



THE SUNRISE CITY
FORT PIERCE
CITY ATTORNEY'S OFFICE
Florida



TO: Audria Moore-Wells, Special Projects Coordinator
FROM: Tanya Earley, Assistant City Attorney *TME*
THROUGH: Peter Sweeney, City Attorney *PS*
RE: Lease of 1134 and 1138 Avenue D
CAO RLS File: No. 20-221
DATE: September 8, 2020

Received
SEP 11 2020
City of Fort Pierce
City Manager's Office

In response to the above request for legal services, I have revised the proposed lease agreement to include the requested changes to the introductory paragraph, Section 17, and the signature block.

As we discussed, the "appeasement clause" that the proposed tenant suggested is already in Section 20(d), which allows either party to extend applicable deadlines in the event of circumstances beyond their control. That said, I have revised Section 10 (regarding deadlines) to indicate clearly that section 20(d) applies to Section 10.

Finally, this is just a reminder that the agreement references two items that should be attached and labeled as follows:

1. Exhibit A: Legal Description of the Property; and
2. Exhibit B: Scope of Work.

If you have any further questions, please contact the City Attorney's Office via phone or email.

Thank you.

TE/mm

cc: Nicholas C. Mimms, P.E., City Manager
Linda Cox, City Clerk

*OK
NCL*

**AGREEMENT TO LEASE AND IMPROVE
1134 AVENUE D AND 1138 AVENUE D**

THIS LEASE AGREEMENT entered into this ____ day of _____ 2020 by and between the **FORT PIERCE REDEVELOPMENT AGENCY (FPRA)**, a dependent special district of the **CITY OF FORT PIERCE, FLORIDA**, and joined by the **CITY OF FORT PIERCE, FLORIDA (CITY)**, a Florida municipal corporation, (hereafter collectively "LANDLORD") whose address is 100 North U.S. #1, Fort Pierce, Florida 34950; and the **ROOTED IN CHANGE, INCORPORATED, DOING BUSINESS AS LINCOLN PARK YOUNG PROFESSIONALS**, a non-profit Florida corporation ("TENANT") whose business address is Post Office Box 3982, Fort Pierce, Florida 34948.

WITNESSETH:

WHEREAS, LANDLORD, is the owner of two parcels located at 1134 and Avenue D (Parcel ID 2409-501-03005-000-7) and 1138 Avenue D (Parcel ID 2409-501-0306-000-4) and more particularly described in the attached Exhibit A (the "Land"); and

WHEREAS, TENANT is an organization serving the Lincoln Park community;

WHEREAS, LANDLORD has selected TENANT to lease and improve the Land for the purpose of creating an open community engagement space; and

WHEREAS, this Lease shall be subject to all existing zoning and building restrictions and regulations and provisions and clauses set forth herein.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, LANDLORD and TENANT do hereby agree as follows:

1. **TERM.** The Term of this Lease shall be for a period of five (5) years, commencing

on the Effective Date (as defined in Section 20(i) below), unless sooner terminated pursuant to the terms set forth herein. Upon the written agreement of LANDLORD and TENANT, the Lease may be renewed for one (1) additional term of five (5) years.

2. **DEMISED PREMISES.** The "Demised Premises" consists of two parcels located at 1134 Avenue D, Fort Pierce, Florida (Parcel ID 2409-501-0305-0007) and 1138 Avenue D, Fort Pierce, Florida (Parcel ID 2409-501-0306-000-4)("the Land"), together with all buildings, structures, and other improvements that shall be constructed, installed, or placed upon the Land.

3. **LEASE PAYMENTS.** TENANT, in consideration of this Lease, shall pay LANDLORD, without demand, at the offices of the Director of Finance, City Hall, 100 North U.S. 1, Fort Pierce, Florida 34950, or such other place as LANDLORD may from time to time designate in writing, rent in the amount of TEN DOLLARS (\$10.00) per year.

4. **TAXES.** If ad valorem taxes are applicable, TENANT agrees to pay its proportionate share as billed and determined by LANDLORD or the taxing authority. TENANT further agrees that should any of its use of the property be subject to sales, use, excise, or rental taxes levied by any taxing authority, TENANT similarly agrees to pay such taxes and hold LANDLORD harmless from the same.

5. **INSURANCE.** TENANT shall purchase and maintain Commercial General Liability Insurance on a form no more restrictive than the latest edition of the standard occurrence Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), without any restrictive endorsements other than any endorsements specifically required by the ISO or the State of Florida.

In addition, LANDLORD shall be included as an "Additional Insured" on a form no more restrictive than ISO Form CG 20 11, Additional Insured-Managers or Lessors of Premises.

