general fund of [\$100,000.00], earmarked specifically and exclusively for the maintenance, repairs and replacement of City Assets as needed at the Venue. The Maintenance Fund will be replenished by the ticket rebate discussed in Section 5.1, below.

3.11 City Events. The City shall have the right to use the Venue, or any portion thereof, for governmental purposes hosted by the City or staffed by City personnel, without payment of any rental or usage fees, on July 4, July 5, and up to ten (10) additional dates per calendar year during the Term (such events, "City Events"). For any City Event occurring on or before July 1, 2024, the City shall provide at least one hundred and twenty (120) days' notice to the Licensee prior to scheduling the City Event. For any City Event occurring after July 1, 2024, the City shall



provide at least three hundred and sixty-five (365) days' notice prior to scheduling the event. If the City provides proper notice, the City shall have the right to schedule the City Event on the day(s) indicated, unless the Licensee has a letter of agreement arranging a guaranteed performance, show, or event on that date. For the avoidance of doubt, a temporary "hold" shall not be considered a letter of agreement or scheduling conflict for purposes of this section. Any unused City Events shall expire at the end of each calendar year and shall not be subject to rolling forward to the next calendar year if unused. The City or organizer of the City Event shall use Licensee for support services, including but not limited to stage operations, concessions, and other operational services; provided, however, that the City shall not be obligated to use Licensee if the City Event does not require a professional event manager, as determined in the reasonable discretion of the City Manager. The City shall reimburse the Licensee for any hourly labor, supplies, catering, and other documented out of pocket costs and expenses incurred by the Licensee in connection with a City Event, such reimbursement without markup or profit, and which reimbursement shall be due and payable upon receipt of a reasonably detailed invoice from Licensee documenting each cost for which reimbursement is sought. The City shall act in good faith to avoid scheduling a City Event promoted by a person or entity that competes with the Licensee, unless agreed by the Licensee that such event would not be a conflict.

3.12 Additional Events. Licensee will reserve the traditional dates for Jazz Holiday festival on an annual basis, contingent upon mutually agreeable terms between Licensee and the event organizer. In addition, the Licensee will use reasonable efforts to work with other third parties to organize certain community events on mutually agreeable terms. Remuneration and contracting for Jazz Holiday and these additional events shall be separately negotiated between the Licensee and the entity hosting the event. Such events may, in the sole discretion of the Licensee, be subject to rental and/or usage fees, and shall not occur without an agreement acceptable to the Licensee. For the avoidance of doubt, the City shall not be responsible for any payment to Licensee in support of any such third-party events unless it expressly agrees otherwise.

## **Article IV. Term**

4.1 Term. Unless terminated earlier pursuant to the terms and conditions of this Agreement, the initial term of this Agreement shall begin on the date hereof and shall continue for a period of five (5) years from the Commencement Date unless earlier terminated pursuant to the terms of this Agreement (the "Initial Term"). Provided that the Licensee is not then in default, the Agreement will automatically renew for four (4) successive five (5) year periods thereafter (each, a "Renewal Term," and the Initial Term and all Renewal Terms, collectively, the "Term") unless written notice of election not to renew is given (a) if by the City, no less than twelve (12) months prior to the expiration of the Initial Term or the then-current Renewal Term, as the case may be, or (b) if by the Licensee, no less than six (6) months prior to the expiration of the Initial Term or the then-current Renewal Term, as the case may be. For purposes hereof, the term "Commencement Date" means the date that the Licensee takes possession and control of the Venue following completion of construction, which the parties intend to be on or before August 1, 2023.

4.2 Early Termination. This Agreement may be terminated early, consistent with the provisions listed below.

(a) *For Convenience.* The City may terminate this Agreement on thirty (30) days' prior written notice for any reason upon approval of the Clearwater City Council at a duly constituted City Council meeting. The City shall provide Licensee no less than thirty (30) calendar days' written notice of the meeting of City Council to determine termination of the Agreement. The Licensee may terminate the Agreement upon six (6) months prior notice to the City for any reason or no reason. Notwithstanding anything to the contrary in this Agreement, in the event the City terminates this Agreement for convenience, the City is prohibited from self-promoting or entering into a booking agreement, entertainment management agreement, or any like agreement with an outside company to promote the events booked for the Venue by the Licensee prior to termination of this Agreement.

