

**LEALMAN EXCHANGE
MASTER LEASE AND MANAGEMENT AGREEMENT**

This Lealman Exchange Master Lease and Management Agreement (“Agreement”) is made and entered into this ____ day of _____, 2022 ("Effective Date") by and between **Pinellas County**, a political subdivision of the State of Florida ("County"), and **St. Petersburg Foundation**, a Florida non-profit Foundation 501(c)(3) agency ("Foundation"), each a “Party” and collectively the “Parties”.

WHEREAS, County owns certain land, buildings, appurtenances, and improvements within the Lealman Exchange ("Complex") with a physical address of 5175 45th St N, St. Petersburg, FL 33714, described in Exhibit “A” attached hereto and incorporated herein by reference (“Premises”); and

WHEREAS, in Fiscal Year 2021, County conducted a strategic planning process for the Complex and later initiated a Letter of Interest procurement process to select an entity to implement the Lealman Exchange Strategic Plan, set forth in Exhibit “G” attached hereto and incorporated herein by reference; and

WHEREAS, Foundation was selected to manage the Complex and implement the Lealman Exchange Strategic Plan; and

WHEREAS, the Parties desire to establish the terms and conditions of the Agreement, and County desires to lease the Premises to Foundation, and Foundation desires to manage and lease the Premises from County, subject to the terms and conditions set forth herein.

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

1. **LEASED PREMISES.** County, for and in consideration of the covenants and conditions herein set forth, does hereby lease to Foundation, and Foundation does hereby lease from County, the Premises, subject to the terms, conditions and provisions of this Agreement. The Premises is located at 5175 45th St N, St. Petersburg, FL 33714 and includes the entire Complex on 5.85 acres, more or less of land identified as Parcel ID# 03-31-16-00000-220-0101, as more fully depicted in Exhibit “A” and includes three buildings, parking lots, accompanying structures, appurtenances, and improvements, itemized in Exhibit “B”. Exhibit “C” depicts County offices that will not be leased by the Foundation and are not subject to the terms and conditions of this Agreement. Exhibits “B” and “C” are attached hereto and incorporated herein by reference.
2. **TERM AND RENEWAL.** The term ("Term") of this Agreement shall commence on the later of the date Foundation takes possession of the Premises or April 1, 2022 and terminate on September 30, 2024. The commencement date shall be October 1st of each renewing term. Subject to County approval, Foundation may request three (3) additional successive terms of five (5) years each, ("Renewal Term(s)") under the same terms and conditions as set forth herein. Foundation may exercise the aforesaid options to renew by notifying the Deputy Director of Administrative Services as provided for in Article 29, NOTICE in writing not less than one hundred and eighty (180) days prior to the expiration date of the then current Term. The Agreement Term and the Renewal Term(s) shall hereinafter be referred to collectively as the “Term”.

3. SPECIFIC SERVICES. Foundation shall have the sole right and authority to manage, operate, direct, and supervise the Complex within the guidelines established by this Agreement, the Annual Business Plan, and pursuant to any rules, regulations and ordinances adopted from time to time by the County that affect County-owned facilities. To further this purpose, Foundation shall have the authority and the obligation to take the following actions at its sole cost and expense:
 - a. Collect all operating revenues and deposit such funds in the Exchange Account, as further defined in Article 5, REVENUE.
 - b. Pay all operating expenses from the Exchange Account.
 - c. Select, hire, promote, terminate where appropriate, supervise, direct, train and assign the duties of all employees that Foundation reasonably determines to be necessary or appropriate for the management, operation, maintenance, and promotion of the Complex.
 - d. Negotiate, execute, enter into, and administer any and all licenses, occupancy agreements, in accordance with the County's Real Estate Policy & Procedures, Exhibit "D" attached hereto and incorporated herein by reference.
 - e. Negotiate, execute, enter into, and administer any and all advertising agreements, supplier agreements and service contracts (including, without limitation, contracts for cleaning and trash removal, pest, and rodent control).
 - f. Water, sewer, electricity, gas, storm water, telecommunications, internet, cable, and all other utility services.
 - g. Remodeling or non-structural improvements, subject to advance written County approval, to include labor and materials; and
 - h. Daily janitorial services in accordance with County's Service Level A, Exhibit "E" attached hereto and incorporated herein by reference.
 - i. The Maintenance and Repairs obligations set forth in Article 10, MAINTENANCE AND REPAIRS.
4. MONIES PAID TO FOUNDATION. The County agrees to transfer payments for the Pinellas County Community Redevelopment Agency Contribution and the County allowances for Utilities Cost, Contracted Services Cost and County Laborer/Handyman Cost no later than the 10th day of each month during the term of this Agreement into the Exchange Account as per the Program and Occupancy Income Section of the proforma attached hereto as Exhibit "F" and incorporated herein by reference ("County's Cost Allocation"). The County's transfer of payments shall not exceed the amounts set forth in Exhibit "F".
5. REVENUE. Foundation will collect monthly all operating revenues, fees, tenant rents, and other revenues collected from any space leased or licensed at the Complex, programs sponsored at the Complex, fundraising, and income from philanthropic naming rights ("Operating Revenues") and deposit such funds in the Exchange Account and pay all operating expenses of the Premises from the Exchange Account. Foundation will provide the County with a current rent roll quarterly on the 1st day of March, June, September, and December.

The County's Fiscal Year is October 1st to September 30th. Foundation shall submit audited financial statements no later than November 30th of each year for the previous Fiscal Year.

Payment from Net Operating Income:

- a. Within ten (10) days of the date on which Foundation furnishes the County with the audited financial statements, Foundation shall be entitled to a payment from the Exchange

Account in an amount equal to twenty-five percent (25%) of the Net Operating Income generated during the previous Fiscal Year. If Net Operating Income becomes negative at any time, Foundation shall be solely responsible for bringing the account back to \$0 by either reducing expenses from its operating budget or by securing additional income from non-County sources by the end of the fiscal year.

