

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** May 4, 2020

**RE:** **Ground Lease Agreement with Peace River Center for Personal Development, Inc. for the Lease of 1831 Gilmore Avenue**

Attached for your consideration is a Ground Lease Agreement with Peace River Center for Personal Development, Inc. (Peace River) for the lease of 1831 Gilmore Avenue. This property was originally leased to Community Health and Service Center of Lakeland, Inc. (Community Health) in 1965 for a term of 99 years. Community Health in turn subleased the property to Heart of Florida Girl Scout Council (Girl Scouts) in 1973. Pursuant to the sublease, the Girl Scouts built a building on the property, which they occupied and in which they operated their service and leadership center. In 2012, the Girl Scouts entered into a sublease agreement with Peace River for Peace River's use of the property for a community health center and Peace River has occupied and used the property for such purpose since such time.

Peace River has now entered into a Purchase and Sale Agreement with the Girl Scouts to purchase the building located on the property. The Girl Scouts intend to use the proceeds from the sale of the building to purchase other property for their operations. In order to obtain title insurance on the building, Peace River has requested that the City enter into a direct lease agreement with them for the property.

Under the attached Ground Lease Agreement, Peace River will lease 1831 Gilmore Avenue from the City under the same basic terms and conditions as the original lease governing the property. The lease term will expire in 2064, as specified in the original lease, and rent will continue to be \$1.00 per year. Peace River will use the property for social welfare and community services. They will pay for all utilities, maintenance and taxes and shall be responsible for maintaining the landscaping in a good, orderly and attractive condition. They will indemnify the City and maintain commercial general liability insurance with limits of \$1,000,000 per person, \$3,000,000 per occurrence, naming the City as an additional insured. The City may terminate the Lease upon default by Peace River, and may also terminate the lease without cause provided the City agrees to either relocate the building or construct a new building for Peace River. Unless extended by mutual agreement of the parties, Peace River will surrender the premises, including the building, to the City in 2064 without compensation from the City.

It is recommended that the City Commission approve the attached Ground Lease Agreement with Peace River Center for Personal Development, Inc. for the lease of 1831 Gilmore Avenue and authorize the appropriate City officials to execute the Agreement.

Attachments

## **GROUND LEASE AGREEMENT**

This GROUND LEASE AGREEMENT (“Lease”) is dated as of \_\_\_\_\_, 2020, between the CITY OF LAKELAND, a municipal corporation under the laws of the State of Florida (“City”), and PEACE RIVER CENTER FOR PERSONAL DEVELOPMENT, INC., a Florida not-for-profit corporation (“Peace River”).

### Recitals and Statement of Background

The City owns certain land located in Lakeland, Polk County, Florida, more particularly described on Exhibit A attached hereto and incorporated herein by reference (“Property”). On February 17, 1965, pursuant to a Lease (“Ground Lease”) the City leased the Property to Community Health and Service Center of Lakeland, Inc., a Florida not-for-profit corporation (“Community Health”) for a term of 99 years. Community Health subleased the Property to Heart of Florida Girl Scout Council, Incorporated, now known as Girl Scouts of West Central Florida, Inc., a Florida not-for-profit corporation (“Girl Scouts”), pursuant to a Lease dated September 20, 1973 (“Sublease”). Pursuant to the Sublease, the Girl Scouts built a building on the Property located at 1831 Gilmore Avenue, Lakeland, FL (“Building”), which it occupied and in which it operated its service and leadership center.

By Assignment of Lease dated January 10, 2000, Community Health assigned its interest under the Ground Lease back to the City (“Assignment”). The effect of the assignment was to cause a merger of the Community Health leasehold interest in the Property into the fee ownership interest held by the City in the Property and thereby effectively extinguishing the Ground Lease. The Girl Scouts continued to occupy and operate its Building on the Property pursuant to the Sublease, with the City’s implied consent.

On December 13, 2012, Girl Scouts entered into a Lease Agreement with Peace River for its possession of the Property and its occupation and use of the Building for a community health center (“Peace River Sublease”). The City consented to the Peace River Sublease. Peace River continues to possess the Property and occupy and operate its business in the Building.