(b) *For Cause.* The non-defaulting party may terminate the Agreement upon determination in good faith by the non-defaulting party that there was a material breach of the Agreement that remained uncured following notice and opportunity to cure as provided in the Terms and Conditions attached hereto as Exhibit C, and the termination will be deemed effective immediately, or upon such other date as specified in a notice of termination, provided that termination shall have been approved by the Clearwater City Council at a duly constituted City Council meeting following failure to cure such material breach by the Licensee, with written notice of such City Council meeting being provided to the Licensee no less than thirty (30) days prior thereto.

4.3 Surrender; Effect of Termination. Upon termination of this Agreement, permission to use the City Assets, including the Venue, shall be revoked. Thereafter, the Licensee shall promptly vacate and surrender to the City the Venue and any City Assets contained therein. In any event, such surrender shall be complete thirty (30) days following effective date of termination.

(a) *Licensee Assets.* The Licensee shall remove any Licensee Assets it determines, in its sole discretion, to retain and make any repairs necessitated by such removal within the period set forth herein. Understanding that Licensee will continue to invest in and replace assets throughout the Term to maintain a first-class venue, upon termination or non-renewal, City will purchase Licensee Assets that the Licensee determines to leave at the Venue for the benefit of the City for the Asset Value. Licensee will submit a depreciation schedule of Licensee Assets to the City annually. The "Asset Value" for Licensee Assets, at separation, shall be determined as the undepreciated amount of original purchase price set forth on the most recent depreciation schedule, or if fully depreciated, will be \$10.

(b) *Expenses.* Upon termination for any reason, City shall pay Licensee for any services performed prior to the effective date of such termination, and any costs and authorized expenses incurred through the effective date of such termination or necessitated by the termination.

(c) *Event Cancellations.* Upon termination by the City, and in addition to the above, the City shall reimburse the Licensee for any Non-Recoverable Event Expenses. For purposes hereof, "Non-Recoverable Event Expenses" means any costs or expenses incurred by

the Licensee as a result of relocating or cancelling a Scheduled Event, including but not limited to forfeited deposits, penalties, marketing expenditures, and transaction fees. The term “Scheduled Event” means an event scheduled to occur at the Venue during the notice period and within eighteen (18) months of the effective date of termination for which the Licensee has sold tickets to patrons or entered into a written or oral agreement for the event.

(d) *Liquidated Damages.* In light of the difficulties in estimating the damages for an early termination of the Licensee under this Agreement without appropriate notice, the City and the Licensee hereby agree that if the City terminates the Licensee for convenience with less than twelve (12) months’ prior written notice, then the following liquidated damages shall apply in addition to the provisions above, which liquidated damages the parties agree are reasonable and intended as just compensation and not as a penalty or method to secure performance:

(i) Termination with less than six (6) months’ notice. If the City terminates this Agreement with less than six (6) months’ notice, then the City shall pay the Licensee an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000.00);

(ii) Termination with less than twelve (12) but equal to or more than six (6) months’ notice. If the City terminates this Agreement with less than twelve (12) months’ notice, but equal to or greater than six (6) months’ notice, then the City shall pay the Licensee an amount equal to One Million Dollars (\$1,000,000.00).

