

FORMAL PROPOSAL FOR  
RESIDENT COMPANY USE AGREEMENT

between

The City of Lake Helen

and

Shoestring Theatre Inc.

Dated as of \_\_\_\_\_

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RESIDENT COMPANY USE AGREEMENT

THIS RESIDENT COMPANY USE AGREEMENT (this "Agreement") is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2021, but effective as of October 1, 2021 (the "Effective Date"), by and between the CITY OF LAKE HELEN, FLORIDA, a municipal corporation of the State of Florida (the "City"), and Shoestring Theatre, Inc., a Florida non-profit corporation ("Shoestring Theatre").

RECITALS

WHEREAS, the City is the owner of the Creative Arts Center & Café (CAC), including the land comprising same and all improvements existing or to be constructed thereon, and is authorized to execute this Agreement upon such terms as it may deem advisable; and

WHEREAS, the City built the Creative Arts Center to serve as a regional catalyst for the local preservation, promotion and development to access and exposure to arts and culture,

WHEREAS, the existing ECHO agreement emphasized the priorities of Equity, Diversity, Space, Support for Artists, and a Sustainable Arts Ecosystem, and the city's local performing arts non-profit organization, Shoestring Theatre, is desirous of growing into a new cultural arts space; and

WHEREAS, Shoestring Theatre Inc. has a long history of presenting engaging arts programming and education to audiences in the Central Florida area, and the City is desirous of providing Shoestring Theatre Inc with a residency opportunity at the CAC; and

WHEREAS, the City and Shoestring Theatre desire to enter into use agreements for the creation of a resident theater and cultural arts center status at the CAC, whereby Shoestring Theatre would have resident theater company status and use priorities in the CAC multi-use building, which would mark the CAC as the first municipal arts center in the City of Lake Helen, thereby expanding usage and exposure to the arts in the community; and

WHEREAS, as a resident theater company user of the CAC, Shoestring Theatre commits to and shall use the CAC as Shoestring Theatre's second stage performance venue, for community workshops and for engaging local residents in the City through arts and culture experiences; and

WHEREAS, Shoestring Theatre is a Florida non-profit corporation established and existing under Florida law; and

WHEREAS, in consideration for Shoestring Theatre's commitment to use the CAC as a performance venue and as further described in this Agreement, the City is willing and does by this Agreement elevate Shoestring Theatre to a status of a resident company user of the CAC, wherein the CAC multi-use facility shall be made available to Shoestring Theatre on a priority basis, subject to and in accordance with the use terms set forth in this Agreement; and

WHEREAS, as part of the consideration for City's grant of resident company user status in the CAC, Shoestring Theatre agrees to cooperate with and actively undertake fundraising campaigns to raise funds for improvements toward the development of betterments to the multi-use space and the supporting areas, which may include but are not limited to seating and audio-visual enhancement.

NOW, THEREFORE, the City and Shoestring Theatre, for and in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby agree to the following:

#### AGREEMENT

In consideration of the covenants and agreements hereinafter set forth to be kept and performed by the parties hereto, the City does hereby elevate Shoestring Theatre to a status of a resident company user of the CAC, and does hereby grant a license to Shoestring Theatre and Shoestring Theatre does hereby accept a license for priority use over the CAC, during a cumulative period of one year as hereinafter described, the Term, and subject to and upon the terms and conditions set forth in this Agreement to be entered into by the parties.

#### ARTICLE 1 Premises

1.1 Premises. The premises subject of and subject to this Agreement and the applicable Use Contract(s) shall consist only of the CAC multi-use facility and shall include as needed on a shared user basis any associated supporting spaces, including but not limited to the kitchen area, restrooms, multi-use room, theatre, shop area, storage and lobby areas, at the Creative Arts Center, located at 493 S Lakeview Dr, Lake Helen, FL 32744; together with all the rights, privileges, and appurtenances belonging to or in any way pertaining to the property for its use, including ingress and egress as needed during Shoestring Theatre's use in accordance with this Agreement (collectively hereinafter the "Premises"). During the periods of use agreed to by the parties and set forth in supplemental Use Contract(s), Shoestring Theatre will have access to the CAC in accordance with industry standards for cultural arts facilities. Shoestring Theatre acknowledges and agrees that the supporting spaces are exclusive areas within the CAC, and the City may not make these areas available for concurrent use by other contracted third-party users of the CAC without expressed permission of the Shoestring Theatre Board of Directors.

#### ARTICLE 2 Term

2.1 Term. Subject to Section 3.3(a), Shoestring Theatre agrees to use the Premises as a resident company for its performances, community engagement and cultural arts purposes for a period of 12 months commencing on October 1, 2021 and expiring on September 30, 2022 (hereinafter the "Primary Term") of this Agreement; provided, however, that the City shall have the right to terminate this lease as provided elsewhere herein. The first month of occupancy Shoestring Theatre agrees to create a full inventory of City property located at the facility to be reviewed and approved by the City Administrator or deignee. Annually, during the Term and at least 6 months in advance of September 30th of the calendar year 2022, Shoestring Theatre shall notify the City of the intention to continue the resident use agreement for the continuation of the agreement. The City and Shoestring Theatre will then enter into a Use Contract applicable to those dates identified. Each subsequent annual period of Shoestring Theatre use will require a separate Use Contract before the Premises will be turned over to Shoestring Theatre each year.

