

RESOLUTION NO. 29733

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE FORGOTTEN CHILD FUND, INC. TO LEASE APPROXIMATELY ONE THOUSAND ONE HUNDRED FORTY-TWO (1,142) SQUARE FEET LOCATED AT 1715 E. MAIN STREET, IDENTIFIED AS TAX MAP NO. 156B-D-011, FOR A TERM OF ONE (1) YEAR, WITH THE OPTION TO RENEW FOR THREE (3) ADDITIONAL TERMS OF ONE (1) YEAR EACH, FOR THE AMOUNT OF ONE DOLLAR (\$1.00) PER YEAR.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Lease Agreement, in substantially the form attached, with the Forgotten Child Fund, Inc. to lease approximately 1,142 square feet located at 1715 E. Main Street, identified as Tax Map No. 156B-D-011, for a term of one (1) year, with the option to renew for three (3) additional terms of one (1) year each, for the amount of \$1.00 per year.

ADOPTED: December 11, 2018

/mem

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made and entered into as of the 1<sup>st</sup> day of November, 2018, (the “Effective Date”) by and between the City of Chattanooga, Tennessee, a municipal corporation (hereinafter referred to as “Lessor”), and Forgotten Child Fund, Inc., a Tennessee nonprofit corporation, whose address is 3000 Alton Park Boulevard, Chattanooga, Tennessee 37410 (hereinafter referred to as “Lessee”).

### RECITALS

WHEREAS, Lessee desires to lease facilities from Lessor to be used exclusively for the operation of programs for the City of Chattanooga’s children in need and any related charitable purposes authorized by the Lessee’s Board of Directors; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to lease to Lessee that certain building containing approximately 1142 square feet located at, situated in the City of Chattanooga, Hamilton County, Tennessee;

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

SECTION 1. Leased Premises. Lessor leases to Lessee that certain building containing approximately 1142 square feet located at 1715 East Main Street, situated in the City of Chattanooga, Hamilton County, Tennessee, identified as Tax Map No. 156E-B-D-011, more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “Leased Premises”).

SECTION 2. Consideration; Utilization of Leased Premises. It is expressly agreed to and understood by the parties that the Leased Premises shall be used exclusively for the

operation of programs for the City of Chattanooga children in need and any related charitable purposes authorized by the Lessee's Board of Directors or for other charitable purposes for the community's benefit. Lessee shall not utilize the Leased Premises for any other purposes without the express written approval of Lessor, which hereby designates its Mayor as Lessor's agent for this purpose. Lessee shall neither engage in nor allow illegal activities on the Leased Premises nor allow alcoholic beverages to be sold or consumed on the Leased Premises.

SECTION 3. Term. The term of this Lease shall commence upon execution by the parties (the "Effective

Date"), shall be for an initial period of one (1) year (the "Initial Term"), and shall not renew automatically, but may be renewed upon mutual agreement of the parties for three (3) additional one (1) terms (each a "Renewal Term") Either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

SECTION 4. Lease Payments. Lessee shall, during the Initial Term or any Renewal Term of this Lease, pay to Lessor the net annual rent of One Dollar (\$1.00) per year, with the first annual payment due on the Effective Date of this Lease and subsequent annual payments due on the anniversary date of the Effective Date of this Lease. As additional consideration, the Lessee agrees to use the property exclusively for charitable purposes authorized by the Lessee's Board of Directors. All rentals payable by Lessee to Lessor under this Lease shall be paid to Lessor at the address herein designated in SECTION 29.

SECTION 5. Alterations. Lessee agrees that no improvements, additions, or alterations shall be made to the Leased Premises without obtaining Lessor's written approval. If Lessee desires to make improvements to the Leased Premises, it shall be required to submit a detailed

description of the improvements to be made to Lessor (the “Lessee’s Plan”). The Lessee’s Plan shall be subject to Lessor’s written approval. Lessor’s approval of Lessee’s Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee’s Plan, the parties shall execute an amendment to this Lease setting forth the obligations of the Lessee with respect to the construction of improvements in accordance with Lessee’s Plan, which shall be attached as an exhibit to the lease amendment.

SECTION 6. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the Initial Term and any Renewal Term of this Lease.

SECTION 7. Termination and Holding Over. Upon termination of this Lease, at the expiration of the Initial Term hereof or any Renewal Term thereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the Initial Term or any Renewal Term hereof including removal of all personal property. Any personal property of Lessee which is not removed from the Leased Premises after termination of this Lease shall be deemed abandoned and may be disposed of by Lessor in any manner without accounting or being liable to Lessee. Lessee shall surrender all keys to the Leased Premises at or before the termination of this Lease.

