

## TRIPARTITE AND INTERLOCAL AGREEMENT

THIS TRIPARTITE AND INTERLOCAL AGREEMENT is made and entered into this 1<sup>st</sup> day of July, 2003, by and between the CITY OF DELRAY BEACH, a Florida municipal corporation, (the "CITY"), and the DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, a community redevelopment agency created pursuant to Florida Statute, Chapter 163, (the "CRA"), and the DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC., (the "LIBRARY").

### W I T N E S S E T H:

WHEREAS, the CITY and CRA both being bodies politic in the State of Florida are desirous of entering into this Tripartite and Interlocal Agreement with the LIBRARY in accordance with the provisions of Florida Statute, Chapter 163.01 et seq.; and

WHEREAS, the CRA is the owner of certain real property located at 104 West Atlantic Avenue, Delray Beach, Florida 33444, and 132 West Atlantic Avenue, Delray Beach, Florida 33444, and herein referred to as "Parcel Three", being more particularly described as follows:

Lots 1 through 4, Block 53, TOWN OF LINTON (now Delray Beach), according to the Plat thereof as recorded in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida, less the right-of-way for West Atlantic Avenue

; and

WHEREAS, the CITY is the owner of certain real property herein referred to as the "Current Library Site" which real property is legally described as:

Lot 7, less the North 16.0 feet and the West 8.17 feet, Lots 8 and 9, less the West 8.17 feet the North 20 feet of Lot 10, Less the West 8.17 feet, Town of Linton

(now Delray Beach), according to the Plat thereof as recorded in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida.

; and

WHEREAS, the Current Library Site is encumbered by a long-term land lease in favor of the LIBRARY; and

WHEREAS the CITY and the CRA desire to facilitate the relocation of the LIBRARY from the Current Library Site to Parcel Three; and

WHEREAS, in order to facilitate such relocation, the CITY and the CRA are desirous of entering into this Tripartite and Interlocal Agreement providing for an exchange of the Current Library\_ site from the CITY to the CRA in return for the conveyance by the CRA to the CITY of Parcel Three; and

WHEREAS, the CITY shall be the owner of Parcel Three and in consideration of the monies granted and expended and as required by the grant from the State, the CITY shall also own the building as wetl as the land upon which the LIBRARY shall construct a new library which will be leased to the LIBRARY under a long term lease with an option to purchase; and

WHEREAS, the LIBRARY is willing to cancel and surrender its Long Term Land Lease and any interest it may possess in the improvements located within and on the Current Library Site to the CITY in return for the CITY teasing to it Parcel Three in accordance with this agreement; and

WHEREAS, the CITY has entered into certain agreements with the LIBRARY and also has entered into a grant agreement with the state; and

WHEREAS, the State has informed the CITY that as the Grantee it is required to expend and disburse funds for the LIBRARY project; and

WHEREAS, the CITY, under the grant, may assign certain responsibilities to the LIBRARY; and

WHEREAS, the CITY, under agreements dated March 20, 2001 as amended by Amendment No. 1 dated October 2, 2001 has delegated the handling of the actual construction to the LIBRARY; and

WHEREAS, as the grant recipients, the CITY is not released from the duties and obligations to complete the LIBRARY construction and the duty to provide funds as set forth in the grant; and

WHEREAS, the total estimated cost of the LIBRARY construction originally submitted for the grant was \$10,155,000.00, which included the cost to construct the LIBRARY, furniture and books but did not include the cost to construct the parking garage which is to cost \$3,200,000.00; and

WHEREAS, the total estimated cost of constructing the LIBRARY as of May 28, 2003 is \$6,500,000.00, which does not include design costs, furniture, books, and construction of the parking garage; and

WHEREAS, the LIBRARY has revised the project estimate, in which with the state has concurred, from the \$10,155,000.00 to the \$6,500,000.00 amount; and WHEREAS, this agreement is premised on the CITY being responsible under the grant for the \$6,500,000.00 project cost and not the \$10,155,000.00 estimated project cost; and

WHEREAS, the parties have undertaken certain monetary and other commitments to each other as further set forth in this Agreement.

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

1. The above recitals are hereby incorporated as if fully set forth herein.

2. The CITY shall convey to the CRA fee simple title to the Current Library Site in its then "as is" condition, subject only to both permitted exceptions set forth in Paragraphs 3., A, below and the CRA shall convey title to Parcel Three to the CITY in its then "as is" condition in exchange for said Current Library Site subject to only those permitted exceptions set forth in Paragraph 3., B., below.

3. A. Permitted Exceptions to Conveyance of Current Library Site:

(i) The right of post-closing occupancy by the LIBRARY upon the terms and conditions set forth in that certain Business Lease attached hereto as Exhibit "A".

(ii) Restrictions, conditions, reservations, easements, and other matters contained on the Plat of Town of Delray Beach, Florida (f/k/a Linton), as recorded in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida.

(iii) Taxes for the year of the effective date of this policy and taxes or special assessments which are not shown as existing liens by the public records.

B. Permitted Exceptions to Conveyance of Parcel Three to the CITY:

(i) Subject to that certain Deed dated September 18, 1967 and recorded October 24, 1967 in O.R. Book 1605, Page 228, Public Records of Palm Beach County, Florida, conveying the North 20 feet of Lots 3 and 4, Block 53, as recorded in Plat Book 1, Page 3, and a portion of Lot 4 for State right-of-way purposes.

(ii) Subject to a Unity of Title dated March 1, 1979 and recorded March 7, 1979, between Selective Recourses Corp., of Delaware and the City of Delray Beach, as set forth in O.R.

Book 3020, Page 138, Public Records of Palm Beach County,  
Florida.

(iii) Current year taxes.

4. Closing and time for conveyance for such exchange shall be upon the LIBRARY obtaining all required building permits to commence construction of its intended improvements to Parcel Three and the redevelopment of such Parcel as a public library, provided, however, that in the event such closing shall not occur on or prior to the 31 st day of December, 2005, this Agreement shall become null and void.

5. The parties agree that the CRA shall order an appraisal of the Current Library Site and Parcel Three promptly after the execution of this Agreement through Anderson and Carr Appraisers for purposes of establishing the appraised value of the respective properties for purposes of this Agreement. The CRA, and the CITY agree to share equally in the cost of such appraisals and the CITY agrees to remit to the CRA their share of the cost thereof within fifteen (15) days following receipt of an invoice from the CRA together with a copy of such appraisals. Upon obtaining the appraisal reports, such party shall have thirty (30) days thereafter to elect to terminate this Agreement if such report is unacceptable to them in their sole discretion. The parties hereby agree that in the event the CRA pursuant to its redevelopment efforts with respect to the Current Library Site shall realize proceeds from the sale of that site, such net proceeds attributable to that site shall be distributed between the parties in the following manner:  
a) First, to the CRA all proceeds up to the appraised value of Parcel

Three, then

b) To the CITY, such net proceeds in excess of a) above up to the appraised value of the land and building at the Current Library Site, then

c) To the CRA and CITY equally, and net proceeds then remaining after a) and b), above.

Notwithstanding any provision of this Agreement to the contrary, the CRA shall have the free and sole discretion in determining the price and terms for its disposition of the Current Library Site pursuant to its public purposes and no special or fiduciary duty of any kind shall be created or imposed as a result of this Agreement. Further, the Agreement shall not be deemed to create an encumbrance of any kind on the title to the Current Library Site.

6. Each party shall, at their own expense, provide the receiving party with a Title Insurance Commitment and Policy in favor of the receiving party with respect to the property being conveyed to them in an insured amount equal to the appraised value of such property within thirty (30) days following the obtaining of the appraisals.

7. The CRA and LIBRARY shall, within four (4) months from the date of this Agreement, have the reasonable right of access to the respective properties being acquired for purposes of conducting such reasonable inspections and investigations of said properties for the suitability and acceptability of said properties by the receiving party. In the event the results of such investigations and study shall render the property to be received by either respective party unacceptable in such party's full discretion, either party may cancel this Agreement by delivering written notice to all of the parties hereto within said time. Neither party shall be entitled to cause any work to be done on

said other party's premises which could result in a lien being paid therefor and each party agrees to indemnify, save, and hold the other party harmless for any and all work being so performed.

8. Each party shall maintain their respective properties, which are the subject of this Agreement, in the same condition as they exist on the date of this Agreement, ordinary wear and tear excepted. Each party shall bear the risk of loss relative to their respective properties prior to closing and shall maintain casualty insurance to the extent of the full insurable value thereof,

9. The LIBRARY shall have the right to occupy the Current Library Site after closing pursuant to the term of the Business Lease set forth in Exhibit "A" and incorporated herein.

10. The LIBRARY shall construct a library building to be owned by the CITY on Parcel Three which shall also be owned by the CITY. Once the LIBRARY has received a certificate of occupancy for the new library, the CITY shall lease to the LIBRARY Parcel Three and the LIBRARY building for ninety-nine (99) years with an option to purchase the LIBRARY building and property for One Dollar (\$1.00) after twenty (20) years in accordance with that certain Long Term Lease attached hereto as Exhibit "B" and subject to the CITY'S right of termination upon a breach as set forth in the Lease, this Agreement and attached exhibits.

11. The CITY, LIBRARY, CRA and Palm Beach County have entered into an Agreement dated November 12, 2002 that is hereby incorporated as if fully set forth herein and is attached as Exhibit "C" to this Agreement. Any funds to be expended pursuant to Exhibit "C" by the CITY or CRA are in addition to the moneys set forth in this Agreement.

12. The CITY and the LIBRARY have entered into an Agreement dated March 20, 2001 and Amendment No. 1 dated October 2, 2001 thereto regarding the Library Project and the Agreement and Amendment No. 1 are incorporated as if fully set forth herein and are attached as Exhibit "D" to this Agreement provided, however, the payment terms on the matching funds in Paragraph 2 of the March 20, 2001 agreement as amended is modified as set forth in this Agreement and Exhibits "E", "F" and "G". The duties and responsibilities set forth in this Agreement are additional to the duties set forth in Exhibit "D" except as modified herein.

13. The CITY is the Grantee under the Grant Agreement dated December 9, 2002 attached hereto and incorporated as if fully set forth herein and attached as Exhibit "E" to this Agreement The LIBRARY agrees to perform the duties of the CITY set forth in the Grant Agreement referenced in this paragraph and comply with the Agreement and Amendment No. 1 as described in Paragraph 10, and comply with all the duties and obligations as set forth in this Agreement and all exhibits hereto; provided, however, the CITY, pursuant to the grant, will disburse all funds for expenses incurred after the date of this agreement.

14. The LIBRARY shall deposit with the CITY \$3,200,000.00 prior to December 20, 2003 for the LIBRARY project. In addition, the LIBRARY shall deposit all other funds necessary to complete the LIBRARY construction as may be required in excess of payments set forth in this Agreement and exhibits hereto in a sufficient amount and in a timely manner in order to complete the construction of the LIBRARY project. The funds will be deposited in a separate LIBRARY Construction Fund Account. The CITY will deposit additional funds for the library in the Library Construction Fund Account in the sum of \$800,000 (consisting of the \$500,000 match and an additional \$300,000) as a Bridge Loan



provided that the LIBRARY shall repay the CITY \$100,000 by August 31, 2004; \$450,000 by June 30, 2005; \$100,000 by August 31, 2005; \$50,000 by December 31, 2005; \$100,000 by August 31, 2006. The

\$800,000 loan shall be evidenced by a Promissory Note and secured by a Security Agreement and the Tripartite Agreement and exhibits thereto. If the breach occurs after the receipt of a certificate of occupancy, the Lease shall terminate and all option rights shall be null and void. The CITY also retains all the rights under the Security Agreement and Promissory Note and Tripartite Interlocal Agreement and exhibits thereto. The LIBRARY shall pay all documentary taxes and all other fees including recording as may be necessary.

15. The CITY shall provide a grant to the LIBRARY of up to \$2.5 million dollars to be put in the LIBRARY construction loan account for library construction pursuant to the terms of this Agreement and Exhibits attached hereto, which includes the Construction Agreement attached hereto and hereby incorporated as if fully set forth herein as Exhibit "H". The CITY may disburse all or part of the funds prior to July 1, 2004, but shall not be required to disburse prior to July 1, 2004 any of the \$2.5 million dollars or the \$800,000.00 bridge loan referenced in Paragraph 13 above,

1 6. If any funds remain due and owing after the LIBRARY obtains a certificate of occupancy that are not timely made when due or made 90 days after notice of default is delivered, the CITY shall invoke the remedies under the Tripartite and Interlocal Agreement. The Lease shall be terminated and the option rights shall automatically be null and void. The CITY shall have full title to the property and building, including the books, furniture and equipment which is the collateral for all funds uncollected by the CITY from LIBRARY. The LIBRARY'S long term lease and option to purchase shall be void.

17. The CRA shall pay to the CITY a total of \$666,000.00 dollars towards the CITY'S \$2.5 million dollar commitment to the LIBRARY, in addition to the monies to be paid by the CRA as set forth in Exhibit "C" hereto. The CRA shall pay the \$666,000.00 to the CITY in one lump sum within 5 business days of the City's written request for the funds. The CITY shall deposit the funds in the Library Building Fund to be used for construction of the LIBRARY. The CITY will expend the CITY'S contribution and the LIBRARY'S initial contribution prior to making the written request for the lump sum payment.

18. The LIBRARY, in consideration of the promises set forth herein agrees to give to the CITY right to use one hundred seventy (137) of the LIBRARY'S 170 parking spaces ten (10) days each calendar year during normal business hours after the new library and parking is constructed (subject to the CITY'S rights in the event of a breach to retain the entire sight). This use is additional to the CITY'S use of the parking lot pursuant to its agreements with the County. The parties will meet within thirty (30) days after the date of the CITY'S notice to the LIBRARY of its need to use the parking spaces to work out the logistics of such use with the LIBRARY and the LIBRARY agrees that if no other accommodations can be worked out within a period of ten (10) days from the date of said meeting that the LIBRARY will be closed or part of the LIBRARY will be closed to accommodate the CITY'S use of the spaces during the time the CITY so designates. This right of use by the CITY shall continue for as long as the CITY determines it needs the spaces. It is the duty of the LIBRARY to work with the county and enter any agreements it deems necessary with the County in order to make sure the CITY has the right to use the 137 spaces as herein provided.

1 9. LIBRARY agrees that if any taxes, fees or special assessments or charges of any kind or nature are assessed against any transaction covered by this Agreement or any attachments or amendments thereto, by any governmental entity that LIBRARY shall pay all such taxes, assessments, fees and charges, or deposit with the CITY sufficient funds to pay all such taxes, assessments, fees and charges that will be disbursed by the CITY.

20. This Agreement and attachments hereto constitute the entire agreement of the parties. To be effective, any modifications shall be in writing and signed by parties and by persons with authority to bind the parties. Modifications to any exhibits shall be in writing and shall be deemed to be included and incorporated herein without the need to amend the Tripartite and Interlocal Agreement; however, all parties to the Tripartite and Interlocal Agreement shall be notified and presented with a copy of the modified exhibit.

21 . This Agreement shall not be effective until signed by all parties.

22 Upon full execution of this Agreement, this Agreement (less attachments) shall be recorded in the Public Records of Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties have heretofore set their hands and seals on the day and year first above written.

ATTEST:

Barbara Gault

City Clerk

CITY OF DELRAY BEACH, FLORIDA

By: Jeff Perlman

Jeff Perlman, Mayor

Approved as to Form:

Susan A. Puley

City Attorney

ATTEST:

Diane Colonna

Print Name: DIANE COLONNA

SECRETARY

Approved as to Form:

DELRAY CH COMMUNITY  
REDEVELOPMENT AGENCY

By: John D. Weaver

John D. Weaver, Chairman

Attested by: DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC.

John J. Callahan

Print Name: JOHN J. CALLAHAN

Daniel M. Murtagh

Print Name: Daniel M. Murtagh

By: It's President



# EXHIBIT “A”

EXHIBIT "A" TO TRIPARTITE AND INTERLOCAL AGREEMENT  
BUSINESS LEASE

THIS AGREEMENT, entered into \_\_\_\_\_,  
this day of 2003 between the DELRAY BEACH COMMUNITY  
REDEVELOPMENT AGENCY,

hereinafter called the Lessor, party of the first part, and DELRAY BEACH PUBLIC LIBRARY  
ASSOCIATION, INC., of the County of Palm Beach and state of Florida, hereinafter called  
the Lessee or tenant, party of the second part:

WITNESSETH, That the said Lessor does this day lease unto said Lessee, and said  
Lessee does hereby hire and take as tenant under said Lessor approximately  
\_\_\_\_\_ square feet of space located at \_\_\_\_\_ to  
\_\_\_\_\_

be used and occupied by the Lessee for the purpose of \_\_\_\_\_  
and for no other purposes or uses whatsoever, for the term beginning on \_\_\_\_\_  
and terminating on the earlier of (i) 180-days written notice from the  
Lessee or (ii) three (3) years from the effective date of this Lease, at and for the agreed  
total rental of one dollar (\$1.00).

The following express stipulations and conditions are made a part of this lease and  
are hereby assented to by the Lessee:

FIRST: The Lessee shall not assign this lease, nor sub-let the premises, or any part  
thereof nor use the same, or any put thereof, nor permit the same, or any part thereof,  
to be used for any other purpose than as above stipulated, nor make any alterations

therein, and all additions thereto, without the written consent of the Lessor, and all additions, fixtures or improvements which may be made by Lessee except movable office furniture, shall become the property of the Lessor and remain upon the premises as a part thereof, and be surrendered with the premises at the termination of this lease.

SECOND: All personal property placed or moved in the premises above described shall be at the risk of the Lessee or owner thereof; and Lessor shall not be liable for any damage to said personal property, or to the Lessee arising from the bursting or leaking of water pipes, or from any act of negligence of any co-tenant or occupants of the building or of any other person whomsoever.

THIRD: That the tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the applicable fire prevention codes for the prevention of fires, at its own cost and expense.

FOURTH: The prompt payment of the rent for said premises upon the dates named, and the faithful observance of the rules and regulations printed upon this lease, and which are hereby made a part of this covenant, and of such other and further rules or regulations as may be hereafter made by the Lessor, are the conditions upon which the lease is made and accepted and any failure on the part of the Lessee to comply with the terms of said lease, or any of said rules and regulations now in existence, or which may be hereafter prescribed by the Lessor, shall at the option of the Lessor, work a forfeiture of this contract, and all of the rights of the Lessee hereunder.

FIFTH: If the Lessee shall abandon or vacate said premises before the end of the term of this lease, or shall suffer the rent to be in arrears, the Lessor may, at his option, forthwith cancel this lease or he may enter said premises as the agent of the Lessee, without being liable in any way therefor, and relet the premises with or without any furniture that may be therein, as the agent of the Lessee, at such price and upon such terms and for such duration of time as the Lessor may determine, and receive the rent therefor, applying the same to the payment of the rent due by these presents, and if the full rental herein provided shall not be realized by Lessor over and above the expenses to Lessor in such re-letting, the said Lessee shall pay any deficiency, and if



more than the full rental is realized Lessor will pay over to said Lessee the excess of demand.

SIXTH: Lessee agrees to pay the cost of Lessor's reasonable attorneys' fee incurred as a result of any litigation arising out of this "Business Lease."

SEVENTH: The Lessee agrees that he will pay all charges for rent, gas, electricity or other illumination, and for all water used on said premises, and should said charges for rent, light or water herein provided for at any time remain due and unpaid for the space of five days after the same shall have become due the Lessor may at its option consider the said Lessee tenant at sufferance and the entire rent for the rental

period then next ensuing shall at once be due and payable and may forthwith be collected by distress or otherwise.

EIGHTH: The said Lessee hereby pledges and assigns to the Lessor all the furniture, fixtures, goods, and chattels of said Lessee, which shall or may be brought or put on said premises as security for the payment of the rent herein reserved, and the Lessee agrees that the said lien may be enforced by distress foreclosure or otherwise at the election of the said Lessor, and does hereby agree to pay attorney's fees of ten percent of the amount so collected or found to be due, together with all costs and charges therefore incurred or paid by the Lessor.

NINTH: The Lessor or any of his agents, shall have the right to enter said premises during all reasonable hours, to examine the same to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof, or of said building, or to exhibit said premises. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions, which do not conform to this Agreement, or to the rules or regulations of the building.

TENTH: Lessee hereby accepts the promises in the condition they are in at the beginning of this lease and agrees to maintain said premises in the same condition, order and repair as they are at the commencement of said term, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to said Lessor immediately upon demand, any damage to water apparatus, or electric lights or any fixture, appliances or appurtenances of said premises, or of the building, caused by any act or neglect of Lessee, or of any person or persons in the employ or under the control of the Lessee.

ELEVENTH: It is expressly agreed and understood by and between the parties to this Agreement, that the landlord shall not be liable for any damage or injury by water, which may be sustained by the said tenant or other person or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of any other tenant or agents, or employees, or by reason of the breakage, leakage, or obstruction of the water, sewer or soil pipes, or other leakage in or about the said building.