Without limiting any of the foregoing, Shoestring Theatre acknowledges and agrees that as a resident company it will have first choice of dates for productions on the CAC calendar prior to any other user group. Shoestring Theatre will have the flexibility to increase the facility's use through the rental of spaces to outside organizations to the benefit of the community at large.

Shoestring Theatre commits to work together with area organizations to determine fair distribution of allotted reservation dates and use. In the event of a dispute regarding the allocation of dates, the CAC Manager will work with both companies to reach a resolution. Shoestring Theatre acknowledges the local needs of other core groups within Lake Helen for general purpose rentals.

2.2 Renewal Options. The City hereby grants to Shoestring Theatre the right and option to renew and extend the Term of this Agreement for five (5) consecutive renewal terms of one (1) year each (hereinafter collectively called the "Renewal Terms" and individually called a "Renewal Term"), with the first Renewal Term to begin upon the expiration of the Primary Term and subsequent Renewal Terms to begin upon the expiration of the immediately preceding Renewal Term. Unless otherwise agreed to by the parties in writing, upon Shoestring Theatre's extension of this Agreement, all of the other but then current terms, provisions and covenants of this Agreement shall apply to each Renewal Term. Provided Shoestring Theatre is not in default under this Agreement or an event does not exist that with the giving of notice or passage of time or both would constitute an Event of Default hereunder, Shoestring Theatre may exercise a renewal option by delivering written notice of such exercise not later than ninety (90) days nor earlier than three hundred and sixty (360) days prior to the expiration of the Term then in effect. The Primary Term and any Renewal Term, which has been exercised, shall hereinafter collectively be described as the "Term".

2.3 Termination. Notwithstanding anything contained in this Agreement to the contrary, the City has the right to terminate this Agreement without further liability thereunder in accordance with the terms set forth in the Use Contract, as may be amended from time to time during the Term. Shoestring Theatre retains right to exercise a termination of agreement with 60 days' notice without further liability thereunder in accordance with the terms set forth in the Use Contract.

#### ARTICLE 3 Rent

3.1 Rent. During the Primary Term, for each monthly possession period set forth in the applicable Use Contract(s), Shoestring Theatre agrees to and shall pay monthly utilities.

3.2 Additional Rent. All amounts to be paid to Shoestring Theatre under the terms of this Agreement or the Use Contract are deemed to be and shall be herein referred to as "additional rent" to be allotted to the support and continued maintenance of Shoestring Theatre and the CAC.

3.3 Additional Consideration. As further and additional consideration for this Agreement Shoestring Theatre has and will commit to the following:

- (a) Shoestring Theatre will provide continued cultural services at the CAC in either the multi-use spaces or staged theater space; and
- (b) Shoestring Theatre will provide volunteering opportunities for the local community and underserved youth, either at the CAC or Shoestring Theatre space, and will track volunteer hours per facility; and
- (c) Shoestring Theatre will strive to provide free usage opportunities to area schools located within the county of Volusia for performances and/or awards shows each fiscal year, and will brand these performances as "Creative Arts Cultural Center" sponsored events in accordance with the existing ECHO grant requirements; and

(d) Shoestring Theatre will complete fundraising campaigns, for betterments to the space, which may include but are not limited to programming, technical, seating and audiovisual enhancements. Shoestring Theatre agrees all funds raised in excess above the stated goal will be maintained for purchases and maintenance related to the Shoestring Theatre mission and Creative Arts Cultural Center. Any expenditures from these funds shall require written authorization from Shoestring Theatre's Board of Directors. Shoestring Theatre shall provide updates/reports on fundraising campaigns as reasonably requested by the City during the regularly scheduled Commissioner's meeting, including status of funds raised and pledges received.

#### ARTICLE 4 Real Estate Taxes

4.1 Real Estate Taxes. The parties recognize that under present tax laws, the City is not required to pay real estate taxes on the CAC. As such, no real estate taxes shall be assessed or charged to Shoestring Theatre Inc.

#### ARTICLE 5 Shoestring Theatre's Acceptance and General Use of the Premises

5.1 Access and Possession. Shoestring Theatre shall have access to the Premises upon the Effective Date; provided however actual possession and use of the Premises shall be turned over to Shoestring Theatre by the City only during the allotment periods for purposes in accordance with this Agreement and the applicable Use Contract(s).