Girl Scouts have entered into a Purchase and Sale Agreement with Peace River for Girl Scouts to sell and Peace River to purchase the Building. Although the City consented to the sale and an assignment of the Sublease to Peace River, to cure title to the leasehold interest extinguished by the Assignment, Girl Scouts and Peace River requested that the City enter into this Lease, which replaces and supersedes the Ground Lease and the Sublease, on substantially the same terms as the Ground Lease and Sublease. The City has agreed to enter into this Lease with Peace River.

### Agreement

Therefore, in consideration of the background involving the Property and this Lease, the mutual covenants, agreements and payment of the rental amounts set forth in this Lease, the parties hereby agree as follows:

1. Confirmation of Recitals and Background Facts. The City and Peace River hereby confirm the accuracy of the Recitals and Statement of Background set out above and incorporate the facts into this Lease.

2. Lease of Property. The City hereby leases the Property to Peace River and Peace River leases the Property from the City, on the terms and conditions provided in this Lease. Peace River accepts the Property in its "as-is" condition as of the date of this Lease.

3. Term. The term ("Term") of this Lease shall commence on the date of full execution of this Lease ("Commencement Date") and end on February 29, 2064. The Term may be extended thereafter by mutual agreement of the parties and by execution of an amendment to this Lease.

4. Rent. During the Term, Peace River shall pay to the City the annual sum of One Dollar (\$1.00) for its possession, occupation and use of the Property under this Lease.

5. Use of Property. The Property shall be used for social welfare and/or community services by a not for profit organization and for any lawful purpose related to those uses. Peace River will not use, or permit any person to use, the Property for any purpose in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Property, or for any other use without the prior written consent of the City. Peace River shall be responsible for complying with applicable codes and regulations applicable to the Property, the Building or for Peace River's business on the Property.

6. Utilities. Peace River shall pay for all utilities used at the Building on the Property during the Term, including without limitation, service for gas, electricity, water and sewer. Peace River shall pay its vendors and service providers directly for trash removal services, janitorial services, pest control, security system, internet and telephone services.

7. Taxes. Peace River shall pay any applicable state or county taxes assessed on the Property during the Term of this Lease. If applicable, the City shall send all tax bills to Peace River within ten (10) days of City's receipt of such bills for payment by Peace River. Peace River shall pay any such taxes at least five (5) days prior to delinquency. Peace River shall pay any taxes assessed on the Building or on Peace River's personal property and equipment located in the Building.

8. Maintenance, Repairs and Alterations. Peace River shall at all times maintain the Property and the Building (both interior and exterior and including, without limitation, all electrical, mechanical, plumbing, lighting, ceiling, wall coverings, floor covering, doors and windows of the Building) in good order, condition and repair, in a clean, sanitary and safe condition. Peace River shall maintain the landscaping on the Property in a good, orderly and attractive condition.

9. Prohibition Against Construction Liens.

(a) No Right of Peace River to Cause Liens on Fee Interest. Peace River shall not suffer, create or permit any construction liens or other liens to be filed against the fee interest of the City in the Property, by reason of any work, labor, services or materials supplied or

claimed to have been supplied to Peace River or any improvements made by Peace River to the Building during the Term.

(b) Peace River shall have the right to mortgage its ownership interest in the Building and its leasehold interest in the Property to finance its business operations.

10. Assignment and Subleasing. Neither the City nor Peace River shall assign this Lease or, in the case of Peace River, sublet the Property, without the prior written consent of the other party. In all such cases, consent shall not be unreasonably withheld or delayed. The use of the Property by any assignee or subtenant of Peace River shall be in accordance with the use permitted for the Property in this Lease.

11. Indemnity. Peace River agrees to indemnify and hold the City harmless against any and all claims, injury, damages, costs and expenses, arising from Peace River's use or occupancy of the Property or operation of Peace River's business on the Property or from any breach on the part of Peace River of any condition of this Lease, or from any act or negligence of Peace River, its agents, contractors, employees, subtenants or licensees in or about the Property; provided, however, that Peace River does not agree to indemnify the City against any claims, injury, damages, costs or expenses arising from the willful or negligent acts or omissions of the City with respect to the Property.