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Each Occurrence.

TENANT shall further furnish LANDLORD with executed Certificates of Insurance showing that such insurance is in full force and effect within thirty (30) days of the execution of this Lease, which certificate shall provide a minimum of thirty (30) days notice to LANDLORD prior to the cancellation or termination of any insurance policy. Additionally, LANDLORD from time to time may require evidence of such insurance and TENANT shall agree to promptly supply the same. LANDLORD shall further have the right to require tenant to make reasonable increases to the minimum required limits of insurance specified herein during the term of this Lease.

6. **LIABILITY AND INDEMNIFICATION.** LANDLORD shall not be liable for any damage or injury, whether it be to the person or property, of TENANT, TENANT's employees, agents, guests, invitees, or otherwise, by reason of TENANT's occupancy of the Demised Premises or because of fire, flood, wind storm, acts of God, or for any other reason, except such damage or injury arising or occurring as a result of LANDLORD's positive acts, negligence, acts or omissions. This paragraph shall apply also to damage caused as previously stated or by frost, steam, excessive heat or cold, falling objects, broken glass, sewage, gas, odors, or noise, or the bursting or leaking of pipes of plumbing fixtures and shall apply equally whether any such damage results

from the acts or omissions of other tenants, occupants or of any other person, whether such damage be caused by or result from any other thing or circumstances above mentioned, or any other thing or circumstances, whether of a like or wholly different nature.

TENANT hereby agrees to indemnify and hold harmless LANDLORD and its officers and employees from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and costs, by reason of damage to persons or property as a result of an accident upon the Demised Premises or events caused by the negligence, recklessness, or intentional misconduct of TENANT, its agents, its officers, or its employees, while TENANT is in possession thereof.

7. **DAMAGE AND OBLIGATION TO RESTORE.** TENANT shall be responsible for any loss or damage to any structure, building, or other improvement constructed, installed, or placed upon the Land. If the Improvements should be damaged or destroyed by fire, windstorm, or other casualty (a "Casualty"), TENANT shall proceed with reasonable diligence to rebuild or repair the Improvements on the Demised Premises to substantially the condition in which they existed prior to such Casualty.

8. **USE OF DEMISED PREMISES.** TENANT shall utilize the Demised Premises for all uses pertinent to and related to its community outreach programs. TENANT agrees to conduct its operations in compliance with all applicable laws. TENANT further agrees to keep the Demised Premises in a clean and sanitary condition; to comply with all laws, ordinances, rules, regulations, environmental permits, and all other obligations imposed by applicable provisions of building, housing, health and environmental codes of any local, state, or federal law, regulation, or agency; to commit no waste of the Demised Premises; to remove all garbage and other debris which

results from the operation of TENANT's operations and use of the Demised Premises in a clean and sanitary manner and to remove the garbage and debris in conformity with all laws and regulations; to keep all plumbing fixtures used by TENANT clean and sanitary; to use and operate in a reasonable manner all electrical, plumbing, heating, ventilating, air conditioning and other facilities and appliances; not to destroy, deface, damage, impair or remove any part of the Demised Premises, or property therein belonging to LANDLORD; to direct persons on the premises with TENANT's consent to conduct themselves in a manner that does not constitute a breach of the peace; and to surrender the Demised Premises at the termination of this Lease in a good state and condition as reasonable use and wear will have permitted.

TENANT specifically acknowledges that its use and occupancy of the Demised Premises is expressly subject to the following: LANDLORD reserves to itself the right to use the Demised Premises exclusively or in conjunction with TENANT or any other person or entity at all reasonable times; provided, however, that such use shall not unreasonably interfere with TENANT'S own use of the facility for programmed or scheduled events.

9. **CONSTRUCTION OF IMPROVEMENTS.** TENANT shall not make any alterations, additions, or other improvements to the Demised Premises without the prior written consent of LANDLORD, except as authorized by this Lease Agreement.

TENANT shall, at its sole cost and expense, construct improvements and perform related work on the Land in accordance with the Scope of Work set forth in the attached Exhibit B. TENANT shall use all commercially diligent efforts, as quickly as reasonably practicable, to obtain all permits and approvals necessary to construct the improvements.

10. **DEADLINES.** TENANT shall meet the following deadlines, subject to the application of Section 20(d) of this Lease Agreement:

(a) Within one (1) year of the effective date of this Lease Agreement, TENANT shall finalize all site, design, and engineering plans related to construction of all improvements.

(b) Within one (1) year of the effective date of this Lease Agreement, TENANT shall obtain all necessary permits related to construction of the planned improvements.