5.2 Condition of Premises. The Premises through Use Contract(s) shall be licensed to Shoestring Theatre for priority use during the Term of this Agreement as a resident theater company per the terms of this Agreement. Except as otherwise set forth in this Agreement, the Use Contract(s) shall govern the terms, conditions, and respective obligations of the parties during each period of Shoestring Theatre's use of the Premises. Prior to each possession period, Shoestring Theatre agrees it shall have made an independent investigation of the Premises and will have determined that the Premises is in all respects suitable for its intended use. Shoestring Theatre hereby covenants and agrees that Shoestring Theatre is familiar with the current condition of the Premises and accepts the current and future condition of the Premises for use during its respective Use Contract(s) periods in adherence with the CAC's customary practice(s) for turnover of any portion of the CAC for use by a third party set forth in the then applicable Use Contract(s). Unless otherwise provided for in the then applicable Use Contract(s), during the term of this Agreement, the City shall have no obligation to make any modifications to the Premises or other portions of the CAC. Unless otherwise provided for in the then Use Contract(s), Shoestring Theatre agrees it shall not modify the configuration at any time during the Primary Term.

Shoestring Theatre will have first choice of dates for productions on the CAC calendar prior to any other user group. Shoestring Theatre acknowledges and agrees that as a resident company Shoestring must work with local organizations to determine fair distribution of scheduling and rentals, and Shoestring Theatre hereby commits to do so. All scheduling disputes shall be referred to the CAC Manager. In the event of a dispute, the CAC Manager will work with groups to find a mutually agreeable resolution for general purpose rentals.

5.3 Prohibited Uses. Without in any way limiting the foregoing section and the terms of the then applicable Use Contract, during its periods of use Shoestring Theatre shall not permit the Premises to be used in any manner contrary to the intended uses and which would render the insurance thereon void

or the insurance risk more hazardous. Shoestring Theatre shall not use or occupy the Premises, or permit the Premises to be used or occupied, contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto, or in any manner which would violate any certificate of occupancy or permit affecting same, or which would cause structural injury to the improvements, or cause the value or usefulness of the Premises, or any part thereof, to diminish, or which constitutes a public or private nuisance or waste.

Shoestring Theatre shall not use or occupy the Premises, or permit the Premises to be used or occupied, in a manner which would be immoral or obscene or create a threat to the health, safety, and welfare of the general public; or, which would constitute an act of public or private discrimination, limitation of use, or exclusion from the Premises on the basis of race, color, religion, gender, age, national origin, citizenship, disability, or sexual orientation. Shoestring Theatre shall not make any change in the building's name or public identification without the prior written consent of the City. Shoestring Theatre shall not use or occupy the Premises or allow the Premises to be used or occupied in any manner that would violate or otherwise invalidate the tax-exempt status of Premises, Shoestring Theatre and/or the City.

Shoestring Theatre, during periods of use of the Premises, shall, at its sole cost and expense, be responsible for programming and staffing the Premises to carry out the purposes of its use as set forth in this Agreement, and for making any payments related thereunder. Unless otherwise provided for in the then applicable Use Contract(s), all personnel engaged by Shoestring Theatre shall be considered employees and/or agents of Shoestring Theatre and not employees or agents of the City or the CAC.

5.4 Programming. The parties acknowledge that a primary objective of this Agreement is to provide a resident company venue within the CAC for Shoestring Theatre, with a long history of creating impactful theater in the city of Lake Helen, and to support full seasons performances and professional schedules for all rehearsals, technical rehearsals and performances for each production, according to industry standards. Shoestring Theatre shall take all reasonable actions to maximize the utilization of the Premises. Shoestring Theatre shall annually provide opportunities for underserved youth and adults throughout Volusia County which include artistic, performance, personal enrichment, and professional development as part of its commitment to Education and Community Development.

5.5 Revenues. During the Term, in accordance with its use rights granted and its operating obligations in this Agreement and the then applicable Use Contract(s), Shoestring Theatre shall have and control all revenue generating opportunities at the Premises arising out of and ancillary to Shoestring Theatre's programming and productions. Shoestring Theatre shall have right to retain any and all revenue, income, proceeds and other amounts that may be generated from its use at or from the Premises. During its period of use, Shoestring Theatre shall undertake to fully exploit said opportunities in a manner consistent with the public, community entertainment, performing arts, and cultural events purpose of the Premises and Shoestring Theatre's non-profit status. In addition, except as otherwise provided for in the then applicable Use Contract(s), Shoestring Theatre shall be liable and obligated to pay all of the costs to operate, maintain, make minor repairs and use the Premises during the Term except for those items expressly provided to be paid directly by the City or reimbursed to Shoestring Theatre by the City, including the Premise's septic and plumbing systems, roofing, electrical wiring and air-conditioning units and will provide to Shoestring Theatre tables and chairs stored in the City



Shuffleboard Court Building for cultural event and activities except for Holidays and preplanned City events.

The parties agree that to the extent a conflict in the operating terms between this Agreement and the then applicable Use Contract(s), the terms set forth in the then applicable Use Contract(s) shall control for the applicable period of Shoestring Theatre's use.

5.6 Use of Common Facilities; Parking. During the Term, Shoestring Theatre shall have a non-exclusive easement, right and privilege for it and its permittees, and invitees, to use, as may be needed for Shoestring Theatre's use of the Premises in accord with this Agreement and the then applicable Use Contract(s), the common facilities within that part of the CAC building campus which lies outside of the Premises in common with City and other occupants and their permittees. Common Facilities" shall mean the parking areas, parking area lighting, streets, roads, driveways, fire corridors, aisles, sidewalks, landscaped areas, utility and sewer lines and systems, common restrooms, and other facilities and service areas for common use, and any additions thereto or enlargements thereof, which are located anywhere within the CAC building and serve the Premises. Shoestring Theatre and its permittee's use of the common facilities may be subject to charge in accordance with established rates applicable to the public visiting the CAC and City shall have no reimbursement obligation under this Agreement.

