

**FIRST AMENDMENT TO THE
SECOND AMENDED AND RESTATED LEASE AGREEMENT FOR ANIMAL
SHELTER FACILITY/THE ANIMAL FOUNDATION CAMPUS**

This FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED LEASE AGREEMENT FOR ANIMAL SHELTER FACILITY/THE ANIMAL FOUNDATION CAMPUS ("Amendment") is made and entered into this ____ day of _____, 20__, by and between the City of Las Vegas, a political subdivision of the State of Nevada (hereinafter referred to as "Landlord" or the "City"), and The Animal Foundation, a Nevada nonprofit corporation (hereinafter referred to as "Tenant" or "TAF"). The City and TAF may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, on February 18, 2015, the City and TAF entered into a Second Amended and Restated Lease Agreement for Animal Shelter Facility/The Animal Foundation Campus (the "Restated Lease Agreement");

WHEREAS, the Parties desire to further amend the Restated Lease Agreement to address various issues regarding the purchase of the Lied Animal Shelter Building and related facilities; and

WHEREAS, Section 21(j) of the Restated Lease Agreement states that no subsequent amendment to this Restated Lease Agreement shall be binding upon Landlord or Tenant unless reduced to writing and signed by both Parties.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the Parties agree to amend the Restated Lease Agreement as follows:

1. Incorporation of Recitals; Capitalized Terms. The foregoing recitals are true and correct and shall be incorporated herein by this reference. All capitalized terms and words of art which are used but not defined herein shall have the same respective meaning designated for such terms and words of art in the Restated Lease Agreement.
2. Section 1 shall be amended to add the following subsection language to the end of the Section:

At such time that (i) Landlord purchases the Lied Animal Shelter Building and related facilities from Tenant, and (ii) Tenant is no longer providing animal sheltering services under any Services Agreements at the Lied Animal Shelter Building, then the Lied Animal Shelter Building and related facilities purchased from Tenant shall no longer be a part of the definition of "Property" and/or "Improvements" being leased by Tenant under this Restated Lease Agreement, and the Restated Lease Agreement shall continue to apply the remainder of the Improvements at the site, which includes but is not limited to the adoption bungalows and related adoption center and administration facilities, as well as the applicable Common Area and parking.

3. Section 3 shall be amended to add the following subsection language to the end of the Section:

*At such time that (i) Landlord purchases the Lied Animal Shelter Building and related facilities from Tenant, and (ii) Tenant is no longer being paid to cover maintenance, repairs and utilities for the Lied Animal Shelter Building and related facilities as part of providing animal sheltering services under any Services Agreements at the Lied Animal Shelter Building, then Tenant shall pay as additional rent ("Additional Rent"), Tenant's share of the aggregate of the following: (a) utility charges for utility services which may be provided by Landlord pursuant to Section 11; (b) repair and maintenance costs incurred by Landlord pursuant to Section 6; (c) annual real property taxes and assessments, if any, for the Property; (d) Common Area charges as defined in Section 6 hereof incurred or to be incurred in connection with the operation of the Property; and (e) annual premiums for insurance carried by Landlord. It is understood that the foregoing charges shall be invoiced monthly, and Tenant shall pay the amount due within thirty (30) days after receipt of said statement from Landlord. If any such amount due is not timely received by Landlord from Tenant, Tenant shall immediately pay to Landlord a late charge equal to ten percent (10%) of the overdue amount. Landlord and Tenant agree that such late charges represent a reasonable sum considering all of the circumstances existing on the date of this Restated Lease Agreement, including the relationship of the sum to the loss to Landlord that could reasonably be anticipated by such non-payment by Tenant, and the anticipation that proof of actual damages would be costly or inconvenient to determine. In addition, any and all amounts not paid to Landlord when due, including but not limited to Additional Rent and late charges, shall bear interest at the so-called "Prime Rate" published in The Wall Street Journal, as the same may change from time to time, plus two percent (2%) per annum, from the date due until paid. Accrual of such late charges and/or interest shall not excuse or cure any default by Tenant under this Restated Lease Agreement and shall not affect any rights and remedies provided to Landlord in this Restated Lease Agreement or at law or in equity, all of which shall be cumulative. Unless the Parties can mutually agree on another way of sharing the expenses based on the circumstances, Tenant's pro rata share of expenses shall be determined by multiplying such expenses by a fraction, the numerator of which is the total number of square feet of floor area in the Tenant's remaining Improvements, including without limitation the adoption bungalows and related adoption center and administration facilities, and the denominator of which is the total number of square feet of actual floor area of buildings located in the Property. **Tenant's pro rata share is currently calculated at forty percent (40%).***