(c) Within one (1) year of acquiring the necessary permits, TENANT shall have completed installation of landscaping, outdoor lighting, fencing, communal seating, and parking enhancements.

(d) TENANT shall provide LANDLORD with progress reports as to the status of construction of the planned improvements within a reasonable time of LANDLORD's demand for same, and at the following stages of completion: 30%, 60%, 90%, and 100%.

11. **TITLE TO IMPROVEMENTS.** Title to any building, structure, or other improvements (other than movable trade fixtures) that shall be constructed, installed, or placed upon the Land shall vest in LANDLORD upon the termination of this Lease or any renewal or extension hereof, and TENANT acknowledges that it shall have no right to remove such fixed and permanent improvements and any fixed appliances, apparatus, or equipment related to the improvements, including all replacements, accessories and modifications thereof from the Demised Premises.

12. **ALTERATIONS.** All alterations and fixtures (other than movable trade fixtures) which may be made or installed upon the Demised Premises shall become the property of LANDLORD upon installation and shall remain upon and be surrendered with the Demised

Premises at the termination of the Lease unless LANDLORD requests their removal, in which event TENANT shall remove the same and restore the Demised Premises to the original condition at TENANT's expense. Any linoleum, carpeting, or other floor covering which may be cemented or otherwise affixed to the floor of the Demised Premises shall be a permanent fixture and shall become the property of LANDLORD without credit or compensation to TENANT.

13. **MAINTENANCE AND REPAIR.** TENANT shall at all times maintain the Demised Premises in a first-class condition and appearance, in compliance with all local, state, or federal statutes, codes, ordinances and rules. TENANT shall keep and maintain in good order and condition (which maintenance shall mean replacement if necessary), with the exception of ordinary wear and tear, interior walls, ceilings, interior portions of all doors, windows, glass, plumbing and sewage facilities, fixtures, heating, air-conditioning (including exterior mechanical equipment), interior electrical equipment, floors, and all other parts of the Demised Premises. TENANT shall be responsible for landscaping and the maintenance of the exterior of any improvements, including but not limited to, the foundation, exterior walls, roof, and generators.

14. **UTILITIES.** TENANT shall contract in its own name and shall pay the charge before delinquency, for all utility services rendered or furnished to the Demised Premises, including telephone, internet and the like, together with all taxes or other charges levied on such utilities.

15. **ASSIGNMENT AND SUBLETTING.** The identity and financial standing of TENANT is a material consideration of LANDLORD in entering into the Lease. TENANT shall not voluntarily, involuntarily, or by operation of law assign, sell, mortgage, pledge, or in any manner transfer the Lease or any estate or interest therein or sublet the Demised Premises or any part

thereof, or grant any license, concession, or other right to occupy any portion of the Demised Premises without the prior written consent of LANDLORD.

16. **DEFAULT AND REMEDIES.** The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by TENANT:

(a) The vacating or abandonment of the Demised Premises by TENANT.

(b) The failure by TENANT to observe or perform any of the covenants, conditions or provisions to be observed or performed by TENANT where such failure shall continue for a period of ten (10) days after written notice thereof from LANDLORD to TENANT; provided, however, that if the nature of TENANT's default is such that more than ten (10) days are reasonably required for its cure, TENANT shall not be deemed to be in default if TENANT commences such cure within said ten day period and thereafter diligently pursues such cure to completion.

In the event of any default or breach by TENANT, LANDLORD may at any time thereafter declare this Lease terminated, terminate TENANT's right to possession of the Demised Premises, and retake possession thereof.

17. **TERMINATION.** Either party may terminate this Lease by serving the other party with one hundred twenty (120) days written notice of intent to terminate with written notice sent to each party at the addresses listed below.

AS TO LANDLORD:

Fort Pierce City Hall
100 North US #1
Fort Pierce, FL 34950
Attention: City Manager
City Attorney
FPRA Director

AS TO TENANT:

Lashonda Henderson
Vice President

Lincoln Park Professionals
Post Office Box 3982
Fort Pierce, FL 34948

18. **NOTICES.** All notices required to be served upon LANDLORD shall be served by registered or certified mail, return receipt requested, to: CITY OF FORT PIERCE, Attn: City Manager, with copies to the Office of the City Attorney and the FPRA Director, at the address designated in Section 17 above, or such other place as LANDLORD may designate in writing. All notices required to be served upon TENANT shall be served by hand delivery or registered or certified mail, return receipt requested to: LINCOLN PARK PROFESSIONALS, at the address designated in Section 17 above, or such other place as TENANT may designate in writing. All such notices shall be deemed to have been duly given, delivered, or served if and when hand delivered or deposited in the U.S. Post Office, postage prepaid, whether evidence of delivery received is obtained or not obtained.