Parking shall be in accord with terms set forth in an addendum to the then applicable Use Contract(s). City shall not be responsible to be liable for parking during Shoestring Theatre's use of the Premises. To extent possible, the City and Shoestring Theatre shall endeavor to coordinate plans to assure adequate parking is provided or available during periods of Shoestring Theatre's use.

5.7 Compliance with Laws. Shoestring Theatre agrees not to use the Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Florida, the City of Lake Helen or other lawful governmental authority having jurisdiction over the Center, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by Shoestring Theatre of this provision (i) so long as Shoestring Theatre shall, in good faith within a reasonable time after Shoestring Theatre acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (ii) until Shoestring Theatre has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; and (iii) so long as neither the City nor any portion of the Premises, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture. Shoestring Theatre shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by Shoestring Theatre, its officers, agents, or employees, in or upon or connected with the Premises and shall pay for the costs of compliance.

5.8 Additional Requirements. During the Term, in accordance with the then applicable Use Contract(s), Shoestring Theatre shall be responsible for and shall take all reasonable action necessary for the programming of the Premises as required under this Agreement, including without limitation the following:

- (a) Shoestring Theatre will provide continued cultural services at the CAC; and

(b) Shoestring Theatre will continue to launch local programming in the educational, community and professional settings, serving as a bridge to intergenerational and multi-ethnic communities.

(c) Shoestring Theatre will strive to provide free usage opportunities to public schools located within the county of Volusia for performances and/or awards shows each fiscal year, and will brand these performances as "Creative Arts Cultural Center" sponsored events in accordance with the existing ECHO grant requirements;

(d) Shoestring Theatre shall program the Premises as a first-class multi-use space for the holding of theater, dance, comedy and concert performances and other events;

(e) assure that all events scheduled in the Premises during the Term are compatible with a community performing arts complex of this nature;

(f) provide professional programming to schedule and promote the maximum utilization of the Premises;

(g) provide tickets takers, ushers, and other personnel necessary for the safe, efficient and first-class operation of the Premises, as may be necessary by Shoestring Theatre's programming;

(h) prepare and submit to the City financial reports as reasonably requested in a timely manner;

(i) collect and account for all Premises revenue, using all reasonable efforts to obtain all fees, rents and other amounts due from users, vendor, concessionaire, advertiser, sponsors and tenants and to achieve reasonable financial and operational success in light of the objectives of the City and Shoestring Theatre for the Premises;

(j) commence, defend and settle in good faith, at no cost or liability to the City, such legal actions or proceedings concerning the management and operation of the Premises as are necessary or required in the opinion of Shoestring Theatre; provided, however, no such legal action by Shoestring Theatre that requires joinder of the City will be required of Shoestring Theatre unless the City so participates;

(k) employ, pay, supervise and discharge all personnel Shoestring Theatre determines to be necessary for the programming of the Premises;

(l) purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the programming of the Premises;

(m) maintain the Premises in a good, safe, attractive, sanitary order and repair consistent with the industry standards and practices;

(n) comply and adhere to any established preventive maintenance programs for the Premises;

(o) maintain or cause to be maintained all necessary licenses, permits and authorizations for the programming of the Premises;

(p) promptly furnish to City such reports and other information concerning the Premises and the programming hereof as may be reasonably requested from time to time by the City Administrator;

(q) procure and maintain in force all insurance policies relating to the Premises and in connection with Shoestring Theatre's operation of same, as may be required by this Agreement;

(r) develop and implement a meaningful program of community outreach, enrichment and education in coordination with performance offerings and events at the Premises, with a particular emphasis on youth, seniors, and historically underserved communities; and

(s) maintenance of the Premises in a good, safe, clean and attractive condition and in compliance with applicable laws.

#### 5.9 Branding, Recognition and Marketing.

(a) During the Term, Shoestring Theatre shall plan, prepare, implement, coordinate and supervise all advertising, public relations and other promotional programs for the Premises and shall negotiate, execute (in its own name and not the name of the City) and perform all contracts for such Premises promotions. Any such arrangements shall (i) not exceed the Term of this Agreement unless the City in writing waives this requirement, (ii) terminate or be assumable, at the City's election, upon the expiration of the Agreement, (iii) in no way obligate, commit or bind City unless assumed by the City, (iv) be of a first-class quality and suitable for public facilities of this nature, and (v) be on commercially reasonable terms and consistent with industry standards and good practices. Cross-promotion of the Premises, or the CAC, with other venues, institutions and events is a prime objective and shall be exploited by Shoestring Theatre whenever practical. Shoestring Theatre agrees to acknowledge the City of Lake Helen in all appropriate printed materials in form reasonably acceptable to the City.