4. Section 6 shall be amended to add the following subsection language to the end of the Section:

At such time that (i) Landlord purchases the Lied Animal Shelter Building and related facilities from Tenant, and (ii) Tenant is no longer being paid to cover maintenance, repairs and utilities for the Lied Animal Shelter Building and related facilities as part of providing animal sheltering services under any Services Agreements at the Lied Animal Shelter Building, then:

- (i) Elements. Landlord reserves the right to install, maintain, use, repair, and replace structural elements and utility equipment, including, but not limited to, pipes, ducts, conduits, wires, and appurtenant fixtures in, under, over, and through the Lied Animal Shelter Building and related facilities and Property, in locations that will not unreasonably interfere with Tenant's use of the Property and its remaining Improvements.
- (ii) Parking Areas. It is understood and agreed that the Parties shall have the right to use the Common Area parking lot on the Property. All parking areas, access roads, courtyards, and other Common Areas, facilities, or improvements are for the general and non-exclusive use in common of all the Parties, and those persons invited upon the Property and shall be subject to the exclusive control and management of Landlord. Landlord shall have the right, without obligation, to establish, modify, and enforce such rules and regulations, which the Landlord may, in its sole opinion, deem reasonable and/or necessary provided that they will not unreasonably interfere with Tenant's use of the Property and its remaining Improvements. Landlord shall cause to be maintained, automobile parking areas within the Property for the benefit and use of the visitors and patrons and employees of the Parties, and other tenants and occupants of the Property, subject to any and all conditions as set forth in this Restated Lease Agreement. The parking areas shall include the automobile parking stalls, driveways, entrances, exits, sidewalks and attendant pedestrian passageways and other areas designated for parking. Landlord, in coordination with Tenant, shall determine the nature and extent of the parking areas and make such changes which are in the best interests of all persons using the parking area. Nothing contained in this Restated Lease Agreement shall be deemed to create liability upon Landlord for any damage to motor vehicles of Tenant, visitors or employees.
- (iii) Tenant's remaining Improvements. Notwithstanding any insurance that may be carried by Landlord, Tenant nevertheless covenants and agrees that it shall at Tenant's sole cost and expense, at all times during the Term of this Restated Lease Agreement, continue to keep the Tenant's remaining Improvements, including without limitation the adoption bungalows and related adoption center and administration facilities, and each and every part thereof in good condition and

repair at all times during the Term hereof and that it shall make promptly any and all repairs, renewals and replacements which may at any time be necessary or proper to put and keep the Tenant's remaining Improvements in good condition and repair, and to keep the Tenant's remaining Improvements and all appurtenances thereto in a good, clean, safe and wholesome condition at all times during the Term of this Restated Lease Agreement. In the event Tenant fails or refuses, after detailed written notice and reasonable opportunity to cure not to exceed ninety (90) days, to perform any repairs required of it hereunder or to make any payment in connection therewith, then, in addition to all other remedies available hereunder or at law or in equity for Tenant's default, Landlord may, but shall not be obligated to, enter the Tenant's remaining Improvements, and perform or cause to be performed such repairs on behalf of, and at the expense of Tenant or make such payment on behalf of Tenant in which event Tenant shall reimburse Landlord for the cost thereof plus interest as described in Section 3 herein, as Additional Rent.