TWELFTH: If the Lessee shall become insolvent or if bankruptcy proceedings shall be begun by or against the Lessee, before the end of said term the Lessor is hereby irrevocably authorized at its option, to forthwith cancel this lease, as for a default. Lessor

may elect to accept rent from such receiver, trustee, or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting Lessor's rights as contained in this contract, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above described property by virtue of this Contract.

THIRTEENTH: Lessee hereby waives and renounces for himself and family any and all homestead and exemption rights he may have now, or hereafter, under or by virtue of the constitution and laws of the State of Florida, or of any other State, or of the United States, as against the payment of said rental or any portion hereof, or any other obligation or damage that may accrue under the terms of this Agreement.

FOURTEENTH: This Contract shall bind the Lessor and its assigns or successors, and the heirs, assigns, personal representatives, or successors as the case may be, of the Lessee.

FIFTEENTH: It is understood and agreed between the parties hereto that time is of the essence of this Contract and this applies to all terms and conditions contained herein.

SIXTEENTH: It is understood and agreed between the parties hereto that written notice mailed or delivered to the premises leased hereunder shall constitute sufficient notice to the Lessee and written notice mailed or delivered to the office of the Lessor shall constitute sufficient notice to the Lessor, to comply with the term of this contract.

SEVENTEENTH: The rights of the Lessor under the foregoing shall be cumulative, and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

EIGHTEENTH: It is further understood and agreed between the parties hereto that any charges against the Lessee by the Lessor for services or for work done on the premises by order of the lease or otherwise accruing under this Contract shall be considered a rent due and shall be included in any lien for rent due and unpaid.

NINETEENTH: It is hereby understood and agreed that any signs or advertising to be used, including awnings, in connection with the premises leased hereunder shall be first submitted to the Lessor for approval before installation of same.

TWENTIETH: Notwithstanding any other provision of this lease to the contrary, the Lessee shall be responsible for the payment of all electric, gas, telephone and other public utilities furnished to the demised premises

TWENTY-FIRST: Notwithstanding any other provision of this lease to the contrary, the Lessee shall be responsible for maintaining the interior of the demised premises, including but not limited to the air conditioning system servicing the subject demised premises.

TWENTY-SECOND: Notwithstanding any other provision of this lease to the contrary, the Lessee shall be responsible for maintaining and paying for casualty insurance for the leased premises replacing any breakage of plate glass appurtenant to the subject demised premises.

TWENTY-THIRD: The Lessee agrees that as a condition to this lease, the Lessee shall at all times during the term hereof maintain public liability insurance with limits of not less than \$1 million for individual claims/\$1 million for aggregate claim resulting from personal injuries or Property damage occurring on or within the subject demised premises and such insurance policy shall expressly name the Lessor as a coinsured and the Lessee shall furnish the Lessor with a certificate of such insurance within five (5) days from the execution of this Lease.

TWENTY-FOURTH: The Lessee is hereby prohibited from making any improvements to the subject real property without the written consent of the Lessor. In the event a Claim of Lien shall be recorded against the subject property as a result of any of Lessee's actions and such Lien shall not be discharged of record within ten (10) days thereafter, the Lessee shall be deemed to be in default pursuant to the terms of this Lease.

TWENTY-FIFTH: Notwithstanding any provision of this Lease to the contrary the leased premises are accepted by Lessee in their "as is" condition and Lessee shall be solely responsible for the maintenance and repairs required with respect thereto.

TWENTY-SIXTH: In the event the Delray Beach Public Library Association, Inc., as Lessee, through no fault of its own, shall not obtain the Certificate of Occupancy to the public library being constructed on Parcel Three as defined and referred to in that certain Tripartite and Interlocal Agreement to which this Business Lease is attached, by the expiration of this Lease, then the said Delray Beach Public Library Association, Inc., shall have the right to extend this Business Lease upon the same terms and conditions set forth herein for an additional period of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this instrument for the purpose herein expressed, the day and year above written.

Signed sealed and delivered in the presence of:

DELRAY B CH  
COMMUNITY REDEVE P  
NT

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

Print Name: DIANE COLONNA  
SECRETARY

AGENCY.

As to Lessor:

By:  
Print

As to Lessee:

DELRAY BEACH PUBLIC  
LIBRARY ASSOCIATION, INC.

Print Name: John J. Callahan

By: Daniel M. Martz  
Print Name: Daniel M. Martz  
Title: President of Board

Print Name: VERONICA F. DI SILVESTRO

EXHIBITB  
TO LEASE

CONTRACT FOR SALE AND PURCHASE

PARTIES: CITY OF DELRAY BEACH, ("Seller"), of 100 N.W. 1st Avenue, Delray Beach, Florida 33444 (Phone: 561-243-7000), and DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC., ("Buyer"), of

(Phone: \_\_\_\_\_) hereby agree that the Seller shall sell and the Buyer shall buy the following described Real Property and Personal Property (collectively "21Qpgrty") upon the following terms and conditions, which NCLUDE the Standards for Real Estate ("Standard(s)") on the reverse side hereof or attached hereto and riders and any addenda to this Contract for Sale and Purchase ("Contract").

1. DESCRIPTION:

(a) Legal description of the Real Property located in Palm Beach County, Florida:

Lots 1 through 4, Block 53, TOWN OF LINTON, (now Delray Beach), according to the Plat thereof s recorded in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida, less the right-of-way for West Atlantic Avenue.

(b) Street address, city, zip, of the Property is:

\_\_\_\_\_  
\_\_\_\_\_

(c) Personalty:

\_\_\_\_\_  
\_\_\_\_\_

11. PURCHASE PRICE: .....  
PAYMENT:

111. TIME FOR ACCEPTANCE; EFFECTIVE DATE: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before \_\_\_\_\_ this offer will be withdrawn. The date of Contract ("Effective Date") will be the date when the Buyer gives notice of its exercise of the option to purchase under that certain Ground Lease between the Seller and the Buyer. A facsimile copy of this Contract and any signatures thereon shall be considered for all purposes as originals. IV. TITLE EVIDENCE: Within twenty-one (21) days after the effective date of this Confract, (CHECK ONLY ONE): C] Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney; OR Buyer shall, at Buyer's expense obtain (CHECK ONLY ONE): abstract of title or (2) L] title insurance commitment (with legible copies of insfruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.

V. CLOSING DATE: This transaction shall be closed and the deed and other closing papers delivered on not sooner than thirty (30) days after Buyer's exercise of the option to purchase and not later than one hundred fifty (150) days after Buyer's exercise of the option to purchase unless modified by other provisions of Contract. In any event the Seller would be given at least fifteen (15) days advance written notice.

vi. RESTRICTIONS; EASEMENTS; LIMITATIONS: Buyer shall take title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record (easements are to be located contiguous to Real Property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines, unless otherwise specified herein); taxes for year of closing and subsequent years; assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided that there exists at closing no violation of the foregoing and none prevent use of Property for public library purposes.

VII. OCCUPANCY: Seller warrants that there are no parties in occupancy other than Seller, but if Property is intended to be rented or occupied beyond closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F. Seller shall deliver occupancy of Property to Buyer at the time of closing unless otherwise stated herein. If occupancy is to be delivered before closing, Buyer assumes all risk of loss to Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy unless otherwise stated herein.

**TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.

IX. RIDERS: (CHECK those Riders which are applicable AND are attached to this Contract):  
☐ "As Is"

X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer (I) may assign and thereby be released from any further liability under this Contract provided that the assignment must occur at least ten (10) days prior to closing.

**XI. DISCLOSURES:**

- (a) Radon is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon or Radon testing may be obtained from your County Health unit.
- (b) Buyer may have determined the energy efficiency rating of the residential building, if any, is located on the Real Property.
- (c) If the Real Property includes pre-1978 residential housing, then Paragraph X(h) is mandatory.

**XII. MAXIMUM REPAIR COSTS:** Seller shall not be responsible for payments in excess of:

- (a) \$-0- for treatment and repair under Standard D (if blank, then 2% of the Purchase Price).
  - (b) \$-0- for repair and replacement under Standard N (if blank, then 3% of the Purchase Price).
- XIII. SPECIAL CLAUSES; ADDENDA:** If additional are to be provided, attached addendum and CHECK HERE ☐

DELRAY BEACH PUBLIC LIBRARY  
ASSOCIATION, NC.

CITY OF DELRAY BEACH,  
FLORIDA

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Buyer

---

Date

---

Seller

---

Date

Social Security

Social Security or Tax ID No. or Tax D No.

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ADDENDUM TO CONTRACT FOR SALE AND PURCHASE

SELLER: CITY OF DELRAY BEACH

BUYER: DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, NC.

PROPERTY ADDRESS:\_\_\_\_\_

"IV. SPECIAL CLAUSES (Continued):

- A. The property is being sold in its "as is" condition.
- B. The parties warrant and agree that there is no broker involved in this transaction.



## STANDARDS FOR REAL ESTATE TRANSACTIONS

**A. EVIDENCE OF TITLE:** (1) An abstract of title prepared or brought current by a reputable and existing abstract firm (if not existing then certified as correct by an existing firm) purporting to be as accurate synopsis of the instruments affecting title to Real Property recorded in the public records of the county wherein Real Property is located, through Effective Date. It shall commence with the earliest public records, or such later date as may be customary in the county. Upon closing of this Contract, the abstract shall become the property of Buyer, subject to the right of retention thereof by first mortgagee until fully Paid; (2) the title insurance commitment issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's title to Real Property, subject only to liens, encumbrances, exceptions or qualification provided in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey a marketable title subject only to liens, encumbrances, exceptions or qualifications set forth in Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 30 days, if abstract, or 5 days, if title commitment, from date of receiving evidence of title to examine it. If title is found defective, Buyer shall, within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defect(s), failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall make diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall immediately be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) in title within the time provided therefor. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligation under this Contract.

**B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a 30 day period in the event of default if a first mortgage and a 15 day grace period if second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior lien and encumbrances to be kept in good standing and forbid modifications of or future advances under prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller; but Seller may only require clauses customarily found in mortgages, mortgage notes, and security agreements generally utilized by saving and loan institutions or state or national banks located in the county wherein Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded financing statements. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

**c. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title, may have Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others, or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

~~**D. TERMITES:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have Real Property inspected by a Florida Certified Pest Control Operator ("Operator") to determine if there is any visible active termite infestation or visible existing damage from termite infestation in the Property. If either or both are found, Buyer will have 4 days from date of written notice thereof within which to have cost of treatment, if required, estimated by the Operator and all damage inspected and estimated by a licensed builder or general contractor. Seller shall pay valid costs of treatment and repair of all damage up to the amount provided in Paragraph XIII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller or Buyer may elect to proceed with the transaction, and receive a credit at closing of an amount provided in Paragraph XIII(a). "Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.~~

**E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for the intended use as described in Paragraph VII hereof, title to which is in accordance with Standard A.

~~F. LEASES: Seller shall, not less than 15 days before closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenants to confirm such information. Seller shall, at closing, deliver and assign all original leases to Buyer.~~

G. LIENS: Seller shall furnish to Buyer at time of closing as affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to Property for 90 days immediately preceding date of closing. If Property has been improved, or repaired within that time, Seller shall deliver releases or waivers of mechanics' liens executed by all general contractors, subcontractors, suppliers, and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a mechanic's lien or a claim for damages have been paid or will be paid at closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county where Real property is located, at the office of the attorney or other closing agent designated by Seller.

I. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day. Time is of the essence in this Contract.

J. DOCUMENTS FOR CLOSING: Seller shall furnish deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters, and corrective instruments. Buyer shall furnish closing statement, mortgage, mortgage note, security agreement, and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording corrective instruments shall be paid by Seller. Documentary and intangible tax on the purchase money mortgage and any mortgage assumed, and recording purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title or abstract charge, title examination, and settlement and closing fee, shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations to be made through day prior to closing or occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed, and current year's assessments are available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at closing.

M. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered as certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

**N. — INSPECTION, REPAIR AND MAINTENANCE:** ~~Seller warrants that, as of 10 days prior to closing, the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage do not have any VISIBLE EVIDENCE of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in WORKING CONDITION. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may, at Buyer's expense, have inspections made of those items by a firm or individual specializing in home inspections and hold an occupational license for such purpose (if required) or by an appropriately licensed Florida contractor. Buyer shall, prior to Buyer's occupancy, or not less than 10 days prior to closing, whichever occurs first, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacement are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XIII(b). Seller is not required to make repairs or replacements of a cosmetic nature unless caused by a defect Seller is responsible to repair or replace. If the cost of such repair or replacement exceeds the amount provided in Paragraph XIII(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to closing, the cost thereof shall be paid into escrow at closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted.~~

o. **RISK OF LOSS:** If the Property is damaged by fire or other casualty before closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Seller and closing shall proceed pursuant to the terms of Contract with restoration costs escrowed at closing. If the cost of the restoration exceeds 3% of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or of canceling Contract and receiving return of deposit(s).

**P. PROCEEDS OF SALE; CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If an abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. All closing proceeds shall be held in escrow by Seller's attorney or other mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and simultaneously with such repayment, Buyer shall return Personalty and vacate Real Property and reconvey the Property to Seller by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. If a portion of the purchase price is to be derived from institutional financing or refinancing, requirements of the lending institution as to place, time of day and procedures for closing, and for disbursement of mortgage proceeds shall control over contrary provision in this Contract. Seller shall have the right to require from the lending institution a written commitment that it will not withhold disbursement of mortgage proceeds as a result of any title defect attributable to Buyer-mortgagor. The escrow and closing procedure required by this Standard may be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended.

Q. **ESCROW:** Any escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of Failure of clearance of funds shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties or Agent may deposit with the clerk of the circuit court having jurisdiction of the dispute. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, P.S., as amended. Any suit between Buyer and Seller where Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded a court costs in favor of the

prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to this escrow, unless such misdelivery is due to willful breach of Contract or gross negligence of Agent.

**R. ATTORNEY FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation which, for the purposes of this Standard, shall include Seller, Buyer, and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs, and expenses.

**s. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified (including payment of all deposit(s)), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If, for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

**T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE:** Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for any party shall be as effective as if given by or to that party.

**U. CONVEYANCE:** Seller shall convey title to Real Property by special warranty deed, trustee's personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for

**V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**W. WARRANTIES:** Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.



# EXHIBIT“C”



# R2002 1980

## AGREEMENT

NOV 12 2002

This Agreement is made and entered into on NOV 12 2002 between the Palm Beach County ("County"), a political subdivision of the State of Florida, and the City of Delray Beach ("City"), a municipal corporation existing under the laws of the State of Florida, and the Delray Beach Public Library, ("Library"), a Florida Corporation Not for Profit with a tax id number of 59-0217683 and the Delray Beach Community Redevelopment Agency **"Agency"**, an agency established pursuant to Florida Statute Section 163, Part III.

## WITNESSTH

WHEREAS, the City, the Agency and County first entered into an interlocal agreement on August 12, 1986 (R86-1201), for the purpose of siting the South County Courthouse, which Interlocal Agreement was subsequently amended twice on August 17, 1993 and January 14, 1997; and

WHEREAS, pursuant to that Interlocal Agreement the County constructed a courthouse and other governmental facilities and currently is planning an expansion to those facilities, and

WHEREAS, the City and the Library wish to locate a new library on the property adjacent to the County Courthouse (a property originally intended to be conveyed to the County), share parking between the library and the courthouse, and reserve the City's option to fund a future parking structure expansion on the County property for its needs; and

• WHEREAS, the Library and the County are agreeing to a development and funding plan for the shared facilities, and

WHEREAS, the City has short and long term obligations toward the development of both the Library, as the owner of the Library property, and to the County pursuant to the interlocal Agreement; and

WHEREAS, this Agreement will terminate the original Interlocal Agreement, as amended, and incorporates various terms of that agreement into this Agreement.

NOW THEREFORE, in conjunction with the mutual covenants, promises and representations contained herein, the parties hereto agree as follows.

### Section I: Purpose

- 1.01 The purpose of this Agreement is to; 1) document the previous unsatisfied commitments of the City, County and Agency which were contained in Agreement R86-1201, as amended, and 2) set forth the terms under which the County will design, construct, and operate parking

#### EXHIBIT C

facilities on its property for use by employees and visitors to the courthouse, County owned facilities, and the proposed Library. Exhibit I depicts all properties referenced in this Agreement.

### Section 2: Definitions

- 2.01 Alley Property: The real property to be conveyed with a reverter in favor of the County, to the City, after abandonment and the City's conveyance of the northernmost half to the County, pursuant to Section 13.04 of this Agreement.
- 2.02 Construction Contract: A contract between the County and a general contractor registered in the State of Florida for the purpose of constructing the Courthouse- Phase I Project.
- 2.03 County's Architect: A firm or team of professional architects and engineers that have an agreement with the County for the design of the South County Courthouse Expansion Project - Phases 1, II, and. [II..
- 2.04 Courthouse Expansion Project: The addition of up to 75,000 square feet of building, construction of parking on both the east and west sides of SW Second Avenue (from SW Atlantic Ave to SW 1<sup>st</sup> St.), interior renovations and all other site work attendant to the expansion of the South County Courthouse in three phases.
- 2.05 Courthouse - Phase I: The first construction phase of the Courthouse Expansion Project which includes the construction of the parking, and all attendant improvements to the property pertaining to the parking, for joint use by the County and the Library, on the east  
•side of SW Second Ave.
- 2.06 Courthouse - Phase I Project Budget: The sum of funds received from the Library and the City pursuant to Section 6 as well the County's contribution to the construction costs.

- 2.07 Courthouse - Phase 2: The second construction phase of the Courthouse Expansion Project which includes the addition of up to 75,000 sf and associated site work on the west side of SW Second Avenue.
- 2.08 Courthouse - Phase 3: The third construction phase of the Courthouse Expansion Project which includes renovations to the existing Courthouse building.
- 2.09 Courthouse Property: The real property owned by the County at the time of execution of this Agreement, on east and west side of SW Second Avenue, south of Atlantic Ave.
- 2.10 Design Contract: A contract between the County and PGAL, Architects dated November 10, 2001 for the design and construction administration of the Courthouse Expansion Project.

Agreement

2.1 Library's Architect: A firm or team of professional architects and engineers that have an agreement with the Library for the design of the Library Project.

2.12 Library Design Amendment: The Consultant Services Authorization issued to the County's Architect authorizing the scope of work associated with the design of shared use parking garage, surface parking facilities, and all attendant improvements which is the financial responsibility of the Library for the Courthouse - Phase I Project.

2.13 Library Property: The real property owned by the City and leased to the Library pursuant to a separate agreement, as well as the Alley Property to be conveyed to the Library pursuant to Section 13.04.

2.14 Parking Facilities: All improvements made to the Courthouse Property for joint use by the Library and County as part of the Phase I project.

2.15 Parking Master Plan: The conceptual program describing the improvements to be used as the basis for the design of the Courthouse - Phase I project.

2.16 SPRAB: An advisory board of the City of Delray Beach with a formal name of Site Plan Review and Appearance Board

### Section 3: Master Plan for Parking Garage and Surface Parking

3.01 The County's Architect has prepared a master plan for a parking garage and surface parking on the Courthouse Property, a copy of which is attached to this Agreement as Exhibit 2. The purpose of the Parking Master Plan is to identify the approximate number of spaces which will be constructed, the general configuration of the parking, the height of the parking structure, setbacks from rights of way, number of disabled parking spaces, and location of elevators and stairwells.

3.02 The City Staff represents that it has reviewed the Parking Master Plan presented as Exhibit 2 to this Agreement and that Staff has thoroughly reviewed the plans as part of a SPRAB review and application process, supports the orientation and size of the garage, setbacks, height, entrance/exit locations and number of spaces and is recommending that the waivers required by the City's land development regulations be granted. A copy of such recommendation is attached as Exhibit 3. The City acknowledges that Staff's recommendation and support of the waivers is a material consideration for the County and Library in entering into this Agreement and that it relied on such recommendation in determining the feasibility and cost of the Parking Facilities. The County and the Library understand that they must individually pursue approval by the City for their respective developments



- 3.03 The Library agrees to reimburse the County up to \$100,000 the costs associated with the preparation of the Parking Master Plan, an effort which was undertaken prior to the execution of this Agreement.
- 3.04 The Library agrees to design and construct the library in a manner consistent with the site plan attached as Exhibit 2 and assumptions per Exhibit 5 to this Agreement. To the extent that the Library desires to modify its site plan from that attached, all changes must be approved in writing by the County. The County may not unreasonably withhold approval but reserves its right to reject any change which negatively impacts the Courthouse, Parking Facilities or comfort or aesthetics of courthouse employees and patrons when entering or exiting the Courthouse or Parking Facilities.