12. Insurance.

(a) Commercial Liability and Property Damage Insurance. Peace River agrees to provide and to maintain in full force during the Term, general commercial liability and property damage insurance covering Peace River, with the City named as an additional insured, with one or more responsible insurance companies licensed to transact business in the state of Florida, with liability coverage in the amount of not less than \$1,000,000.00 per person and not less than \$3,000,000.00 per occurrence, for liability of Peace River, its employees, agents or representatives for injury and damages arising out of or in connection with the occupation, use or condition of the Property by Peace River.

(b) Policies. Any insurance policy required by this Lease shall be obtained and maintained by Peace River at Peace River's sole expense and shall be placed with any responsible companies licensed to transact business in Florida. Any insurance policy shall provide for at least fifteen (15) days prior notice to the City before cancellation or non-renewal. Copies of insurance coverage certificates shall be delivered annually by Peace River to the City on the City's written request.

13. Condemnation. If any part of the Property shall be taken by any public or private authority under the power of eminent domain, and a part thereof remains which is reasonably sufficient for Peace River's business and parking requirements for Peace River's use hereunder, this Lease shall continue; or at the option of the City or Peace River, each shall have the option to terminate this Lease by written notice to the other within fifteen (15) days of official written notice of the condemnation received from the condemning authority. If all of the Property is taken, or such a large part thereof is taken that there does not remain any portion reasonably sufficient for the operation of Peace River's business hereunder, this Lease shall terminate. In

the event of condemnation of the whole or any part of the Property, all compensation awarded or paid in the event of a taking shall belong to and shall be the property of the City, whether the compensation be awarded for diminution in value of the leasehold or to the fee of the Property, and this Lease shall be considered to have terminated on the date title vests in the condemning authority; provided, however, that the City shall not be entitled to any portion of the award made to Peace River for the value of the Building, the loss of business, moving expenses or depreciation to and cost of removal of Peace River's inventory, equipment, stock and fixtures from the Building and the Property.

14. City's Inspection. Peace River shall permit the City and its agents to enter into and upon the Property at all reasonable times and upon reasonable advance notice during regular business hours on normal business days for the purpose of inspecting the Property for compliance with the terms of this Lease.

15. Fire or Other Casualty. If the Building should be damaged or destroyed by fire, windstorm, hail or other casualty, Peace River shall give written notice thereof to the City as soon as practicable.

If the Building is damaged or totally destroyed by a casualty, Peace River shall have the option to cancel and terminate this Lease on written notice to the City. All insurance proceeds for the Building shall then be paid to Peace River, together with any insurance proceeds for inventory, personal property, trade fixtures and/or contents coverage maintained by Peace River.

In the event Peace River does not terminate this Lease as a result of casualty damage, Peace River may repair and/or reconstruct the Building within a reasonable time after the casualty. City shall cooperate with Peace River for such reconstruction and repairs on written notice by Peace River of its intent to reconstruct and/or repair the Building.

16. Default by Peace River. If Peace River shall be in default of the terms of this Lease and remain in default for a period of thirty (30) days (or such longer period as may be necessary under the circumstances, provided that curative efforts are pursued diligently) after written notice from the City specifying the default by Peace River, the City may, at the City's option, with a three (3) business days' prior written notice thereof to Peace River, terminate this Lease and recover possession of the Property.

17. City's Cancellation of Lease Without Cause. In the event the City gives Peace River written notice of cancellation of this Lease and termination of the rights of Peace River under this Lease without just and good cause, the City agrees to either relocate the Building for Peace River in a suitable location within the City of Lakeland, or construct a new building for use by Peace River similar to the existing Building and lease the new building and premises to Peace River in accordance with the terms of this Lease. Any notice of cancellation by the City without cause pursuant to this section shall be given to Peace River at least six (6) months in advance of the effective date of cancellation and shall indicate the City's intent to relocate or to build a replacement building.