- b. Within ten (10) days of the date on which Foundation furnishes the County with the audited financial statements, Foundation shall pay the County from the Exchange Account an amount equal to fifty percent (50%) of the Net Operating Income generated during the previous Fiscal Year. The County shall transfer its share of Net Operating Income to a fund designated to be used for Program Support, Capital Improvements and Capital Equipment purchases specific to the Complex.
- c. Within ten (10) days of the date on which Foundation furnishes the County with the audited financial statements, Foundation shall pay the County from the Exchange Account an amount equal to twenty-five percent (25%) of the Net Operating Income generated during the previous Fiscal Year to reduce the County's Cost Allocation. Foundation may retain Net Operating Income to apply to income requirements for the following year. Net Operating Income which exceeds the amount required for the following year shall be dispersed to the Foundation.
- d. If the amount of Net Operating Income directed toward Program Support, Capital Improvements and Capital Equipment purchases specific to the Complex ever exceeds Six Hundred Thousand Dollars (\$600,000) during the Term of this Agreement, the County shall have the option to direct the amount of any such excess to the County's Lealman CRA, provided, however, before undertaking such action, the County shall give Foundation advanced written notice.
- e. If Foundation's audited financials result in any adverse material findings, irregularities, or any fiscal impropriety, including the inability of Foundation to remain solvent, properly manage itself or the operation, Foundation shall have an opportunity to address any findings with the County and what Foundation has done or intends to do to correct or cure any irregularity. The County shall have the right in its sole discretion to terminate this Agreement with or without cause and any associated agreements or funding upon thirty days (30) written notice to Foundation. A meeting with the County Administrator or designee shall be required before the County issues the notice of termination.

Exchange Account:

- a. Upon receipt by Foundation, all Operating Revenues shall be promptly deposited into the Exchange Account. Foundation shall pay all Operating Expenses out of the funds in the Exchange Account. The County shall have access to the Exchange Account, *provided, however,* that the County shall only access the Exchange Account if Foundation is in default under this Agreement.
- b. The Exchange Account shall be a separate, segregated account. The banking institution used for the Exchange Account shall not be on the County's nonapproved list, a copy of which will be provided to Foundation upon request. Foundation shall not commingle funds on deposit in the Exchange Account with any other funds. Any interest earned on the funds on deposit in the Exchange Account shall become part of the Exchange Account.

Annual Business Plan:

- a. No later than July 15 of each year, to begin in July of 2022, Foundation shall annually submit to the County Administrator or designee an Annual Business Plan for the operation of the Complex for the following Fiscal Year. For the first three years, the Annual Business Plan shall adhere to the deliverables outlined on page 47 of the Lealman Exchange Strategic Plan, attached hereto as Exhibit "G" and incorporated herein by reference. The Annual Business Plan shall include (i) an annual financial forecast (annual budget consisting of estimates of Operating Revenues and Operating Expenses, the prior Fiscal Year's actual results, the current Fiscal Year's budget and the current Fiscal Year's actual results); (ii) requests and recommendations for utilization of Retained Earnings for Capital Improvements and Capital Equipment purchases; (iii) updates relating to changes in facility rates and program fees; and (iv) a communications plan, including a crisis communications component.
- b. No later than September 1 of each year of the Term, the County Administrator or designee shall notify Foundation in writing whether the County Administrator or designee approve of the proposed Annual Business Plan as submitted. If the County Administrator or designee approves the proposed Annual Business Plan, it shall become effective at the beginning of the next Fiscal Year. If the County Administrator or designee does not approve the proposed Annual Business Plan, the County Administrator or designee must specify in writing the reasons for such disapproval. The Parties agree to work together in good faith to resolve any differences. If the Parties are unable to reach an agreement concerning Foundation's proposed Annual Business Plan by September 30 of each year of the Term, Foundation shall operate the Complex in accordance with the prior Fiscal Year's Annual Business Plan until the Parties resolve the disagreement. If the County Administrator or designee does not communicate in writing with Foundation by September 30, Foundation shall be entitled to operate the Complex in accordance with the most recent Annual Business Plan it submitted.
- c. Foundation shall comply with the Annual Business Plan and shall not substantially deviate from it without the written consent of the County Administrator or designee, except where such deviation is due to an emergency. In the event of an emergency, the Foundation shall provide the County with reasonable advance written notice of the specific deviations from the Annual Business Plan.
- d. If the Annual Business Plan approved by the County Administrator or designee modifies the proposed Annual Business Plan for such Fiscal Year submitted by Foundation to the extent that, in Foundation's reasonable judgment, the approved Annual Business Plan would materially interfere with, impede or impair the ability of Foundation to manage the Complex, Foundation shall have the right to terminate this Agreement and the exercise of such right shall not be considered a breach of this Agreement. Any exercise of Foundation's right to terminate under this subsection shall be exercised within thirty (30) days of receipt of written notice from the County Administrator or designee that the Annual Business Plan was approved as modified.
- e. Foundation shall make reasonable recommendations to the County from time to time regarding amendments to the then current Annual Business Plan, which recommendations shall be reasonably accommodated by the County in good faith.

Annual Performance Review:

- a. Foundation shall include in its Annual Business Plan a written review of Foundation's performance under this Agreement during the past Fiscal Year based upon results of operations (for example, the number of program hours and participants, the number of

rental hours, equipment maintenance standards, maintenance/janitorial inspections and complaint resolutions and a comparison of the prior Fiscal Year's actual operating results, current Fiscal Year budget and current Fiscal Year actual operating results). The County Administrator or designee shall notify Foundation in writing of any issue that the County has with Foundation's annual performance review. Foundation shall respond to any issue raised by the County Administrator or designee as soon as practicable or, if appropriate, in the Annual Business Plan for the following Fiscal Year. Any material failure by Foundation to respond to any reasonable issue raised by the County Administrator or designee shall be deemed a material default of this Agreement under Article 41, DEFAULT.

