

FUNDING AND LAND USE RESTRICTION AGREEMENT

This Agreement is made this ____ day of _____, 2017, ("effective date") between Pinellas County, a political subdivision of the State of Florida (hereinafter "County"), and R'Club Child Care, Inc. (R'Club), a nonprofit organization providing child care to the residents of Pinellas County, (hereinafter "Funds Recipient"), collectively referred to as the "Parties."

Recitals

WHEREAS, Pinellas County received funds through a settlement ("Settlement") with parties responsible for the Deepwater Horizon accident which affected the Gulf of Mexico and communities in the region including Pinellas County; and

WHEREAS, County has identified and approved Projects intended to benefit the public or serves a public benefit that the Board of County Commissioners intends to be enhanced with the funding from the Settlement; and

WHEREAS, on December 13, 2016, the Board of County Commissioners adopted Resolution 16-90 delegating to the County Administrator the authority to enter into agreements with entities necessary to effectuate the approved projects within the amounts approved by the Board of County Commissioners for each project; and

WHEREAS, the restoration of a child care facility located at 920 19th Street South, St. Petersburg (the "Premises"), Florida was approved by said resolution; and

WHEREAS, the Funds Recipient is the current owner of the Premises; and

WHEREAS, the Funds Recipient hereby agrees to restrict the Premises' usage for a certain period of time in exchange for the funds provided to improve the Premises.

NOW THEREFORE, the Parties agree as follows:

1. **Recitals.** The Parties stipulate that the above recitals are true and correct and are hereby incorporated herein.
2. **Authority.** The Funds Recipient hereby affirms that it owns and is in legal possession of the Premises and is legally able to enter into this Agreement to rehabilitate the Premises pursuant to the terms and conditions herein. The Funds Recipient agrees that if at any time during this Agreement it does not own or have legal authority to possess and rehabilitate the Premises as contemplated herein, then the Funds Recipient will reimburse the County the entire amount of funding provided by the County under this Agreement.
3. **Funding.** County agrees to provide \$150,000.00 to Funds Recipient in installments associated with the phases of the project. The first installment will be available within thirty (30) days of effective date of the Agreement to fund the Project, as further defined herein. All installment requests submitted shall consist of an invoice from the Funds Recipient, signed by an authorized representative, and accompanied by an official proposal(s) for the respective project phase.
4. **Premises.** The Project shall be conducted at the child care facility located at 920 19th Street South, St. Petersburg, FL 33712 (hereinafter the "Premises"), as further depicted on Exhibit A, attached hereto and incorporated herein.

5. **Project Description.** Funds Recipient agrees to renovate the Martin Luther King Jr. Church building to utilize the building as the offices for the child care facility (hereinafter "Project"). Renovation activities will include, new flooring, ceiling and lighting, interior paint, HVAC, windows, as well as, restroom upgrades, repairing and repainting the building exterior, and the construction of interior office spaces. The Project shall include necessary design, permitting, procurement, and construction work. The County shall not be responsible for ongoing maintenance, operation or other costs that arise after completion of the Project, or any amount exceeding the original one-time sum of \$150,000.00.
6. **Project Timeline.** The Project shall be completed within one year from the effective date, unless extended by County's written approval. Completion of the Project shall be signified by receipt of the final accounting document, an inspection of the completed Project by the County, and a letter from the County to the Funds Recipient attesting to the satisfactory completion of the work.
7. **Use Restrictions.** In consideration of the funds provided hereunder, the Funds Recipient agrees to utilize the Premises for a child care facility for a minimum of five (5) years after completion of the Project (the "Restricted Period"). By executing this Agreement, the Funds Recipient is hereby placing a restrictive covenant on the Premises to this effect, which will bind its successors and assigns as further described herein. R'Club shall provide the County an annual letter, during the first week of January, confirming the use of the Premises as a child care facility. The letter shall be sent to the address referenced in paragraph 8.
8. **Term.** This Agreement shall become valid and binding upon the effective date and remain in effect until the expiration of the Restricted Period, unless terminated as provided herein.
9. **Monitoring and Accounting.** The County shall have the right to monitor the Funds Recipient's activities associated with this Funding Agreement to ensure the funding provided to the Funds Recipient is used for authorized purposes. The Funds Recipient shall submit a final accounting summary document of funds spent, including original invoices, to the County at the completion of the Project. The summary document and invoices shall be sent to the Pinellas County Real Estate Management Department, 509 East Avenue South, Clearwater, Florida 33756 within 45 days following final completion of the work. Any unspent funds upon completion of the Project shall be returned to the County. This provision shall survive the termination of this Agreement.
10. **Assignment.** Funds Recipient shall not assign Funds Recipient's right to effectuate the Project without the written consent of the County.
11. **Relationship of the Parties.** Nothing contained in this Funding Agreement is intended to or shall be construed as creating or establishing the relationship of employer/employee, principal/agent, or partnership or joint venture between the Parties. Funds Recipient is an independent party and not an agent of the County.