(b) Signage in the lobby of the CAC multi-use theater space agreed to by all parties will display resident company status of Shoestring Theatre. In the event signage changes, said changes are subject to the agreement by the City and CAC Manager.

(c) Shoestring Theatre will attribute "resident theater company of the City of Lake Helen's Creative Arts Center" or similar language on all marketing materials related to the facility.

(d) Shoestring Theatre management will create a marketing plan each fiscal year to promote each production and event at the Creative Arts Center, collaborative marketing plans may be subject to change by the parties as needed in the then applicable Use Contract(s).

5.10 Concessionaire and Vendor Contracts. Pursuant to applicable Use Contract(s) terms, Shoestring Theatre may during their periods of possession and use have the right to negotiate and execute and perform all vendor contracts involving the Premises, restaurant space and other areas of the CAC.

5.11 Naming and Sponsorship. Shoestring Theatre, if presented with any naming opportunities for its use of the CAC, shall comply with the City's naming policy. If permissible under the Naming Policy, Shoestring Theatre shall have the right to contract for and grant sponsorships, advertising space and naming rights for facilities, events, programs, and advertising panels involving the Premises (subject to applicable laws, zoning and ordinances). Any such arrangements shall (i) not exceed the Term of this Agreement unless the City in writing waives this requirement, (ii) terminate or be assumable, at the City's election, upon the expiration of the Agreement, (iii) in no way obligate, commit or bind City unless assumed by the City, (iv) be of a first-class quality, tasteful, attractive, and suitable for public facilities of this nature, and (v) be on commercially reasonable terms and consistent with industry standards and good practices. Sponsorships, advertising and/or naming rights involving the Premises shall not promote, advertise or relate to tobacco products or companies or be of a noncommercial or cause-oriented nature (e.g. promoting or criticizing a political party, public official or candidate; a political or

social cause or movement; or a religion or religious establishment or movement) and shall not include any reference to any proper geographic name, unless such reference (i) is to "Lake Helen" or the "City of Lake Helen" or (ii) is part of the proper name of a person or entity selected as a sponsor pursuant to this Section.

5.12 Fees and Charges. During the term, subject to the then applicable Use Contract(s), Shoestring Theatre may specify and control any and all fees, deposits, charges and consideration for goods, services, concessions, admission, use, advertising, sponsorship, naming rights or any other designated purposes involving the Premises provided that they are commercially reasonable and consistent with industry standards and good industry practices. It is expressly understood and agreed that any and all revenue from such sources shall be applied by Shoestring Theatre toward the development, equipping, operation and maintenance of the Creative Arts Center and Shoestring Theatre's promotion and furtherance of the performing arts at the Creative Arts Center and its performance under this Agreement.

5.13 Contracts Related to Programming of the Premises; General Provisions.

(a) General Requirements. During the term, subject to the terms of the then applicable Use Contract(s), any Shoestring Theatre contracts (sometimes hereinafter collectively referred to as the "Resident Company User Contracts") in connection with Shoestring Theatre's use and programming of the Premises, including without limitation vendor contracts, shall: (i) require the contractor to use good faith efforts to comply with the City (ii) terminate upon termination of this Agreement unless the City, at its sole option, elects to assume the specific Resident Company User Contract(s), (iii) provide the right to the City to assume the contract upon termination of this Agreement without liability for any obligation arising prior to said assumption (iv) if applicable, contain insurance requirements for coverages and limits not less than those which are customarily required by the City of its like contractors, naming the City and its officers and employees as additional insureds, (v) indemnify the City and its officers and employees against any costs or liabilities thereunder using language substantially similar to Shoestring Theatre's indemnification of the City found in this Agreement, (vi) if applicable, contain vendor qualification requirements sufficiently broad so as not to exclude minority vendors as a class and general contract specifications sufficiently broad so as not to favor a single vendor, and (vii) contain the following provision (or substantially similar wording approved by the City) in bold print, underlined and uppercase lettering:

**"THIS AGREEMENT IS SUBJECT TO THE TERMS AND PROVISIONS OF THE SHOESTRING THEATRE RESIDENT COMPANY USE AGREEMENT FOR THE CAC MULTI-USE FACILITY BETWEEN THE CITY OF LAKE HELEN AND SHOESTRING THEATRE (THE "AGREEMENT"), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE, IN THE EVENT OF THE TERMINATION OF SAID AGREEMENT, UNLESS THIS AGREEMENT IS ASSUMED OR EXTENDED BY THE CITY. THE CITY OF LAKE HELEN SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY UNDER THIS AGREEMENT, AND THE PARTIES HERETO RELEASE THE CITY OF LAKE HELEN FROM LIABILITY FOR ANY CLAIMS, SUITS, OR JUDGMENTS IN CONNECTION WITH THIS AGREEMENT."**

(b) City Review. A list of all Resident Company User Contracts, including the parties thereto, the primary purpose thereof and applicable contract, agreement or license fees, shall be maintained by Shoestring Theatre, and, upon the request of City, Shoestring Theatre shall provide the City a copy of such list, delivery of which shall not be withheld or unreasonably delayed. The City shall be entitled to

review the Resident Company User Contracts for compliance with the requirements of this Agreement at Shoestring Theatre's office during their normal operating business hours.