- (iv) Common Area and Central Plant. Landlord hereby grants to Tenant the non-exclusive right in common with others during the Term of this Restated Lease Agreement to use the Common Area (as hereinafter defined) of the Property for itself, its employees, agents, customers, invitees and licensees. As used herein, "Common Area" means all areas of the Property except those areas which from time to time are designated by Landlord in consultation with the Tenant as being outside the Common Area. The Common Area includes, without limitation, the land and facilities utilized for or as parking areas, access and perimeter roads, truck passageways, landscaped areas, and exterior walks. The Common Area is generally depicted on Exhibit "D" attached hereto. Tenant shall pay to Landlord in the manner set forth in Section 3 Tenant's pro rata share as determined therein of the actual costs and charges incurred and/or paid by Landlord in connection with the maintenance, repair, operation or ownership of the Common Area and Central Plant facility, which charges shall include but not necessarily be limited to the expense of the following: repair, replacement, maintenance, surfacing, resurfacing, painting, restriping, cleaning, sweeping, trash bin rentals, planting and landscaping, signs and markers, lighting and other utilities, fire protection or detection service, parking control and security service and all personnel to implement such services, all real property and personal property taxes and assessments levied or assessed against the Property (if any is applicable to Landlord and Tenant), premiums for all forms of insurance covering the Common Area and Central Plant, cost (if purchased) of machinery and equipment used for Common Area and/or Central Plant maintenance or rental thereof (if rented or leased). Notwithstanding the foregoing, Landlord shall not incur any such equipment rental/purchase costs or expenses used for Common Area and/or Central Plant maintenance in excess of \$20,000 annually without the

collaboration with and approval by the Tenant, which shall not be unreasonably withheld or delayed.

5. Effective January 1, 2024, Section 9 shall be deleted in its entirety and replaced as follows:

9. ALTERATIONS, IMPROVEMENTS AND CHANGES

Tenant will in no event make any material and attached alterations, improvements or other changes of any kind to the Improvements or the Property, except with written consent from the Landlord, which consent Landlord may not reasonably withhold, delay or condition. Any authorized Tenant alterations, improvements and changes to the Improvements or the Property shall be made in accordance with all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws with respect to the Property and the Improvements.

6. Section 10(A) shall be deleted in its entirety and replaced as follows:

Subject to the terms and conditions of Section 16, if the Services Agreement to which Landlord is a party is terminated for any reason or such Services Agreement expires by its terms, then this Restated Lease Agreement shall continue in effect until expiration of the Term.

Notwithstanding the terms and conditions of any other provisions between the Parties to the contrary herein, the Parties agree that Landlord shall purchase from TAF and TAF shall transfer all rights, title and interest to the Lied Animal Shelter Building, and their related improvements, structures, and amenities (which shall include the existing Central Plant building and service yard depicted in Exhibit "D" attached hereto, but not the pylon sign located to the East of the Shelter building near Mojave Road), as well as all personal property and other tangible property located in the Lied Animal Shelter Building /Central Plant including without limitation all other furniture, fixtures and equipment attached to or located therein (the "Purchased Assets") to the City of Las Vegas, free and clear of all liens and encumbrances and/or claims of third parties (the "Shelter Building Transfer"), pursuant to the following terms:

- (i) *In consideration of the Shelter Building Transfer, upon the date of transfer TAF shall be paid a net payment Fifteen Million Dollars (\$15,000,000.00) (the "Purchase Price"), which shall be apportioned by the Entities as outlined an Interlocal agreement entered into between Clark County, City of Las Vegas, City of North Las Vegas regarding the ownership and/or use of the Lied Animal Shelter Building. Regardless of how the Entities agree to apportion the Purchase Price in the Interlocal*

agreement, the Shelter Building Transfer shall not be deemed to have occurred until TAF has received the entire Purchase Price.