#### Section 4: Design of Parking Garage and Surface Parking

- 4.01 The County's Architect shall provide the County with the fee cost associated with the design and construction administration of Courthouse Project - Phase . The County's and the Library's Project Representative shall jointly negotiate the fee with the County's Architect resulting in the County preparing a consultant services authorization which shall be known as the Library Design Amendment. The Library shall provide the County a letter stating that it accepts the terms and conditions of the Library Design Amendment prior to the Amendment being executed by the Board of County Commissioners for incorporation into the contract with the County's Architect.
- 4.02 The Library shall commit its approval of the Library Design Amendment to writing, at which time, the full fee of \$94,000 shall be the responsibility of the Library. The Library shall reimburse the County upon completion of the work and receipt of an invoice for same. In the event that the City agrees to contribute funding toward the Library Design Amendment, the Library shall still be obligated to pay the County the full fee and the Library and City shall work out the terms and amount of the contribution toward the Library Design Amendment between themselves.
- 4.03 In the event that the Library requests a change which results in an increase in the amount of the Library Design Amendment, the County Project Representative shall request the County's Architect prepare an estimate of the design fees associated with the request as well as an estimate of the construction costs associated with the request. Based on this information, the Library will decide if it desires to proceed and shall provide the County with a letter stating that it accepts the fees. The County will then amend the Library Design Amendment accordingly.
- 4.04 The Library and the County agree that the Parking Master Plan will be used as the basis for design of the Parking Facilities and that both the County and the Library will consider the design to be consistent with the Master Plan provided that the Library has 170

spaces allocated for its use, the design includes; 1) the number of elevators and stairwells in the

same general location as shown on the Master Plan, and 2) the same number and configuration of access points as are shown on the Master Plan. In the event that modifications, changes or deviations are required to the items listed above, the County shall seek and secure the written approval of the Library. Approval of such modifications, changes or deviations shall not be unreasonably withheld and shall be made in a time frame which does not cause a delay in the County's Architect's prosecution of the Design Amendments or Design Contract. The County's Architect shall make every effort to provide as much notice as possible to the Library of the nature of the modification, change and/or deviation where possible. The requirements to secure the Library's approval as well as the notice provisions of this Section will be included in the Library Design Amendment.

4.05 As required by the Design Contract, the County's Architect will provide separate periodic statements of probable costs associated with the work defined by the Library Design Amendment, as of that date. In the event that the statement of probable costs for the Courthouse - Phase I exceeds the funds available in the Courthouse - Phase I Project Budget, 1) the County and the Library will agree to reduce the scope of work, or 2) the Library will agree to increase the budget. In the event that the Courthouse- Phase I budget is to be increased, a written statement from the Library directing the County to proceed with the scope as currently stated, providing an affirmative acknowledgment of the additional costs and directing the County to proceed, will be required.

4.06 The County will include in the design, under slab conduit for four pay stations on the ground level and two pay stations on the second and third level of the parking garage for future use. The cost of the pay stations, installation and/or service to the pay stations will be borne by the party who desires that the pay station be installed, by some other separate agreement that may be agreed upon at a later date for that specific purpose. In the event that pay stations are desired, the initiating party will request approval from the County demonstrating that the installation and use of same will not interfere or modify the use of the parking by Courthouse customers, which approval by the County shall not be unreasonably withheld.

## Section 5: Construction of Parking Garage and Surface Parking

5.01 The County shall procure construction services in accordance with applicable State and local procurement requirements. The form of the contract shall be a lump sum except where mutually agreed upon by the County and the Library. The Library acknowledges that the County prefers not to contract for any work on a unit price basis.

5.02 Upon receipt of the bids, the County shall make a recommendation for award of a construction contract to the lowest, responsive, responsible bidder. Concurrent with the notice of intent to award, the County shall provide Library with the costs of construction, plus a 5% contingency, less a reduction for the County contribution to the construction costs pursuant to Section 6, and less \$534,000. The Library shall then forward to the County, funds in an amount equal to the amount identified in the notice provided by the County and as

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described above. The Library funds received by the County shall be placed in an interest bearing account with the interest accruing to the contingency.

5.03 Upon execution of the Construction Contract by the County, the County shall provide notice to the Library and the City.

5.04 During the course of construction, changes to the Construction Contract may be required. The cost of all construction changes, but for those which are initiated by the County, for the sole benefit of the Courthouse operation, will be 100% eligible for reimbursement from the 5% contingency funds transferred to the County to create the Courthouse • Phase I Project Budget. The County will be responsible for the total cost of any changes made for the sole benefit of the courthouse operations.

5.041 All funds required for changes will be from the Courthouse- Phase I Project Budget Contingency Line.

5.042 The County reserves the right to not pursue changes initiated by the Library for the sole benefit of the Library if such change, in the County's sole opinion, causes an unacceptable delay to the Courthouse- Phase Project Schedule, causes a safety concern or is contrary to any existing regulatory approvals held by the County..-

5.05 The County and the County's Architect shall be responsible for ensuring that the Courthouse - Phase I Project is constructed according to the design documents.

5.06 The County shall be responsible for following all State and local laws, ordinances and requirements for the procurement and administration of public works projects.

5.07 All contractors of the Library shall furnish, for the benefit of the County, City, CRA and Library, payment and performance bond equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes, The County shall also require contractors to furnish satisfactory evidence of statutory worker's compensation insurance, comprehensive general liability insurance comprehensive automobile

insurance and physical damage insurance on a Builder's Risk form with the interest of the County, City, CRA and the Library endorsed thereon.

5.08 In order to provide adequate staging area for the construction of the Parking Facilities, the Library agrees that it will not commence construction on the Library Property until after final completion of the Parking Facilities. After final completion of the Parking Facilities, the County agrees to allow the Library to use a portion of the Parking Facilities as a staging area for construction upon the Library Property. The portion of the Parking Facilities to be used as staging for ~~construction~~ on the Library Property and the conditions of use are identified in Exhibit 6 to this Agreement. The ability to use a portion of the Parking Facilities for



staging shall expire upon any party exercising its options pursuant to Section 11 of this Agreement.

## Section 6: Courthouse- Phase I Project Funding

- 6.01 The material consideration for the County entering into this Agreement was that the Library agreed to pay all costs associated with the Parking Facilities beyond those which the County would have expended to develop surface parking for the courthouse operations only. As such, the County agrees to pay \$ 1,750 per parking space toward each space constructed in excess of 170. The remainder of the costs associated with the Courthouse - Phase I Construction will be borne by the Library, less the \$334,000 to be paid by the CRA, less \$200,000 to be paid by the City for this specific purpose, pursuant to Section 9.13.
- 6.02 The Library recognizes that the estimate for the Courthouse Phase I Construction is in excess of \$4,000,000 and has demonstrated that it has, as of the date of this Agreement, sufficient funds for the total amount of the estimate, less the County's contribution pursuant to this Section, in place to fund its portion of the Courthouse - Phase I Construction.
- 6.03 Within 30 days of the Library's receipt of the notice of intent to award mentioned in Section 5.02, the Library shall provide the County with the total amount of the funds identified in the notice and authorize the County to proceed with construction. The sum of the funds received from the Library and the City pursuant to this Section as well as the County's contribution to the construction costs will become the Courthouse - Phase I Project Budget. If the Library does not have the total amount of funds required, the Library must decide whether to either; 1) reduce the scope of the project (deleted items must be approved by the County, which approval will not be unreasonably withheld), or 2) terminate the Agreement pursuant to Section 17.01.
- 6.04 The County shall reimburse the Library, any funds transferred to the County pursuant to Section 6.03 which remain after Final Acceptance and Final Payment of the Courthouse Phase I Project and after the resolution of all claims by the Contractor, County Architect or third parties.
- 6.05 Each month after the commencement of construction continuing through the Final Acceptance as described in Section 6.04, the County shall provide the Library with copies of the contractor's pay application and a contract summary showing the amount paid, and any change orders authorized, and the status of the 5% contingency. The County shall provide the Library with a notice if the County believes that the Project will require funds beyond that in the contingencies.

- 6.06 After ~~construction~~ commences and in the event that the County requests a change in the Parking Facilities, the change which benefits solely the County; the County shall bear the total cost of the change. The cost of changes made necessary as a result of unforeseen

conditions, utility relocation, imposition of conditions of approval by the City, design errors or omissions, or any other change but for those specifically described in the first sentence of this subsection shall be borne by the Courthouse- Phase [ Project Budget.

## Section 7: Ownership of Parking Facilities

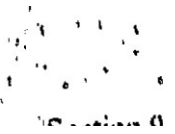
- 7.01 All real and personal property shall be assets of the County, despite the Library's financial contribution to their design, construction, and/or purchase. Notwithstanding the foregoing, the Library, City and Agency, its successors and assigned, shall be allowed to use same pursuant to the terms set forth in this Agreement.

## Section 8: Administrative Requirements of this Agreement

- 8.01 During the design and construction phases of this Agreement described in Sections 3 through 5, the Library shall be viewed as a County Department without creating liability and shall be included in design reviews as are County Departments. In addition to those approvals specifically required by this Agreement, from time to time, the Library will be afforded the same reviews and approvals as other County department.
- 8.02 Within 15 days of the execution of this Agreement, the Library, City and County shall provide each other with the names, phone and fax numbers as well as e-mail addresses of each party's Project Representative.
- 8.03 Within 15 days of the execution of this Agreement, the Library is to Provide the County with a list of persons/positions which are authorized to approve increases and/or decreases to the amount to be paid to the County pursuant to this Agreement.
- 8.04 Invoices to the Library and the City shall be in a form mutually agreed upon by the County, the City and the Library prior to submittal of the first invoice.
- 8.05 Upon receipt of any invoice, the Library and the City will immediately review same and report any discrepancies to the County within 10 days of receipt. Payment will be due to the county within 30 days of receipt of the invoice, Payments shall be sent to:

## Facilities Development & Operations

Fiscal Manager  
3323 Belvedere Rd., Building 503  
West Palm Beach, Fl. 33406  
Attn: South County Courthouse Parking Agreement #



## Section 9: City Responsibilities and Obligations

- 9.01 The City agrees to initiate and complete the processing of all necessary changes to the City's Comprehensive Land Use Plan to make the proposed project consistent and in conformity with the City's code of laws and ordinances. The County shall be required to submit the proposed project for development review pursuant to the City's normal review process. The City agrees to expedite the review of such approvals.
- 9.02 The City has previously determined that the County can expand the South County Courthouse facility by an additional 75,000 square feet and re-affirms its agreement that any site plan approvals, building permit applications or other development approvals required for the expansion of the Courthouse and parking shall be reviewed based upon the Delray Beach Land Development Regulations and Code of Ordinances in force as of January 14, 1997 to allow the County to develop its property pursuant to the 1997 regulations, if they are determined to be more favorable than those in effect at the time that the County actually submits for the necessary land development approvals.
- 9.03 The City agrees to design, permit, construct and maintain storm water facilities to accommodate, off-site, any storm water of the Library Property and the Parking Facilities beyond that which the County's underground exfiltration system can accommodate, at no cost to the County nor the Library. The County's intent is to accommodate on-site storm water requirements to meet pretreatment water quality standards of the City and the SFWMD through an underground exfiltration system.
- 9.04 The County represents and confirms that water, sewer and storm drainage facilities are available at the street, contiguous to the properties, and there is adequate capacity to service 150,000 square feet of the courthouse and/or other governmental facilities at no cost to the County. When utilities are available and present to the site, the County agrees to pay all standard connection charges and user charges pursuant to current City policy. The City agrees to complete, at its sole cost, all utility relocation, upgrades or modifications necessary to support the 150,000 square feet of courthouse and/or governmental facilities prior to commencement of Phase I construction or no later than May 15, 2003. The parties agree that such utilities shall be located within the SW 2nd Ave right of way, except where may

be approved by the County. The County shall provide the information pertaining to its requirements no later than December 1, 2002.

9.05 The City represents and confirms that there currently exists, or provisions have been made at no cost to the County for all required stacking and deceleration lanes and other roadway modifications to accommodate traffic associated with the development of the County property.

9.06 The City acknowledges that adequate site lighting is necessary to enhance the safety and security of the individuals utilizing the site. The City agrees to permit site lighting, provided that such lighting shall comply with City codes and land development regulations.

9.07 The City agrees to initiate and process the abandonment requested by the County for the Afley Property, the north south alley way, and any other alleyways not currently but which may exist within the Courthouse Property. Said alleyways shall be conveyed to the County no later than April 1, 2003, or in the case of the unknown alleyways, within 120 days of the County's discovery of same and request to City. Such abandonment shall exclude such underground utility easements as the City shall require for existing underground utilities, provided however, that in the event that the City receives notice from the County that the County intends to construct a structure(s) on such abandoned rights of way where underground utilities exist, the City shall at its sole costs and expense, remove, relocate or abandon said underground utilities. The City shall provide the County with a marketable title insurance policy in an amount equal to the fair market value of the property subject to the abandonment at the time the abandonment is completed. The City shall bear the full cost of the processing all such abandonments.

9.08 If, in the sole discretion of the Chief Judge of the Fifteenth Judicial Circuit, there is an apprehension of inadequate site security at site, then upon written request of the Chief Judge, the City agrees to assign one full time police officer to the security of the site and immediate surrounding areas, full time, extending from one hour before and continuing until one hour after the normal business hours of the Courthouse, at no cost to the County. This security shall continue to be provided by the City until such time that the Chief Judge is satisfied from statistics or other documentation that the site is adequately secure without the specific assignment of such a patrol officer by the City. On June 3, 1999, the Chief Judge agreed to modified site security requirements for the City in lieu of a full time police officer, subject to continuous review and approval of the Chief Judge. The County agrees to provide a full time contract security position to the Courthouse site upon the occupancy of the Courthouse expansion.

9.09 The City agrees to grant the County, at no cost to the County, a temporary parking easement for contractor personal vehicles during Courthouse Phase I construction. The location of the easement shall be determined prior to the commencement of Phase I, however the City is aware that the preferred location is within two blocks of the site in order to minimize the likelihood of contractors parking in adjacent residential and unauthorized areas.

9.10 The City agrees to grant the County, at no cost to the County, a temporary parking easement for contractor personal vehicles during Courthouse - Phase III construction. The location of the easement shall be determined prior to the commencement of Phase III, however, the City is aware that the preferred location is within two blocks of the site in order to minimize the likelihood of contractors parking in adjacent residential and unauthorized areas.

9.11 The City agrees to grant the Library, at no cost to the Library, a temporary parking easement for contractor personal vehicles during the construction of the Library. The location of the easement shall be determined prior to the commencement of construction of the Library, however, the City is aware that the preferred location is within two blocks of the Library site in order to minimize the likelihood of contractors parking in adjacent residential and unauthorized areas.

9.12 The County understands that the City is the owner of the Library Property and intends to lease with option to buy same to the Library pursuant to the terms of ground lease agreement. The City agrees to ensure that the terms of its ground lease are consistent and in no way conflict with the terms, permitted uses or rights granted to the Library pursuant to this Agreement. In the event that there is a disagreement between the terms of this Agreement and the ground lease agreement, the terms of this Agreement shall prevail.

9.13 [In order to construct the Parking Facilities in such a manner that a future expansion is possible without significant impact to the Courthouse and Library's operations, the City agrees to pay \$200,000 and the CRA \$334,000, toward the cost of construction of the Parking Facilities. The City and CRA shall provide such funds to the County within 30 days of receipt of invoice from the County. Such invoice will be sent to the City and CRA ~~only~~ after the County having received a construction cost from the contractor of the Parking Facilities. Neither the County nor the Library shall have any obligation to re-pay the City or the CRA for these funds in the event that an expansion to the Parking Facilities does not occur. All obligations and/or rights with respect to the parties and expansion of the Parking Facilities are set forth Section 11 of this Agreement.

## Section. 10: Operation and Maintenance of the Parking Garage and Surface Parking

10.01 The Parking Master Plan assumes non-exclusive use of all parking spaces by the County, Library and its employees and visitors, both the County and the Library agree hereby with that assumption, The County agrees that it will employ reasonable operational measures to direct its employees to use the garage spaces, starting at the top and working down. The Library agrees that it will employ reasonable operational measures to direct its employees to park in the southern most surface parking spaces.

10.02 The County shall be physically responsible for the operation and maintenance of the Parking Facilities and the Library shall annually pay the County 31% of all on-site operation and maintenance costs including capital renewal and replacement costs, utilities, and security

10.021 BY April 1 annually, the County shall submit an operations and maintenance budget to the Library for the next fiscal year.

10.022 On November 1 annually, the County shall invoice the Library for the entire amount due to the County for that fiscal year, commencing upon the occupancy of the Library or October 1, 2004, whichever occurs first.

10.023 [In the event that the allocation of parking spaces to each party to this Agreement changes as a result of Section 11 of this Agreement, the pro rata share of the operating and maintenance costs described in this subsection will be reallocated among the parties accordingly.

10.03 The County and the Library shall meet periodically to discuss issues regarding the use, operations and maintenance of the Parking Facilities. The County and the Library both agree that no fee will be assessed to users of the Parking Facilities. [In the event that either the Library or the County believes that there is a reason to consider the assessment of fees, this issue shall be brought up through the periodic meeting process described in this Section.

## Section 11: Options to Expand Parking Garage

11.01 In the event that the City chooses to expand the structured parking on the Courthouse

Property, the City shall provide notice to the County as well as all other parties to this Agreement at least one year in advance of the desired construction commencement date. Such notice shall not be delivered prior to the completion of the Courthouse Expansion Project and the construction of the library. Within 90 days of receipt of the notice, the County shall review the request and initiate an amendment to this Agreement which includes the terms and conditions under which the expansion to the structured parking can proceed, which will at a minimum include; 1) the City agreeing to be responsible for all costs associated with the expansion, 2) the temporary parking accommodations to provide similar parking facilities for the library and courthouse

operations, and 3) identifies the number of expansion spaces that the County chooses to fund for its use. If the County chooses to fund expansion spaces as part of a City initiated expansion, it shall reimburse the City an amount equal to the percentage of County expansion spaces multiplied by \$334,000, as well as funding the cost of the County expansion spaces. The City acknowledges that the County and the Library provide parking at no charge to its respective patrons and employees, and the expansion of the Parking Facilities and subsequent use by others must provide for continued use of the Parking Facilities by the Courthouse and Library patrons and employees at no charge. Approval by the County, Agency and Library shall not be unreasonably withheld.

11.02 The County reserves the right to expand the parking structure at its cost any time after the completion of the Courthouse Expansion Project and the construction of the library. If the County intends to expand the parking, it shall provide one year notice to the City and the Library and each shall be given 90 days to reply with whether it chooses to participate in the expansion. In the event of a County initiated expansion which the Library and/or City do not choose to participate in the expansion, the County shall be solely responsible for the costs

of the parking expansion and shall be responsible for providing temporary parking accommodations to provide similar parking facilities for the Library operations.

## Section 12: Use of Parking Lots and Garage by City

12.01 The parking lot and garage constructed by the County, Library and City may be available for use after normal business hours by the County, City, Library and/or the Agency pursuant to the Real Property Temporary Use Agreement to be entered into between the County and the City, Library or Agency administratively on the form attached as Exhibit 4. The requesting party shall submit a letter requesting use of the Parking Facilities to the County, no less than 30 days in advance of the date of event for which the request is being sought. The letter request shall include the dates and time of the proposed event, the name and purpose of the use, whether any fees (for those potential parkers other than Library patrons and Courthouse visitors and employees) are proposed for the use of the Parking Facilities, the amount of the proposed fee (if applicable), the name of the party who will benefit from the revenue collected, contact person information, as well as evidence of the required insurance. Based on the request, the County will prepare a Temporary Use Agreement for review by the Library and execution by the requesting party. Fees for temporary use of the Parking Facilities will only be approved if they are for the benefit of the County, the City, or the Library. The County and Library agree to

not unreasonably withhold its consent for the City and/or the Agency's utilization of said parking.

### Section 13: Real Property Considerations

13.01 The County and the City agree that in the event that the County ever elects to dispose of its interest in any of the County's real property, the Agency, or the City if the Agency is dissolved, shall have the right of first refusal to acquire such real property from the County. Prior to taking any action to dispose of the property, the County shall offer the property to the Agency "as is" at a purchase price equal to the fair market value of the improvements to the land made by the County (excluding land value). The County shall provide the Agency written notice of its intent to dispose of such real property together with an appraisal as to the said improvement to the lands and the Agency shall have the first right of refusal as herein provided by providing the County written notice such election within 45 calendar days of the receipt of such notice from the County. Failure of the County to receive written notice within this time period, shall result in termination of the Agency's right of first refusal.

In the event that the Agency elects not to purchase the property or fails to respond within the time period indicated above, the right of first refusal shall be provided to the City under the same terms as described above. In the event that the City chooses not to purchase the ~~property~~, the right of first refusal shall be provided to the Library under the same terms as described above.



Any sale or transfer of the County's interest in Courthouse Property on the east side of SW 2<sup>nd</sup> Avenue will be subject to the rights, use and terms of this Agreement.

13.02 The use of the Library Property shall be restricted to library and customary ancillary uses, as well as City or other legal uses which; 1) do not increase or modify the traffic and internal circulation patterns within the garage or on rights of way adjacent to the Courthouse Property, and 2) do not jeopardize the County's tax-exempt bond restrictions. In the event that the library is never constructed or that the lease between the City and the Library is terminated (except for termination of the lease in the event that the Library purchases the Library Property from the City), the City may request that the Library Property be used for City operations or leased to a non-City entity, providing that the proposed operation does not have additional impacts on parking and internal circulation beyond that which was assumed for use by the Library, and such proposed use does not jeopardize the County's tax-exempt bond restrictions. Such approval shall not be unreasonably withheld.