6. PUBLICITY AND PROMOTIONAL MATERIALS. Any news release or other type of publicity pertaining to the services performed by Foundation pursuant to this Agreement must recognize the contribution of County. Foundation, as a not-for-profit receiving public funding or non-monetary contributions through County, shall recognize County for its contribution in all promotional materials and at any event or workshop for which County funds are allocated. Any news release or other type of publicity must identify County as a funding source. In written materials, the reference to County must appear in an approved logo type. Foundation agrees to abide by the County branding guidelines and media engagement practices and shall ensure prompt engagement of the Communications Department upon any emergency or high-visibility situation that may arise, and which could negatively impact the public's interaction with the facility.
7. NAMING RIGHTS. Throughout the Term of this Agreement, the Foundation may develop a plan in connection and compliance with the County's Philanthropic Naming Rights Policy, attached as Exhibit "H" attached hereto and incorporated herein by reference. The plan must be submitted to the County Administrator, or designee, for approval.
8. USE AND ACCESS. County shall allow Foundation reasonable access to the Premises. In the event of a local state of emergency, severe weather conditions or pending natural disaster, County reserves the right to withhold access to the Premises at County's sole discretion during such events, and to utilize Premises as an emergency shelter.
9. CONDITION OF PREMISES. No agreement to alter, remodel, decorate, clean, or improve the Premises has been made between County and Foundation. Foundation hereby accepts the Premises in its "AS IS" and "WHERE IS" condition "WITH FAULTS" and patent or latent defects and without representations or warranties of any kind, expressed or implied, or arising by operation of law.
10. MAINTENANCE AND REPAIRS. The Premises' operational, repair and maintenance expenses and the responsibility to maintain the structures and appurtenances in good condition shall be assumed by County and Foundation as set forth. County reserves the right to review, approve and audit contracts and services provided by vendors hired by the Foundation for services outlined in this Article.
 1. Foundation, at its sole cost and expense, shall at all times throughout this Agreement:
 - a. Provide, maintain, and operate sufficient interior and exterior lighting for the Premises.
 - b. Provide, routine and preventive maintenance, and repair all non-life and life safety systems, including heating, air conditioning, and ventilation systems for the comfortable use and occupancy of the Premises, electrical systems, plumbing systems, interior and exterior lighting, security and access systems and cameras, walls, interior doors and locks, signs,

breakroom and restroom fixtures and appliances, building glass and doors. Routine and preventive maintenance shall be on a recurring schedule set by the County.

- c. Maintain and repair all normal wear and tear interior items and external items, including but not limited to sidewalks, walk paths, parking lots, and drainage grates.
- d. Provide regular maintenance of the roof, including inspections and gutter cleaning.
- e. Landscaping and lawn maintenance of the Premises, including but not limited to, regular pruning, trimming, fertilization, pest services, and replacement of dead plants
- f. Locksmith and security services.
- g. Maintain and coordinate services and inspection of life safety systems to include fire alarm/suppression systems and hood equipment (ASNL). County to retain and provide inspection reports as needed; and
- h. Compliance with all laws, County ordinance, rules, and regulations of governmental and quasi-governmental agencies regarding facilities (including without limitation, state, and federal ADA requirements) other than those that are the express responsibility of County.

2. In the event Foundation fails to timely or adequately perform its maintenance responsibilities or to repair any damage to the Premises, the County may perform itself or contract for the performance of the maintenance or repairs by a third party. Upon completion of the services County will be entitled to reimbursement from Foundation for the total cost of the maintenance or repairs within thirty (30) days of the date of the County's written reimbursement request.

3. County, at its sole cost and expense, shall:

- a. Repair and replace structural components of the Premises, including the foundation, walls, and support structures.
- b. Replace when needed the HVAC units, roof, sidewalks, parking lots and other capital improvements required to operate the buildings and structures outlined in Exhibit "B".

11. **CABLING AND TECHNOLOGY.** Foundation shall make no changes or alterations to cabling or technology without written consent of the County. County will not provide telephone, voice, video, data, internet, or other telecommunications services. Foundation shall not access, utilize, or impact the County technology closet. Foundation shall have access to a shared technology cabinet generally accessible and utilized by all tenants. The County's technology department (BTS) will not provide access or support to the main distribution frame (MDF) or intermediate distribution frame (IDF) for tenants. The County shall not be liable in any manner for any damage caused to or by Foundation's technology equipment, either owned by or installed for the benefit of Foundation, including but not limited to damage resulting from data breaches. **Tenants are required to label all equipment and cabling.**

12. **TAXES.** In the event that any ad valorem, rental, sales, or similar taxes are levied upon the leased Premises due to the existence of this Agreement, Foundation shall be solely responsible for the payment of all such taxes so imposed.

13. **ALTERATIONS & IMPROVEMENTS TO PREMISES.** Foundation shall make no structural change or alteration to the Premises or other parts of the Complex, including changes or alterations to cabling or technology, without advance written consent of County. Foundation shall not make any improvements requiring building permits to the Premises without the prior written consent of County. Any improvements or alterations to the Premises approved by County shall be undertaken

by Foundation at its sole expense, including but not limited to the costs Foundation shall be responsible for any and all damage to the Premises caused by any structural changes, alterations or improvements. Foundation shall pay for all charges for permitting, labor, services and materials used in connection with any structural changes, alterations, improvements or repairs to the Premises undertaken by Foundation. In the event Foundation fails to timely or adequately repair any damage it causes to the Premises, the County may perform itself or contract for the performance of the repairs by a third party. Upon completion of the repairs County will be entitled to reimbursement from Foundation for the total cost of the repairs within thirty (30) days of the date of the County's written reimbursement request.