- (ii) The Shelter Building Transfer shall occur on a date that is sixty (60) days after TAF receives written notice from the Landlord that it is consummating the purchase, which consummation shall in no event occur later than July 31, 2024. If no notice is timely provided by the Landlord, the purchase shall occur on July 31, 2024.*
- (iii) The Purchase Price of Fifteen Million Dollars (\$15,000,000.00) shall be net of any costs or expenses, but shall be reduced by the Deposit.*
- (iv) Prior to the execution of this Amendment, TAF was holding in a restricted Shelter Capital Reserve account the amount of \$1,391,988.10 as an account to be used for capital expenses on the Shelter. As a non-refundable non-cancelable deposit against the Purchase Price, all restrictions shall be automatically removed from the account and the account in the total amount of **\$1,007,394.10** (i.e., net after the \$384,594.00 reimbursement for the backup generator) shall be retained by TAF for its unrestricted use (the "Deposit").*
- (v) After the Shelter Building Transfer and while Tenant is still utilizing the Purchased Assets to provide animal sheltering services under any Services Agreements and, until the expiration or earlier termination of the Services Agreement the Purchased Assets shall be deemed leased to TAF.*
- (vi) Contemporaneously with the Shelter Building Transfer, TAF shall cause the remaining indebtedness under Bond Series 2017A of that certain Financing Agreement between Nevada State Bank and TAF dated as of September 29, 2017 (the "Financing Agreement") to be fully repaid. The City shall be responsible for the repayment of Bond Series 2017B under the Financing Agreement.*
- (vii) TAF shall provide the City an itemized list of all assets and tangible personal property that will be a part of the Purchased Assets and Shelter Building Transfer, including without limitation, furniture, fixtures, machinery, and other clinical equipment, office equipment, computers and telephones owned by TAF and located at the Shelter on or before March 31, 2024 (the "FF&E list"). TAF shall afford the City reasonable access during normal business hours to and the right to inspect the FF&E and the Lied Animal Shelter Building in order to verify that no property that is to be transferred to the City as part of the sale is excluded from said list.*

- (viii) *Each party agrees to perform any further acts and to execute, acknowledge and deliver any documents which may be reasonably necessary to carry out the provisions of this Section.*
- (ix) *It is the intent of the parties that while Tenant is providing animal sheltering services under any Services Agreements at the Lied Animal Shelter Building, that the use of the Purchased Assets shall not change from its occupation and use prior to the Shelter Building Transfer and except as otherwise stated in this Restated Lease Agreement and any Services Agreements the Landlord's access to the Purchased Assets, including but not limited to the Lied Animal Shelter Building, shall remain restricted in the same manner and to the same degree as it was prior to the Shelter Building Transfer.*
- (x) *After the Shelter Building Transfer, Landlord shall have the continued right to place signage on the current proportionate area of any existing or future pylon and monument signs (as well as a reasonable right to use their digital displays) at no additional cost, and Landlord shall be responsible for the future cost of manufacturing, installing and maintaining its panels. Tenant shall continue to be obligated to maintain all existing pylon and monument signs in accordance with Section 6 herein and shall not remove any such signs, or change or alter any such signs so as to adversely affect Landlord's position or the visibility of Landlord's panels on the pylon or monument sign.*
- (xi) *After the Shelter Building Transfer and while Tenant is still utilizing the Purchased Assets to provide animal sheltering services under any Services Agreements and, until the expiration or earlier termination of the Services Agreement, the Landlord agrees not to remove any currently existing naming recognition signage on or about the Purchased Assets unless (1) the named individual/family donor requests that their name be removed, or (2) in the unlikely event that donor (or its senior officers or directors, if company) commit acts of misconduct that are illegal, unethical, immoral and/or scandalous that are deemed by the Landlord in its reasonable and good faith opinion to be detrimental to the reputation, image, mission or integrity of the Landlord or its governing body. As of the date of this Amendment, the Tenant agrees not to grant any new or further naming rights on any of the Purchased Assets without the Landlord's prior written consent.*

7. Section 10(B)(b) shall be deleted in its entirety and replaced as follows:

Subject to the terms and conditions of Section 16, if this Restated Lease Agreement is terminated for any reason other than an event of default by Tenant as set forth in Section 15 or the Term expires, then Landlord shall purchase the Improvements from Tenant for a price equal to the greater of (i) the hard costs (exclusive of any interest or financing charges) of the Improvements, or (ii) the then fair market value of the Improvements.