#### ARTICLE 6 Use by the City; City's Right of Entry

6.1 Use by the City. Except as may be necessary in the exercise of its police power, notwithstanding the other terms hereof, the City shall have no right, authority, and power to use and occupy the Premises, or any portion thereof, and/or to cause or permit others to use and occupy the Premises, or any portion thereof, during the periods allocated to Shoestring Theatre for its resident company purposes pursuant to this Agreement and the then applicable Use Contract(s), without the express written consent of Shoestring Theatre.

6.2 City Right of Entry. Shoestring Theatre acknowledges that the City may need to gain access to the Premises on occasion during Shoestring Theatre's periods of actual possession under the then applicable Use Contract(s) during the Term as part of CAC maintenance. The City is agreed that, except as provided herein, all access by City during those periods allocated to Shoestring Theatre for its resident company purposes pursuant to this Agreement and the then applicable Use Contract(s) shall be subject to prior written notice of at least 48 hours, except in the event of an emergency. To the extent City shall need access to the Premises for the purposes described above, City shall make arrangements with Shoestring Theatre to have Shoestring Theatre's personnel in attendance for the duration City is present in the Premises. Except in an emergency event, City's notice shall be in writing and describe the reason for access and the area desired to be accessed and the time of such access by the City. Prior to giving such notice for access the City shall contact Shoestring Theatre to establish the dates that the Premises will be available and subject to City's granted access rights. In addition to the rights of access reserved in the then applicable Use Contract(s) and elsewhere herein, Shoestring Theatre and City agree City may reasonably use and occupy the Premises, or parts thereof, at times and locations that do not unreasonably interfere with Shoestring Theatre's allotment of weeks and/or previously scheduled or anticipated performances and activities in the Premises. In order to enable Shoestring Theatre's successful performance and compliance under this Agreement, Shoestring Theatre shall have priority of dates and scheduling in the Premises.

#### ARTICLE 7 Abatement of Nuisances

7.1 Shoestring Theatre shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances as caused by Shoestring Theatre, its officers, agents, or employees, in or upon, or connected with the Premises, and shall pay for the costs of compliance.

#### ARTICLE 8 Maintenance and Upkeep of the Premises

8.1 Shoestring Theatre shall be responsible for the general maintenance and upkeep of the Premises; not to include air-conditioning system, exterior paint, septic system repairs nor repairs due to injury to the facility from "Acts of God."

#### ARTICLE 9 Improvements

9.1 Improvements. During the Term, unless otherwise provided for in this Agreement or in any then applicable Use Contract(s), City shall be responsible for and shall affect or cause the design, development, financing, construction for any capital improvements to the CAC.

9.2 Ownership. The City (and not Shoestring Theatre) shall own title to any improvements made to the Premises upon completion of any improvements; provided, however, that Shoestring Theatre shall have the right to use the Premises (including, but not limited to, the improvements) to the extent and as provided in this Agreement and any then applicable Use Contract(s).

9.3 Condition of Premises; Disclaimer. During the term of this Agreement and in accordance with the terms of the then applicable Use Contract(s), turnover of the premises to Shoestring Theatre during its periods of possession is in an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis and subject to all matters of record and zoning. Shoestring Theatre acknowledges and agrees that the City has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past present or future, as to, concerning or with respect to (a) the value, nature quality or condition of the Premises, including without limitation, the title, soil and utilities, (b) the income to be derived from the Premises, (c) the suitability of the Premises for any and all activities and uses which Shoestring Theatre may conduct thereon, (d) the compliance of the Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, (f) the manner or quality of the construction or materials, if any, incorporated into the Premises, (g) the manner, quality, state of repair or lack of repair of the Premises, and (h) any other matter with respect to the Premises, and specifically, that the City has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises of hazardous materials. Shoestring Theatre further acknowledges and agrees that, in accordance with the then applicable Use Contract, having been given the opportunity to inspect the Premises, Shoestring Theatre is relying solely on its own investigation of same and not on any information provided or to be provided by the City and agrees to accept the Premises for use and waive all objections or claims against the City arising from or related to the Premises or to any hazardous materials on the Premises. Shoestring Theatre further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The term "hazardous materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations affecting the Premises relating to pollution or the protection or regulation of human health, natural resources or the environment including, but not limited to, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder.

9.4 Alterations, Additions and Improvements.

(a) Improvements/Renovations. Without limiting the terms set forth in the then applicable Use Contract(s), generally during the Term, Shoestring Theatre shall not make any improvements to the Premises without the prior written consent of City, which consent shall not be unreasonably withheld provided the improvements are not permanent or structural in nature and are reasonably related and

necessary for Shoestring Theatre's use of the Premises in accordance with this Agreement. All approved improvements to be made by Shoestring Theatre shall be made in good and workmanlike manner. All cost of improvements, maintenance, utilities expense and all other costs or expense associated with Shoestring Theatre's use of the Premises shall be at Shoestring Theatre's expense and timely paid by Shoestring Theatre as agreed upon with the City. Shoestring Theatre shall not allow or permit any liens to attach to the Premises.

