

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: January 17, 2023
RE: **RP Funding Center Naming Rights Agreement**

Attached for your consideration is a proposed Naming Rights Agreement with Mortgage Lenders Investment Trading Corporation, doing business as RP Funding, for the naming rights to the City's convention and event facility currently known as the RP Funding Center. Under the attached Agreement, the facility will continue to be designated as the RP Funding Center.

The RP Funding Center was renamed from its previous name of The Lakeland Center pursuant to the City's agreement with the Orlando Magic's G-League affiliate, the Lakeland Magic. That agreement granted the Magic the right to secure a naming rights sponsor for the facility in exchange for revenue sharing with the City. The Magic entered into a naming rights agreement with RP Funding for a period of 5 years, pursuant to which it paid the City \$150,000 per year for the right to name the facility the RP Funding Center. The agreement with the Magic expired on June 30, 2022. Although the City has renewed its agreement with the Magic for a period of one year, the renewed agreement no longer includes naming rights.

Under the attached Agreement, the City will grant naming rights directly to RP Funding for a period of five (5) years. The RP Funding Center will continue to be known by such name during this time unless a name change is approved by mutual written consent of both RP Funding and the City. The City will receive \$250,000 per year under the Agreement, for a total payment \$1,250,000 for the five-year initial term of the Agreement. The parties may extend the Agreement for an additional five-year term upon mutual written consent of the parties, subject to agreement on the amounts to be paid during the renewal term. The City may terminate the Agreement for convenience with at least 120 days' written notice and may terminate the Agreement immediately in the event RP Funding engages in any conduct which brings RP Funding into public disrepute, contempt, scandal or ridicule or which reflects unfavorably on the reputation of the City.

The naming rights granted under the attached Agreement do not include the naming rights to individual rooms and spaces within the Center, including the Jenkins Arena, Youkey Theater, the ticket box office, the Lake Hollingsworth Ballroom, Sikes Hall, Exhibit Hall, the Lake Parker and Lake Morton Rooms, and similar convention and meeting spaces, all of which would be subject to separately-negotiated naming rights agreements with either RP Funding or unrelated third parties.

It is recommended that the City Commission approve the attached Naming Rights Agreement with Mortgage Lenders Investment Trading Corporation, d/b/a RP Funding, and authorize the appropriate City officials to execute the Agreement on behalf of the City.

Attachment

NAMING RIGHTS AGREEMENT

This Naming Rights Agreement (the "Agreement") is effective this ___ day of _____, 2023 (the "Effective Date"), by and between MORTGAGE LENDERS INVESTMENT TRADING CORPORATION, dba RP Funding, with its principal office located at 1400 S. International Parkway, Suite 1000, Lake Mary, Florida 32746 (hereinafter, "RP Funding"), and the CITY OF LAKELAND, a Florida municipal corporation, with its City Hall offices located at 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (hereinafter, the "City"). Throughout this Agreement, RP Funding and the City may be collectively referred to as the "parties."

RECITALS

WHEREAS, the City owns and operates certain real property and facilities currently known as the RP Funding Center, located at 701 W. Lime Street, Lakeland, FL 33815 (the "Facility"); and

WHEREAS, the Facility consists of, in part, a multi-purpose arena, a performing arts theater, convention halls, concession areas, office space, and other amenities; and

WHEREAS, the parties desire to enter into a naming rights agreement pursuant to which the City will grant RP Funding the exclusive naming rights with respect to the Facility in return for certain benefits set forth below;

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, the parties hereby agree as follows:

ARTICLE I. TERM AND TERMINATION

- 1.1 Term. The initial term ("Initial Term") of this Agreement shall be for five (5) years, commencing on October 1, 2022 and ending on September 30, 2027, unless otherwise terminated in accordance with the terms and provisions contained herein. At the end of the Initial Term, this Agreement may be renewed for an additional five (5) year term ("Renewal Term") upon the mutual written consent of the parties, provided such consent is memorialized no later than ninety (90) days prior to the expiration of the Initial Term. The Initial Term and Renewal Term may be referred to hereinafter collectively as the "Term."
- 1.2 Termination for Default. Upon the occurrence of an event of default, the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days' written notice to the defaulting party, subject to the cure provisions described in Section 9.1(a) and (e); provided, that the City shall have the right to terminate this Agreement immediately upon an event of default specified in Section 9.1(b), (c) or (d).
- 1.3 City Termination for Convenience. The City may, without reason or without cause, terminate this Agreement at any time. The City shall notify RP Funding at least one hundred and twenty (120) days prior to the termination date if it decides to terminate the Agreement pursuant to this Section 1.3. In the event termination for convenience is effected by the City, the City will return to RP Funding a pro rata portion of the money which has been paid to the City for the then-current fiscal year as described in Section 4.2 but for which RP Funding has not received the pro rata portion of the corporate exposure as described in this Agreement. Upon the effective date of a termination notice pursuant to this Section 1.3, RP Funding shall remove its property, if any, from the Facility, and the City shall, at the City's expense, remove the Name and/or Logo (as defined herein) and related signage and labeling from the Facility.