13.03 If the Library chooses not to construct upon the Library Property after the construction of the Parking Facilities, the County shall not be obligated to re-pay the Library for any monies provided to the County pursuant to this Agreement. The County's only obligation is make the parking spaces available to the City, its successors and assigned, under the same terms as defined in this Agreement.

13.04 The City shall take the necessary steps to abandon the east west alleyway between the Library Property and the Parking Facilities, pursuant to the terms of Section 9.07 . Concurrent with the abandonment, the City shall convey the northern most half of the alleyway to the County. Upon receipt of the northernmost half of the alley, the County agrees to convey, by County deed, the entire alley ("Alley Property") to the City for incorporation into the Library Parcel subject to a reverter in favor of the County. The Alley Property shall revert to the County in the event that the property is used for purposes other than those allowed by this Agreement.

#### Section 14: Indemnification

14.01 To the extent permitted by law, the parties to this Agreement shall indemnify, defend and hold the other party and their respective officers and employees harmless against any actions, claims or damages arising from that party's performance of this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute an agreement by either party to indemnify the other party for its own negligence, willful or intentional acts.

#### Section 15: Notices

15.01 Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail Return Receipt Requested. The effective date of such notice shall be the date

of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following.

As to the County:

Director, Facilities Development & Operations  
3323 Belvedere Rd Bldg 503  
West Palm Beach, Fl. 33406

County Administrator  
301 N. Olive Ave, Suite 1 101  
West Palm Beach, Fl. 33401

County Attorney  
301 N. Olive Ave, Suite 601  
West Palm Beach, Fl. 33401

As to the City:

City of Delray Beach  
Office of City Manager  
100 NW First Avenue  
Delray Beach, Fl. 33444

As to the Library:

Library Director  
Delray Beach Public Library

29SE First Ave  
Delray Beach, Fl. 33483

As to the Agency:

Office of the Executive Director  
Delray Beach Community Redevelopment Agency  
104 Atlantic Ave  
Delray Beach, Fl. 33444

Robert Federspiel, Esq.  
151 NW First Avenue  
Delray Beach, Fl. 33444

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#### Section 16: Term of Agreement

16.01 The initial term of this Agreement is 30 years and shall commence immediately upon execution of this Agreement. The Agreement may be renewed for two additional 30 year terms thereafter. At least two years prior to the expiration of the initial term, the Library and City shall advise the County of its request to renew the Agreement. Such Renewal Amendment will require approval of all parties and none of the parties may unreasonably withhold its approval of the Renewal Amendment. In the event that the City chooses not to participate in the renewal of this Agreement, the Library and the County may negotiate a mutually acceptable renewal agreement, but which will require the City to remain obligated for any outstanding or on-going obligations from the initial term.

#### Section 17: Termination

17.01 In the event of a termination by the Library pursuant to Section 4.01 or 5.02, the City shall have 60 days to step into the role of the Library for the purposes of this Agreement in which case all rights and privileges of the Library with respect to the design, construction and use of the Parking Facilities will then be the City's. In the event that the City chooses not to assume the responsibilities of the Library, the County shall be able to proceed with the design and construction of a surface parking facility for the Courthouse facilities only and shall have no further obligation to provide parking on its property, in any manner whatsoever for the future development of the Library Property by the City.

17.02 In the event of a termination of the Library's participation in this Agreement pursuant to Section 4.01 and regardless of whether the City assumes the obligations of the Library pursuant to Section 17.01 ; all requirements, obligations, rights and privileges of the County, City, and Agency continue.

17.03 Upon execution of the construction contract for Courthouse • Phase I, none of the parties shall have the ability to terminate this Agreement.

#### Section 18: Amendments to this Agreement

18.01 This Agreement may be amended from time to time by written amendment by all parties.

Library/City/CRA Agreement

Last Update FINAL 2 10/22/02 1943

Page 19 of 21

## Section 19: Applicable Law

19.01 This Agreement shall be governed by the laws of the State of Florida.

## Section 20: Filing

20.01 A copy of this Agreement shall be filed by the County with the Clerk of the Circuit Court in and for Palm Beach County.

## • Section 21: Entire Agreement

21.01 This Agreement and any attachments attached hereto and forming a part thereof as it fully set forth herein, constitute all agreements, conditions and understandings between the County, City, Agency and Library. All representations, either oral or written, shall be deemed to be merged into this Agreement, except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon the county or City unless reduced to writing and signed by them.

## Section 22: Delegation of Duty

22.01 Nothing contained herein shall be deemed to authorize the delegation of the Constitutional or Statutory duties of County or City officers.

## Section 23: Annual Budget Appropriations

23.01 The County's and City's obligations to pay pursuant to this Agreement are contingent upon the annual appropriation for this purpose by the Board of County Commissioners and the Delray Beach City Commission. In the event that the City or County exercises its rights under this Section of the Agreement after the construction of the Parking Facilities, the Library retains the rights to use the Parking Facilities.

## Section 24: Time Is of the Essence

24.01 Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

## Section 25: Assignment

25.01 None of the parties to this Agreement shall assign this Agreement or any interest herein without the prior written consent of the other parties.

## Section 26: Default

26.01 In the event any party fails or refuses to perform any term, covenant or condition of this Agreement, the same shall constitute a default hereunder, and the non-defaulting parties shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

## Section 27: Invalidity of Clauses

27.01 The invalidity of any portion, section, paragraph, provision, clause or any portion of this Agreement shall have no effect upon the validity of any other part or portion hereof.

## Section 28: Effective Date of Agreement

28.01 This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

## Section 29: Termination of Previous Agreements

29.01 Upon approval of this Agreement by the Board of County Commissioners, Agreement R861201, as amended is terminated.

## Section 30: Non Public Forum

30.01 The Courthouse Property (which includes the Parking Facilities) are designated as non-public forums and as such, expressive activities such as, but not limited to protests, petitioning, soliciting, leafleting, campaigning, exhibitions, displays are subject to approval by the County pursuant to its adopted policies. The Library agrees that it will comply with the County's policy for expressive activities which may be considered for the Parking Facilities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the ~~day~~ and year first written. R2002 1980

ATTEST:


DOROTHY H. WICKEN, Clerk

By:

  
Deputy Clerk  

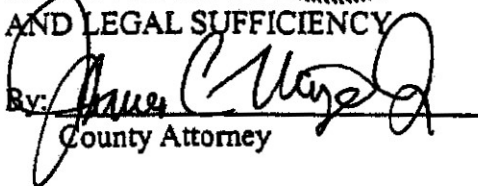

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By:

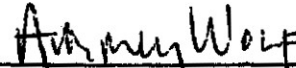
  
Warren H. Newell, Chairman  
NOV 12 2002

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:

  
County Attorney

By:

  
Dir. Facilities Dev & Ops

APPROVED AS TO TERMS

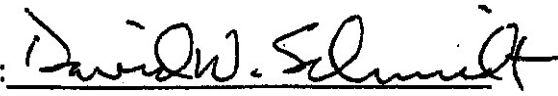
AND CONDITIONS

ATTEST:

By:

  
City Clerk

By:

  
Mayor

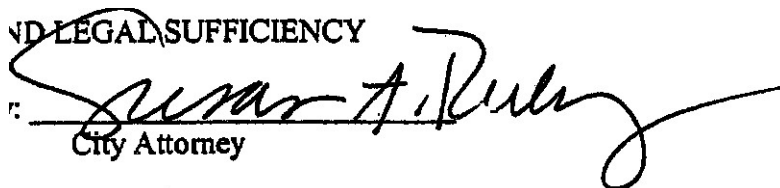
By: David W. Schmidt

Printed Name of  
Mayor.

APPROVED AS TO FORM  
CITY OF DELRAY BEACH

AND LEGAL SUFFICIENCY

By:

  
City Attorney

AND LEGAL SUFFICIENCY

NOV 12 2002

By: R2002

1980.

ATTEST:

Library/City/CRA  
Last FINAL 2

By:

Diane Hervey  
Witness

By:

Theresa Smith  
Witness

DELRAY BEACH COMMUNITY  
REDEVELOPMENT AGENCY

[Signature]  
Chairman

By:

JOHN D. WEAVER

Printed Name of Chairman

APPROVED AS TO  
FORM  
AND LEGAL  
SUFFICIENCY

By:

[Signature]  
Agency Attorney

R2002 1980

NOV 12 2002

ATTEST:

DELRAY BEACH PUBLIC LIBRARY

r: [Signature]  
Witness  
r: Karen Erickson  
Witness

By: By: [Signature]  
Chairman  
By: By: Daniel M. Murtagh  
Printed Name of Chairman

R2002 1980

NOV 12 2002



Library/City/CRA  
Last FNAL

## LIST OF EXHIBITS

- Exhibit 1 Property (1 page)
- Exhibit 2 • Parking Master Plan (3 pages)
- Exhibit 3 - Letter from City of Delray Beach staff recommending and supporting the grant of waivers for the Parking Facilities (1 pages)
- Exhibit 4 • Agreement for Use of Parking Lots and Garage (7 pages)
- Exhibit 5 • Compatibility and Use Assumptions/Requirements for Library (2 pages)
- Exhibit 6 • Consttuction Staging Area for Library Property (3 pages)
- Exhibit 6 •



# WEST ATLANTIC AVENUE

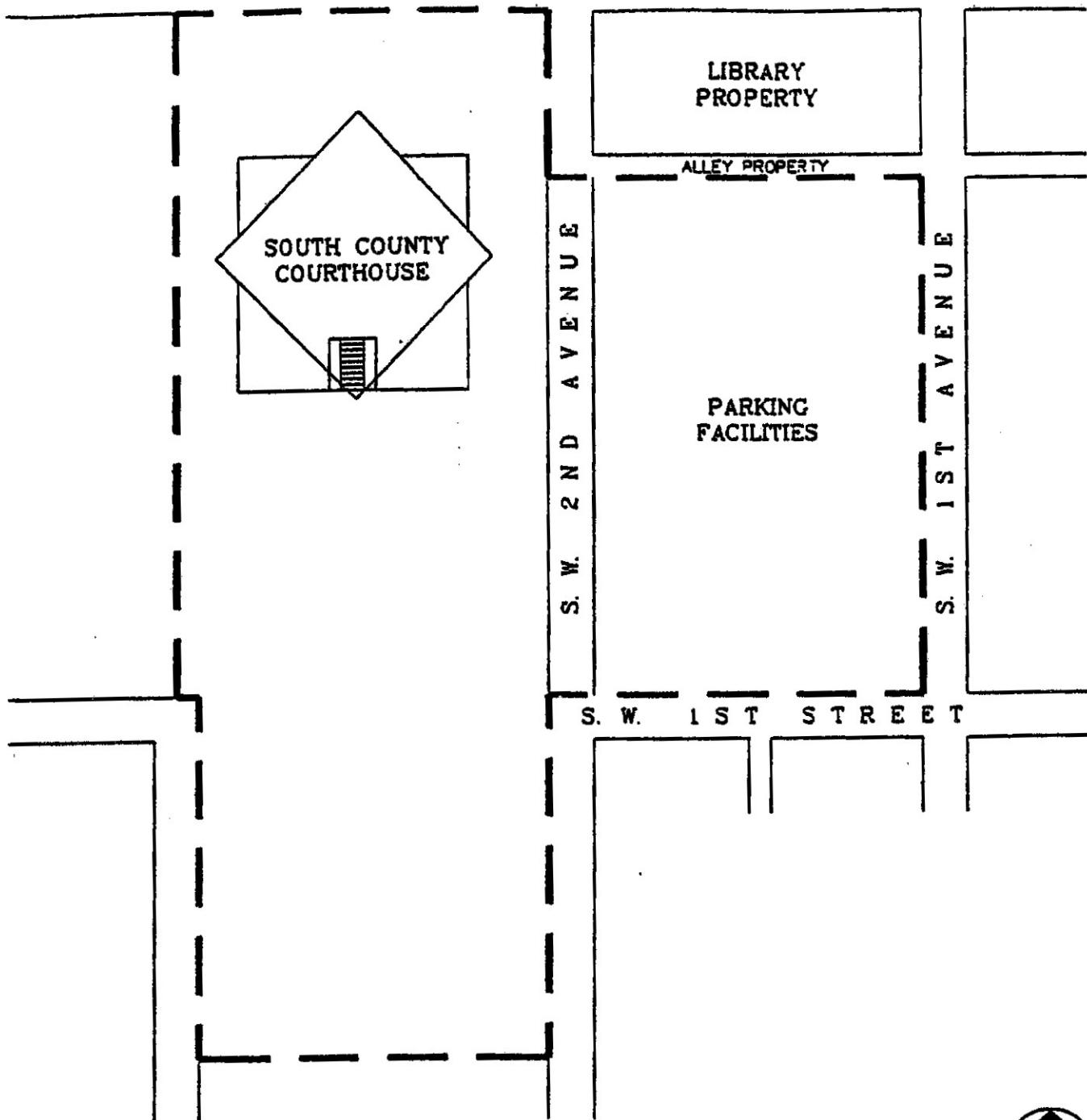


EXHIBIT 1  
COURTHOUSE PROPERTY MAP  
DELRAY BEACH, FLORIDA  
BEACH



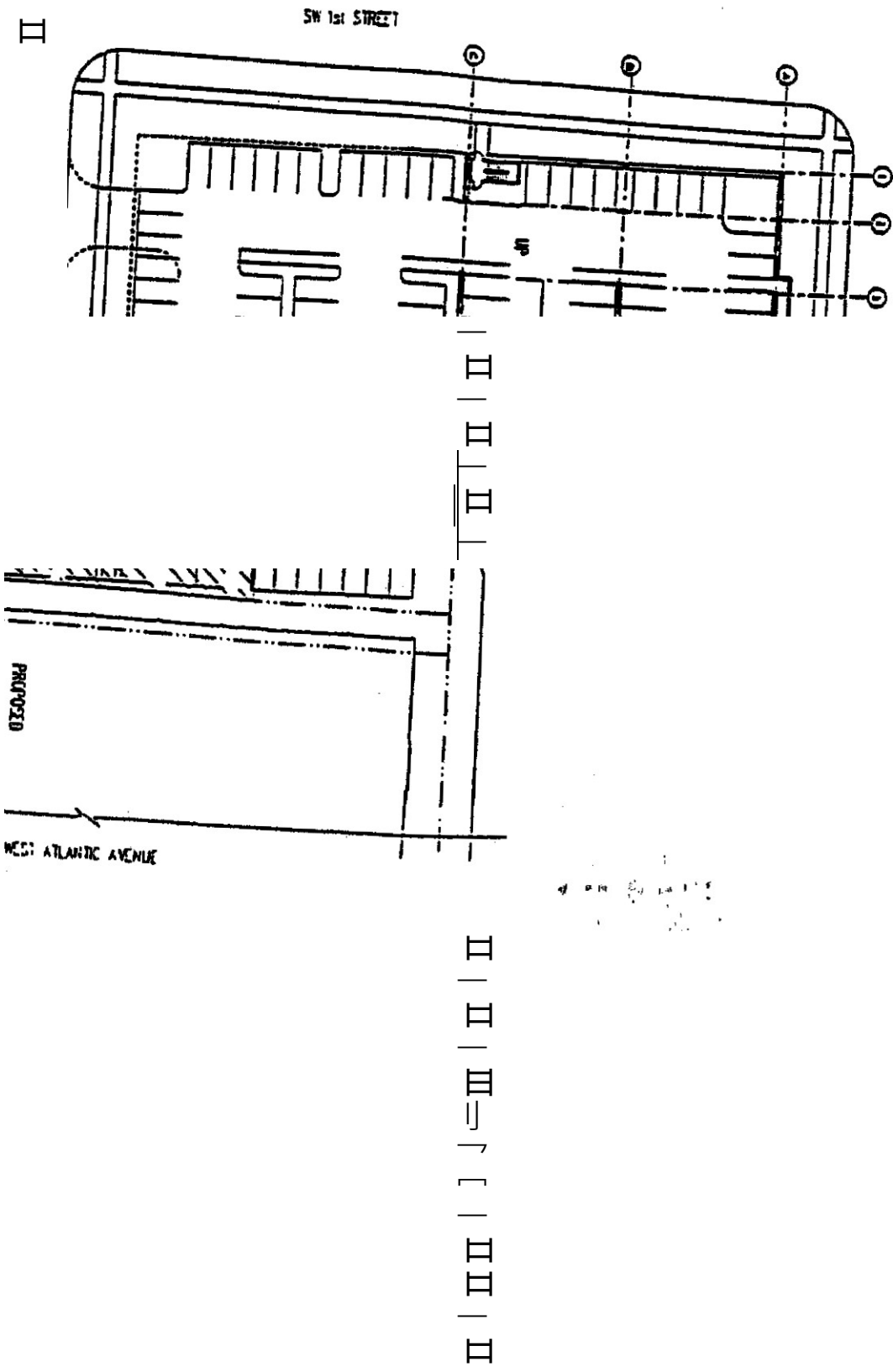
project name: SOUTH COUNTY COURTHOUSE PARKING  
project number: 02227  
date SEPTEMBER 4, 2002  
drawn R.P.A.  
checked