## **Article V. Compensation Matters**

5.1 **Ticketing; City Rebate.** All revenue and/or expense derived from tickets and fees are property of Licensee; provided, however, that the Licensee shall remit to the City a rebate with dollar values dependent upon the ticket price, as follows, to be paid to City within thirty (30) days following the end of each calendar quarter during which the event actually occurs: (a) for tickets actually sold with a selling price of more than \$10.00, the Licensee shall remit to the City a rebate of \$5.00 per ticket sold, of which \$4.00 shall be paid to the City’s general account, and \$1.00 shall be paid to the Maintenance Fund; (b) for tickets actually sold with a selling price of \$10.00 or less, the Licensee shall remit to the City a rebate of \$2.00 per ticket sold, of which \$1.00 shall be paid to the City’s general account, and \$1.00 shall be paid to the Maintenance Fund; and (c) for free or complimentary tickets, excluding complimentary tickets provided to the City, the Licensee shall pay to the City \$1.00 per such ticket, the entirety of which shall be paid to the Maintenance Fund. For clarity, a rebate for a ticket is only payable to the City following the actual occurrence of the event for which the ticket was sold, and notwithstanding anything to the contrary in this Section 5.1, no rebate whatsoever will be assessed or paid on any tickets that were sold but later refunded or subject to chargeback.

5.2 **Profit Sharing.** Provided that its operations from the Venue generates at least an eight percent (8%) profit margin to the Licensee, the Licensee shall make an annual payment to the City, no later than one hundred twenty (120) days following the end of the prior calendar

year, (the “Profit Share”), equal to twenty-five percent (25%) of the profits in excess of the 8% profit margin.

5.3 City Ticket Allocation. In consideration for use of the Venue, the City will receive six (6) tickets in the first five (5) rows of each event, plus six (6) additional tickets somewhere in the highest price level for each event, plus twelve (12) additional tickets in a section of the Licensee’s choosing. These twenty-four (24) tickets shall be separate from and in addition to the tickets described in Section 3.5. Each ticket described in this Section 5.3 shall entitle the individual holding the ticket to access the Premium Area depicted in Exhibit “D,” unless the Premium Area has been rented by the Licensee for the exclusive use of a single party or legal entity. The City will designate a liaison to the Venue for distribution of these tickets. The tickets shall be distributed by the City, in its sole discretion, in accordance with City policy as amended from time to time. These tickets are provided to the City in exchange for the City’s use of the Venue, and the City shall not be expected to purchase or separately remunerate the costs associated with these twenty-four (24) tickets.

5.4 Venue Sponsorships or Park Sponsorships. Any and all revenue and/or expense derived from any Venue Sponsorships and Park Sponsorships will be property of the City, but the City shall reimburse or arrange for reimbursement to the Licensee for any expenses incurred in servicing either of these sponsorships in the manner and to the extent provided in Section 3.5 of this Agreement.

5.5 City Information Rights. The Licensee will provide the City with a quarterly report listing the aggregated number of tickets sold for all events held during the prior calendar quarter and the number of free tickets provided, and the number of tickets refunded and chargebacks suffered related to ticket sales during that prior quarter. In addition, the Licensee will meet with a designee of the City on at least an annual basis each January to discuss revenues and expenses generated from the Venue. At the annual meeting, the Licensee shall allow the City to review and inspect sufficient financial data from the previous calendar year to confirm the calculations and project anticipated revenue based on the distribution method contemplated by Sections 5.1 and 5.2 of this Agreement.

## **Article VI. Insurance**

6.1 Survival; Limitations. The obligations of the Parties under Section 6 shall survive the expiration or termination of this Agreement. Other than as expressly set forth in this Agreement, neither Party shall be liable or responsible for any indirect, incidental, punitive or special damages, whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each Party’s liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the Party.

6.2 City Insurance Requirements. City shall be required to maintain, at its cost, property insurance covering loss or damage to the City Assets, including the Venue, in an amount not less than the full replacement value thereof, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event the Venue is in a flood zone) special extended perils ("all risk", as such term is used in the insurance

industry). In addition, the City shall name the Licensee as an additional insured under its excess commercial general liability insurance policy if the excess carrier allows the City to name the Licensee as an additional insured solely for the Venue any assets located therein.

6.3 Licensee Insurance Requirements. Licensee shall be required to maintain, at its cost, the following policies of insurance with the following limits, maintained with a carrier having an AM Best Rating of A-VII or better, with coverage on an occurrence basis or, if unavailable, on a claims-made basis with a minimum three (3) year tail following termination or expiration of this Agreement, and naming City as an additional insured on the policies. Copies of the insurance policies shall be provided to the City within thirty (30) days of the commencement of the Term and annually thereafter. The insurance limits set forth below may be achieved by a combination of primary and umbrella/excess liability policies. Such policies shall provide thirty (30) days' written notice to the City prior to any cancellation, nonrenewal, termination, material change, or reduction in coverage, and shall be primary and non-contributory for Licensee's negligence.

(a) Commercial General Liability Insurance coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of One Million Dollars and 00/100 (\$1,000,000) per occurrence and Two Million Dollars and 00/100 (\$2,000,000) general aggregate.

(b) Commercial Automobile Liability Insurance coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of One Million Dollars and 00/100 (\$1,000,000) combined single limit.

(c) Professional Liability/Malpractice/Errors or Omissions Insurance coverage appropriate for the type of business engaged in by the Respondent with minimum limits of Two Million Dollars and 00/100 (\$2,000,000) per occurrence. If a claims-made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims-made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (SERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

(d) Crime and Employee Dishonesty Insurance coverage must include fidelity insurance for reimbursement to an employer for these types of losses. Third-party fidelity coverage is also required to cover the acts of an employee against an employer's clients. Please provide coverage using ISO form CR 00 01 Employee Dishonesty Coverage Form or its equivalent and shall include ISO endorsement CR 04 01 Clients' Property or its equivalent and ISO endorsement CR 20 14 Loss Payable or its equivalent.

(e) Workers' Compensation Insurance and Employer's Liability Insurance with Workers' Compensation limits in statutory amount, unless waived by the State of Florida and proof of waiver is provided to the City, and Employer's Liability Insurance in the minimum amount of Five Hundred Thousand Dollars and 00/100 (\$500,000) each employee each accident,

Five Hundred Thousand Dollars and 00/100 (\$500,000) each employee by disease, and Five Hundred Thousand Dollars and 00/100 (\$500,000) disease policy limit. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

## **Article VII. Damage or Destruction to Premises**

7.1 Partial Damage. If all or a portion of the Venue are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, acts of terrorism, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by City at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the grossly negligent acts or omissions of the Licensee, its agents, officers, or employees, the Licensee shall be responsible for reimbursing City for the cost and expense, in excess of the City's insurance coverage, incurred in making such repairs.

7.2 Extensive Damage. If the damages as described above in "Partial Damage" are so extensive as to render the Venue or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by City at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the Venue is fully restored and certified as again ready for use; provided, however, that if such damage is caused by the grossly negligent acts or omissions of the Licensee, its agents, officers, or employees, the Licensee shall be responsible for the cost and expenses, in excess of insurance coverage, incurred in making such repairs.

7.3 Complete Destruction. In the event all or a substantial portion of the VENUE are completely destroyed by fire, explosion, the elements, public enemy, acts of terrorism, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, City shall be under no obligation to repair, replace or reconstruct said Venue, no payments will be required of either party until such time as the said Venue are fully restored. If within three (3) months after the time of such damage or destruction said Venue have not been repaired or reconstructed, the Licensee may terminate this Agreement in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said Venue, or a substantial portion thereof, are completely destroyed as a result of the grossly negligent acts or omissions of the Licensee, its agents, officers, or employees, City may, in its discretion, require the Licensee to repair and reconstruct the same within twelve (12) months of such destruction and the Licensee shall be responsible for reimbursing City for the cost and expenses incurred in making such repairs.

7.4 Limits of City's Obligation Defined. In the application of the foregoing provisions, City may, but shall not be obligated to, repair or reconstruct the Venue. If the City chooses to do so, City's obligation shall also be limited to repair or reconstruction of the Venue to the same extent and of equal quality as obtained by the Licensee at the commencement of the Term. All redecoration and replacement of capital investment, including all City Assets shall be the cost and responsibility of the City. The Licensee shall bear the cost of repair and replacement of any Licensee Assets except to the extent that the damage or destruction is caused by City's gross negligence or more culpable action or omission.

## **Article VIII. Confidentiality**

8.1 Confidentiality. The business of conducting and operating an entertainment venue that offers live entertainment to the public on a contract basis and/or on the rental of the Venue basis is a complex, multifaceted undertaking. The business itself, including the provision of services as well as the booking of entertainment is highly competitive between venues and between the acts hired to perform. Negotiations are act specific and are affected by the choice of time of the performance, the competition in markets where multiple venues exist, market conditions generally, relationships within the industry, etc. Each contract entered into with an act is different. Each contract negotiated with a service provider can be different than with any other venue. The Licensee has the responsibility for the negotiation of and the contracting for services and the booking of acts into the Venue. This process includes a high degree of confidentiality if the Venue is going to be successful. The means and methods of negotiation and selected terms of service contracts and booking contracts include information known only to certain employees of the Licensee, which information is closely guarded by the Licensee. This results in less expense and greater revenue to the Licensee, is information and know-how developed by the Licensee and its employees over years of experience and would take significant time and expense for others to duplicate. Accordingly, the Licensee shall maintain its trade secrets in the performance of its duties hereunder. Licensee shall identify any trade secrets in any communications with the City and shall communicate those to the City only as required. The parties acknowledge that the City must comply with the Public Records Law as to any records in the City's possession or control. To the extent that the City receives a request that may be eligible for protection or redaction as a trade secret, the City will promptly notify Licensee of the request. The City Attorney's Office will confer with the Licensee or Licensee's legal counsel, but the parties recognize that the City must and will ultimately determine whether records in its possession are releasable under Florida law.

## **Article IX. Miscellaneous**

### **9.1 Representations and Warranties.**

(a) City represents and warrants to the Licensee the following:

(i) All required approvals have been obtained, and City has full legal right, power and authority to enter into and perform its obligations hereunder;

(ii) This Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally or by general equitable principles;

(iii) The execution and delivery of this Agreement will not violate or cause a breach (with or without notice or the passage of time) under any agreement, law, ordinance, or other obligation to which City is bound;

(iv) There is no current, pending, or to the City's knowledge after due inquiry, threatened, action or proceeding before any court or administrative agency to which it is a party, questioning the validity of this Agreement, the relationship between the City and the Licensee, or which appear likely to materially adversely affect the City's performance of its obligations under this Agreement;

(v) City is the owner of the Park and the Venue;

(vi) City is financially capable to complete the construction of the Venue and redevelopment of the Park, more generally, and shall proceed with diligence to completion thereof;

(vii) Upon delivery to the Licensee, the Venue shall comply with all laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, occupancy, and condition of the Venue for the purposes described herein, including, without limitation, the Americans with Disabilities Act and the certificate of occupancy;

(viii) All improvements in the Park, and specifically, the Venue, will be constructed in a good and workmanlike manner, and said improvements and all other City Assets are and will be in good working order and condition, free from defects in workmanship and materials, and fit for the purposes for which they are provided; and

(ix) City understands and acknowledges the following:

(1) That the entertainment industry is extremely competitive and contains substantial risk and volatility;

(2) The Licensee is a nonprofit entity that operates other venues in the area, including but not limited to Ruth Eckerd Hall and Bilheimer Capitol Theatre, and provides booking and production services at various locations throughout the Tampa Bay area; and

(3) That performers and entertainers, and not the Licensee, oftentimes choose or dictate what cities and venues at which they will perform, and that there may be occasions where it is not economically feasible to schedule a performer into a venue the size of the Venue, and that during a certain season, a performer or entertainer may play at another venue managed by the Licensee.