Additionally, any structural and permanent type improvements, and/or renovations approved by the City and undertaken by Shoestring Theatre under this Agreement shall become the property of the City, free and clear of all liens and encumbrances, subject to the terms of this Agreement and/or the then applicable Use Contract(s). The intent by the parties in this Agreement is to provide that City approved permanent additions to the structure of the CAC shall become the property of the City, unless Shoestring Theatre, in the then applicable Use Contract(s) is otherwise required to remove said improvements and restore the CAC to its prior condition. Before commencement of any work, Shoestring Theatre shall ensure the contractor(s) performing the work shall meet the insurance, indemnification, and defend and hold harmless requirements of City, and shall provide performance and payment bonds equivalent to what the City requires of its contractors on like projects, with the City to be named as an additional insured, indemnitee, and obligee, respectively. No improvements or any subsequent change, modification or addition to the Premises shall be undertaken until Shoestring Theatre shall have procured and paid for all required permits, licenses, and authorizations and shall have furnished the City evidence thereof. All improvements and subsequent changes, modifications and additions shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction, Shoestring Theatre shall furnish the City with a certificate of substantial completion executed by the architect for the project, and a complete set of as-built plans for the improvements. Shoestring Theatre shall thereafter furnish the City with copies of the updated plans showing all changes and modifications thereto. Shoestring Theatre shall also furnish to the City copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable laws. To extent temporary improvements made by Shoestring Theatre are not removed, City shall have the discretion to either (i) remove at Shoestring Theatre's sole expense which shall thereafter be invoiced as additional rental by City, or (ii) maintain as part of the CAC without any liability to Shoestring Theatre for the eventual disposal of the improvements by the City.

(b) Decorative and/or Theatrical. No portion of this Section shall be construed as to limit Shoestring Theatre's ability to construct temporary sets, designs, staging, lighting and sound systems or other alterations of theatrical or decorative nature in the facilities which does not alter the structural integrity or fundamental character or appearance of the Premises. Shoestring Theatre or its contractors shall carry sufficient and appropriate insurance for such activities as may be required by the City.

9.5 Personal Property. All personal property installed or situated from time to time in the Premises and paid for by Shoestring Theatre from funds other than from the City, shall remain the property of Shoestring Theatre (or any sub-licensee or concessionaire installing same). Items of personal property purchased by the City or that are necessary or proper for the safe or efficient operation of the Premises shall be and remain the City's property and part of the Premises.

ARTICLE 10 Insurance and Indemnification



10.1 The City's Insurance Obligation. Except as set forth in section 12.2 below, the City, at the City's expense, shall during the Term, be responsible to procure and maintain property insurance against loss or damage by fire and other casualties to the CAC including the Premises (but excepting Shoestring Theatre's Personal Property), in accordance with the City's insurance policies.

10.2 Shoestring Theatre's Insurance Obligation. Except as set forth in section 12.1 above, as additional rent for the Premises, Shoestring Theatre shall, at Shoestring Theatre's sole cost and expense, procure and maintain, or cause to be procured and maintained during its possessory periods during the Term, insurance in accordance with the requirements set forth in the applicable Use Contract which shall be incorporated herein for all purposes set forth therein.

10.3 Indemnity. During the Term, Shoestring Theatre agrees to abide by and adhere to the indemnity requirements set forth in the then applicable Use Contract(s). The provisions of this Section shall survive the termination of this Agreement and are solely for the benefit of the City and Shoestring Theatre and shall not be deemed for the benefit of any other person or entity.

#### ARTICLE 11 Repair, Maintenance and Security

11.1 Shoestring Theatre's Obligation/Care of Premises. During its possessory periods under the then applicable Use Contract(s) during the Term, Shoestring Theatre shall keep the Premises and all permanent Improvements that from time to time may be on or a part of the Premises or other used areas within the CAC in accordance with any requirements set forth in the then applicable Use Contract(s).

11.2 Routine Maintenance and Security of Premises. During the Term and unless otherwise set forth in the then applicable Use Contract(s) as a Shoestring Theatre obligation, City shall maintain and provide fire monitoring services, trash collection and parking lot maintenance for the Premises, including repairs (other than Capital Maintenance as hereinafter defined and which shall be the City's obligation) to the structural portions of the Improvements. Shoestring Theatre shall be responsible to take care of the grounds at the CAC, including, the mowing of grass, care of shrubs, and general landscaping..

11.3 Capital Maintenance. City is not required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Creative Arts Center, or any part thereof, during the Term. Unless otherwise agreed to in this Agreement or in any then applicable Shoestring Theatre Use Contract(s) during the Term, the City shall be responsible for all Capital Maintenance that the parties agree and deem necessary or advisable with respect to the Premises. Additionally, the City shall not undertake any Capital Maintenance to the Premises which has not been designated or approved in writing by Shoestring Theatre and the City, which approvals shall not be unreasonably withheld, delayed or conditioned. The City and Shoestring Theatre shall coordinate and cooperate to minimize disruption of the Premises programming and events while avoiding additional cost or delays to Capital Maintenance.