- 1.4 Use and Removal of Sponsor Marks upon Termination. At the end of the Initial Term, or Renewal Term if applicable, or upon the earlier termination of this Agreement in accordance with the terms herein, the rights and privileges granted under this Agreement shall immediately terminate, and the parties shall terminate the use of Sponsor Marks (as defined in Section 3.1) in connection with any licensed goods and/or services. Notwithstanding the foregoing, however, the City shall have a period of twelve (12) months after the date of termination to utilize the Sponsor Marks in order to make necessary physical changes to the Facility and its components, and to phase out the use of the advertising and other materials in stock which contain or display the Sponsor Marks. Unless termination occurs pursuant to Section 1.3 or as a result of a City default subject to Article 9, RP Funding shall be responsible for all costs associated with removing the Name and/or Logo and related signage and labeling from the Facility and replacing it with a new name/logo and related signage ("Signage Costs"). Upon RP Funding's request, the City shall furnish reasonable written documentation of all Signage Costs.
- 1.5 Transition. Except in the event of a RP Funding termination by reason of an uncured breach hereof by the City, RP Funding agrees that, following termination hereof for any reason, it will reasonably cooperate with the City in its efforts to transition to a new or replacement naming rights sponsor, provided such cooperation shall not entail material financial cost to RP Funding.
- 1.6 Disposal of Property After Termination. Any and all property belonging to RP Funding which may be found on the premises of the Facility after termination or expiration of this Agreement, and which is not removed by RP Funding within sixty (60) days of such termination or expiration, may be handled, removed, stored or disposed of by the City at the sole risk and expense of RP Funding.

ARTICLE 2. NAME OF FACILITY

- 2.1 Name of Facility. The parties agree that the Facility shall be named "**RP Funding Center**" (the "Name"), subject to any changes which may be mutually agreed upon in writing by the parties. The Facility will continue to be so named for the Term of this Agreement unless RP Funding renames the Facility in the manner provided herein (subject to and requiring the advance written consent of the City), or until this Agreement is terminated in accordance with the provisions of this Agreement. Such naming rights during the Term are exclusive to RP Funding. Unless approved by RP Funding, during the Term of this Agreement, the City shall not accept permanent advertising at the Facility from a company whose primary business competes directly with RP Funding (as detailed further in Section 6.1), except as otherwise provided herein. Notwithstanding the foregoing, the parties acknowledge and agree that: (1) to the extent the City has existing sponsorship agreements with competitors of RP Funding, such agreements shall be allowed to continue for the remainder of their current terms; and (2) this restriction shall not apply to or prevent event organizers or their sponsors from selling merchandise during or in relation to events held at the Facility.
- 2.2 Exclusions from Naming Rights. The naming rights granted herein do not include the naming rights to individual venues, rooms and other discrete spaces within the Facility, including, without limitation, the Jenkins Arena, Youkey Theater, the ticket box office, the Lake Hollingsworth Ballroom, Sikes Hall, Exhibit Hall, Lake Parker and Lake Morton rooms, and similar convention and meeting spaces, all of which shall be subject to separately negotiated naming rights agreements with either RP Funding or unrelated third parties.
- 2.3 City References to Facility. Except as provided herein, during the Term of this Agreement, the

City, when making reference to the Facility, shall make commercially reasonable efforts to use the Name and no other. The Name shall appear on external and internal signage on the building as well as on other materials or objects that refer to the Facility, including promotional materials, employee uniforms, and the like, all as more specifically set forth in Article 5. However, isolated or inadvertent references that fail to include the correct or entire Name shall not be deemed a violation of this Agreement.

- 2.4 References by Others. The City will make commercially reasonable efforts to ensure that the Facility is referred to by its Name, and shall cooperate with RP Funding's efforts to do the same.