SECTION 8. Indemnity. Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for injuries or damage for any cause arising at any time to persons in or about said Leased Premises where said injuries or damage occurs as a

result of the use of the Leased Premises by Lessee or from the failure of Lessee to keep the Leased Premises in good condition and repair, as herein provided. Lessee will indemnify Lessor and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Lessee of the Leased Premises or any part thereof occasioned wholly or in part by any act or omission of Lessee, its invitees, agents, employees, or contractors. Lessee further agrees to defend, pay all costs of defense, including attorney's fees, and/or any judgment or costs for any claim or suit brought against Lessor as a result of any claim brought against Lessee, its invitees, agents, employees, or contractors. This indemnification of Lessor shall survive the expiration or sooner termination of the Initial Term or any Renewal Term of this Lease.

SECTION 9. Annual Reporting Requirements; Appropriation of Funds Lessee shall comply with all federal, state, and local laws governing annual reporting requirements of Lessee's business affairs and transactions, which includes, but is not limited to, compliance with T.C.A. § 6-54-111 and Chattanooga City Code Sec. 2-526 as to City of Chattanooga appropriations, outlining the procedures for receiving appropriations from governmental entities. All reports required by state and local law shall be submitted by March 1 of each year during the Initial Term or any renewal Term of this Lease and any holdovers. During the Initial Term or any Renewal Term of this Lease, Lessee must, within ninety (90) days of the end of each fiscal years submit to Lessor a copy of its annual audited financial report for that fiscal year.

For the purposes of this Section, the amount of funds deemed appropriated to Lessee shall be based upon a fair market rental value of \$5.00 per square foot (1,142 square feet constituting usable leased space) for a total annual amount of \$5,710.

SECTION 10. Audit Requirements.

A. Lessor may audit all financial and related records (including digital) associated with the terms of the Lease including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Lessee. Lessor may further audit any Lessee records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by Lessor) or to identify conflicts of interest.

B. Lessee shall at all times during the Initial Term and any Renewal Term of the Lease and for a period of seven (7) years after the expiration or earlier termination of this Lease, keep and maintain records of expenditures of any funds appropriated by Lessor. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Lessee. Documents shall be maintained by the Lessee necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Lessee shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Lessor at all reasonable times and without prior notice.

C. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Lessee and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Lessee's obligations to Lessor.

D. Costs of any audits conducted under the authority of this Section and not addressed elsewhere will be borne by Lessor unless the audit identifies significant findings that

would benefit Lessor. Lessee shall reimburse Lessor for the total costs of an audit that identifies significant findings that would benefit Lessor.

E. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which Lessor may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

SECTION 11. Insurance. At its sole expense, Lessee shall procure and maintain during the term of this Lease insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with this Lease.

(a) Commercial General Liability Insurance

Lessee agrees during the term of this Lease to maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) each occurrence for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it will apply separately to this Lease, or be no less than two (2) times the occurrence limit. Lessee agrees to provide the insurance policies at its sole expense, with commercially reasonable increases in coverage, but in no event shall the insurance coverage be less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. Such insurance will:

- (1) Contain or be endorsed to contain a provision that includes the Lessor, its officials, officers, and employees as insureds with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the

scope of protection afforded to the above listed insureds. Liability coverage can be provided in the form of an endorsement to Lessee's insurance or as a separate owner's policy; and

- (2) For any claims related to this Lease, be primary insurance as respects the Lessor, its officials, officers and employees. Any insurance or self-insurance programs covering the Lessor, its officials, officers and employees will be in excess of insurance and will not contribute with it.

(b) Additional Insurance Requirements.

Lessee shall include Lessor as additional insured on all business and property insurance.

Proof of said insurance shall be provided to Lessor's Risk Manager.

Lessee shall:

- (1) Prior to the Effective Date, furnish Lessor with original certificates of insurance and any amendatory endorsements effecting coverage required by this Section, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City Attorney and Risk Manager of Lessor;
- (2) If requested by Lessor, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance;
- (3) Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than AV; and
- (4) Require all contractors to maintain during the terms of this Lease, commercial general liability insurance, business automobile liability



insurance and workers' compensation/employers' liability and furnish contractor's certificates of insurance to Lessor prior to the commencement of work.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by Lessor.

Lessor shall insure the building on the Leased Premises against the risk of fire. Lessee agrees to reimburse Lessor for the cost of maintaining this coverage when it remits its annual Lease payment.

SECTION 12. Assignment or Sublease. Lessee shall neither assign nor transfer this Lease or any interest herein nor sublease the Leased Premises or any part thereof to anyone during the term of this Lease or any extensions or holdovers.

SECTION 13. Discrimination. Lessee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 14. Nonprofit Status. Lessee shall provide evidence of its status as a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code prior to the Effective Date and maintain its status as a nonprofit charitable organization at all times during the term of this Lease. Failure of Lessee to maintain its 501(c)(3) status shall constitute a default under this Lease.