19. **ACCESS TO PROPERTY.** During the term of this Lease, and any renewal or extension thereof, TENANT shall permit LANDLORD and the agents and representatives of LANDLORD access to the Demised Premises at all reasonable times deemed necessary for the purpose of this Lease, and to assure compliance with all ordinances, statutes and rules and regulations of federal, state and local agencies having jurisdiction.

20. **GENERAL PROVISIONS.** The following general provisions shall be an integral part of this Lease:

(a) Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereof. Neither this Lease, nor any of the terms and

provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of LANDLORD and TENANT.

(b) Time is of the essence.

(c) The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

(d) Whenever a period of time is prescribed for action to be taken by either party, said party shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the parties.

(e) Each provision performable by TENANT shall be deemed both a covenant and a condition. The Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. The Lease may be modified in writing only, signed by the parties in interest at the time of modification.

(f) This Lease shall bind the parties, their personal representatives, successors and assigns.

(g) This Lease and the rights of the parties shall be governed by and construed or enforced in accordance with the laws of the State of Florida. Venue for any action arising out of this Lease is in the Courts of St. Lucie County, Florida. Any action shall be tried as a non-jury case.

(h) The terms "LANDLORD" and "TENANT", as used herein, denote both singular and plural and all genders. Where "TENANT" consists of more than one person, whether natural or artificial, all the persons constituting "TENANT" shall be jointly and severally liable for all obligations to be performed by TENANT herein.

(i) The Effective Date of the Lease shall be the date last executed by the parties without amendment or deletion to the Lease and its Exhibits.

(j) LANDLORD may, in its sole discretion, provide letters of recommendation on TENANT's behalf.

21. **RADON GAS.** Pursuant to Fla. Stat. Sec. 404.056(8), 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 the St. Lucie County Public Health Unit.

22. **INSPECTION.** LANDLORD or its agents shall have the right to enter the Demised Premises at all reasonable hours for the purpose of inspecting or for any other purpose not inconsistent with the terms and provisions of this Lease.

23. **PARTIAL INVALIDITY.** In the event any term, provision, or condition of this Lease shall be adjudged, decreed, held or ruled to be invalid, such provision or a portion thereof shall be deemed severable, and it shall not invalidate or impair this Lease as a whole or any other provision of this Lease.

24. **NO WAIVER.** No waiver of any provision of this Lease shall be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such

violation is continued or repeated subsequently. No express waiver shall affect any provision other than the one specified in such waiver, and then only for the time and in the manner specifically stated.

IN WITNESS WHEREOF, the parties hereto have signed, sealed, and delivered this Lease as of the day and year first above written.

WITNESS AS TO LANDLORD:

LANDLORD:

ATTEST:

**FORT PIERCE REDEVELOPMENT
AGENCY**

By: _____
Linda Cox, City Clerk

By: _____
Linda Hudson, Chairman

Date: _____

**APPROVED AS TO FORM
AND CORRECTNESS:**

By: _____
Peter Sweeney, City Attorney

**TENANT:
LINCOLN PARK YOUNG PROFESSIONALS**

WITNESSES AS TO TENANT:

By:  _____
Lashonda Henderson

Date: _____

Date: 9/18/2020

Exhibit A: Legal Description of Property

Site Address: 1134 Avenue D

Parcel ID: 2409-501-0305-000-7

Legal Description: LINCOLN PARK NO 2 BLK 12 LOT 3 (OR 3043-1024)

Site Address: 1138 Avenue D

Parcel ID: 2409-501-0306-000-4

Legal Description: LINCOLN PARK NO 2 BLK 12 LOT 4 (OR 3043-1024)

Exhibit B: Scope of Work

The Allegany Franciscan Ministries in Conjunction with Rooted In Change, Inc. dba Lincoln Park Young Professionals plans to develop 1134 Avenue D and 1138 Avenue D to create The Root, (Recognize Ourselves in Others Together), an open community engagement space for a wide variety of functions. The project shall be developed in three (3) phases.

- Phase 1: Activate the space with Taylor Moxey Library and open event space for pop-up markets.
- Phase 2: Add shipping containers to upgrade entrepreneurial hub with vendor and classroom space in a central area. Add stage and other needs for event space venue.
- Phase 3: Add communal space platform and final amenities such as bathrooms, storage and larger stages for venue space, pop-up market for startup programming, movie nights programming, public art opportunities, youth cooking classes, community art events, and community wellness programs.