18. Surrender of Premises at Expiration. Upon termination or expiration of this Lease, Peace River shall surrender the Property in as good a condition and repair as it received

the Premises, reasonable wear and tear and loss by fire, explosion, wind or rainstorm, hail or other casualty not caused by Peace River excepted. Upon the termination or expiration of this Lease, if the City so requests in writing, Peace River shall promptly remove all of its personal property and additions, fixtures and installations placed in or about the Building and the Property. No compensation shall be due from the City for the value of the Building upon termination or expiration of this Lease except to the extent of the City's obligations in the event of a termination without cause as provided in Paragraph 17.

19. Short Form/Memorandum of Lease. If requested by either the City or Peace River, the City and Peace River shall execute, deliver and record a short form or memorandum of this Lease Agreement in the public records of Polk County, Florida. The requesting party shall be responsible for preparation of the memorandum and payment of all recording fees.

20. Force Majeure. If the City or Peace River is prevented from doing, accomplishing or performing any act or thing required under the terms of this Lease Agreement due to causes beyond the City's or Peace River's reasonable control (including, but not limited to, acts of God, war, civil commotion, terrorism, labor disputes, strikes, fire, flood or other casualty, shortages of labor and material, government regulation or restriction or weather condition), the time provided in this Lease for doing, accomplishing or performing the act or thing shall be extended to provide the City or Peace River with the same number of days to accomplish or perform the act or thing after termination of the cause or situation preventing performance, as the City or Peace River would have had in the absence of the cause or situation preventing performance.

21. Attorneys' Fees and Expenses. If, on account of any breach or default by the City or Peace River of its obligations hereunder, it shall become necessary for any of the parties hereto to employ an attorney to enforce or defend any rights or remedies hereunder, the prevailing party shall be entitled to payment of all reasonable attorneys' fees, whether incurred in court ordered mediation, at trial, on appeal or in any bankruptcy or administrative proceedings, and to collect all reasonable costs and expenses incurred.

22. Notices. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, even if refused or unclaimed, (i) when personally delivered, or (ii) when delivered by an overnight delivery service, or (iii) five (5) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed:

- (a) if to Peace River, at \_\_\_\_\_;
- (b) if to City, at 228 S. Massachusetts Avenue, Lakeland, Florida 33801, Attn: City Attorney;
- (c) or to such other address as either party may have specified to the other party by written notice delivered in accordance herewith.

23. Quiet Enjoyment. Peace River, upon performance under this Lease, provided that no event of default shall have occurred and be continuing hereunder with respect to the Property, shall lawfully and quietly hold, occupy and enjoy the Property during the Term without

hindrance or molestation from anyone claiming by, through or under the City. Any consents required pursuant to the terms of this Lease from the City or Peace River shall not be unreasonably withheld or delayed.

24. Captions and Gender. The captions or headings of sections in this Lease are inserted by convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and plural for singular, unless the context requires otherwise.

25. Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of Florida. Time is of the essence with respect to this Lease.

26. Successors. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

27. Severability. The invalidity or unenforceability of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity or enforceability of any other provision hereof.

28. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

29. Written Agreement. This Lease and attached exhibits contain the entire agreement between the parties hereto with respect to the subject matter hereof, and may be modified only by an agreement in writing signed by the City and Peace River.

30. Counterparts. This Lease may be signed in any number of counterparts, all of which taken together shall constitute one whole and complete instrument. Signatures transmitted by electronic or facsimile transmission shall be treated as originals for all purposes as against the party so transmitting.

[Signatures appear on the following pages.]

THIS GROUND LEASE AGREEMENT IS EXECUTED as of the day and year first written above.

WITNESSES:

CITY OF LAKELAND

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
(as to City)

**CITY**

Attest:

Approved as to form and correctness:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Palmer C. Davis, City Attorney

[Signatures continue on the following page.]

Printed Name: \_\_\_\_\_

PEACE RIVER CENTER FOR PERSONAL  
DEVELOPMENT, INC., a Florida not-for-  
profit corporation

Printed Name: \_\_\_\_\_  
(as to Peace River)

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

**PEACE RIVER**

**EXHIBIT A**

Legal Description of the Property

Lots 1-3 and the North ½ of closed street lying South of same, Block 2,  
LAKELAND HEIGHTS SUBDIVISION, as shown in Plat Book 12, page 12,  
public records of Polk County, Florida