PALM BEACH COUNTY & OPERATIONS  
FACILITIES DEVELOPMENT

capital improvements division  
west palm beach, florida (sat) 233-0200

~ a



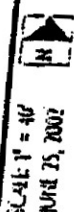
SCALE: 1" = 100'  
JAN 29, 2002

CHART 1  
SOUTH COUNTY COURTHOUSE  
PALM BEACH COUNTY, FLORIDA

PHASE I - GROUND FLOOR

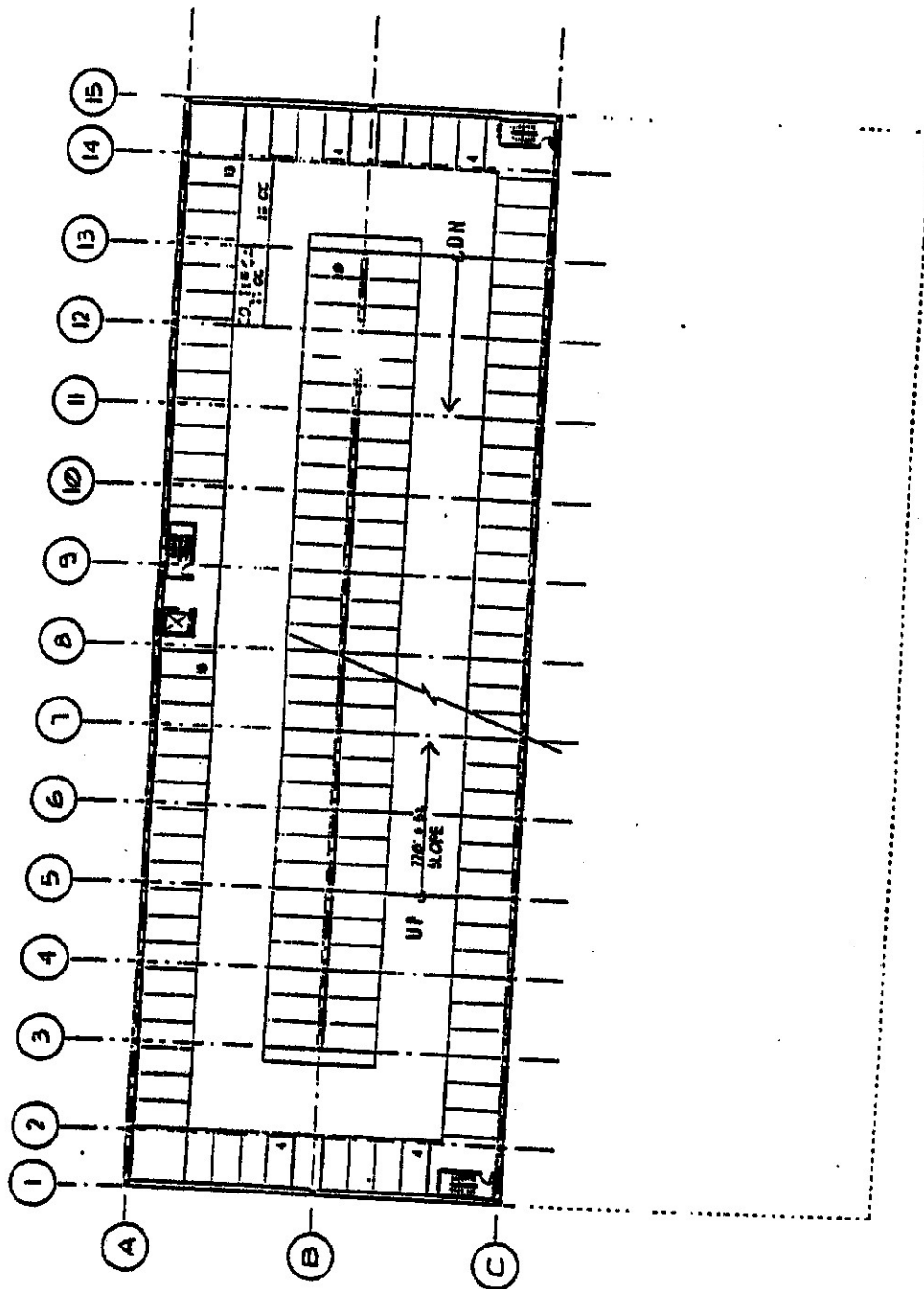
PCAL

II: Dd



PROPOSED PARKING GARAGE  
SOUTH COUNTY COURTHOUSE  
PALM BEACH COUNTY, FLORIDA

EXHIBIT 2



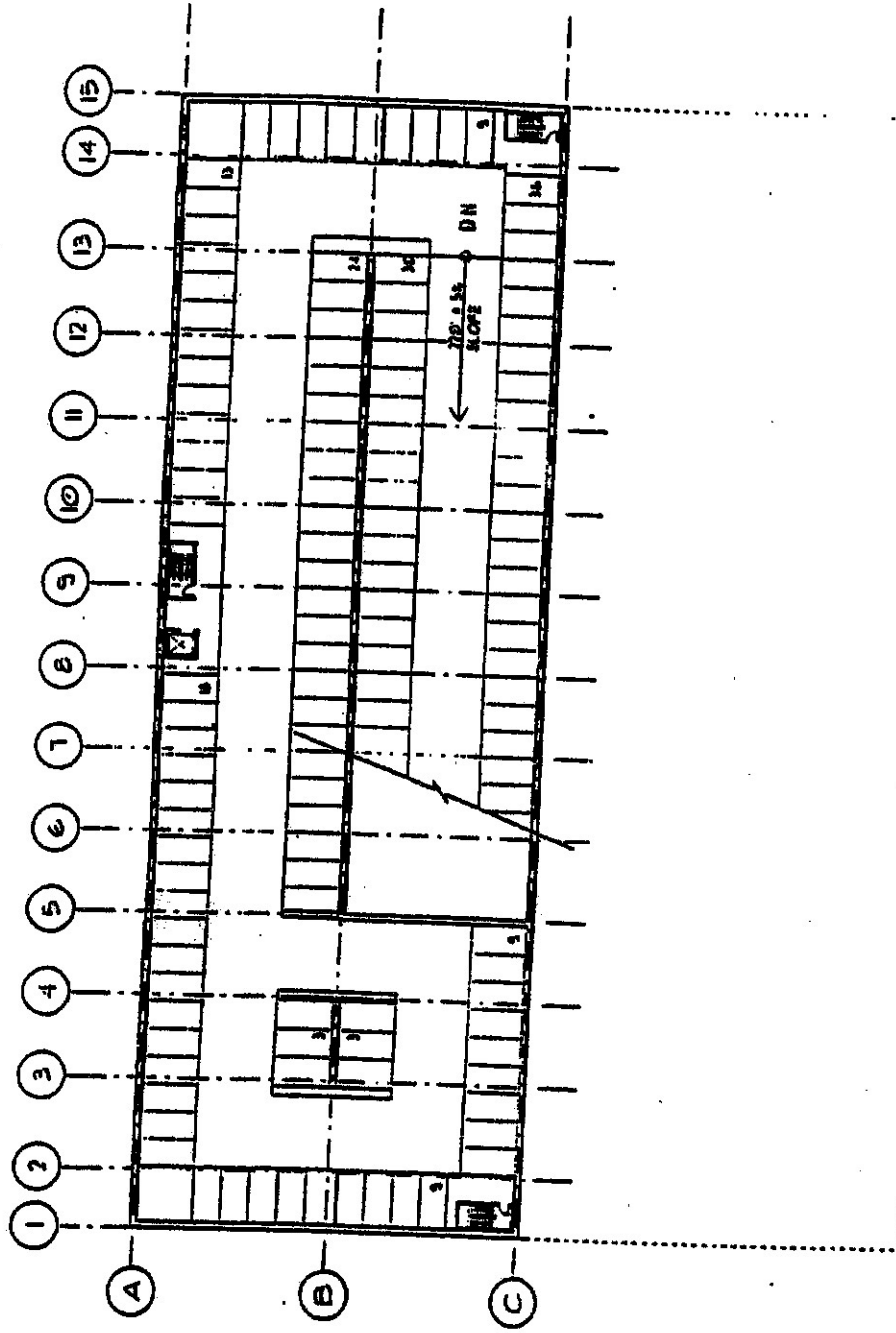
SCALE 1" = 40'  
JUNE 25, 2002



PROPOSED PARKING GARAGE  
SOUTH COUNTY COURTHOUSE  
PALM BEACH COUNTY, FLORIDA

PHASE I - SECOND FLOOR

X | Z



SCALE 1" = 40'  
JUNE 25, 2002

PROPOSED ADDITION/RENOVATION  
SOUTH COUNTY COURTHOUSE  
PALM BEACH COUNTY FLORIDA

PHASE I - THIRD FLOOR

DC-11



Exhb\*)

**CITY OF DELRAY**



**BERtH**

too N.W. 1st AVENUE • DELRAY BEACH, FLORIDA 334" • set/2aa-7000

1993

2001

Ocbber 9.2002

Ms. Audrey Wolf, Ditector

Palm Beach      Fadlit½s, Planning, Design md Consruction  
3323              Road  
Budding 503  
West Patm Beatl, Florida 33415

Dear Ms. Watt

The              leter a summary of staffs position on the four              idenüfied by      Site Plan  
Review and Appearance Board (SPRAB) for the ~~courthouse~~ pamng garage at their July 10, .2002  
meeüng,

With respect to the varianca              he required 25% open space  
requirement of I-DR Sedon              4.3.4(K) star has an I-DR nduce this  
requirement to 10% to be              **text change to n**              consistent with the balance of he  
   **at Atlantic Avenue**  
Oveday District This amendment was considered the Pttning and Zoning Board on August  
19. 2002, and by the Commission **on** September 17• and lª, 2002. With adopöon of this  
ordinance, his is no longx an

Rega•dtng the requh'd iOO' of stacking for vehides entering the garage. his issue has been  
resolved      he redesign stbmited on      8, 2002. The redesigned entrances      the required  
   aiteria UDR's.

Witt respea to reqt.iring internal landscaping on the lat.. Qwaiver to this requitzment is  
supported by The placemalt of the required 5' to the (east böeder) appears b be a  
masonabie approadl. However, the redesigned ptans have the required hta•nal lards  
caping herúm, this issue has addressed.

## ARTICLE

### Section 2.01

should be at least minimal detail  
construction of the balance of  
physical relief expected on the  
through score lines, etc. should be provided.

Sincerely,



David T. Harden  
City Manager



Printed on Recycled Paper  
This document is a letter to Audrey White, PEC garage

The issue providing should be at least  
design to be east wdt has some merit. Staff  
feels there along this elevation. in case here  
is substantial delay in exchange. While this does  
not need include the the more visible  
elevations, believes some attempt at detail

THE EFFORT ALWAYS MATTERS

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and entered into this day 200 , by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County" and the City of Delray Beach, hereinafter referred to as "Licensee".

### WITNESSETH:

WHEREAS, County is the owner of certain real property in Palm Beach County, Florida, known as the South County Courthouse, as said property is legally described in Exhibit "A" attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, Licensee desires to use the County owned parking facilities at the South County Courthouse; and

WHEREAS, County is willing to grant Licensee a revocable license to use said Property for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a revocable license to use the Premises as hereinafter defined upon the following terms and conditions:

# ARTICLE 1

## BASIC PROVISIONS

### Section 1.01 Premises.

The premises which are the subject of this Agreement consist of the County owned parking lot at the South County Courthouse; and (pick one or more: east lot, parking garage or north lot).

### Section 1.02 Length of Term and Commencement Date.

The term of this Agreement shall be for \_\_\_\_\_, from \_\_\_\_\_ hours until \_\_\_\_\_ hours the "Term"), unless sooner terminated pursuant to the provisions of this Agreement.

Agreement. Ddray

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## ARTICLE II

### LICENSE FEE

#### License Fee.

Licensee shall be entitled to use the Premises without charge.

## ARTICLE III

### CONDUCT OF BUSINESS AND USE OF PREMISES BY LICENSEE

#### Section 3.01 Use of Premises.

Licensee shall use the Premises solely and exclusively for  
Licensee shall not use, permit or suffer the use of the Premises for any other business or purpose whatsoever. The use of the Premises by Licensee shall not interfere with County's use of, access to and parking on the County's contiguous Property. Licensee hereby agrees that all parking required by Licensee, its agents, employees, or invitees shall be

use

# ARTICLE

## Section 2.01

accommodated and confined to the Premises. Licensee, at its sole cost and expense, shall provide all traffic control and enforcement and security necessary to ensure that Licensee's use of the Premises does not interfere with County's use of its contiguous property and that there will be no entry or use of any County building on the Premises by the Licensee's agents, employees or invitees.

Licensee may charge a fee of \$ for the use of the parking. Licensee shall provide the County with a report indicating the total amount of fees collected as well as expenses incurred in collecting the fees and complying with the other requirements of this Agreement. Licensee acknowledges that the County will approve the Licensee to collect a fee for parking when the revenues from same are accrued only to the Licensee, the County, and/or the Delray Beach Public Library.

Licensee ~~acknowledges~~ that while not a party of this Agreement, the County will only approve the License if the Licensee's use does not interfere with, or is acceptable to the Delray Beach Public Library.

## Section 3.02 Licensee's Work.

Licensee shall make no further ~~improvements~~, alterations or additions to the Premises without the prior consent of County. Licensee agrees and acknowledges that any such work performed by Licensee whether pursuant to this Section or otherwise, is performed and accomplished solely for the benefit and convenience of Licensee, and not for the benefit of County, such work being nevertheless subject to each and provision of this Agreement.

Item\* Agreement • Delray **Parking Use**

Last Update: 2 of

## Section 3.03 Waste or Nuisance.

Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's interest in the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Licensee's operations, on the Premises or in any manner not permitted by law. All refuse is to be

removed from the Premises daily at Licensee's sole cost and expense. Licensee will keep the access to the Premises, the parking areas, driveways and other contiguous areas to the Premises free and clear of obstruction. Licensee, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

#### Section 3.04 Governmental Regulations.

Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force. Licensee shall comply with all ecological requirements to operate its business on the Premises. Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section.

#### Section 3.05 Non-Discrimination.

Licensee shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring on the Premises.

#### Section 3.06 Surrender of Premises.

Upon expiration or earlier termination of Licensee's license to use the Premises, Licensee, at its sole cost and expense, shall remove all of its improvements and personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in as of the date of this Agreement.

**Agreement.** Odray

Last date: 5/5/02

3 of

tv

## REPAIRS AND MAINTENANCE OF PREMISES

Responsibility of County and Licensee.

use

## ARTICLE

### Section 2.01

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. All portions of the Premises and all improvements erected on the Premises shall be kept in good repair and condition by Licensee. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Premises to County in good repair and condition as specified herein. In the event of any damage to the Premises, County may complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

## ARTICLE V INSURANCE AND INDEMNITY

### Section 5.01 Liability Insurance.

Licensee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1M) per occurrence combined single limit bodily injury and property damage liability and Workers Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for Premises - Operations, and Product Liability, Independent Contractors, Contractual Liability and Broad Form Damage Liability coverages.

### Section 5.02 General Provisions.

Except for Workers Compensation, all insurance policies shall name the County as Additional Insured. Such insurance shall be in an insurance company licensed to do business in the State of Florida and subject to the approval of the County's Risk Management Department. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County at least fifteen (15) days prior to the Commencement Date, such Certificate indicating at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the of said insurance policies be considered as limiting the liability of Licensee under this Lease. In the event that Licensee shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by Licensee under this Agreement, County shall have the right of injunction, or County may immediately terminate this Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, Licensee shall and does nevertheless indemnify, defend and hold County harmless from any loss or damage

incurred or suffered by County from Licensee's failure to maintain such insurance.

#### Section 5.03 Indemnification of County.

Licensee shall, to the extent permitted by law, indemnify, defend and save County harmless from and against any and all claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Premises; (ii) the occupancy or use by Licensee of the Premises or any part thereof, or (iii) any act or omission of Licensee, its agents, contractors, employees or invitees. In case County shall be made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County harmless and pay all costs and fees incurred by County in connection with such litigation, and any appeals thereof. Nothing contained herein shall be deemed a waiver of the City's sovereign immunities.

#### Section 5.04 Waiver by Licensee and Licensee's Insurers of Subrogation.

In the event of loss or damage to the Premises and/or any of Licensee's improvements, the Licensee shall look solely to any insurance in its favor without making any claim against the County, and the Licensee shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Licensee, for **itself and** its insurers, waives all such insured claims against the County.

## ARTICLE VI UTILITIES

Licensee shall be solely responsible for and promptly pay directly to the utility or other provider of such service all charges and **assessments** for water, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises.

## ARTICLE VII REVOCATION OF LICENSE

#### Section 7.01 Revocation of License.

Notwithstanding anything to the contained herein, the rights granted to Licensee hereunder amount only to a license to use the Premises, which license is expressly revocable by Court for any reason whatsoever upon notice to Licensee. Upon Licensee's receipt of notice from County of the revocation of the license granted hereby, this Agreement shall terminate and

# ARTICLE

## Section 2.01

County shall be relieved of all further obligation hereunder accruing subsequent to the date of such termination.

### License Agreement.

Last Update: 5/11/02 10:42

PageSaf .7

## VIII

## MISCELLANEOUS

### Entire Agreement.

This Agreement and any Exhibits attached hereto and forming a part hereof as if fully set forth herein, constitute the agreements, conditions and understandings between County and Licensee concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced writing and signed by them.

### Section 8.02 Notices.

Any consents, approvals and permissions by the County shall be effective and valid only if in writing and any notice by either to the other shall be in writing and shall be deemed to be duly given only if mailed prepaid by certified mail return, receipt requested, addressed:

(a) If to the County at:

Palm Beach County  
Property and Real Estate Management Division  
3323 Belvedere Road, Bldg. 503  
West Palm Beach, FL 33406-1548

with a copy to:

If to the Licensee at:

City of Delray Beach  
Robert A. Barcinski  
Assistant City Manager  
100 N.W. Avenue  
Delray Beach, FL 33444



(c) If to the Library at:  
Executive Director  
Delray Beach Public Library  
29 SE Ave  
Delray Fl. 33483

#### Section 8.03 Recording.

Licensee shall not record this Agreement, or any memorandum or short form thereof, without

the use

Last Update: 10:42

the written consent and joinder of County.

#### Section 8.04 Waiver of Jury Trial.

The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

#### Section 8.05 Governing Law and Venue.

This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

#### Section 8.06 Time of Essence.

Time is of the essence with respect to the performance of every position of this Agreement in which time of performance is a favor.

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, - oc have caused the same to be executed as of the day and year first above written.

WITNESS:

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
\_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
\_\_\_\_\_  
Assistant County Attorney

# ARTICLE

## Section 2.01

delay ze

License Agreement • 0day Use  
Last Update: 5/5/02 10:42

## PALM BEACH COUNTY

By:

---

Robert Weisman, County

Administrator

## CITY OF DELRAY BEACH

By:

---

David Hardin, City  
Manager

The purpose of this Exhibit is to document the assumptions and intent of the parties in entering into this Agreement. To the extent that any of the terms of the Agreement itself are in conflict or inconsistent with the contents of this Exhibit, the terms of the Agreement prevail.

A three story parking covering the western half of the property is contemplated in order to provide for an expansion to the garage in a manner which minimizes the disruption to the operation of the existing garage during the expansion. The Agreement of the parties relating to the physical aspects of garage, the rights of the parties during the development of their respective projects and the potential future expansion are detailed in the Agreement. Not as clear are the operational assumptions and design intent. The following provides a summary of those assumptions and statements of intent.

1. The Courthouse and Library are compatible uses whose operations complement each other in terms of sharing of parking facilities and other shared facilities such as adjacent roads and access to the property.
2. The Library will be designed and operated in manner which is consistent with and appropriate for the front of a **Courthouse**. The Library will not place any "back-of house" operations which are conducted on the exterior of the building on the western half of the Library property.
3. The primary entrance to the parking facility for Courthouse employees and visitors will be from SW Avenue and for the Library employees and visitors from SW 1st Avenue. Both the Courthouse and the Library will include the same information in written materials and verbal directions to their respective entrances. It is not contemplated that there will be barriers requiring or personnel enforcing same.
4. The employees of the Courthouse would be required to use the upper floors of the garage, with the Courthouse visitors encouraged to use the ground level and second level.
5. The employees of the Library would be required to use the southern most surface parking spaces with the Library patrons being encouraged to use the northern most surface parking spaces.
6. The Library will have up to 80 parking spaces adjacent to its property which will be reserved for 5 minute parking associated with book drop offs. The Library will be responsible

for enforcement.

**Parking Interlocal Agreement**

S • AnamptiON

Page t of 2

7. ~~The~~ The Library will be provided up to two parking spaces adjacent to its property on the east end of the surthce parking lot for service vehicles and deliveries. The Library will be responsible for enforcement.

8. The parking garage structure will be secured at 1800 hours on Monday through Thursday and re-opened at 0700 hours the following morning. The parking garage structure will be secured from 1800 hours in Fridays through 0700 hours on Monday, unless a license pursuant to Exhibit 4 of this Agreement has been executed, in which case the terms of the License

Agreement will prevail. The ground level of the parking garage may be made available for Library use as needed up to 2115 hours on Monday through Thursday and 0900-1730 on Saturdays and Sundays; provided that the Library is responsible for security and ensuring that Gate 3 is in the closed position during times of use. The Library shall be responsible for opening Gates t and/or 2 during these periods of use.

9. Neither the County nor Library intends on charging a fee for use of the parking. In the event that it is determined that a fee shall be charged, the garage will utilize gang or group parking meters or pay stations, the conduit for which has been designed into the facility. The facility and access was not designed for a cashier booth or any type of permanent money collection at the entrance/exit to the facility.

## Exhibit 6

This Exhibit identifies the construction staging area for the construction of the Library, the scheduling for which is to be determined in the future, but in a case after the completion of the Parking Facilities. A portion of the surface parking area is designated on Attachment I to this Exhibit and is generally located on the eastern half of the property and adjoining the south alleyway property lined up to a point just to the east of the entrance to the parking garage structure.

The use of this area for construction staging is subject to the following conditions:

1. The Library repairing and restoring all pavement, landscape and other improvements to their pre-staging condition or better. The restoration will be completed at the Library's sole cost and expense.
2. The Library taking all precautions necessary to protect the improvements adjacent to the staging area, the persons and property using occupying the remainder of the Parking Facilities, including, but not limited to implementing, dust control measures, temporary security, temporary traffic control, signage, etc. The use as a construction staging area is subject to the continual review and approval of the County for compliance with the terms of this Exhibit (which approval will not be unreasonably withheld) of the City for compliance with local codes. The County has the right to stop any work it believes creates an eminent danger for the Courthouse, its employees or its visitors.
3. The Library shall create a temporary entrance to the lot from SW 1<sup>st</sup> Avenue to the southeast corner of the lot (access from SW 1<sup>st</sup> Ave) to provide access and from the parking garage. This would include the relocation of the entrance back to its original position at the completion of construction of the Library and restoration of the temporary entrance back to its original condition by the Library, at its sole cost and expense.
4. All vehicles and equipment associated with the Library construction shall enter the Library site or the construction staging area from SW 1<sup>st</sup> Ave only. All construction vehicles and equipment are prohibited from SW Ave.
5. The Library will include in its construction contract a provision which prohibits the temporary closure of SW Ave for any purpose or any duration from 0600 hours Monday through 1800 hours on Friday. Temporary closure of SW 2<sup>nd</sup> Avenue on the weekends may be approved by the County with no less than 96 hour advance notice to the County. The Library must also secure the necessary City approvals for temporary street closures.

**Interlocal Agreement  
§ - Library Construct Staging  
E108.7**

Parking

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6. The Library will include in its contract a provision which prohibits the temporary closure of SW Ave tbrany purpose or any duration from 0630 to 0900 hours and from 1600 to t 730 hours on Monday through Friday, providing that the south entrance to the garage remains . open and the Library has secured the necessary permits from the City.
7. The Library will be solely responsible for security within the constn:ction staging arca which may not include the use of canine to secure the site.

In the event that the Library has secured a building petmit and is fillly ftnded the consn-uction prior to the completion of the Packing Facilities, the Library may request that the County deduct certain work items from the Parking Facilities project. Anyitems (such as those listed below) deducted from the Parking Facilities, would have to be provided by the Library upon completion of the Library construction project Further, such deductions ate subject to modification of the County's building permit for the Parking Facilities to allow for a partial certificate ofoccupancy. Examples ofthe work which may be deducted are as follows.

- a. Providing only the first lift of asphalt in the area of the surtce parking to be used as a staging area
- b. Utilizing Type F curbing for the surface parking lot to accommodate the second lift of asphalt at a later date.
- c. Installation of landscaping and curbing within the construction staging area.

Parking tneioei A.—  
Exhibit 6 • Lib«aw

Staci'\* Am

EXHIBIT“D”



## AGREEMENT

This Agreement Is made this ao\*h day of March, 2001 by and between the CITY OF DELRAY BEACH, a Florida municipal corporation (hereinafter referred to as, the "City"), and the DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC. (hereinafter referred to as, the "Associatlon").