SECTION 15. No Warranties. Lessee takes and accepts the Leased Premises from Lessor "AS IS," that is at its condition as of the Effective Date of this Lease, upon the terms and conditions herein contained.

SECTION 16. Utility Services and Water Quality Fees. Any applications and connections for necessary utility services on the Leased Premises shall be made in the name of Lessee only. Lessee shall be solely liable for utility charges as they become due, including, but not limited to, those for water, gas, electricity, telephone, and water quality fees. It shall be a breach of this Lease to fail to keep such payments current.

SECTION 17. Repairs and Maintenance.

(a) Lessee shall make and pay for all repairs, maintenance, and replacements to the Leased Premises which are necessary to keep the same in good state of repair and operating order. Lessee shall not suffer or permit any waste or neglect of the Leased Premises and will take such steps as often as may be necessary to keep the buildings, and other improvements on the Leased Premises in a first-class and model condition. Any repairs made by Lessee shall be done in a workmanlike manner and within a reasonable period of time. Lessor shall not be liable for the cost of any repairs, maintenance or replacements made by or through Lessee.

SECTION 18. Limitation of Lessor's Liability.

(a) Lessor shall not be liable to Lessee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Lease and no such failure or delay shall constitute actual or constructive eviction of Lessee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Lessee.

(b) Lessor shall not be liable to Lessee, its invitees, agents, employees, or contractors for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Leased Premises.

(c) Lessor shall not be liable for any theft or loss of property of Lessee, invitees, agents, employees, or contractors.

SECTION 19. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 20. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 21. Attorney's Fee for Right to Recover Possession Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

SECTION 22. Right to Enter. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 23. Damage or Destruction. In the event the Leased Premises shall be damaged by fire, or other casualty, the Lessee shall give immediate notice thereof to the Lessor. This Lease shall, unless notice is given as set forth below, continue in full force and effect, and the Lessor shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 28 and delays in making of insurance adjustments by Lessor, repair the Leased Premises. Lessor need not restore fixtures and improvements owned by Lessee or floor

coverings, furnishings, personal property, and other decorative features furnished by Lessee. In the event the Leased Premises shall, before or after the Effective Date, be so damaged that the Lessor shall decide not to repair the same, or if the Lessor shall decide to demolish or rebuild the Leased Premises for any reason whatsoever, upon notice to Lessee, the Initial Term or any Renewal Term of this Lease shall cease and terminate effective as of the time of the damage, and the accrued rent, if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the Lessor.

SECTION 24. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

(a) The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- (i) Abandonment of the Leased Premises, except for causes of force majeure, as defined in SECTION 28; and
- (ii) Any attempted assignment, transfer, or sublease in violation of SECTION 12 above;

(b) Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor

may terminate this Lease on not less than three (3) days' written notice to Lessee, and on the date specified in said notice the Initial Term or any Renewal Term of this Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Lessee or other occupants and their effects.

SECTION 25. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 26. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 27. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, to insist on strict enforcement of any term, covenant, or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 28. Force Majeure. Lessor shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond Lessor's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage,

governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

SECTION 29. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the parties as follows:

**Lessor:** City of Chattanooga, Tennessee  
**ATTN:** Real Property of ECD  
101 E. 11<sup>th</sup> Street, Suite G4  
Chattanooga, TN 37402

**With a copy to:** Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
City Hall Annex  
Chattanooga, TN 37402

**Lessee:** Forgotten Child Fund, Inc.  
**ATTN:** Patricia Baker  
3000 Alton Park Boulevard  
Chattanooga, Tennessee 37410

**With a copy to:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 30. Miscellaneous Provisions.

30.1 Applicable Law. This Lease shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the parties and/or default by Lessee may only be submitted to a court of

competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

30.2 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other leases, agreements, and communications between the parties, whether oral or written, concerning the subject matter herein. Any amendment to this Lease must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

30.3 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

30.4 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease on the \_\_\_\_ day of \_\_\_\_\_, 2018, at Chattanooga, Hamilton County, Tennessee.

**LESSOR:**

CITY OF CHATTANOOGA, TENNESSEE

BY: \_\_\_\_\_  
ANDY BERKE, Mayor

**LESSEE:**

FORGOTTEN CHILD FUND, INC.

BY: \_\_\_\_\_  
ARLES K. SIMMONS, President

## **EXHIBIT “A”**

State Tax Map No. 156B-D-011  
1715 East Main Street  
Chattanooga, Tennessee

TRACT TWO: All that tract or parcel of land lying and being in the City of Chattanooga, Hamilton County, Tennessee, being known and designated as Lot 9, Block 9, Addition to Montague’s Subdivision No. 4, being Lots 9 and 37 of the I. W. Henderson Tract in Highland Park, as shown on plat of survey recorded in Plat Book 6, Page 73, in the Register’s Office of Hamilton County, Tennessee.