ARTICLE 3. USE OF NAME AND TRADEMARKS

- 3.1 Enforcement. All trademarks, service marks and trade names, and all logos or commercial or advertising symbols used in conjunction with or associated with the Name (the "Sponsor Marks"), shall be mutually agreed upon, in writing, prior to use by either party in interstate or intrastate commerce by either party and prior to application for registration thereof by RP Funding. RP Funding shall, at its sole cost and expense, obtain, and thereafter maintain, protection for all rights in the Sponsor Marks, such enforcement to be conducted at the sole discretion of RP Funding. The expense of any such protection and enforcement, including legal proceedings related thereto, shall be paid solely by RP Funding, and all recoveries from any lawsuit or settlement shall go to RP Funding. The parties agree that RP Funding will develop, at RP Funding's expense, a logo (the "Logo") associated with the Facility, which Logo, like all other Sponsor Marks, shall be subject to the approval of the City. RP Funding shall provide the City with copies of all correspondence (regardless of form or media) sent or received by RP Funding in connection with the prosecution and maintenance of all registrations, if any, of the Sponsor Marks. The City agrees to use commercially reasonable efforts to notify RP Funding of any use of terms or marks of which the City has actual knowledge and which the City believes, in good faith, may infringe upon the Sponsor Marks. The City further agrees reasonably to cooperate with RP Funding, at the request and expense of RP Funding, in any lawsuit or other dispute involving a claim of infringement of the Sponsor Marks.

3.2 Grant of License. RP Funding hereby grants to the City a restricted, non-exclusive and non-transferable (except as specifically herein otherwise provided) license to use the Sponsor Marks for purposes of identifying the Facility and promoting the City or third-party sponsored events and activities at or in the Facility. It is understood and agreed that third parties using the Facility and/or promoting activities at or in the Facility ("Third-Party Users") may use the Sponsor Marks in announcements, promotional materials and advertisements about such use and/or activities. RP Funding further grants to the City a restricted, non-exclusive and non-transferable (except as specifically herein otherwise provided) license to use any trademarks, trade names, and logos as may in the future be used to describe the connection with the Facility for purposes of identifying the Facility and promoting the Facility, the City, or Third-Party User events and activities at the Facility. It is understood and agreed that Third-Party Users may use any trademarks, trade names and logos as may in the future be used to describe the connection with the Facility in announcements, promotional materials and advertisements about such use and/or activities. It is further understood and agreed that Third-Party Users are not subject to any restriction on or prohibition against use of terms, marks, logos or commercial or advertising symbols of persons, firms, corporations or other entities that offer goods and/or services that are competitive with those of RP Funding. The City acknowledges that the Sponsor Marks and all goodwill associated therewith are, and shall remain, the sole property of RP Funding and

that no rights are conferred upon the City with respect to the Sponsor Marks except as specifically set forth herein. The City may not acquire or claim any title to the Sponsor Marks adverse to RP Funding by virtue of the license granted herein or through the City's use of the Sponsor Marks, all uses or claims to ownership by the City of the Sponsor Marks inuring solely to the benefit of RP Funding. The City agrees not to challenge the validity of the Sponsor Marks or to set up any claim to the Sponsor Marks which is adverse to RP Funding.

RP Funding acknowledges that the use of the term "City of Lakeland" in the Name, and in the Logo or the other Sponsor Marks, is for the purpose of identifying the location of the Facility, and that no rights are conferred upon RP Funding to use the name of the City, other than as a part of the Name and as a part of the Logo or the other Sponsor Marks, in connection with the sale, advertisement and promotion of RP Funding and/or any of its products and services. Furthermore, nothing contained in this Agreement shall grant, or be construed as granting, any license by the City to RP Funding to use the logo of the City for any purposes. Any use of the logo of the City by RP Funding shall require the written agreement of the City and grant of a license to RP Funding. The parties understand and agree that either party may use the Logo, once approved by the City, as provided in this Agreement.

- 3.3 Usage Post-Termination. Except as otherwise provided herein, at termination of this Agreement, the City will not identify itself as a licensee of or otherwise associated with RP Funding or use for any purpose any Sponsor Marks or other commercial symbol that indicates a connection or association with RP Funding. Notwithstanding RP Funding's ownership rights in and to the Sponsor Marks, following the Term, RP Funding agrees to cease all use of the Name and the Sponsor Marks and to any and all registrations thereof and pending applications for registration thereof to become canceled or go abandoned, as applicable. RP Funding shall have no residual rights in or to the Name or any of the Sponsor Marks, the goodwill associated therewith or symbolized thereby being deemed to have ceased with the end of the Term.