### WITN E S S E T H :

WHEREAS, the State of Florida, Division of Library Servlces• requires the City to make application and the Association desires the City to make application on their behalf for a grant through the State of Florida, Division of Library Services for the construction of a new library (the Project); and,

WHEREAS, the Project Is eligible to receive matching grant funds of up to five hundred thousand dollars (\$500,000.00); and,

WHEREAS, the State of Florida, Division of Library Services requires the City of Delray Beach to give assurances that local matching funds will be available and unencumbered at the time of the grant award; and,

WHEREAS, the Division of Library Services requires the City to give assurances that sufficient funding will be available in order that the Project will result In a completed library building; and,

WHEREAS, the Division of Library Services of the State of Florida also requires the City to give assurances that sufficient funding is available to operate the facility.

NOW, THEREFORE, the parties hereto in consideration of the foregoing and agreements herein contained, hereby covenant and agree as follows:

**1. Recitals.** The Recitals set forth above are hereby incorporated as if fully set forth herein.

**2 . Specific Grant Covenants.** The Association requests, and the City agrees to submit an executed application for a grant for the construction of a new public library facility. The Association shall pay to the City all matching funds required under the grant. The Association shall pay to the City the matching funds within five (5) business days of the City's verbal or written request, but no later tha prior to the grant award.

The Association further covenants and promises the City that funding is sufficient and will be available in order that the Project will result in a completed library building. The Association covenants and promises the City that the Association will provide sufficient funding to operate the facility. The Association acknowledges the City has entered into Resolution No. 27-01, will submit the Grant application, whereupon it requires entering into a Grant Agreement, and any other Agreement for the construction of a new library facility, in reliance on the Association's promises herein contained.

3. All Other Requirements. The Association, by execution of this Agreement, agrees to be bound by this Agreement and by all terms and conditions of the Grant Agreement, construction contracts, and any other related agreements pertaining to the construction of a new library facility, whether express or implied, and shall comply and fulfill all of the obligations and duties required of the City under the aforesaid agreements or any other agreement not mentioned herein pertaining to the new library construction project, whether financial, administrative or otherwise, and the Association shall provide proof of discharge of all obligations and duties under the agreements, as though the Association had been in the place and stead of the City of Delray Beach throughout the completion of the building project, through and including the final inspection thereof and shall secure the release from the State of Florida, Division of Library Services and shall release all financial and Inspection records after final audit and program review. The Association shall be responsible for all obligations and duties that may remain under the Agreements after the completion of the building as set forth above.

4. Use of Building. The Association shall provide the City unconditional use of the new library site and building, as provided in Resolution No. 27-01. .

5. Indemnification. The Association shall hold harmless, indemnify and defend the City of Delray Beach, its officers, agents and employees or otherwise ensure against any claims made by the State of Florida, Division of Library Services for failure to comply with the Grant Contract, this Agreement or any construction contract or any other agreement, where the City has entered into the agreement at the behest of the Association. If insurance is obtained, the City, its officers, agents and employees shall be

named as an additional insured and the amount of insurance and the terms thereof shall be acceptable to the City, as may be amended from time to time.

2

6. **Cooperation.** The City and the Association agree to take all actions as shall be reasonably appropriate or required of each of them in order to make effective the purpose and provisions of this Agreement and to facilitate and effectuate the construction of the new library facilities under this Agreement, Grant Agreement and related agreements and the transfer and/or conveyance of the existing library facilities.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this 20<sup>th</sup> day of March, 2001.

ATTEST:

*Acting*  
Barbara Smith  
City Clerk

Approved as to form:

R. M. Smith  
City Attorney

THE CITY OF DELRAY BEACH, a Florida

By: David W. Schmidt  
Municipal Corporation

David W. Schmidt  
Mayor

**SOCIATION, INC.**

Daniel M. Murtaugh  
President Daniel M. Murtaugh

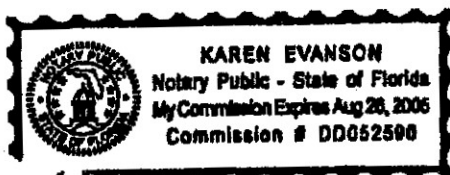
DELRAY BEACH PUBLIC LIBRARY  
ASSO

By:

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of  
SEPTEMBER, 2001 by DANIEL M. MORTWORTH, PRESIDENT  
of DELRAY BEACH PUBLIC LIBRARY ASSN. INC., a FLORIDA  
Yzugi

corporation, on behalf of the corporation. He/she personally known to me/they personally  
produced \_\_\_\_\_ (as identification).



Karen Evanson  
Signature of Notary Public

3

AMENDMENT NO. TO THE AGREEMENT  
BETWEEN THE CITY OF DELRAY BEACH AND  
DELRAY BEACH PUBLIC LIBRARY ASSOCIATION. INC.

THIS AMENDMENT No. 1 to the agreement approved by the City Commission on  
March 20, 2001 between the CITY OF DELRAY BEACH ("City") and the DELRAY BEACH  
PUBLIC LIBRARY ASSOCIATION, INC., (the "Association") is made this day of October,  
2001.

WITNESSETH:

WHEREAS, the City and the Association entered into an agreement which was  
approved by the City Commission of the City of Delray Beach, Florida on March 20,  
2001 relating to the construction of the new public library; and

WHEREAS, the parties desire to amend Paragraph 3, "All Other Requirements" of  
the original agreement to clarify that the Association is responsible for the design and

construction of the new public library and the selection of design professionals and contractors.

NOW, THEREFORE, the parties hereto in consideration of the covenants contained agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated as if fully set forth herein. .

2, Modification. Paragraph 3, "All Other Requirements" of the original agreement is modified as follows: .

3 . All Other Requirements. The Association shall be solely responsible for the design and construction of the new public library facility. The Association shall be responsible for the selection of design professionals and contractors. The Association, by execution of this Agreement, agrees to be bound by this Agreement and by all terms and conditions of the Grant Agreement, design contracts, construction contracts, and any other related agreements pertaining to the construction of a new library facility, whether express or implied, and shall comply and fulfill all of the obligations and duties required of the City under the aforesaid agreements or any other agreement not mentioned herein pertaining to the new library construction project, whether financial, administrative or otherwise, and the Association shall provide proof of discharge of all obligations and duties under the agreements, as though the Association had been in the place and stead of the City of Delray Beach throughout the completion of the building project, through and including the final inspection thereof and shall secure the release from the State of Florida, Division of Library Services and shall release all financial and inspection records after final audit and program review. The Association shall be responsible for all obligations and duties that may remain under the Agreements after the completion of the building as set forth above.

3. **Entire Agreement.** The Agreement, as clarified and amended as Amendment No. 1, consist of the entire contract between the parties. No other covenants not contained in the original agreement and this amendment, oral or written, express or implied, are binding on the parties. The original agreement is modified only by the express terms stated herein. All other terms of the original agreement are binding on the parties except as expressly modified herein.

2

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date written above.

ATTEST:

Barbara Givite

City Clerk

Approved as to form:

Steven A. Puh  
City Attorney

CITY OF DELRAY BEACH, FLORIDA

a Florida municipal corporation

By: David W. Schmidt

Florida municipal corporation

David W. Schmidt, Mayor

DELRAY BEACH PUBLIC LIBRARY  
ASSOCIATION, INC.

By: Daniel M. Murtaugh  
Daniel M. Murtaugh / President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of SEPTEMBER, 2001 by DAVID M. MORTAGH, PRESIDENT of DELRAY BEACH PUBLIC LIBRARY ASSO INC., a FLORIDA corporation, on behalf of the corporation. He/She is personally known to me ~~or has~~ produced \_\_\_\_\_ (as identification).



Karen Evanson  
Signature of Notary Public





FLORIDA DEPARTMENT OF STATE  
DIVISION OF LIBRARY AND INFORMATION SERVICES  
PUBLIC LIBRARY CONSTRUCTION

GRANT  
AGREEMENT

entered into

December 9, 2002

This AGREEMENT, executed and entered into

Department of State, Division of Library and Information Services, hereinafter referred to as the GRANTOR,  
and the City of Delray Beach, hereinafter referred to as the GRANTEE.

BETWEEN the State of Florida,  
Referred as the DIVISION, and the

the PROJECT: Delray Beach Public Library the GRANT AMOUNT: Five

hundred thousand dollars (\$500,000)

Unless there is a change of address, any materials required by this agreement shall be delivered to the Division of Library and Information Services, 500 South Bronough Street, Tallahassee, Florida 32399-0250, for the State, and to the Delray Beach Public Library, 29 SE Fourth Ave., Delray FL, 334834573, for the GRANTEE. In the event of a change of address, it is the obligation of the moving party to notify the other in writing of the change of address.

The DIVISION, as of state funds provided under Section 257, 191, Florida Statutes, has approved an application for public use by the GRANTEE, which application is by reference herein made a part of this agreement. The GRANTEE, acting under the authority vested in it for the establishment and maintenance of a free public library has applied for and received the DIVISION and the GRANTEE are willing to cooperate for the construction of a public library project.

The parties hereto agree as follows:

1. The GRANTEE agrees:

A. To provide eligible and unencumbered funds to be used for public library construction.

B. To provide an approved site and building plans and specifications prepared by a licensed architect.

Submit the plans and specifications to the DIVISION for review prior to the award of the grant.

Award a contract within 540 days from the date of the grant award.

C. To provide and maintain and adequate engineering or inspection at construction site to ensure that contracted work with the approved plans and specifications and will submit progress reports and such information as may be required by the DIVISION.

D. To expend all grant received agreement solely for the purposes for which they were authorized and appropriated. Expenditures from grant funds shall not be made for general operating expenses such as salaries, travel, personnel, or office. Grant funds will not be used for lobbying the Legislature, the judicial branch or any agency.

E. To make changes in the construction contract the DIVISION for if they:  
1. alter the approved building floor space or space relationships;

2. **alter the approved** function or services of any part of a **facility;**
  3. change the location, size, or quantity of any approved fixed equipment;
  3. change the location, size, or quantity of any approved fixed equipment;
  4. **transfer funds** from approved equipment budget the construction budget, or vice versa;
  5. **affect design** features of the or requirements for **elimination of architectural** barriers for the handicapped.
- F. To include the **construction** contract provisions for a **Performance** and Payment Bond and **other financial** assurances as to the contractor's comply with said contract provisions, pursuant to **Section 255.05, Florida Statutes.**
- G. To have a proper accounting system **in accordance** with generally accepted accounting principles.
- H. To provide the DIVISION, through any authorized representative, access to the site and access and the right to examine all records, books, papers, or other related to the PROJECT.
- I. To add the DIVISION of the date and of final in order to afford **participation** in such **inspection** for purpose of contracting in the final acceptance of the building.
- J. To provide, without discrimination, free use **of the library** services to all residents of the area served.
- K. That it will not discriminate against any employee employed the performance of this **agreement**, or against any applicant for employment of race, creed, color, handicap, national origin, or sex. The GRANTEE shall insert a similar provision in all **subcontracts** for services by this **agreement.**
- L. To comply with **the Executive Order** 11988, Flood Plain Management.
- M. To with provisions of Section 257.191, Florida Statutes, and the **regulations implementing** the law, including Sections 553.501-553.513, Florida Statutes, relating to accessibility by persons with disabilities, Americans with Disabilities Act of 1990.
- N. To be devoted exclusively for the public purposes for which constructed or altered. A change may be by the DIVISION.
- O. that the GRANTEE a amount of awards (i.e., State **financial**) provided to the GRANTEE to carry out a single project) equal to or in excess of \$300,000 in any fiscal year of such GRANTEE, the GRANTEE must have a State single or project-specific audit for such fiscal year accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the and Chapter 10.00, Rules of the Auditor General. In the award expended in any fiscal year, the GRANTEE shall consider as sources of State received from the DIVISION, except that State received by a nonstate for Federal program, having requiring be excluded from
- In **connection** with the audit requirements addressed in the paragraph above, the GRANTEE shall ensure that the audit complies the requirements of Section 215.97(7), **Statutes.** Florida This **includes submission** of a report package as by Section 215.97(7)(f), **a Statute,** Florida and Chapter 10.600, Rules of the Auditor General.

If the GRANTEE expends less than \$300,000 in State awards in any fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the GRANTEE expends less than \$300,000 in State awards in any fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of audit must be paid from non-State (i.e., the cost of such an audit be paid recipient finds obtained from other than State endues).

of

# 11. The DIVISION agrees to:

- A. Provide funds, in accordance with the terms of his agreement and to the extent that the appropriate for this project is released to the DIVISION for the PROJECT. Should the GRANTEE still expend the amount of local certified in the application, the DIVISION will match local funds on a dollar for dollar basis a maximum of the grant award.
- B. Make payments according to the schedule contained in the Library Construction Guidelines and Application packet, subject to any special conditions by the Office of the Comptroller, State of Florida.
- C. Conduct a periodic review of the PROJECT, including participation in the final inspection, when feasible.

## m. The GRANTEE and the DIVISION mutually agree that:

- A. This is the whole agreement of the parties. There are no conditions, or obligations provisions, terms, other than those contained herein; and this agreement shall supersede all previous communications, representation, or agreement either verbal or written between the parties. No amendment shall be effective unless reduced in writing and by the parties.
- B. The agreement is made and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Each party shall perform obligations hereunder in accordance with the terms and conditions of this agreement.
- C. If any term or provision of the agreement is found to be illegal and unenforceable, the remainder of the agreement shall in full force and effect and such term or provision shall be deemed stricken.
- D. The DIVISION shall demand the return of monies delivered and withhold subsequent payments if violations occur which disqualify the project from the grant under which they were provided, if monies were early expended or managed or if records of proper expenditure are not prepared, preserved or surrendered as required by this agreement.
- E. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by either under this agreement shall impair any such right, power or remedy of either party; nor shall such delay or be construed as a waiver of any such breach or default, or any similar breach or default.
- F. This agreement shall be terminated by the DIVISION because of failure of the GRANTEE to fulfill its obligations this agreement in a satisfactory manner unless the GRANTEE demonstrates good cause as to why it cannot fulfill its obligations. Satisfaction of obligations by the GRANTEE shall be determined by the DIVISION based on the

terms and ~~conditions imposed~~ on the GRANTEE this ~~agreement~~ and conformance with the program guidelines. The DMSION shall provide the GRANTEE a written notice of default letter. GRANTEE shall have 15 calendar days to cure the default. If the default is not cured by the GRANTEE within the period, the DIVISION shall terminate the agreement, unless the GRANTEE good cause as to why it cure the default within the prescribed ~~time~~ period. For purposes of agreement "good cause" is defined as circumstances beyond the GRANTEE'S control. In the event of termination of this the GRANTEE will be ~~compensated~~ for any work satisfactorily completed prior to the

G. The DIVISION shall cancel this Agreement in the event that the GRANTEE refuses to allow public access to all documents or other materials subject to the provisions of Chapter 19, Florida Statutes, and made or received by the GRANTEE.

of

H. The State of Florida's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the legislature. In the event that the state funds on which this agreement is dependent are withdrawn, this agreement is terminated and has no further liability to the GRANTEE, beyond that already incurred by termination date. In the event of a revenue shortfall, the grant will be terminated in accordance with Section 257.195, Florida Statutes.

I. Bills for fees and services must be maintained in detail sufficient for a proper preaudit and payment thereof.

J. Unless authorized by Law and agreed in writing by the DIVISION, the DIVISION shall not be liable to pay attorney interest or the cost of ~~cost~~

K. The DMSION shall not ~~any~~ liability for the acts, omissions to act or negligence of the GRANTEE, its agents, servants or employees; shall the GRANTEE exclude ~~for~~ own omissions to act or negligence to the DIVISION. In the GRANTEE hereby agrees to be responsible for any injury or property damage resulting from any activities conducted by the GRANTEE.

L. The GRANTEE, other than a GRANTEE which is the State or agency or subdivision of the State, agrees to ~~indemnify and~~ hold the DIVISION harmless and against any and all ~~or~~ demands for damages of any nature, including but not limited to personal injury, death, or damage to arising out of any ~~activities performed~~ under this agreement and shall investigate all ~~at~~ own expense.

M. The GRANTEE shall be responsible for all work performed and all expenses incurred in connection with the Project. The GRANTEE may subcontract as necessary to perform the services set forth in this ~~agreement~~, including entering into ~~subcontracts~~ with vendors for services and commodities, PROVIDED THAT such subcontract has been approved by the DIVISION prior to its execution, and PROVIDED THAT it is ~~understood~~ by the GRANTEE that the DIVISION shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the GRANTEE shall be solely liable to Subcontractor for all expenses and incurred under the subcontract.

N. Neither the State nor any agency or subdivision of the State waives any defense of ~~sovereign immunity~~, or increases the ~~of~~ liability, upon entering into a contractual relationship.

O. The ~~ig~~ officers; employees, of shall act in capacity of independent contractor and not as an officer, employee or agent of the DIVISION. GRANTEE is not entitled to any of employment, including retirement and any other or privileges with employment in the State. Career GRANTEE agrees to take steps may be necessary to that each subcontractor of the GRANTEE will be and will not be considered or ~~permitted to~~ be an agent, servant, joint or partner of &

P. The GRANTEE shall not sublicense or otherwise transfer duties, or obligations under this agreement without prior written consent of the DMSION; which consent shall ~~S obligations, in connection~~

not be unreasonably withheld. The ~~agreement~~ Eansferee demonsrate complimce with the requiremeng of the progam. If the DEVISION approves a ransfer of the GRANTEE'S the GRANTEE remains responsible for all work performed and all e'Qenses inclzred with the ageement. In be event the Legislanre nnsfers the righG, dudes, and obligauas of the DIVISION to another government ptzsuant secäon 20.06, Florida Statutes, or otherwise, the and under this ageement shall also be ransferred the successor government enäty as {fit were an oriönal party to the a3eemeat.

Q. . This ageement shall bind the successors, represennäves of the GRANTEE and of any legal that succeeds to the of the DIVISION.

R. The term of ageement will commence on the date of executon of the ageement

of

THE GRANTEE

David W. Schmidt

Signature of Authorized Official

THE DIVISION

Dave Mann

Dave Mann, Assistant Secretary of State  
Department of State, State of Florida

DAVID W. SCHMIDT, MAYOR

Typed Name and Title of Authorized Official

Attest:

Barbara Hayts

Witness

City Clerk.

ine

Jean M. Breen

Witness

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Witness

Witness

of

Revised 6/13/02

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ITM

FROM DELRAY LIBRARY DBI 200 3/01

SSPM

DEPT. OF STATE/LIBRARY Fax: 850-488-2746

Jun 4 2003 14:56

DEPT., OFp. 02



FLORIDA DEPARTMENT OF STATE

Glenda E. good

Secretary of State

DIVISION OF LIBRARY AND INFORMATION SERVICES

June 4b 2003

John Callahan

Delray Beach

29 Southeast

Delray Beach

John Callahan, Director

Delray Beach Public Library

29 Southeast Fourth Avenue

Delray Beach, FL 33483

Dear John,

This is permission for the Delray Beach Public Library to revise the projected construction budget from \$10,155 million submitted in the application to \$6.5 million. This revised amount will become the new cost to construct the library facility and is the approximate amount to be funded by the City of Delray Beach for the project. This approval is made with the understanding that the library building will be built as described in the Sanitary applic

If you have any questions or need additional information, please let me know.

Sincerely

A handwritten signature in cursive script, reading "Marian Deeney".

Marian Deeney

Library Program Administrator

Cc: Victoria Pendleton, Liaison consultant

Liaison consultant

STATE LIBRARY OF FLORIDA  
R.A. Gray Building • Tallahassee, Florida 32399-0250 • (850) 245-6600  
FAX: (850) 488-2746 • TDD: (850) 922-4085 • <http://www.dos.state.fl.us>  
LEGISLATIVE LIBRARY SERVICE    RECORDS MANAGEMENT SERVICES    FLO  
(850) 488-2812 • FAX: (850) 488-9879    (850) 487-2180 • FAX: (850) 413-7224    (850) 24  
Oft.DDnsrArg  
(BSD) 24\*6760.  
FAX. (89488404

06/04/03 WED 15:53 [TX/RX NO 6559]

EXHIBIT F,



## PROMISSORY NOTE

Date:

\_\_\_\_\_  
Palm Beach County, Florida

FOR VALUE RECEIVED, the undersigned, DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC., a Florida corporation, referred to here as the "borrower," or "debtor" promises to pay to the order of the CITY OF DELRAY BEACH, a Florida municipal corporation, in legal tender of the United States of America, the principal sum of \$800,000.00. Payments must be made at 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444, or any other place or places as holder of this note specifies to the borrower in writing from time to time.

Principal will be payable with the first payment of \$100,000.00 to be paid by August 31, 2004; a payment of \$450,000.00 to be paid by June 30, 2005; a payment of \$100,000.00 to be paid August 31, 2005; a payment of \$50,000.00 to be paid by December 31, 2005; and a payment of \$100,000.00 to be paid by August 31, 2006.

The City has also contributed \$2.5 million dollars and other consideration on the promise of the borrower to construct a library building on the site owned by the City which is legally described as: Lots 1 through 4, Block 53, Town of Linton (now Delray Beach) according to the plat thereof as recorded in Plat Book 1, Page 3 of the Public Records of Palm Beach County, Florida, less the right of way for West Atlantic Avenue.