Within ninety (90) days following the termination or expiration of this Restated Lease Agreement, Landlord shall purchase the Improvements from Tenant and Tenant shall sell to Landlord the Improvements for the amount to be determined pursuant to this Section 10.B.

8. Section 11 shall be amended to add the following subsection language to the end of the Section:

At such time that (i) Landlord purchases the Lied Animal Shelter Building and related facilities from Tenant, and (ii) Tenant is no longer being paid to cover maintenance, repairs and utilities for the Lied Animal Shelter Building and related facilities as part of providing animal sheltering services under any Services Agreements at the Lied Animal Shelter Building, Landlord shall provide to Tenant any and all current utilities or services for which Tenant is unable, in a commercially practical manner, to separately contract, and Tenant shall pay to Landlord, as Additional Rent hereunder, and without any off set or deduction, Tenant's share of the utility charges for utilities or services provided by Landlord whether the same be charged or assessed at flat rates, measured by separate meters or prorated by the utility company or Landlord. Should Tenant desire that a particular utility be measured by separate meters, it shall pay for the installation costs. Tenant shall pay any such properly invoiced amounts to Landlord within thirty (30) days after receipt by Tenant from Landlord of an invoice therefor. Tenant agrees, at its own expense, to pay to the appropriate collecting company the cost for all such utilities or services separately contracted for by Tenant. If any such charges are not paid when due, Landlord may, but shall not be required to, pay the same and any amount so paid by Landlord shall immediately thereafter become due to Landlord from Tenant as Additional Rent. Regardless of the entity which shall supply any utility or provide any service referred to in this Section, Landlord shall in no event be liable to Tenant for any interruption in the service of any such utilities to the Tenant's Improvements, unless such interruption is caused by the gross negligence or willful misconduct of Landlord; and this Restated Lease Agreement shall, in any event, continue in full force and effect, with no abatement of rent whatsoever despite any such interruptions.

9. Miscellaneous Provisions.

(a) All other terms and conditions of the Restated Lease Agreement, except as specifically amended herein, shall remain unmodified and in full force and effect and are hereby ratified.

(b) The terms and provisions of this Amendment shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.

(c) City and TAF represent and warrant to each other that each has the legal capacity and authority to execute this Amendment, that each has neither received nor relied upon any oral or written representation of the other regarding any fact in executing this Amendment, and that each has had the opportunity to receive advice from independent legal counsel with respect to this Amendment.

(d) This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all Parties. Executed copies hereof may be delivered by facsimile or e-mail, pursuant to NRS 719.240, and upon receipt will be deemed originals and binding upon the Parties, regardless of whether originals are delivered thereafter.

(e) This Amendment shall not constitute consent or approval to any future modifications, amendments, changes or extensions to the Restated Lease Agreement, and shall not relieve TAF or any person claiming under or through TAF of the obligation to obtain the approval of the City Council, to the extent required under the Restated Lease Agreement, to any future modifications, amendments, changes or extensions to the Restated Lease Agreement and the terms and conditions thereof be expressed in a written document signed by both Parties.

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IN WITNESS WHEREOF, the City and TAF have executed this FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED LEASE AGREEMENT FOR ANIMAL SHELTER FACILITY/THE ANIMAL FOUNDATION CAMPUS as of the date set forth above.

CITY OF LAS VEGAS

By: _____

CAROLYN G. GOODMAN, Mayor

Date: _____

ATTEST:

By: _____


LuAnn D. Holmes, MMC

City Clerk

Date: _____

Council Action: _____, 20____; Item # _____

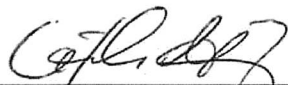
APPROVED AS TO FORM:

By:  _____
Deputy City Attorney

Dimitri P. Dalacas
Deputy City Attorney

12/5/2023
Date

THE ANIMAL FOUNDATION

By:  _____

Printed Name: Hilakie Greey

Title: Chief Executive Officer

Date: 12/5/23

Exhibit "D"