ARTICLE 4. NAMING RIGHTS FEES

- 4.1 Base Fee. RP Funding agrees to pay to the City the sum of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00) (the "Base Fee") for the rights granted hereunder for the Initial Term of this Agreement. RP Funding shall also pay all signage costs for modified or additional signage as provided in Section 4.2.

Prior to the commencement of a Renewal Term (as provided for in Section 1.1), the parties will meet and agree upon an escalator of the Base Fee for the rights granted hereunder during a second five-year Term.

4.2 Payment Schedule. The Base Fee shall be paid in quarterly installments of Sixty-Two Thousand Five Hundred Dollars (\$62,500) each, provided that an initial payment of One Hundred Twenty-Five Thousand (\$125,000) shall be made no later than February 1, 2023 (which shall constitute the payment for the period October 1, 2022 through February 1, 2023). Subsequent quarterly payments of \$62,500 shall be made on or before May 1, August 1, November 1 and February 1 of each year of the Initial Term until the full Base Fee of \$1,250,000 has been made. In addition, RP Funding agrees to pay all signage costs for signage modified or added for the Initial Term and any Renewal Term. RP Funding shall remit payment to the City within sixty (60) days of receiving documentation outlining signage fabrication and/or installation costs.

Prior to the commencement of the Renewal Term, if any (as provided for in Section 1.1), the parties will meet and agree upon an updated payment schedule for the rights granted hereunder during any second five-year term.

4.3 Late Payments. If RP Funding fails timely to pay any payment charge or fee as provided for in this Agreement, interest shall automatically accrue and become payable at the rate of one and one-half percent (1½ %) per month or portion of the month.

ARTICLE 5. SIGNAGE, MEDIA, AND NAME AND LOGO PLACEMENT

5.1 Placement of Signage, Name and Logo. The Name and/or Logo shall be displayed as selected by RP Funding and as mutually agreed by the parties. Exhibit 1 shows preapproved design guideline options for placement of the Name and Logo on the signs and other items outlined on Exhibit 1, and RP Funding shall have an exclusive right to display and placement on the items outlined on Exhibit 1. Any deviation from the design guideline options outlined on Exhibit 1 shall require mutual agreement of the parties. If necessary, the parties will then finalize any additional details outlining the actual placement of the Name and Logo on signs and other items identified.

5.2 Employee Uniforms. The uniforms of the Facility staff shall bear the Name and/or Logo. RP Funding shall provide \$4,000 for the first year of the Initial Term for Facility staff uniforms bearing the Name and/or Logo and \$2,000 per year each year thereafter of the Initial Term and any Renewal Term. The City shall be responsible for any additional costs of future or supplemental Facility staff uniforms. In the event RP Funding changes the Name and/or Logo in the manner provided in this Agreement (subject to and requiring the advance written consent of the City), RP Funding shall provide, at RP Funding's expense, any new Facility staff uniforms necessary as a result of the new Name and/or Logo.

5.3 Design Expenses. RP Funding shall be responsible for any and all costs of re-designing the Facility's Name and Logo as a result of changes to the Facility's Name or Logo subsequent to the Effective Date of this Agreement.

5.4 Cost of Signage. RP Funding shall be responsible for the fabrication and installation costs of any signage modified or added subsequent to the Effective Date of this Agreement. The City shall be responsible for the cost of the subsequent maintenance of the signage after installation, provided that any damage to the signage caused by RP Funding will be repaired at the expense of RP Funding. RP Funding may change the content of the signage at its own expense upon receipt of City approval pursuant to Section 2.1 (which work will be performed by the City and billed to RP Funding at actual cost).

Any damage to the signage caused by any party other than RP Funding will be promptly repaired by the City at its own expense.

- 5.5 Facility Web Site. The Name and/or Logo shall be prominently displayed on the Facility's web site.
- 5.6 Publicity. The City will coordinate publicity efforts with RP Funding as it relates to the Facility. Publicity efforts shall include, but are not limited to, newsletter, e-news, social media, speeches and pictures.

ARTICLE 6. ADVERTISING/SPONSORSHIP OF FACILITY BY OTHER ENTITIES

- 6.1 Exclusivity. Except as provided herein, the City shall not during the Term grant any new advertising/sponsorship rights to the Facility to any entity whose primary business competes directly with RP Funding. Notwithstanding the foregoing, however, booking contracts entered into for events at the Facility may be sponsored by entities that may compete directly with RP Funding and will be allowed at the sole discretion of the City.
- 6.2 Other Contracts. Except as stated herein, the City may enter into advertising/sponsorship rights for any portion of the Facility, or for any event at the Facility, with any business or entity. The City represents and warrants that no advertising or sponsorship agreements exist as of the execution of this Agreement that would violate the terms of this Agreement.

ARTICLE 7. CHANGE OF NAME AND/OR LOGO

- 7.1 Name Change. If RP Funding changes its corporate name or trade names, merges into another entity that results in a name change, or sells substantially all of its assets to another entity, and the Agreement is assigned to the new entity with the consent of the City as provided herein, the City shall use the new name and logo incorporating the name and/or logo of the successor, under the terms and conditions of this Agreement. Any new Facility name and/or logo shall require the approval of the City as provided in Articles 2 and 3. RP Funding or its successor shall be responsible for all direct and indirect costs associated with the resulting name and logo change of the Facility, including, without limitation, all costs and expenses of reconstructing, restoring, remodeling or otherwise altering any portion of the Facility or signage of the Facility, replacing or relabeling any uniforms, concession materials, replacing letterhead, stationary or other printed materials, or replacing or relabeling any other items with the new name and logo, and all related promotional and re-branding costs.
- 7.2 Limitation. The Facility shall not utilize, and the Facility's name will not be changed to, a specific name or logo if, in the reasonable judgment of the City, it would result in a name or graphic that is inconsistent with or detrimental to the reputation of the City or the Facility, or if such name or logo is contrary to the community standards of good taste. In such event, the parties shall negotiate in good-faith to determine an appropriate name or logo for the Facility. If, after ninety (90) days of good faith negotiations, the parties are unable to agree on a new or replacement name for the Facility, then the City, in its sole discretion, may terminate this Agreement.

ARTICLE 8. ASSIGNMENT

- 8.1 Assignment. The rights and obligations created by this Agreement are unique to RP Funding, exclusive and shall not be transferred or assigned by RP Funding except by written consent of the City. In the event of an assignment by RP Funding to an affiliate, parent or subsidiary which

is an entity which is substantially owned or controlled by RP Funding or which retains substantially similar management and directors and where such assignment is intended to accomplish an internal corporate purpose of RP Funding as opposed to materially and substantially altering the underlying business nature of RP Funding, the City will not unreasonably withhold its consent for such assignment.

- 8.2 Successors. This Agreement shall be binding upon any permitted successor or assignee of either party, whether by merger, sale of assets, dissolution, reorganization or otherwise. Any attempted assignment by RP Funding, whether by merger, sale of assets, dissolution, reorganization or otherwise, in violation of Section 8.1 hereof shall constitute an event of default under this Agreement entitling City to furnish to RP Funding a notice of termination, as provided for in Section 1.2 hereof, except that RP Funding shall have no right to cure such event of default.

ARTICLE 9. DEFAULT: REMEDIES

- 9.1 Default. A default shall be deemed to have occurred hereunder if:

- (a) RP Funding fails to make a payment required under this Agreement and such default continues for a period of thirty (30) days after the date it is due.
- (b) A petition in bankruptcy is filed by or against RP Funding.
- (c) RP Funding no longer possesses the rights, powers, licenses, permits and authorizations necessary for the lawful and proper conduct and operation of its business.
- (d) RP Funding engages in conduct which brings RP Funding into public disrepute, contempt, scandal or ridicule or which reflects unfavorably on the reputation of RP Funding or the City.
- (e) Either party fails to perform or observe any material term, covenant, condition or provision of this Agreement, and such breach continues for a period of thirty (30) days after written notice to the defaulting party, or if such breach cannot be cured reasonably within such thirty (30) day period and the defaulting party fails to commence to cure such breach within thirty (30) days after written notice or fails to proceed diligently to cure such breach within a reasonable time period thereafter.

- 9.2 City Remedies. The City's remedies in the event of RP Funding's default shall include (but not be limited to) the right to terminate this Agreement, the right to seek specific performance of RP Funding's duties under this Agreement, and the right to remove, cover, or replace all signage and written or other references to RP Funding and/or the Name. In addition, RP Funding shall be responsible for all costs associated with removing the Name and/or Logo and related signage and labeling from the Facility and replacing it with a new name/logo and related signage ("Signage Costs"). Upon RP Funding's request, the City shall furnish reasonable written documentation of all Signage Costs.

- 9.3 RP Funding Remedies. RP Funding's remedies in the event of the City's default shall include (but not be limited to) discontinuing payment until the default has been cured, and the right to seek specific performance of the City's duties under this Agreement. RP Funding shall have the right to terminate this Agreement, without liability, in the event the City sells the Facility to an unrelated third party, provided RP Funding provides advance written notice that, in its reasonable judgment, such transfer will materially impair the value of the Sponsor Marks, and, provided further that such right of termination is exercised within sixty (60) days following the effective date of any such

transfer.

- 9.4 Other Remedies. In the event of a breach by either party of any of the material terms, covenants, conditions or provisions hereof, the other party shall have the right to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein and to enforce the performance and observance of any obligation, agreement or covenant of the allegedly defaulting party.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default of the other party.

ARTICLE 10. DISPUTE RESOLUTION

- 10.1 The City and RP Funding agree that disputes under this Agreement should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, in the absence of a City default hereunder, RP Funding shall proceed with the monetary payments as per the Agreement as if no dispute existed.

If mutually agreed by the parties, any dispute, controversy or claim arising out of this Agreement that cannot be settled through negotiation may be resolved by the parties trying in good faith to resolve the dispute by mediation (such mediation session may be requested by either party, and if agreed to by the other party, shall be held in Lakeland or at such other location as may be agreed to by the parties).

ARTICLE 11. INDEMNIFICATION

- 11.1 Indemnification of City. RP Funding will indemnify, defend and save harmless the City (including its officials, employees and agents) from all third-party claims, actions, damages, losses or expenses of every kind and description, including reasonable attorneys' fees and costs, made against or suffered by the City in any way because of or based upon (i) RP Funding's (or its officers', directors', partners', employees', agents', representatives', tenants' or guests') negligent act, misconduct or omission; (ii) a copyright or trademark infringement claim or other intellectual property action arising from the City's use of the Name, the Logo, or any of the Sponsor Marks, as permitted or authorized herein; (iii) a breach of this Agreement by RP Funding; or (iv) the operation of RP Funding's business.
- 11.2 Notice, Defense and Settlement; Survival. The City will give RP Funding prompt written notice of any claim or suit coming within the scope of these indemnities. Upon the written request of the City, RP Funding will assume the defense of any claim, demand or action against the City, utilizing legal counsel reasonably satisfactory to the City, and will permit the City to participate in the defense of the claim. RP Funding may settle any such claim, demand or action against the City, albeit only with the prior written consent of the City, and such consent may not be unreasonably withheld, conditioned or delayed.
- 11.3 Survival. The provisions of this Article shall survive termination or expiration of this Agreement.

ARTICLE 12. MISCELLANEOUS

- 12.1 Amendment, Modification or Alteration. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.
- 12.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute but one and the same instrument.
- 12.3 Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independently of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of each party to realize the material benefits intended by this Agreement, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.
- 12.4 Notices. All notices required or permitted to be given under this Agreement shall be given by certified or registered mail or nationally-recognized overnight courier, addressed to the proper party at the following addresses, or at such other address as may be subsequently given pursuant to this Section, and shall be deemed given when deposited into the U.S. Mail, postage prepaid, if given by certified or registered mail, or the next business day when deposited with a nationally-recognized overnight courier:
- If to City: City of Lakeland
 Attn: Executive Director – RP Funding Center
 701 West Lime Street,
 Lakeland, FL 33815
- With a copy to: City Attorney
 City of Lakeland
 228 S. Massachusetts Avenue
 Lakeland, FL 33801
- If to RP Funding: RP Funding
 Attn: Matt Levy
 1400 S. International Parkway, Suite 1000
 Lake Mary, Florida 32746
- With a copy to: Jason O'Neal, Esq.
 Cornerstone Law Firm, PLLC
 1511 E. State Road 434, Suite 3049
 Winter Springs, Florida 32708
- 12.5 Waiver. Any failure of either party to comply with any provision of this Agreement may only be waived expressly in writing by the other party. The waiver by either party of any default or breach by the other party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Agreement.

- 12.6 Time of Essence. Time is of the essence of this Agreement.
- 12.7 Bailment. Nothing herein shall be construed to create a bailment relationship between the parties concerning any property brought on the premises of the Facility by RP Funding, unless such property is expressly delivered into the possession of the City and accepted by the City for such purposes.
- 12.8 Status of Parties. The parties hereto are and shall be deemed and construed as independent contractors with respect to one another for all purposes. Nothing contained in this Agreement shall be determined to create a partnership, joint venture, principal-agent, employer-employee, or similar relationship between the City and RP Funding, or any of their respective officers, employees or agents, with respect to the actions of either of the parties pursuant to the terms of this Agreement.
- 12.9 Governing Law; Venue. This Agreement and all matters or issues collateral hereto shall be governed and construed in accordance with the laws of the State of Florida without respect to conflict of law principles. Venue for any litigation arising out of or relating to this Agreement shall be in the courts of Polk County, Florida or the United States Middle District of Florida, Tampa Division.
- 12.10 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in this Agreement, and it may not be amended except by a writing signed by all parties. There are no oral or written representations, agreements, understandings or circumstances which have not been included within this Agreement.
- 12.11 Exhibits. The Exhibits referenced herein shall be deemed a part of this Agreement as if fully set forth in the body of this Agreement.
- 12.12 Effective Date. The Effective Date of this Agreement shall be the date upon which the last of the parties executes this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year indicated below.

CITY OF LAKELAND, FLORIDA

MORTGAGE LENDERS INVESTMENT TRADING CORPORATION

By: _____
H. William Mutz, Mayor

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST:

Kelly S. Koos, City Clerk

Approved as to Form and Correctness:

Palmer C. Davis, City Attorney

EXHIBIT 1

Naming Rights THE RP Funding Center

- Facility name: During the term of the Agreement, the Facility will be exclusively referred to as RP Funding Center and receive category exclusivity in permanent advertising and promotions controlled by the Facility. However, this would not apply when national events/tours have existing national partnership agreements, or “non-permanent” advertising that Facility tenants may control
- Highway Signage: RP Funding Center directional signage located on major interstate highways (I-4), state roads (Polk Parkway) and local streets (Harden Blvd).
- Event Advertising: RP Funding will be featured in all event-related advertising which will include, but not be limited to, television, radio, print, digital and outdoor for in-house and 3rd party promoted events.
- Message Center: All recorded messages on the Facility sound system, box office answering system, and digital messages on the outdoor marquee located on Sikes Blvd/Lime Street will prominently feature RP Funding Center.
- Static Marquee: Company ID on all four (4) advertising panels facing Sikes Blvd/Lime St.
- Electronic Event Marquee: Minimum of ten (10) ten second (:10) company dedicated matrix board spots per hour on the marquee located on Sikes Blvd/Lime St.
- Exterior Signage on the Theatre Tower: Backlit sign facing Sikes Blvd.
- Static Directional Signs: Located throughout the Center.
- Arena End Zone and Ribbon Boards: Located on the N/S/E/W ends. Corporate digital ads running during events in the arena when applicable
- Arena Wall Signage: Wall graphic display on Arena concourse wall
- Exterior Entrance Banners: Banners w/RPFC logo lining Entrance 1 driveway and Wall Signage information near Entrance 1 & 2.
- Lobby signage: Digital TV display throughout the Facility on 10 display monitors promoting RP Funding

Kiosk/Merchandise Display:	A temporary, interactive or static kiosk in Lobby or Concourse with the ability to promote product to guests at all events held at the Facility.
Marketing materials:	RP Funding Rack Cards/ brochures will be placed in front office and marketing tables throughout contract period.
Staff Uniforms:	Staff uniforms will be logoed with RP Funding Center ID
Marketing & Collateral:	RP Funding Center will be prominently featured on all Facility press releases, publications, tickets, brochures, business cards, letterhead, merchandise, and pertinent concession items.
Community Programs:	Enhance any current RP Funding community programs using any Agreement assets.
Website Exposure:	RP Funding logo throughout the official website of the Center.

Additional Partnership Assets

Rental Space:	RP Funding will have the opportunity to use mutually agreed upon convention space for company meetings three (3) times a year during the life of the agreement at a reduced rate.
FHSAA Partnership:	Platinum Level Sponsorship and branded bags given to all volunteers. Subject to additional charges.
Event Tickets	Twelve (12) tickets to RPFC shows when applicable and to mutually agreed upon shows.