14. ASSIGNMENT AND SUB-LETTING. Foundation may not assign or sublet this Agreement or any interest thereunder.
15. PROPERTY OF TENANT. Foundation shall, (if not in default hereunder) prior to the expiration of the Agreement, or any extension thereof, remove all personal property which it has placed in the Premises, provided Foundation repairs all damages to the Premises caused by such removal, unless Foundation obtains the written consent of County to keep such property on the Premises after expiration or termination of the Agreement.
16. DAMAGE OR THEFT OF PERSONAL PROPERTY. Foundation agrees that all personal property brought into the Premises shall be at the risk of Foundation only, and County shall not be liable for theft thereof or any damage thereto occasioned by any acts of any tenants, other occupants of the Building or any other person.
17. NO ESTATE IN COUNTY'S OWNERSHIP INTEREST. Foundation has only a temporary leasehold interest in the Premises pursuant to the terms and conditions herein, which is not subject to levy and sale. Any security interest obtained in Foundation's leasehold shall not affect or encumber County's fee simple interest in the Premises.
18. OBSERVANCE OF LAWS. Foundation agrees, at its own expense, to promptly comply with all requirements of any legally constituted public authority necessitated by reason of Foundation's occupancy of said Premises, including complying with all laws, regulations and ordinances concerning its operations, and obtaining and maintaining any and all permits and licenses to provide services pursuant to this Agreement.
19. EMINENT DOMAIN.
 - a. In the event the whole or any substantial part of the Complex or the Premises is taken or condemned by any competent authority for any public or quasi-public use or purpose, this Agreement shall terminate as of the date of the taking of possession or by the condemning authority.
 - b. In the event less than a substantial part of the Complex or the Premises is taken or condemned for any public or quasi-public use or purpose, or if any adjacent property or street is condemned or improved in such manner as to require the use of any part of the Premises or of the Complex, then at the election of County expressed by delivery of written notice to Foundation within ninety (90) days after said date of taking, condemnation or improvements, this Agreement shall terminate as of said date without any payment from County to Foundation therefore, other than Foundation's share of damages from said taking as referenced herein.

- c. County shall be entitled to receive the entire award from any taking or condemnation without any payment to Foundation, as provided for in Florida Statutes; provided, however, Foundation shall be entitled to receive any award or portion of any award specifically designated to Foundation pursuant to Florida Statutes.

20. DAMAGE BY FIRE OR OTHER CASUALTY.

- a. Partial Destruction. If the Complex or Premises is partially damaged by fire or other casualty, Foundation shall provide written notice of the same to County as soon as practical thereafter ("Casualty Notice"). If no such Casualty Notice is given, notice shall be deemed to be the date upon which County has actual knowledge of the fire or other casualty. Upon receipt of such notice, County shall determine, in its sole discretion, whether the repairs can be completed within one hundred eighty (180) days, and tender written notice of the same to Foundation within thirty (30) days of the Casualty Notice. Where such repairs can be completed within one hundred eighty (180) days, County shall commence to repair the damage and shall thereafter diligently pursue repair of the damage to completion up to the amount of any insurance proceeds available. Where such repairs cannot be completed within one hundred eighty (180) days, the damage shall be treated as a Substantial or Total Destruction and the terms and conditions of subparagraph (b) of this Paragraph 20 shall apply. County shall not be liable for any inconvenience or annoyance to Foundation resulting in any way from such damage or the repair thereof, except that, subject to the provisions of the next section.
- b. Substantial or Total Destruction. If the Premises, Common Areas or Complex are (i) totally destroyed or damaged by casualty, or (ii) the Complex, whether the Premises is damaged or not, should be damaged to the extent of fifty (50%) percent or more of the then monetary value thereof, or (iii) if the Premises, Complex or Common Areas shall be so damaged or destroyed to such an extent that Foundation is unable to conduct its business at the Premises in the ordinary course, as determined by Foundation, and if the estimated time to repair or replace such damage or destruction exceeds one hundred eighty (180) days from the date of the Casualty Notice, then either Party may terminate this Agreement by written notice to the other within thirty (30) days after the date of the Casualty Notice, with such termination to be effective as of the date of the Casualty Notice. If neither Party terminates this Agreement as set forth above, County shall promptly repair or replace any damage or destruction to the Premises, including the Common Areas.
- c. County's Termination Option. Notwithstanding the foregoing provisions of Subparagraph (b) of this Article, if such damages (i) are a result of a risk which is not covered by County's insurance or exceeds the proceeds from such insurance or (ii) such damage shall occur during the last eighteen (18) months of the Term of this Agreement (or of any renewal Term), then in any of such event, County may, at its sole option and discretion, by written notice to Foundation within thirty (30) days of the Casualty Notice, elect not to repair such damage and to cancel and terminate this Agreement effective as of a date of Casualty Notice. Upon the giving of such notice to Foundation, the Term of this Agreement shall expire by lapse of time upon the third (3rd) day after such notice is given, and Foundation shall vacate the Premises and surrender the same to County as diligently as possible or within thirty (30) days of receipt of County's notice of termination.

21. RIGHTS OF RECOVERY. County and Foundation agree to have all fire and extended coverage and material damage insurance which may be carried with respect to the Premises or any portion of

the property located therein endorsed with a clause substantially as follows: “This insurance shall not be invalidated should the insured waive in writing prior to a loss any or all rights of recovery against any Party for loss occurring to the property described herein.”

22. ENTRY BY COUNTY. County may enter the Premises at reasonable hours to exhibit the same to prospective purchasers or tenants, and to inspect the Premises to see that the Foundation is complying with all its obligations under the terms hereof. The County shall also be allowed to take any and all needed materials and equipment that may be required for its maintenance obligations or to make repairs, into and through the Premises without being liable to Foundation in any manner whatsoever, unless damage is caused by County’s negligence, subject to the requirements and limitations set forth in Section 768.28, Florida Statutes. Such repairs shall not unduly interfere with Foundation’s business except as is naturally necessitated by the nature of the repairs being affected. During the time such work is being done in or about the Premises, Foundation waives any claim and cause of action against County for damages by reason of interruption to Foundation’s business or loss of profits therefrom. County shall use its best efforts to notify Foundation within 24 to 48 hours of County’s intent to enter Premises. In the event of emergency, the County is not required to provide prior notification.
23. DUTY TO MAINTAIN PREMISES. Foundation shall at all times under the Agreement exercise best efforts to make repairs or notify County of the need for repairs the County is responsible for under the Agreement. Foundation shall further ensure that those repairs, whether the responsibility of the County or Foundation, are diligently pursued and made as soon as possible in order to mitigate any further damage.
24. TERMINATION. In the event, this Agreement is terminated by either Party, Foundation shall be responsible to turn over the Premises to County in tenantable condition, absent normal wear and tear. Foundation may be charged back by County for the costs associate with any repairs or replacements not satisfactorily addressed by the Foundation and for any portion of the Premises that is damages or in disrepair. In the alternative, at the County’s directive, Foundation will be required to make specific repairs prior to vacating the Premises.
25. DAMAGE TO PREMISES. Foundation shall be solely responsible for the cost and reimbursement to County for any damages, required repairs or improvements to the Premises, whether routine, preventative, or capital in nature, arising from Foundation's use and occupancy of the Premises due to Foundation's failure to maintain or advise the County of required repairs under this Agreement.
26. MAINTENANCE AND REVIEW OF RECORDS.
 - a. The Foundation and any of its subcontractors providing any of the services required to be performed or provided under this Agreement shall maintain adequate records and accounts, including, but not limited to, property, personnel and financial records, and supporting documentation which shall enable ready identification of Foundation's cost of goods and use of funds for a period of six (6) years, hereinafter referred to as the “Audit Period”, from the date of final payment to the Foundation, or its subcontractors, as applicable, under this Agreement or the termination thereof, whichever occurs later.
 - b. The County and its authorized agents shall have the right to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom, and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to, personnel and employment records during the Audit Period. The Foundation will permit the County and

its authorized agents, including but not limited to the County Internal Auditor, to inspect all such records, accounts and documentation. The Foundation shall make such records available to the County and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the County may deem necessary during the Audit Period.

- c. The County's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether federal, state, or local. Foundation shall ensure that any such subcontractor shall recognize the County's right to examine, inspect and audit its records, accounts, and documentation in connection with its provision of services required to be provided by the Foundation, including but not limited to any services related to funding County provides under this Agreement. If County, or any other federal, state, or local agency, begins but fails to complete an audit during the Audit Period, then the Audit Period should be extended until audit findings are issued. This Article shall survive the expiration or termination of this Agreement.

27. INSURANCE. Foundation shall procure, pay for, and maintain during the term of this License insurance as depicted on Exhibit "I" attached hereto and incorporated herein by reference.

28. INDEMNIFICATION.

- a. Foundation agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless, the County, its officers, employees and agents ("Indemnified Parties") from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property or in any way relating to or arising from this Agreement; or on account of any act or omission, neglect or misconduct of Foundation; except only such injury or damage as shall have been occasioned by the sole negligence of the County. The extent of this indemnification shall not be limited in any way as to the amount or types of damages or compensation payable to any of the Indemnified Parties on account of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement.
- b. Nothing herein shall be construed to extend any Party's liability beyond that provided for in Section 768.28 Florida Statutes, if applicable.
- c. The provisions of this Article shall survive the expiration or termination of this Agreement.

29. NOTICES. Any and all reports, notices, demands, consents, approvals, or other communication which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if transmitted by electronic mail or by hand-delivery with receipt thereof by a nationally recognized overnight delivery service, or by certified mail posted prior to the expiration date for such notice, return receipt requested and first-class postage prepaid, to the following addresses:

If to County: Pinellas County Department of Administrative Services
Attention Deputy Director
509 East Ave. S, Clearwater, FL 33756

If to Foundation: _____ Attention: _____

Or to such other address as a Party may have specified in writing to the other Party using the

procedures contained in this Article. Notices sent (i) via hand delivery shall be deemed delivered when received; (ii) via overnight delivery by a nationally recognized overnight delivery service shall be deemed delivered on the next business day after deposit with such service; and (iii) via certified mail shall be deemed delivered on the date of receipt.

30. COMPLIANCE WITH APPLICABLE LAWS. Foundation hereby covenants and agrees to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations promulgated thereunder.
31. FISCAL NON-FUNDING. Notwithstanding anything to the contrary contained in this Agreement, the Agreement is contingent upon the appropriation of funds by County to fulfill its requirements under this Agreement. In the event County terminates this Agreement based on fiscal non-funding, then such termination shall be without penalty or expense to County, except for obligations that have arisen prior to the termination date.
32. NONWAIVER. The provisions, terms and conditions of this Agreement shall not be construed as a waiver by the County of any rights provided for by any provision of law, including but not limited to Section 768.28, Florida Statutes or any other applicable statute or immunities. County expressly reserves these rights to the fullest extent allowed by law.
33. EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION.
 - a. Foundation shall comply with Pinellas County, Florida - Code of Ordinances and Laws, Part A, Chapter 30, Article II (Pinellas County Human Rights Ordinance) as amended, which prohibits illegal discrimination on the basis of actual or perceived race, color, sex, age, religion, national origin, disability, marital status, sexual orientation, or gender identity or expression, in employment, public accommodations, real estate transactions and practices, County contracting and procurement activities, and credit extension practices.
 - b. Foundation shall also comply with the requirements of all applicable federal, state, and local laws, rules, regulations, ordinances, and executive orders prohibiting and/or relating to discrimination, as amended and supplemented. All of the aforementioned laws, rules, regulations, ordinances, and executive orders are incorporated herein by reference.
34. ADDITIONAL RIGHTS AND REMEDIES. Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the Parties under law or in equity which may now or in the future be applicable. '
35. PUBLIC ENTITY CRIMES. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a Foundation, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Foundation hereby represents and warrants that it has not been convicted of a public entity crime, that it is not on the State of Florida's convicted vendor list, and that it is not prohibited from entering into this Agreement by Section 287.133, Florida Statutes.