This note, including the promise to construct a library building, is secured by a Security Agreement, which is a lien on certain personal property described there located in Palm Beach County, Florida. This note is not assumable. This note will become immediately due and payable in full upon the sale or transfer of the collateral securing this note. The Lease shall terminate and the option rights will be nullified, the Construction Agreement and the conditions in the Security Agreement shall also be triggered if borrower fails to comply with the Tripartite and Interlocal Agreement and exhibits thereto, this note or any other agreement between the parties.

Time is of the essence of this note.

Borrower has the option and privilege of prepaying all or any part of the outstanding principal balance evidenced by this note without premium, penalty or

charge. Partial prepayments will not alter the amount or due date of payments under this note until all indebtedness is paid in full.

The happening of any of the following events will constitute a default of this note:

(a) failure to pay a principal or interest payment when due under this note; (b) a default occurs under the Tripartite and Interlocal Agreement and exhibits thereto dated the same date as this note or (c) failure to successfully and timely complete the construction of the Library.

If there is a default of this note and the borrower has not cured the default within fifteen (15) days after written notice of such default is given by the holder to the borrower, then at the option of the holder of this note the entire principal sum then remaining unpaid will immediately become due and payable without notice or demand, and the Security Agreement provisions shall be activated, and the Assignment of Lease and Cancellation and Nullification of Option Rights shall be activated. Failure to exercise any of the above options will not constitute a waiver of the right to exercise the same in the event of any subsequent default.

All parties liable for the payment of this note agree to pay the holder reasonable attorneys' fees and costs, whether or not an action be brought, for the services of attorneys employed after maturity or default to collect this note or any principal or interest due hereunder, or to protect the security, if any, including but not limited to costs and attorneys' fees on any appeal and in any proceedings under the bankruptcy laws or in any post-judgment proceedings.

Notwithstanding any other provision of this note or of any instrument securing this note or any other instrument executed in connection with the obligation evidenced hereby, it is expressly agreed that the amounts payable under this note, or under the other instruments mentioned above.

Borrower does:

(a) consent to any forbearance or extension of the time or manner of payment of this note, to the release of all or any part of any security held by the holder of this note to secure payment of this note, and to the subordination of the lien of the Security Agreement and Assignment Agreement and any other instrument of security securing this note as to all or any part of the property encumbered by it, all without notice to or

consent of the borrower, but this does not obligate the holder to do any of the above;

(b) agree that no course of dealing or delay or omission or forbearance on the part of the holder of this note in exercising or enforcing any of its rights or remedies under this note or under any instrument securing this note shall impair or be prejudicial to any of the holder's rights and remedies under this note or to the enforcement of this note and that the holder may extend, modify or postpone the time and manner of payment and performance of this note and any instrument securing this note, may grant forbearance, and may release, wholly or partially, any security held by the holder as security for this note, all with notice to or consent by the borrower and without releasing, discharging or diminishing its rights and remedies, but this does not obligate the holder to do any of the above; and

(c) waive notice of acceptance of this note;  
and

(d) waive presentment, demand, protest, notice of dishonor and notice of protest.

This note is executed under seal in the State of Florida and constitutes a contract under the laws of the State of Florida and will be enforceable in a court of competent jurisdiction in Palm Beach County, Florida. The undersigned agreed that Florida law will govern and control this instrument.

The headings of the paragraphs contained in this note are for convenience of reference only and do not form a part of this note and in no way modify, interpret or construe the meaning of the provisions of this note.

Documentary stamps, if required, have been purchased and affixed to the Security Agreement and Assignment Agreement

dated of the same date as this note, and is recorded in the Public Records of Palm Beach County, Florida.

Maker's Address DELRAY BEACH PUBLIC LIBRARY

*Daniel M. Murtough*  
Print Name: Daniel M. Murtough  
Title: President of Board  
ASSOCIATION, INC.

29 Southeast 4th Avenue

By:

Delray Beach, FL 33483

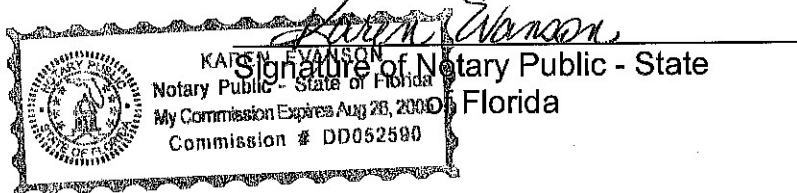
(SEAL)

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> da  
June, 2003 by Daniel M. Murtough (name of officer or  
agent, title of officer or agent) of Delray Beach Public Library Assn., Inc.  
of corporation acknowledging), a Florida (state or place of incorpora  
STATE OF FLORIDA

COUNTY OF day of

agent, title of \_\_\_\_\_ ame of \_\_\_\_\_ (state or place of incorporation) corporation, on behalf  
of the corporation. He is personally known to me. or—has  
produced \_\_\_\_\_ (type of identification) as identification.



## SECURITY AGREEMENT

THIS AGREEMENT, is made this day of \_\_\_\_\_ of \_\_\_\_\_ 2003, by and between the DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, INC., and the CITY OF DELRAY BEACH, a Florida municipal corporation, its successors and/or assigns, herein called the "Secured Party".

## WITN E S S E T H

To secure the payment of an indebtedness in the amount of \$800,000.00 payable as follows:

Principal will be payable with the first payment of \$100,000.00 to be paid by August 31, 2004; \$450,000.00 to be paid by June 30, 2005; \$100,000.00 to be paid August 31, 2005; \$50,000.00 to be paid December 31, 2005; and a payment of \$100,000.00 to be paid by August 31, 2006.

as evidenced by a (promissory) Note (hereinafter referred to as the "NOTE") of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "OBLIGATIONS"), evidenced in the Tripartite and Interlocal Agreement and exhibits thereto, Debtor hereby grants and conveys to the Secured Party a security interest in:

(a) the property described in the schedule attached hereto and made a part hereof (hereinafter called the "COLLATERAL"), which COLLATERAL the Debtor represents will be used primarily in business or other use,

(b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this Agreement and prior to its termination,

(c) all proceeds thereof, if any,

(d) all increases, substitutions, replacements, additions and accessions thereto.

## DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

1.To pay and perform all of the obligations secured by this Agreement according to their terms.

2. To defend the title to the COLLATERAL against all persons and against all claims and demands whatsoever, which COLLATERAL, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except for personal property/ tangible taxes for the current and subsequent years and as may be set forth in the schedule.

3. On demand of the Secured Party to do the following: furnish further assurances of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this Agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the COLLATERAL and pay all costs of filing in connection therewith.

4. To retain possession of the COLLATERAL during the existence of this agreement, Debtor agreeing that, except for any sale of inventory in the ordinary course of business or any sale of equipment replaced with unencumbered equipment of equal or better value, upon any sale of the COLLATERAL, or upon any transfer, forfeiture, or conveyance of all or any part of Debtor's interest or equity in and to the COLLATERAL or upon any transfer of any shares of a corporate Debtor's capital stock, either voluntary, involuntary or by operation of law other than (a) a transfer by devise, descent, or by operation of law upon death of a joint tenant, or (b) creation of a lien or encumbrance subordinate to this Security Agreement, all sums then remaining unpaid hereunder and under the NOTE secured hereby shall, at Secured Party's option, become immediately due and payable in full, without notice, unless Secured Party shall first consent in writing to such transfer, conveyance or sale.

5. To keep the COLLATERAL at the location specified in the schedule and not to remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

6. To keep the COLLATERAL free and clear of all liens, charges, encumbrances, taxes and assessments, mortgages other than subordinate mortgages.

7. To pay, when due, all taxes, assessments and license fees relating to the COLLATERAL.

8. To keep the COLLATERAL, at Debtor's own cost and expense, in good repair and condition and not to misuse, abuse, waste or allow it to deteriorate except for normal wear and tear, and to make same available for inspection by the Secured Party at all

reasonable times. To complete fictitious name registration of any fictitious name collateralized hereby within forty-five (45) days of the date hereof.

9. To keep the COLLATERAL insured against loss by fire (including extended coverage), theft and other hazards as the Secured Party may require and to obtain collision insurance if applicable; Secured Party shall be named as additional insured as to all such policies. Policies shall be issued by companies duly licensed and authorized to do business in the state where the property is located and shall be in such form and amounts as the Secured Party may reasonably designate. Policies shall be obtained from responsible insurers, authorized to do business in the state where the COLLATERAL is located. Certificates of insurance or policies, payable to the respective parties as their interests may appear, shall be deposited with the Secured Party (prior to expiration of preceding coverages) who is authorized, but under no duty, to obtain such insurance upon failure of the Debtor to do so; Debtor shall reimburse Secured Party upon demand for premiums paid by Secured Party for coverage in the event of Debtor's failure to secure insurance coverage in favor of Secured Party and said obligation shall also be secured hereby. Debtor shall give immediate written notice to the Secured Party and to insurers of loss or damage to the COLLATERAL and shall promptly file proofs of loss with insurers. Debtor hereby appoints the Secured Party the attorney for the Debtor in obtaining, adjusting and hereby assigns to the Secured Party all sums which may become payable under such insurance, including return premiums and dividends, as additional security for the indebtedness, to the extent of Secured Party's insurable interest therein.

10. If this Agreement is security for a loan to be used to pay a part or all of the purchase price of the COLLATERAL; to use the proceeds of the loan to pay the purchase price, filing fees and insurance premiums. The Secured Party, however, may pay the proceeds directly to the seller of the COLLATERAL.

11. To immediately notify the Secured Party in writing of any change in or discontinuance of Debtor's place or places of business and/or residence.

12. That if the COLLATERAL has been attached to or is to be attached to real estate, a description of the real estate and the name and address of the record owner is set forth in the schedule herein; if the said COLLATERAL is attached to real estate prior to the perfection of the security interest granted hereby, Debtor will on demand of the Secured Party furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any interest in the COLLATERAL which is prior to the Secured Party's interest.

**THE PARTIES FURTHER AGREE AS FOLLOWS:**

A. The NOTE executed in connection with this Agreement is a separate instrument and may be negotiated by Secured Party without releasing Debtor, the COLLATERAL, or any guarantor or co-maker. Debtor consents to any extension of time of payment. If there be more than one Debtor, guarantor or co-maker of this Agreement or of notes secured hereby, the obligation of all shall be primary, joint and several.

B. Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this Security Agreement, shall not constitute a waiver of any subsequent or other default or failure.

C. Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

D. The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision of this Agreement.

E. The following shall constitute a default by Debtor:

i. Failure to pay the principal or any installment of principal and/or interest, or any late charge, on the NOTE when due, continuing beyond any grace period set forth therein.

ii. Failure by Debtor to comply with or perform any provision of this Agreement continuing beyond any grace period set forth in the NOTE secured hereby.

iii. False or misleading representations or warranties made or given by Debtor in connection with this Agreement.

iv. Subjection of the COLLATERAL to levy of execution or other judicial process.

v. Commencement of any insolvency proceeding by or against the Debtor or of any guarantor or surety for the Debtor's obligations.

vi. Death (or if Debtor is a corporation, dissolution) of the Debtor or of any guarantor or surety for the Debtor's obligations.

vii. Any reduction in the value of the COLLATERAL or any act of the Debtor which reasonably imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.



viii. Any default under any note or security instrument or the Tripartite Agreement and exhibits thereto which is prior in right, title or dignity hereto.

ix. Any default under any Pledge Agreement, Collateral Assignment of Lease or other security instrument from Debtor to Secured Party made and given as additional security for the OBLIGATIONS, including the Tripartite Agreement and exhibits thereto, continuing after any grace period specified therein,

Failure to complete fictitious name registration as to any- fictitious name collateralized hereby within forty-five (45) days of the date hereof,

Upon any default of the Debtor and at the option of the Secured Party; the OBLIGATIONS secured by this Agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have : all- the- rights, remedies and privileges with respect to repossession; retention and sale of- the COLLATERAL and disposition of the proceeds as are accorded to a Secured party by the applicable sections of the Uniform Commercial Code respecting: "Default", -in effect as of the date of the Security Agreement.

G. Upon any default, the Secured Party's reasonable attorney's fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping- storing, advertising, and selling the COLLATERAL shall be chargeable to the Debtor.

The Debtor shall remain liable for any deficiency. resulting. from a sale of the COLLATERAL and shall pay any such deficiency forthwith on demand.

If the Debtor shall default in the performance of any of the' provisions of this Agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so' doing shall: be chargeable- with interest to the Debtor and added to the indebtedness secured

In conjunction with, in addition to or by way of: substitution for those rights, Secured Party, at its discretion, may: (1) enter upon Debtor's premises peaceably by Secured Party's own means or with legal process,- and- take- possession- of- the COLLATERAL, or render it unusable, or dispose of the COLLATERAL on -the Debtor's premises and the Debtor agrees not to resist or interfere; require Debtor to assemble the COLLATERAL and make it available to the Secured Party at a place to be designated by the Secured Party, reasonably convenient to both parties (Debtor agrees that the Secured Party's address as set forth above is a place reasonably convenient for such assembling); (3) unless the COLLATERAL is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any

private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice will be: met if such notice- is mailed, postage prepaid, to the address of the Debtor shown above, at least three (3) days before the time of sale or disposition.

Secured party may assign this Agreement and, if assigned, the assignee(s) shall be entitled, upon notifying the Debtor, to performance of all of the Debtors obligations

and agreements hereunder and the assignee(s) shall be entitled to all of the rights and remedies of the Secured Party hereunder. Debtor will assert no claims or defenses Debtor may have against the Secured Party against the assignee(s).

L.The Secured Party is hereby authorized to file and/or record a Financing Statement and any necessary statements of assignment or continuation hereof.

The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this Agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the

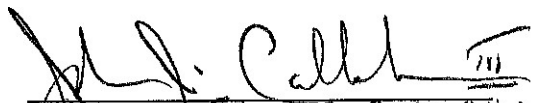
This Agreement may not be changed verbally.


IN WITNESS WHEREOF, the parties have respectively signed and sealed these presents the day and year first above written.


Signed, sealed and delivered in our presence:

WITNESSES: DELRAY BEACH PUBLIC LIBRARY

ASSOCIATION, INC.

  
Print Name: John J. CALLAHAN III

By:   
Print Name: Daniel M. Murtagh  
Title: President of Board

  
Print Name: VERONICA F. DiSILVESTRO  
ASSOCIATION, INC.

ATTEST:

Barbara L. Lupo

CITY OF  
DELRAY  
EACH,

Jeff Perlman  
Jeff Perlman, Mayor

FLORIDA

By:

City Clerk

Approved as to Form:

Samuel R. Rulifson  
City Attorney

STATE OF FLORIDA UNIFORM  
**FINANCING** COMMERCIAL CODE STATEMENT  
FORM

A. NAME & DAYTIME PHONE NUMBER OF owner, or PERSON
Susan A. Ruby City Attorney 561 243—70 1
B. SEND ADVISORY COMMENTS TO:
Name Susan A. Ruby, City Attorney
Address 100 N.W. 1st Avenue
Delray Beach, FL 33444
Address
City/State

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME 1a OR 1b - Do Not Abbreviate or Names

1a. ORGANIZATION'S NAME Delray Beach Public Library Association, Inc.					
1b. INDIVIDUAL'S LAST NAME Callahan, III		FIRST NAME John		MIDDLE NAME SUFFIX	
1c. MAILING ADDRESS 4th 29 S.E. 1st Avenue		CITY Delray Beach		POSTAL CODE 33483	COUNTRY USA
1d. TAX 59-0217683	RE: ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION 501(C) (3)	1f. JURISDICTION OF ORGANIZATION Florida		1g. ORGANIZATION ID# NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME 2. OR 2b - Do Not Abbreviate or Combine Name

2a. ORGANIZATION'S NAME					
2b. INDIVIDUAL'S LAST NAME		FIRST NAME		MIDDLE NAME SUFFIX	
2c. MAILING ADDRESS		CITY		STATE	POSTAL CODE COUNTRY
2d. TAX	REQUIRED ADDRESS INFO RE: ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATION ID# NONE

3. SECURED PARTY'S NAME or NAME OF TOTAL ASSIGNEE OF ASSIGNORS/P INSERT ONLY ONE SECURED PARTY NAME 3a OR 3b

3a. ORGANIZATION'S NAME City of Delray Beach, Florida, a Florida municipal corporation					
3b. INDIVIDUAL'S LAST NAME		FIRST NAME		MIDDLE NAME SUFFIX	
3c. MAILING ADDRESS		CITY		STATE	POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

See schedule to Security Agreement and- Rider. to' UCC—[I] Financing: \_  
Statement.

5. ALTERNATE DESIGNATION (if applicable)	C	LESSOR AG.	CONSIGNEE/CONSIGNOR NON-UCC FILING	BALBWBAILOR SELLER]BUYER
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6. Florida DOCUMENTARY STAMP TAX - YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX



All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA

STANDARD FORM - FORM UCC-1 (REV. 11/001)      Filing once Copy      Approved by the Secretary of State, state of florida

STATE OF FLORIDA UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT FORM - ADDENDUM

8. NAME OF FIRST DEBTOR OR 1a OR 1b ON RELATED FINANCING STATEMENT

8a. ORGANIZATION'S NAME			
Delray Beach Public Library Association, Inc.			
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
Callahan, 111	John		

9. MISCELLANEOUS:	111 is the Director
John J. Callahan, of the Library	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S EXACT LEGAL NAME - INSERT ONLY ONE DEBTOR NAME 10a OR 10b - Do Not Abbreviate or Combine

10a. ORGANIZATION'S NAME					
N/A					
10b. INDIVIDUAL'S LAST NAME			FIRST NAME	MIDDLE NAME	SUFFIX
10c. MAILING ADDRESS			CITY	STATE	POSTAL CODE COUNTRY
10d. TAX	REQUIRED ADDL INFO RE: ORGANIZATION DEBTOR	10e. TYPE OF ORGANIZATION	10f. JURISDICTION OF ORGANIZATION		10g. ORGANIZATIONAL NONB

11. SECURED PARTY'S NAME OR TOTAL ASSIGNEE OF ASSIGNOR SIGN  
INSERT ONLY ONE SECURED PARTY NAME OR 11b

11a. ORGANIZATION'S NAME				
11b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS			STATE	POSTAL CODE COUNTRY

<p>12. This FINANCING STATEMENT covers collateral, or is filed as fixture filing.</p> <p>13. Description of real estate:</p> <p>14. Name of Debtor (if Debtor is a Record Owner of above-described real estate (if Debtor not have a record interest):</p>	<p>15. Additional collateral description:</p> <p>See schedule to Security Agreement and Rider to UCC—Financing Statement</p>
	<p>16. <u>only</u> if applicable and check <u>Only</u> one box.</p> <p>Debtor is a <input type="checkbox"/> Trust or <input type="checkbox"/> Trustee acting with respect to property held in trust or</p> <p><input checked="" type="checkbox"/> Decedent's Estate</p> <p>17. Check if applicable and check <u>only</u> one box.</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> is a TRANSMITTING UTILITY</p> <p><input type="checkbox"/> in connection with a Manufactured-Home Transaction — effective 30 years</p> <p><input type="checkbox"/> Filed in connection with a Public-Finance Transaction — effective 30</p>

STANDARD FORM UCC-I ADDENDUM (REV.12/2001)

Filing once copy

Approved by the Secretary of State, State of Florida

## SCHEDULE TO SECURITY AGREEMENT AND RIDER TO UCC-I FINANCING STATEMENT

Dated:

The Security Agreement or Financing Statement to which this Schedule/Rider is attached covers the following types and items of property:

(a) Fixtures or Leasehold Improvements. All fixtures or leasehold improvements owned by Debtor capable of severance and permitted to be severed from the premises located at 104 West Atlantic Avenue and 132 West Atlantic Avenue, Delray Beach, Florida, which premises are presently owned by City of Delray Beach, Florida, or successor business location(s) used by Debtor, said address(es) and location(s) hereinafter being described as the "premises."

(b) Tangible Personal Property. All of Debtor's interest in all fixtures, equipment, including but not limited to computers and copiers, scanners, etc. inventory, books, movies, tapes and tangible personal property of any nature whatsoever now or hereafter (i) affixed or situated in or about the premises located aforesaid capable of severance therefrom, or (ii) regardless of where situated, used, useable, or intended to be used in connection with Debtor's business or any present or future use or operation of or in said premises.

(c) Incomes. All rents, issues, incomes and profits, in any manner arising from the Debtor's business or the aforesaid premises, leasehold improvements, or tangible personal property, or any combination, including Debtor's interest in and to all leases, licenses, franchises, and concessions of, or relating to all or any portion of Debtor's business or the premises, whether now existing or hereafter made, including all amendments, modifications, replacements, substitutions, extensions, renewals or consolidations; the foregoing items are jointly and severally called the "incomes" in this instrument.

(d) Contract Riahts. Without imposing on Secured Party any liabilities therefor, all of Debtor's right, title, and interest and to any and all contracts, written or oral, expressed or implied, now existing or hereafter entered into or arising, in any manner related to the improvement, use, operation, sale, conversion or other disposition of any interest in the Debtor's business or the premises, leasehold improvements, tangible personal property, or the incomes, or any combination, including any and all deposits, prepaid items, and payments due and to become due thereunder, and including construction contracts, service/maintenance contracts, advertising contracts, purchase agreements and orders, equipment and other leases, including but not limited to the Tripartite and Interlocal Agreement and exhibits thereto and purchase options.