12. **Indemnification.** To the greatest extent of applicable law, Funds Recipient agrees to indemnify and defend County, its officers, and employees, against all costs, expenses, liabilities, suits, claims, losses, damages, and demands of any nature whatsoever arising out of the Project. The Funds Recipient shall defend any said costs, expenses, liabilities, suits, claims, losses, damages, and demands brought against the County.
13. **Insurance.** Contractors involved with the Project will carry coverage during construction as shown in Exhibit B insurance requirements attached herein, and will specifically list Pinellas County, a political subdivision of the State of Florida, as an additional insured on the policy(s).
14. **Observance of Laws.** Funds Recipient shall, in all aspects of the Project, ensure that Funds Recipient, its employees, agents or contractors shall be compliance with all applicable laws, rules, and regulations of any and all governmental and other authorities governing said parties and the work to be completed hereunder. If a dispute arises regarding this agreement, the Laws of Florida shall govern. Proper venue shall be in Pinellas County, Florida.
15. **Default.** The Funds Recipient will be in default of this Funding Agreement if the Recipient materially fails to perform under this Agreement, including but not limited to:
 - a. Failure to comply with any of the rules, regulations or provisions referenced herein, or such statutes, regulations or policies as may become applicable;
 - b. Failure of the Funds Recipient to retain ownership or legal possession and ability to rehabilitate the Premises pursuant to the terms herein;
 - c. Failure of the Funds Recipient to fulfill its obligations within the required time period without a written waiver from the County;
 - d. Improper use of the Premises during the Restricted Period; or
 - e. Improper use of the funds provided under this Agreement.
16. **Remedies:** In the event the Funds Recipient does not comply with the covenants herein, the County shall be entitled, in addition to all other remedies provided in law or equity:
 - a. To compel specific performance by Funds Recipient, or its successors and assigns in regard to this Agreement to perform their obligations hereunder;
 - b. To require the Funds Recipient to reimburse the County in whole or in part the funds provided hereunder.
17. **Successors and Assigns:** This Agreement shall be properly filed and recorded by the County in the official public records of Pinellas County, Florida and shall constitute a restriction upon the use of the Premises subject to and in accordance with the terms contained herein. The covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure, to the Funds Recipient, its successors, assigns, and all subsequent owners of the Premises or any interest therein, for the Restricted Period. The Funds Recipient shall expressly reference the conditions and covenants of this Agreement on any deed or other instrument conveying ownership interest in the Premises during the Restricted Period.

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

WITNESS:

Linda Bergine

Print Name: LINDA BERGINE

WITNESS:

Maria Climes

Print Name: Maria Climes

FUNDS RECIPIENT:
R'Club Child Care, Inc.

Arthur O'Hara

Print Name: Arthur O'Hara

Title: Executive Director

Date: 9/20/17

WITNESS:

Print Name: _____

FUNDS PROVIDER:
PINELLAS COUNTY, FLORIDA

By:

Date: _____

APPROVED AS TO FORM:
OFFICE OF THE COUNTY ATTORNEY

Chelsea D. Hardy

Chelsea D. Hardy
Assistant County Attorney