Foundation further represents and warrants that it will not hire any professional, Foundation, or supplier that is on the State of Florida's convicted vendor list. Foundation is directed to the Florida Public Entity Crime Act, Section 287.133, Florida Statutes, as amended from time to time, and County's requirement that Foundation comply with it in all respects prior to and during the Term.

36. ACCESS TO RECORDS; PUBLIC RECORDS ACT.

- a. The Parties acknowledge and agree that the statement and provisions below are required by Florida Statute to be included in this Agreement. The inclusion of this statement and provisions below shall not be construed to imply that Foundation has been delegated any governmental decision-making authority, governmental responsibility, or governmental function or that the Foundation is acting on behalf of County as provided under Section 119.011(2), Florida Statutes, or that the statement or provisions are otherwise applicable to Foundation. As stated below, Foundation may contact County's Custodian of Public Records with questions regarding the application of the Public Records Law; however, Foundation is advised to seek independent legal counsel as to its legal obligations. County cannot provide Foundation advice regarding its legal rights or obligations.
- b. If under this Agreement, Foundation is providing services and is acting on behalf of County as provided under Section 119.011(2), Florida Statutes, Foundation will comply with public records law, and agrees to:
 - i. Keep and maintain public records that would ordinarily be required by County to perform the service.
 - ii. Upon request from County's custodian of public records, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided Chapter 119, Florida Statutes, or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement and following completion of the Agreement if Foundation does not transfer the records to County.
 - iv. Upon completion of the Agreement, transfer at no cost to County, all public records in possession of Foundation or keep and maintain public records required by County to perform the service. If Foundation transfers all public records to County upon completion of the Agreement, Foundation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Foundation keeps and maintains public records upon completion of the Agreement, Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon request from County's custodian of public records, in a format that is compatible with the information technology system of County.

IF FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COUNTY'S DUTY TO PROVIDE

PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Phone: (727) 464-4485

Email: jpeters@pinellascounty.org

Mail or hand delivery:

Attn: Records Manager

509 East Avenue South

Clearwater, FL 33756

Failure of Foundation to comply with Chapter 119, Florida Statutes, and/or the provisions set forth above, where applicable, shall be grounds for immediate unilateral termination of this Agreement by County.

37. SURRENDER OF PREMISES. Upon termination of this Agreement, whether by lapse of time or for any other reason, Foundation shall surrender and vacate the Premises immediately and deliver possession thereof to County in a clean, good, and tenantable condition, ordinary wear excepted. Upon any termination which occurs other than by reason of Foundation's default, Foundation shall remove from the Premises all furnishings, equipment, and records, provided that Foundation shall repair all damage resulting from such removal and shall restore the Premises to a tenantable condition, unless otherwise agreed by County. All other additions, decorations, fixtures, hardware, and all permanent improvements remaining, in or about the Premises upon termination remain County's property and shall remain upon the Premises without compensation, allowance, or credit to Foundation, whether placed there by Foundation or by County, unless County directs their removal. Any and all property which may be removed from the Premises by County pursuant to the above or pursuant to law shall be conclusively presumed to have been abandoned by Foundation and title thereto shall pass to County without any cost by setoff, credit or otherwise, and County may, at its option:
- a. accept title to such property in which event Foundation shall be conclusively presumed to have conveyed such property to County under this Agreement as a bill of sale; or
 - b. at Foundation's expense, dispose of such property in any manner that County shall choose.

In no event, however, shall County be responsible for the value, preservation, or safekeeping of such property.

38. ESTOPPEL CERTIFICATE. County shall, from time to time, upon not less than twenty (20) days prior written request by Foundation, deliver to Foundation a statement in writing certifying that:
- a. This Agreement is unmodified and in full force and effect, or, if there have been modifications, that the Agreement is modified and is in full force and effect; and
 - b. The dates to which Rent and other charges have been paid and the amount of any Security Deposit; and
 - c. The Foundation is not in default under any provision of this Agreement, or, if in default, a detailed description thereof.

39. COUNTY DEFAULT. County shall be in default under this Agreement if County has not commenced and pursued with reasonable diligence the cure of any failure of County to meet its obligations under this Agreement within thirty (30) days of the receipt of written notice from Foundation. This grace period shall be extended if the default is of a nature that it cannot be completely cured within the thirty (30) day period solely as a result of non-financial circumstances outside of County's control, provided that County has promptly commenced all appropriate actions to cure the default within the thirty (30) day period and such actions are thereafter diligently and continuously pursued by County in good faith. Upon the occurrence of an event of Default by County, which Default is not cured after notice as outlined herein, to the extent provided for or required herein, Foundation reserves the right to Terminate this Agreement by providing 90 days' written notice.
40. DEFAULT BY REASON OF BANKRUPTCY. It is agreed between the Parties hereto that if Foundation shall become a debtor, or seek the entry of an order for relief under the Federal Bankruptcy Code, or become insolvent, or unable to pay its debts as they mature, or take the benefit of any insolvency law, or if Foundation's leasehold interest under this Agreement shall be sold under any execution or process of law, or if a trustee in bankruptcy or a receiver be appointed or elected or had for Foundation (whether under federal or state laws), or in the event Foundation is in default of any obligations hereunder, then and in any such event, at County's option and ten (10) days after County has given tenant written notice of such act, conditions or default, the said County may terminate this Agreement.

Nothing contained hereinabove shall impair or affect County's right to maintain summary proceedings provided for by law. If this Agreement shall be deemed terminated pursuant to such proceedings, County may immediately or at any time thereafter re-enter or repossess the Premises and remove all persons and property in a commercially reasonable manner therefrom in accordance with such proceedings and all applicable laws.

All rights and remedies of County hereunder shall be cumulative and in addition to all rights and remedies provided by applicable law.

41. FOUNDATION DEFAULT. Foundation shall be in default under this Agreement if one or more of the following events ("Event(s) of Default") occur:
- a. Monetary Default. The Parties covenant and agree that if Foundation fails to pay any amount payable when due in accordance with the terms hereof ("Monetary Default"), then Foundation shall be in default of this Agreement. County shall provide written notice to the Foundation of the Monetary Default and Foundation will have ten (10) days from receipt of notice to cure such Monetary Default.
 - b. Violates Terms. If Foundation shall violate or fail to comply with or perform any of the terms, conditions, or agreements to be performed or observed by Foundation under this Agreement within thirty (30) days after written notice from County or such additional time as County shall deem necessary in the event such violation cannot be cured within the thirty (30) day period.
 - c. Prohibited Transfer. If Foundation attempts to assign, transfer, mortgage, encumber, or sublet the Premises or its interest under this Agreement without prior written consent from County.
 - d. Compliance with Law. If Foundation violates any federal, state, or local law pertaining to this Agreement and if such violation is incurable, or if curable, not cured within thirty (30) days after Foundation is notified or is made aware of such violation.
 - e. Bankruptcy or Assignment to Creditors. Foundation shall make any general assignment for

the benefit of creditors, shall be adjudicated as bankrupt, whether voluntary or involuntary, or shall have a receiver appointed for its property, or shall permit any judgment-lien or other lien to attach to the Premises.

- f. Insurance. If Foundation fails to maintain the insurance required by this Agreement or as may be required from time to time and such failure continues for a period of thirty (30) days after notification from the insurer and/or County.
- f. Corporate Status. If Foundation fails to maintain itself as a not-for-profit Foundation under the laws of the State of Florida or the equivalent of the same.
- g. Tax Exemption. If Foundation fails to maintain itself as a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code, or the equivalent of the same.
- h. Condition of Facility. Foundation shall fail to maintain the Premises on a regular basis for the intended use unless Foundation's use is disturbed by reason of war, strikes, riots, civil unrest, hurricanes, or other natural disasters or events typically described as "Acts of God";
or
- i. Default Under Other Agreements. If Foundation shall be in default beyond applicable notice and curative periods under any related agreement with County and/or the funding thereof.

42. EFFECTS OF DEFAULT.

- a. Termination. If at any time an Event of Default shall occur and such Event of Default has not been cured within any applicable cure period set forth herein, it shall be lawful for County, upon election, to declare the Agreement terminated and to re-enter the Premises and the improvements situated thereon, or any part thereof or thereon, either with or without process of law. Foundation hereby waiving any demand for possession of such Premises and any and all improvements then situated thereon, or County may have such other remedy as the law or this Agreement may afford.
- b. Possession. Upon the termination of this Agreement, at such election of County, or in any other Way, Foundation shall immediately surrender and deliver up the Premises and improvements peaceably to County. If Foundation shall hold such Premises, or any part thereof, for any period (including a day) after the termination date, it shall be subject to eviction or removal in accordance with the law. Any damage which may occur to the Premises due to the Foundation's removal of its equipment and/or personal property, shall be repaired by Foundation at its sole expense and to County's reasonable satisfaction. Furthermore, the entirety of the Premises shall be delivered in good condition absent normal wear and tear and Foundation shall make repairs as required under the Agreement and shall at no point in time neglect their duty to maintain the Premises.
- c. Monetary Damages. Suit or suits for the recovery of monetary damages as a result of an Event of Default.
- d. Preservation of Rights. Nothing contained herein shall be construed as precluding County from having such remedy as may be and become necessary in order to preserve its rights in the Premises and in this Agreement, even before the expiration of the grace or notice periods provided for in this Agreement if under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of County in this Agreement and to the Premises.
- e. Other Remedies. County shall have all other rights and remedies available at law or in equity.

43. TERMINATION OF AGREEMENT. In addition to the exercise of any other remedies available to

County at law or in equity, the County may terminate this Agreement for Foundation's non-performance, as solely determined by the County, upon no less than ninety (90) days written notice to the Foundation.

In the event of termination by County hereunder, the Foundation shall not incur any contracts or applications for revenue, new obligations or enter into any new agreements for services or procurement after notification of the effective date of termination. The County shall pay the Foundation for services incurred by the Foundation prior to termination. Any costs incurred by the Foundation after the effective date of the termination shall not be reimbursed.

44. **AUTHORITY TO EXECUTE.** The person(s) executing this Agreement warrant they have the authority to so execute this Agreement and the Party on whose behalf they are signing. Foundation is a Florida not-for-profit Foundation, and the person executing this Agreement on behalf of Foundation represents and warrants that Foundation is duly organized and validly existing, that this Agreement has been authorized by all necessary parties and is validly executed by an authorized officer or agent of Foundation, and that this Agreement is binding upon and enforceable against Foundation in accordance with its terms.
45. **ASSIGNMENT.** This Agreement, and all rights and obligations hereunder, shall not be assigned, transferred or delegated in whole or in part, without advance written consent of the County. All of the covenants, agreements, promises, obligations, conditions, and provisions of this Agreement shall inure to the benefit of and shall bind the assigns of Foundation. should County permit same.
46. **RELATIONSHIP OF PARTIES.** Nothing herein contained shall be deemed to constitute either of the Parties hereto as a joint venture, partner, or agent of the other, and neither Party shall claim any status which is contrary to the terms of this Agreement. Foundation is not acting on behalf of County when carrying out its activities under this Agreement, and Foundation shall not hold itself out as a County Department nor Foundation's employees as County employees. Further, Foundation acknowledges that it has not been delegated any statutorily authorized function from County.
47. **ELECTRONIC SIGNATURES AUTHORIZED.** The Parties agree that this Agreement may be executed by electronic signature in a manner that complies with Chapter 668, Florida Statutes.
48. **MULTIPLE COUNTERPARTS.** This Agreement may be executed in more than one counterpart, all of which taken together shall constitute one and the same original, and the execution of separate counterparts by the Parties shall bind the Parties as if they had each executed the same counterpart.
49. **WAIVER.** One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition by the other Party, and the consent or approval by either Party to or of any act by the other Party requiring consent or approval shall not be construed as a consent or approval to or of any subsequent similar act by the other Party.
50. **CAPTIONS.** The headings or captions of Articles are for convenience only, are not part of this Agreement, and shall not affect the interpretation of this Agreement.

51. TIME. Time is of the essence as to this Contract. Any reference herein to time periods shall refer to calendar days, and any time period provided for herein which shall end on a Saturday, Sunday or County or legal holiday shall extend to 5:00 p.m. of the next full business day.
52. EXHIBITS. All exhibits attached to this Agreement are made a part hereof and are incorporated herein by reference.
53. SMOKING. All buildings on the Premises are smoke free. Any smoking must be done outside and not inside any portion of the Premises. If Foundation, its agents, employees, or servants wish to smoke outside of a building, they will be required to do so away from all building entrances.
54. AMERICANS WITH DISABILITIES ACT (ADA). County warrants that the Premises are in and shall be maintained in compliance with the Federal Americans with Disabilities Act (ADA) and any similar Act adopted by the State of Florida at County's expense, at the commencement of this Agreement.
55. ASBESTOS. County warrants that to the best of its knowledge, there are no friable asbestos in the Complex or the Premises at the commencement of this Agreement and that if any friable asbestos are discovered in the Complex or the Premise during the Term, the County shall, at its sole cost and expense, remove or encapsulate said asbestos within a reasonable period of time.
56. 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 Public Health Department.
57. HAZARDOUS SUBSTANCES. Foundation shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in Premises. Foundation shall not do, nor allow anyone else to do, anything affecting Premises that is in violation of any Environmental Law. The preceding sentences shall not apply to the presence, use, or storage on Premises of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal maintenance use.

County shall promptly give Foundation written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving Premises, and any Hazardous Substance or Environmental Law of which County has actual knowledge thereof. If County learns or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting Premises is necessary, County shall promptly take all necessary remedial actions in accordance with Environmental Law.

County shall indemnify and hold Foundation fully harmless for any liabilities and remedial actions of Hazardous Substances for which County is responsible under this Article, except if such liabilities and remedial actions were caused by Foundation or its officers, employees, or guests. County's indemnification obligations under this Article shall survive the expiration or termination of the Agreement.

As used in this Paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law, as well as the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Paragraph, "Environmental Law" means Federal laws and laws of the jurisdiction where Premises is located that relate to health, safety, or environmental protection.

58. AIR QUALITY. The County shall maintain the Complex and Complex's air handling systems to provide a healthy indoor air environment. The County shall maintain the Complex and air handling systems sufficiently to prevent the amplification of biological agents (mold, mildew, fungi, and bacteria) and dust above proximate outdoor levels. The Foundation shall be informed prior to any maintenance activities utilizing chemicals including pesticide applications that may impact indoor air quality (and reserve the right to require these activities to occur when Complex is unoccupied). Prior to and during occupancy, the Foundation reserves the right to conduct indoor air quality testing. Testing may include volatile organics, biological agents, humidity, temperature, or other compounds.
59. PETS. Pets shall not be allowed in or on the Premises without prior written consent of County with the exception of service animals.
60. ENTIRE AGREEMENT. This Agreement and all exhibits incorporate all covenants, promises, agreements, conditions, and understandings between the Parties. No covenant, promise, agreement, condition or understanding, either written or oral, not specifically set forth herein, shall be effective to alter the performance or the rights of the Parties as stated herein. No modification, waiver, or amendment of the provisions of this Agreement shall be binding upon County or Foundation unless in writing and signed by County and Foundation or by their duly authorized agents.

REMAINDER OF THIS PAGE INTENTIONALLY BLANK; SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, County and Foundation have caused this Agreement to be executed as of the date first above written, by their respective officers or Parties thereunto duly authorized.

Joe Hamilton, Board of Directors
St. Petersburg Foundation

Date: _____

PINELLAS COUNTY, FLORIDA, a political
subdivision of the State of Florida.

By: _____
Charlie Justice, Chairman

ATTEST:
KEN BURKE
Clerk of the Circuit Court

By: _____
Deputy Clerk

EXHIBIT "A"
SITE MAP

EXHIBIT "B"
LIST OF BUILDINGS, APPURTENANCES AND IMPROVMENTS

EXHIBIT "C"
COUNTY OFFICES

EXHIBIT "D"
REAL ESTATE POLICY & PROCEDURES

EXHIBIT "E"
COUNTY'S JANITORIAL SERVICE LEVEL A

EXHIBIT "F"
PROFORMA

EXHIBIT "G"
LEALMAN EXCHANGE STRATEGIC PLAN PAGE 47

EXHIBIT "H"
COUNTY PHILANTHROPIC NAMING RIGHTS POLICY

EXHIBIT "I"
INSURANCE REQUIREMENTS