11.4 Shoestring Theatre's Repairs. Unless otherwise provided for in the then applicable Use Contract(s), during the term, Shoestring Theatre shall be obligated for repairs to the Premises arising out of Shoestring Theatre's use. To extent Shoestring Theatre shall be obligated, Shoestring Theatre shall make any and all repairs in and about the Premises that may be required or permitted by this Agreement in a



good and workmanlike manner, and shall otherwise observe and comply with all public laws, ordinances, and regulations that from time to time are applicable to the Premises and the CAC.

11.5 Right of The City to Make Repairs. The City, its agent and employees, shall have the right, at any time, and from time to time, to enter the Premises for the purpose of inspection or, if Shoestring Theatre is in default or in the event of an emergency, making any repairs or alterations to the Premises or any improvements thereon, both interior and exterior, and of every kind or nature which are required of Shoestring Theatre under the Agreement or the then applicable Use Contract(s) but which Shoestring Theatre has failed to perform; and Shoestring Theatre shall not offer any obstruction, or hindrance to any such repairs or alterations; provided; however, that nothing contained in this Section shall be deemed to impose on the City any obligation to so act.

11.6 Signs. Except as may otherwise be provided in this Agreement or in an applicable Use Contract(s), Shoestring Theatre shall have no right to erect any permanent signage on the Premises without City's prior written consent.

#### ARTICLE 12 Casualty

(THIS ARTICLE SHALL BE OPERATIONAL ONLY TO EXTENT NOT ADDRESSED IN THE THEN APPLICABLE USE CONTRACT(S) DURING THE TERM)

12.1 Casualty. In the event the Premises are rendered partially unusable for the purposes for which they were licensed (which, as used herein, means such destruction or damage as would prevent Shoestring Theatre or City from carrying on its business on the Premises to an extent exceeding 50% of its normal business activity) by fire, water, natural disaster or other damage or casualty, Shoestring Theatre shall give immediate notice to City who may elect, but not be obligated, to repair and restore the damage or to demolish the premises. In event City elects to demolish the Premises, this Agreement shall terminate.

#### ARTICLE 13 Assignment and Subletting

13.1 Assignment and Subletting. Except as otherwise provided for in the applicable Use Contract, Shoestring Theatre shall have the sole ability to sublet all or any portion of the Premises with all funding secured to be allocated towards the fulfillment of the CAC mission.

#### ARTICLE 14 Financing

14.1 No Mortgage on the City's Interests. Shoestring Theatre shall have no right, power or authority to place a mortgage, deed of trust lien or security interest of any sort upon any interest of the City in or to the CAC or the Premises, including without limitation the fee title to same.

#### ARTICLE 15 Miscellaneous

The parties agree that to the extent the following miscellaneous provisions differ in form in the then applicable Use Contract, the form in the then applicable Use Contract shall be harmonized with those set forth in this Agreement, as may be amended at such time set forth in the applicable Use Contract during the Term of this Agreement so as not to be contrary to the Lake Helen City Charter or City Code.

15.1 Commissions. The City and the Shoestring Theatre hereby represent and warrant to each other that (a) it has not contracted or entered into any agreement with any real estate broker, agent, finder or

any other person or entity in connection with this transaction, and (b) it has not taken any action that would result in any real estate broker's, agent's, finder's or other fees or commissions being due to any person or entity with respect to this transaction.

15.2 Representatives. During the term of this Agreement, the City Administrator shall have full authority to administer this Agreement and provide the consents and approval provided for herein on behalf of the City. To facilitate this, the Administrator may assign a designee to act on the City Administrator's behalf as to all aspects of this Agreement. Shoestring Theatre shall be entitled to rely on the authority of the City Administrator (or, when designated, the Directors) for such purposes under this Agreement.

During the term of this Agreement, Shoestring Theatre shall designate two individuals who shall have full authority (acting together and not alone) to administer this Agreement on behalf of Shoestring Theatre. The initial Shoestring Theatre representatives shall be \_\_\_\_\_ and \_\_\_\_\_. Shoestring Theatre may designate a permanent or temporary replacement for either Shoestring Theatre representative by delivering a written notice to the City executed by Shoestring Theatre.

15.3 Nondiscrimination. As a condition of this Agreement, Shoestring Theatre covenants that Shoestring Theatre will take all necessary actions to insure that, in connection with any operations under this Agreement, Shoestring Theatre, its officers, employees and subcontractors, will not engage in discrimination in violation of applicable law. CARA MIA shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. Shoestring Theatre shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Shoestring Theatre shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12301-12233, as amended.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by City, signing by and through its City Administrator, duly authorized to execute same by Resolution No. \_\_\_\_\_, adopted by the City Commissioners on \_\_\_\_\_, and by Shoestring Theatre, acting through its duly authorized officials.

Shoestring Theatre Inc.: Shoestring Theatre, a Florida non-profit corporation

Name: Title:

THE CITY:

CITY OF LAKE HELEN, FLORIDA, CITY Administrator

Name: Title: