

SECOND AMENDMENT TO LEASE AGREEMENT

The Amendment is made and entered into this _____ day of _____, 2018 ("Effective Date") by and between the CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida, hereinafter "City" or "Lessor" and Ruth Eckerd Hall, Inc., a Florida not-for-profit corporation, as successor in interest to PACT, Inc. hereinafter "REH" or "Lessee" (each individually referred to herein as "Party" or collectively as the "Parties").

WHEREAS, the Parties entered into that certain Lease Agreement ("Lease") dated March 7, 2001 whereby the Lessor leased to Lessee property being more fully described in Exhibit "A" attached hereto (hereinafter referred to as the "Entire Parcel"); and

WHEREAS, the Lease was amended on November 25, 2003 to release a portion of the Entire Parcel to the Lessor to construct a Habitat Restoration and Mitigation Project, (hereinafter referred to as the "Mitigation Project") as permitted by the Florida Department of Environmental Protection; and

WHEREAS, REH intends to improve the Ruth Eckerd Hall Facility to update the facility and create the "Ruth Eckerd Hall Experience," attached hereto as Exhibit B, and to further provide for the continuing operation thereof as a City owned performing arts venue providing quality performing arts experiences and educational opportunities; and

WHEREAS, the City finds that the renovation and redevelopment of the Ruth Eckerd Hall Facility will preserve, enhance and improve the City owned facility and enhance the performing arts experience for the community and advance the City's economic development efforts, enhance tourism and arts education and provide a clear sense of regional and national destination for the City; and

WHEREAS, REH desires to construct, renovate, repair and continue to operate the Ruth Eckerd Hall Facility, and is actively soliciting funds to provide for the long-term operation and maintenance of the said premises and improvements thereon as a performing arts venue; and

WHEREAS, the REH has requested that the City provide Funding for certain capital improvements and enhancements for the Ruth Eckerd Hall Experience; and

WHEREAS, the City has determined that it is in the public interest and serves a public purpose to enter into this Second Amendment to the Lease Agreement to provide funding in the amount of Three Million Dollars (\$3,000,000.00) for specific capital Improvements and enhancements necessary for the renovation, repair and operation of the Ruth Eckerd Hall Facility under and pursuant to the terms and provisions hereinafter set forth; and

WHEREAS, in order to the construct the improvements and expansion to Ruth Eckerd Drive which are part of the Ruth Eckerd Hall Experience, REH, the City, and Clearwater Housing Authority have entered into an Easement Agreement dated March 2018 which Agreement contains certain minimum insurance requirements to be carried by REH; and

Whereas, the City and REH desire to amend the lease to provide for such insurances; and

WHEREAS, the City and REH entered in to a Facility Use Agreement dated March 7, 2001 for the purpose of providing a subsidy to REH to secure public availability of the Facility for the use of and performances by various community groups and by the City which provided for an annual payment to REH; and

WHEREAS, the Facilities Use Agreement also provided that the City would enter into a guarantee agreement with REH and a lender for certain refinancing in an amount limited to \$1,000,000 (One Million Dollars); and

WHEREAS, concurrent with this amendment, the Parties agree to terminate that Facilities Use Agreement since the City has not needed to use the Facility pursuant to the Agreement; and

WHEREAS, City wishes to provide for an ongoing annual contribution of \$420,000 for the purpose of maintenance and improvements to Premises to include repairs, general maintenance, and asset and fixture replacement for the Premises, for the purpose of assuring the continued high-quality maintenance of the City owned Facility; and

WHEREAS, REH has and will continue to operate and maintain the Facility and Premises for the benefit of the citizens of Clearwater, in consideration of which the City and REH wish to amend the Lease to allow the City to enter into a Guarantee Agreement if requested, with REH and a lender for the purposes of financing, refinancing, renovation, modernization and expansion of the Premises subject to the City's reasonable approval of the plans and proposals for any renovation, modernization, and expansion; such guarantee to be unconditional but limited to an amount not to exceed \$1,000,000 (One Million Dollars) principal and interest inclusive; and

NOW THEREFORE, it is agreed for the sum of One Hundred Dollars (\$100) and other valuable considerations the receipt of which is hereby acknowledged, as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.
2. Paragraph 11 of the Lease is hereby amended to read as follows:

11. Insurance. During the term hereof, RUTH ECKERD HALL shall maintain fire and extended coverage insurance on the Premises in an amount reasonably acceptable to City as further described below. REH shall maintain contents insurance upon its personal property located in the Premises. As required in the Easement Agreement between Clearwater Housing Authority, REH, and the City dated March 19, 2018, during the term hereof, REH shall maintain general liability insurance in the minimum amount of \$2,000,000 per occurrence, and \$5,000,000 in the aggregate, which amounts may be satisfied by an applicable umbrella liability policy. Such insurance shall be effected under valid and enforceable policies issued by financially responsible insurers which are subject to the service of legal process in the State of Florida and have a general policyholders rating of A- or better and a financial classification of VII or better, as classified and rated in the edition of Best's Key Rating Guide of Property and Liability Insurers most recently published by A. M. Best Company as of the date of issue of such policy or with an equivalent policyholders rating if the present rating and classification system utilized by the A. M. Best Company shall be changed or if such Key Rating Guide shall no longer be published. Evidence of the initial policies or renewal policies, as the case may be, required to be carried hereunder shall be delivered to Clearwater Housing Authority upon execution of this Agreement and thereafter not less than thirty (30) days prior to the expiration date of the expiring policy. Such insurance may be maintained under a blanket policy covering other properties. Such policies may not, without consent of Clearwater Housing Authority, include a "deductible" or self-insured retention limit in excess of \$10,000. Such insurance shall name the City and Clearwater Housing Authority and Clearwater Housing Authority's mortgagee (if Clearwater Housing Authority notifies City of the same) as additional insureds.

3. Paragraph 16 of the Lease, is amended to add paragraph (c) to read as follows:

(c). The City will enter into a guarantee agreement in a form reasonably acceptable to the City, with REH and a lender or lenders pursuant to any financing, refinancing, renovation, modernization, or expansion subject to the city's reasonable approval of any such transaction. Such guarantee will be unconditional but limited to a total amount of One Million Dollars (\$1,000,000) principal and interest inclusive. Under no circumstance shall the City be obligated to enter into a

guarantee agreement until any previous guarantee agreements have been fully released. In the event REH defaults on any financing or refinancing and the city is required to pay under the terms of any Guarantee Agreement, the city will have no further obligation to guarantee any additional financing or refinancing.

4. Paragraph 25 of the Lease, is added to read as follows:

25. City contribution to Ruth Eckerd Hall Experience Premises Improvements.

REH has requested and the City wishes to contribute certain funding for the Project known as Ruth Eckerd Hall Experience described in Exhibit "B" attached hereto and incorporated herein by reference, specifically those Project elements described in Exhibit "C" attached hereto and incorporated herein by reference.

The disbursement of, and any continued funding for the Project herein, is subject to the following conditions precedent:

(a) Upon receipt of documentation establishing satisfaction of the conditions precedent as required in by this paragraph, the City agrees to reimburse to REH funds in the sum not to exceed Three Million Dollars (\$3,000,000.00), from legally available funds of the City, for specific improvements and enhancements shown on Exhibit C as follows:

i. Payments shall be made in payments of not exceeding One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) during the City's 2018 fiscal year, One Million Dollars and No Cents (\$1,00,000.00) during the City's 2019 fiscal year and Five Hundred Thousand Dollars and No Cents (\$500,000.00) during the City's 2020 fiscal year.

ii. Upon receipt of a payment request from REH to the City, the City shall make payment as provided herein. With such documentation as required herein. At a minimum, the payment request shall include documentation detailing (i) the work completed that REH is seeking reimbursement for; (ii) proof of payment for the work; (iii) a certification: from the either the contractor, design professional, or REH certifying the work has been completed and paid for before submittal of the payment request.

(b) City's contributions of funds herein shall in no event exceed any amount agreed to herein and any and all excess Project costs are the sole responsibility of REH.

(c) The Capital Project Funds shall be paid in accordance with section 218.70 et seq., Florida Statutes. The Local Government Prompt Payment Act."

(d) the REH shall:

- i. Manage, supervise, oversee, pay all costs and expenses related to, and be solely responsible for completing the Project including, but not limited to securing all permits and approvals required for the Project, contracting and/or subcontracting with all third parties necessary to complete the Project, and operating the project/facility.
- ii. Utilize all commercially reasonable efforts to complete the Project within the Project Budget on an agreed upon date, REH may elect to increase the Project Budget or any component part thereof with notice to the City and shall be solely responsible for the additional costs and expenses, including any cost overruns, on the Project.

(e) Each of the following shall constitute an event of default (each, an "Event of Default") hereunder:

- i. A breach by REH of any material term, covenant, obligation or agreement under this Amendment, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to REH, which will entitle the City to immediately exercise the available remedies;
- ii. REH's voluntary filing of or consent to a petition under any bankruptcy, insolvency, or reorganization law, failure to secure the dismissal of an involuntary bankruptcy petition within 60 days of filing, or a determination by a court of competent jurisdiction that is insolvent and unable to pay its debts when due;
- iii. A payment request containing a material misrepresentation;
- iv. REH permanently ceases operations of the Capital Project or Facility during the Term.

- v. REH fails to pay taxes and/or assessments, if any, when due.
- (f) Upon or at any time after the occurrence of an Event of Default which has not been cured if authorized herein:
 - i. The City may withhold, temporarily or permanently, any or all unpaid portion of the Project Funds and/or may terminate this Agreement by giving thirty (30) calendar days' notice to REH. At which point, the City shall then have no further funding obligation under this Agreement;
 - ii. Additionally, the City may exercise any right, power, or remedy as provided in law or equity pursuant to Florida law.

The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue including but not limited to applicable public records laws.

5. Paragraph 26 of the Lease, is added to read as follows:

Annual Commitment by The City. City agrees to provide annual funding to REH in the amount of Four Hundred Twenty Thousand Dollars (\$420,000) for the purpose of Premises maintenance and improvements to include repairs, custodial labor, general maintenance, and asset and fixture replacements for the Premises including the structures, parking, drive way, and landscaping etc. Such contribution is subject to the terms and conditions of this section and applicable provisions of the lease. If the City determines that sufficient funds will not be available for such purposes in any year or years, then prior to July 1 of each year the City may by written notice to REH notify REH that no payment shall be made during such fiscal year. REH shall have the option to submit supplemental information or proposals to the City for consideration at the City's budget hearings. Anything herein to the contrary notwithstanding, should the City give such notice with respect to particular fiscal year, the same shall not terminate this provision except as to the particular fiscal year with respect to which notice is given. In May of each year commencing in 2019, REH provide an annual report in writing to the City outlining the use of the City funds provided.

6. Paragraph 27 is added to read as follows:

This Lease is not a general obligation of the City. It is understood that neither this Lease nor any representation by any City employee or officer creates any obligation to appropriate or make monies available for the purpose of the Lease

beyond the fiscal year in which this Lease is executed. No liability shall be incurred by the City, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the City for any or all of this Lease, the City shall not be obligated to pay any sums provided pursuant to this Lease beyond the portion for which funds are appropriated. The City agrees to promptly notify REH in writing at least fifteen (15) days prior to any public hearing related to the anticipated failure to appropriate funding as contemplated herein and notify REH in writing of such failure of appropriation.

- (a) The Parties agree that REH and its officers, agents, and employees, in performance of this Agreement, will act in the capacity of an independent contractor and not as an officer, employee, or agent of the City. REH agrees to take such steps as may be necessary to ensure that any third-party REH contracts with will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the City.
- (b) REH has no authority to and shall not pledge the City's credit or make the City a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

In no event shall either party be liable to the other (nor to any person claiming any right, title, or interest derived from, or as a successor to the agreement) for incidental, consequential, or special damages of any kind, including without limitation, lost profits, or loss of business arising out of this funding agreement irrespective of whether the parties have advance notice of the possibility of such damage; provided however, the foregoing limitation does not apply to the indemnification obligations.

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7. All other terms and conditions of the Lease and amendments shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

COUNTERSIGNED:

CITY OF CLEARWATER

By: _____
George N. Cretekos
Mayor

By: _____
William B. Horne, II
City Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
Pamela K. Akin
City Attorney

By: _____
Rosemarie Call
City Clerk

ATTEST:

RUTH ECKERD HALL, INC.

By: _____
Name:

By: _____
Zev Buffman
President and CEO