(b) Licensee represents and warrants to City the following:

(i) All required approvals have been obtained, and Licensee has full legal right, power and authority to enter into and perform its obligations hereunder;

(ii) This Agreement has been duly executed and delivered by Licensee and constitutes a valid and binding obligation by Licensee, enforceable in accordance with its



terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles; and

(iii) There is no current, pending, or to the Licensee's knowledge after due inquiry, threatened, action or proceeding before any court or administrative agency to which it is a party, questioning the validity of this Agreement, the relationship between the City and the Licensee, or which appear likely to materially adversely affect the Licensee's performance of its obligations under this Agreement.

9.2 Notice. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given when delivered personally to the recipient on a business day prior to 5:00 P.M. local time, otherwise on the next business day, faxed or emailed to the intended recipient on a business day prior to 5:00 P.M. local time, otherwise on the next business day at the facsimile number or email address set forth therefor below (with electronic confirmation of receipt and hard copy to follow), or one business day after being sent to the recipient by reputable express courier service (charges prepaid) and addressed to the intended recipient as set forth below:

If to City:

With copy to (which shall not constitute notice):

City of Clearwater  
Parks Department  
100 South Myrtle Avenue  
Clearwater, Florida 33756  
Attention: James Halios  
Email: jim.halios@myclearwater.com

City Attorney  
600 Cleveland Street  
Clearwater, Florida 33755  
Attention: David Margolis  
Email: david.margolis@myclearwater.com

If to Licensee:

With copy to (which shall not constitute notice):

Ruth Eckerd Hall, Inc.  
1111 N. McMullen Booth Road  
Clearwater, FL 33759  
Attn: Susan Crockett, CEO  
Email: s.crockett@rutheckerdhall.net

Macfarlane Ferguson & McMullen, P.A.  
625 Court Street  
Clearwater, Florida 33756  
Phone: 727-444-1403  
Attention: Brian J. Aungst, Esq.  
Email: bja@macfar.com

9.3 Order of Precedence. In the event of any conflict between this Agreement and any exhibits or other documents entered into in connection herewith, the provisions of this Agreement shall prevail. In addition, the parties acknowledge that the City intends to enter into a separate brokerage agreement relating to Venue Sponsorships and pouring rights across the City, including the Park and Venue. The parties intend for this Venue License Agreement to be fully compatible with any forthcoming agreement between the City and The Superlative Group, Inc. However, in

the event of a latent or patent ambiguity requiring resolution, this Venue License Agreement shall control.

9.4 Entire Agreement. This Agreement, the exhibits, and any documents executed in connection with this Agreement, constitute and express the entire agreement of the Parties hereto and no agreements, warranties, representations or covenants not herein expressed shall be binding upon the parties.

9.5 Captions. Captions appearing before sections and articles in this Agreement have been inserted solely for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section or articles to which they pertain.

9.6 No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between City and Licensee.

9.7 Good Faith. It is agreed that both Parties shall perform their respective duties under the terms of this Agreement in good faith.

9.8 Incorporation of Terms and Conditions. The terms and conditions set forth in Exhibit C are incorporated into this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties and is effective as of the \_\_\_\_ day of \_\_\_\_\_ 2022.

APPROVED BY CITY THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022

Countersigned:

\_\_\_\_\_  
FRANK HIBBARD, Mayor

Approved as to form:

\_\_\_\_\_  
DAVID MARGOLIS, City Attorney

**CITY:**

THE CITY OF CLEARWATER, FLORIDA,  
a municipal corporation of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
ROSEMARIE CALL, as its City Clerk

**LICENSEE:**

RUTH ECKERD HALL, INC., a Florida not-for-profit corporation

By: \_\_\_\_\_  
Name: SUSAN CROCKETT  
Title: CEO

**Exhibit A**  
**Venue**

Please see attached.

**Exhibit B**  
**Licensee Assets**

Please see attached.

**Exhibit C**  
**Terms and Conditions**

Please see attached.

**Exhibit D**  
**Premium Area**

Please see attached.