(e) Name. All right, title and interest of Debtor in and to all trade names now or hereafter used in connection with the operation of Debtors business or the premises, and all related marks, logos, and insignia.

(f) Other Intangibles. All contract rights, bank accounts, accounts receivable, instruments, and general intangibles, as such terms from time to time are defined in the Florida Uniform Commercial Code, in any manner related to the use, operation, sale, conversion, or other disposition (voluntary or involuntary) of the Debtor's business or the premises, or leasehold improvements, intangible personal property, or incomes, including the telephone number(s), all permits, and goodwill of the business from time to time being conducted by Debtor in and about the premises.

(g) Secondary Financing. All of Debtor's right, power or privilege to further encumber any of the property described in this Schedule and Rider for debt.

(h) Proceeds. All proceeds of the conversion, voluntary or involuntary, of any of the property described in this Schedule and Rider into cash or other liquidated claims, or that are otherwise payable for injury to, or the taking or requisitioning of, any such property, including all insurance and condemnation proceeds.

As used in this instrument, the term "include" is for illustrative purposes only and is always without limitation.

IN WITNESS WHEREOF, the parties have executed this Schedule/Rider the date stated above.

DEBTOR:

SECURED:

DELRAY BEACH PUBLIC LIBRARY

CITY OF DELRAY BEACH, FLORIDA

ASSOCIATION, INC.

By:

y:

By:



# CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2003, by and between the DELRAY BEACH PUBLIC LIBRARY ASSOCIATION, 'INC., hereinafter called the "Library", and the CITY OF DELRAY BEACH, FLORIDA, hereinafter called the "City".

WITNESSETH•.

WHEREAS, the CRA is to convey to the City and the City will be vested with fee simple title to that certain property situate in the County of Palm Beach, State of Florida, known and described as follows:

Lots 1 through 4, Block 53, TOWN OF LINTON (now Delray Beach), according to the Plat thereof as recorded in Plat Book 1, Page 3, Public Records of Palm Beach County, Florida, less the right-of-way for West Atlantic Avenue.

and the said Library desires to build a library and parking facilities ("Improvements") on said property above-described as set forth in the plans and specifications and said Library is without sufficient funds with which to construct said Improvements, and said City, as hereinafter provided, has agreed to make a contribution for the construction of said Library of \$2.5 million dollars (the CRA to contribute \$666,000.00 thereof and the City and CRA each to contribute additional monies under Exhibit "C" to the Tripartite and Interlocal Agreement) on the terms and conditions hereinafter set forth in the Tripartite and Interlocal Agreement and exhibits thereto.

NOW, THEREFORE, in consideration of the mutual and separate agreements, covenants and warranties of the parties hereto and the \$2.5 million dollars contributed by the City, it is agreed, covenanted and warranted by and between the parties hereto as follows:

I. The Library covenants, warrants and agrees:

A. The Library will build a library and parking facilities on the abovedescribed property and has the right, after a certificate of occupancy for the new library building is obtained, to enter into a long term lease on the property and has an option to purchase the property pursuant to the Tripartite and Interlocal Agreement of (date) and exhibits thereto, provided, however, upon a breach of

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this Agreement or a breach of the Tripartite and Interlocal Agreement and any exhibits thereto which may effect the successful and timely completion of construction of the Library, the City may take whatever action is necessary in law or in equity to secure its rights and obligations under the Tripartite and Interlocal Agreement and Exhibits thereto, and if the breach occurs during construction of the Library, or upon the failure of the Library to repay monies due the City, the CITY has the option to complete the

building using whatever monies the Library has raised for the project which shall immediately be turned over to the City. The City is entitled to take possession and title to the property and complete the construction of the Library on the property and any anticipated or actual lease rights of the Library and right to purchase shall be null and void. The City shall have all rights to the items included in the Security Agreement. The Library shall also indemnify the City as provided in its agreements set forth in Exhibit "D". This covenant is in addition to and not a substitution for all rights of the City set forth elsewhere in the Tripartite and Interlocal Agreement and any exhibits thereto, including this Agreement.

**B.** The Library covenants and warrants that the as of the date hereof no materials of any kind have been placed thereon and no labor has been performed upon the property incident to the contemplated construction.

**C.** The Library shall furnish the City, at Library's expense upon the completion of said building(s) and improvements, a print or prints of survey showing said building(s) and improvements properly located on said property.

The Library shall also furnish the City at Library's expense, a print or prints of survey made immediately after all foundation walls of said buildings are in place to show that any covenants and restrictions and zoning ordinances affecting said property have not and will not be violated by the erection of said building(s).

**D.** The Library shall furnish and pay the premiums for, from the commencement of construction, fire and extended coverage insurance and insurance against such other hazards including flood insurance, if necessary, as well as builder's risk insurance, as shall be required by the City, in a company or companies acceptable to the City, in the full insurable value of the Improvements and covering the same. Said policies to be in such amount and form so that City will be a co-insured. The Library shall furnish at Library's expense such workmen's compensation, builder's risk and liability insurance as may be required by law and the City.

**E.** The Library shall construct and erect in a true, thorough, workmanlike and substantial manner on the above-described property the Improvements herein mentioned in accordance with the plans and specifications heretofore and approved by City, which plans and specifications shall be construed together in such manner so that any works, structures, or parts thereof exhibited in the plans and not mentioned in the specifications, or vice versa, are to be constructed and erected as if they were exhibited in the plans and mentioned in the specifications. The Library shall fully equip said Improvements and install and pay for any fixtures and materials and complete and pay for any landscaping, walls, drives, approaches or walks required by said plans or specifications or the mortgage loan commitment or certificates of reasonable value

hereinafter mentioned or described in the application for such commitment, and place in said Improvements and pay for any chattels, furniture, furnishings or equipment as required by said plans or specifications or by said mortgage loan commitment or mentioned or described in the application therefor. Library shall provide at the cost, charge and expense of Library all materials, labor, scaffolding, implements and cartage of every description for the due performance of the several works and the complete construction and erection of said Improvements herein contracted to be performed by the Library. Library shall not make any changes in the plans or specifications or deviate therefrom except with the written consent of the City.

F.The Library shall take all necessary steps to assure that construction of said Improvements shall proceed continuously and diligently, and in all events shall complete construction and equipage of said Improvements and perform all covenants and promises contained in the preceding sub-paragraph (E) hereof not later than December 31, 2005. Construction of said Improvements shall commence no later than March 31 , 2004.

G. The Library covenants and warrants that all necessary licenses or permits will be obtained to permit the completion of said Improvements and that all materials contracted or purchased are for delivery to said property and for use in said construction, and all labor contracted or hired for or in connection with said construction shall be used and employed solely on said property and in said construction and only in accordance with said plans and specifications. Copies of the necessary building permits shall be furnished by Library to City forthwith prior to any disbursement of funds pursuant to this Agreement.

H.The Library agrees to comply with all federal, state, and local laws, rules and regulations of any nature whatsoever, applicable zoning ordinances and subdivision restrictions, now in effect or in the future.

I.The Library shall furnish, on completion of construction on said property, all receipted bills, certificates, affidavits, releases of liens and other documents which may be required by the lien laws of the State of Florida or which shall be reasonably required by the City as evidence of full payment for all labor and materials incident to said construction and release of said building(s) on said property from all liens therefor.

J. The Library shall supervise the construction of said Improvements without charge or deduction for such services.

K.The Library shall execute all instruments required to fully comply with and perform same and shall abide by, complete and carry out all the Library representations, proposals and obligations. It is specifically agreed and understood that

City's obligation to disburse the money at any time in accordance with this Agreement is contingent upon Library's full and strict compliance with all of the covenants, warranties, representations, terms and conditions of the documents executed and delivered in connection with this transaction.

L. The Library shall furnish City forthwith and prior to the disbursement of any funds pursuant to this Agreement, duly executed copies of the contract between contractor and Library and any other contracts and/or subcontracts between lienors and/or materialmen and Library, as well as a copy of the executed contract between Library and Library's architect.

2. Funds shall be disbursed and advanced by the City from time to time as follows:

A. Subject to the provisions hereof, such funds shall be disbursed and advanced by the City from time to time as follows:

(1) The Library shall deposit to the City in a Library Construction Fund, all funds necessary to construct the Library subject to any payments to be made by other parties as set forth in the Tripartite and Interlocal Agreement and exhibits thereto. The funds to be drawn during the term of this loan will be disbursed by the City not more than one time each month on a direct payment basis as work progresses upon receipt by City of properly executed draw requests acceptable to City both as to form and substance together with bills and/or lien waivers. In addition, City shall receive prior to any disbursement a certification from City's inspectors, Library's architect, Library's general contractor and Library indicating the work in place. The costs of disbursements and inspections are to be paid by Library. City must receive at least seven (7) working days' notice prior to the payment of funds. Payments shall not exceed 90% of the value of the work performed and materials in place or the amount due to the contractors and material suppliers, whichever is less. Such ten percent (10%) hold back will be retained until completion of construction and funding of the final loan proceeds. There shall be no disbursements for materials stored offsite. Disbursements for materials stored onsite shall be permitted unless such disbursements are prohibited by or are in violation of the payment and performance bonds.

B. Notwithstanding the provisions of sub-paragraph A last above and prior to the disbursement of any funds as set forth in said sub-paragraph A, the Library shall if requested, confirm that it has deposited in its own funds in the amount necessary to complete the construction of such improvements over and above the amount to be advanced hereunder, in such amount as City in its sole discretion shall determine on account of the construction costs of the improvements and the costs of chattels, furniture, furnishings or equipment, if any, as to such improvements (not including,

however, cost of land or cost of any chattels, furniture, furnishings or equipment which are not required to be pledged by said mortgage loan commitment), and the Library shall submit to the City evidence satisfactory to it that said sum was deposited from Library's own funds and not from any secondary financing involving any of the property described above or the improvements to be made thereon.

C. Notwithstanding any other provision hereof, the City shall be entitled at its option to refuse to make any disbursements hereunder, or to withhold a part of any disbursement, if the Library shall fail to perform or comply with any condition, contingency or requirement of any agreement between the parties.

D. Said funds shall be disbursed in accordance with all of the standard controls typically placed upon the disbursement of construction proceeds by City. Disbursement will be made based upon a percentage of completion as described above, or directly to the contractor, subcontractor and/or supplier or in such other manner as City may determine. Requisitions for advances shall be on City's approved forms. All determinations as to cost-to-complete, feasibility, compliance with plans, specifications and building codes, frequency and amount of advance and other matters relating to disbursements shall be at the sole discretion of the City.

E. No change orders that would cause the total construction cost to exceed \$6,500,000.00 will be permitted unless approved in writing by the City and all change orders of any amount shall be paid for in advance directly by Library.

F. If the services of an architect and/or engineer are employed, City shall, but at Library's expense, require the architect's and/or engineer's certificate as to the progress of construction before making each disbursement in accordance with the aforesaid schedule.

G. The City may, at its option, from time to time during construction and at its completion require for its own information and protection evidence from the Library or contractor, or both, of the payment of bills for all labor and materials, but the City shall not be required or responsible to ascertain that any bills are paid.

H. Without the prior written consent of the City, all monies disbursed hereunder shall be used solely on account of costs of construction and improvements on the hereinabove-described property and expenses of the construction loan and no such monies shall be diverted or borrowed for any other use.

I. The City shall not be responsible or liable to ascertain or determine at the time of making any disbursement hereunder, or at any other time, that the construction of said building(s) and improvements has been in accordance specifications or any

contract of the Library for the construction thereof, nor that same as proposed or constructed is permitted by restrictions or zoning ordinances, if any, affecting said premises.

J. As requested by City during construction, an Engineering Report satisfactory to City shall be provided, at Library's expense, from an independent engineering firm approved by City. Said inspections shall show all buildings and equipment to be in satisfactory condition and working order.

3.The City shall not be liable to materialmen, contractors, subcontractors, laborers or others for goods and/or services delivered and/or rendered by them in or upon said premises or employed in said construction or for any debts or claims accruing in favor of any such parties and against the Library or others or against said premises. The Library is not and shall not be the agent of the City for any purpose whatsoever.

4.All inspection services, if any, rendered by the City or officers, agents, or employees, shall be rendered solely for its own information and protection. Neither the City nor its officers, agents or employees shall be in any way liable for the failure of any dealer, contractor, sub-contractor or laborer to deliver materials or perform services to be delivered or performed by them.

5.If and when it shall appear in City's reasonable discretion at any time during the construction that the balance of costs of all the construction and improvements to be performed as aforesaid (cost-to-complete) will exceed the aggregate cost of the improvements, less such sums thereof as have been theretofore advanced or reserved, the Library, forthwith upon demand of the City, shall deposit with the City the excess amount of such costs of such construction and improvements.

6.If the Library or Library's contractor shall fail to perform according to the terms of this Agreement or cause or permit conditions to arise so that performance would be rendered unduly difficult or hazardous for the City, or if the Library shall fail, neglect or refuse to perform either or any of Library's promises or agreements hereunder, or breach any promise, covenant, warranty or agreement made hereby, or if it becomes apparent that the Library or Library's contractor will not complete said Improvements within the time specified in paragraph I(F) hereof, or if the Library shall become insolvent or if there is filed a voluntary or involuntary petition in bankruptcy of the Library, or if a conservator or trustee or receiver is appointed for the assets of the Library or an assignment for the benefit of creditors is made by the Library, then and in either such event the City may, at its option, withhold further disbursements hereunder and will be entitled to take possession of the property and has all rights as set forth in Paragraph I.A. and is entitled to pursue all of the remedies available at law and in equity and may pursue any or all

rights and remedies as set forth in the Tripartite and Interlocal Agreement and exhibits thereto.

7.If at any time it shall appear that the Improvements are being constructed in violation of any environmental laws, regulations, rules, covenants, restrictions or zoning ordinances of governmental authorities affecting said property, the City shall be entitled to withhold further disbursements hereunder and, unless such violation is attempted to be corrected and cured by the Library forthwith on notice to the City and the process continuously and vigorously prosecuted until completed, the City may at its option, declare all funds previously advanced be immediately due and payable.

8.The dissolution of Library shall not terminate the obligations of the Library to complete said Improvements and perform all other agreements hereunder, and the trustees of the Library shall be required to carry out this Agreement in the manner and within the time herein provided.

9.Should any dispute arise between the Library and the City that cannot otherwise be mutually resolved by the parties respecting the true construction and meaning of the plans and specifications, the same shall be decided by a competent architect and/or engineer to be selected by the City at the cost of the Library.

10. All charges and expenses (including but not limited to City's fee, recording fees, intangible tax on any mortgage on the property, documentary stamps on note, abstracting, counsel fees, inspecting engineers, architects, construction consultants, title insurance and title search expenses, recording charges and expenses, etc.) in connection with the construction are due and payable by Library.

11. The Library further represents, covenants, warrants and agrees that:

A. No notice of commencement of any improvement upon any part of the property hereinabove described has been made, recorded or posted within forty-five (45) days preceding the date of this Agreement; no such Notice of Commencement will be recorded or posted prior to the recording of the mortgage hereinabove referred to; the Notice of Commencement will be properly recorded and posted prior to commencement of any improvements; and the improvements described in said Notice will be commenced within thirty (30) days after such recording;

B.City's advances hereunder shall be disbursed by the City, as hereinabove provided; and City is not an agent of the Library, and has no obligation or responsibility to the Library or the contractor or lienors, for the further disbursement and proper payment of said funds to any parties for work, labor, services and materials done, performed and supplied for the construction and improvements on the property, or for

compliance with or performance of any requirements or provisions of the Florida Mechanics' Lien Law, or otherwise;

C.City's advances hereunder shall be disbursed for "proper payments", pursuant to Library's contracts and under the Florida Mechanics' Lien Law, for work, labor, services and materials done, performed and supplied to the property, and Library will timely comply with all requirements and provisions of the Florida Mechanics' Lien Law and will require and obtain from all contractors, sub-contractors and/or lienors all affidavits required, or permitted to be required, by said Law, and will construct and complete the Improvements in accordance with the plans and specifications therefor, free and clear of all claims of lien;

D.If a Claim of Lien shall be filed against the property, the Library, on request of City or the title insurer, will promptly make and record a "Notice of Contest of Lien"; and cause said lien to be bonded with a cash or surety bond in the amount required by law for the bonding of mechanic's liens within thirty (30) days of the recording of the claim of lien; and

E.If and when requested by City, Library will promptly furnish satisfactory proof of compliance with all the foregoing and copies of all notices, affidavits and other papers received, made or given by Library relating to the property. City shall have the right to withhold payment of any advance otherwise due Library hereunder whenever, in the opinion of City or title insurer, the further disbursement of said funds by Library would not constitute "proper payments" for work, labor, services or materials done on and supplied to the property under Library's contracts or under the Florida Mechanics' Lien Law.

F.Library shall fully conform to and comply with the Florida Mechanic Lien Law, Florida Statutes 713, and shall obtain and maintain the full protections to an owner not in privity, as described in Florida Statutes, Chapter 713.06.

12. Library releases City from any liability or damages arising out of or related to the disbursement of the proceeds hereunder, including any non-compliance or improper compliance with the Florida Mechanics' Lien Law, and Library and contractor severally agree to indemnify and hold harmless the City from and against any such liability or damages.

13. The mailing of a written notice of demand, addressed to the Library, directed to the said Library at the last address actually furnished to the City, or directed to the said Library at 29 S.E. 4<sup>th</sup> Avenue, Delray Beach, Florida 33483 and mailed by the United States certified mail, return receipt requested, shall be sufficient notice and demand in any case arising under this instrument and required by the provisions hereof



or by law. Notice to City if required hereunder, shall be deemed properly given when forwarded by certified mail, return receipt requested, with sufficient postage affixed thereto and addressed to City at 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444, Attention: City Manager and to 200 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444, Attention: City Attorney

14. Nothing herein shall be construed to waive or diminish any right or security of the City. It is the purpose and intent hereof to provide safeguards, protections and rights for the City in addition to those provided and to better secure said City by reason of this Agreement.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Library shall be released from obligations and agreements hereunder only by written instrument of the City specifically provided for in such release.

16. This Construction Agreement shall be governed and construed under the laws of the State of Florida.

17. If this Construction Agreement is executed by more than one person then all singular nouns, pronouns and verbs herein shall be construed as plural nouns, pronouns or verbs; it being the intent and purpose hereof that this form shall conform to the circumstances as fully as if each change from singular to plural were set forth in writing herein.

18. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties hereto and there are no promises either written or oral, express or implied, between the parties hereto other than as herein set forth. It is expressly understood and agreed that the parties hereto intend this Agreement to be an integration of all prior and contemporaneous promises, agreements conditions, undertakings, warranties and representations between the parties hereto.

19. It is specifically agreed and understood that City shall not be held liable for any and all claims for loss, damage or injury of any nature whatsoever with respect to any person or to the property described in the Tripartite and Interlocal Agreement and exhibits thereto or the Improvements to be constructed thereon or to the personal property to be installed or located therein. Furthermore, City's negligence in the administration of the construction loan shall not excuse Library or anyone else from complying with any and all of the terms set forth hereunder and under the other loan documents of even date. All of the provisions set forth hereunder and under the other

documents are to be fully enforced and are solely for the City's protection and are not to be and should not be relied upon by the Library, or other third parties.

20. Library shall pay and deposit with the City all and singular the out-of-pocket costs, charges and expenses, including reasonable attorneys' fees and abstract and/or title search costs, reasonably incurred or paid at any time by City because of the failure of Library to perform, comply with, and abide by each and every of the stipulations, agreements, conditions and covenants of this Agreement.

21. Library shall furnish City written notice forthwith, addressed to City by certified - return receipt requested mail, of any conduct (by action or omission) which in Library's opinion may be actionable against City, including but not limited to fraud, duress, breach of contract, breach of fiduciary duty, negligence, breach of covenant of good faith, failure to disclose, interference, etc. Failure to furnish such notice will constitute a waiver by Library of such action.

22. Library warrants and represents that the subject property, to the best of its knowledge, does not contain any toxic or hazardous substances waste. All environmental laws, rules and regulations issued by all governmental authorities in connection with the foregoing have been and are being complied with and the use of said property will not violate any such laws, rules and/or regulations.

Furthermore, City shall have the right to enter the property and inspect it from time to time to clean up, at City's expense, if Library fails to do so, Library shall immediately notify City of any significant release of hazardous substances on the property and the receipt of any notices or communications regarding environmental matters from governmental authorities. Library shall submit to City from time to time as requested by City proof acceptable to City, that there is full compliance with all environmental laws, rules and regulations. Library shall use its best efforts to obtain immediately upon request by City, certificates of compliance from prior owners and operators regarding past use and shall have them furnished to City immediately upon receipt.

Library shall fully indemnify City and save City harmless for any loss, damage or injury suffered by City or anyone else in connection with this provision, except for City's willful misconduct.

23. The recitals are incorporated as if fully set forth herein.

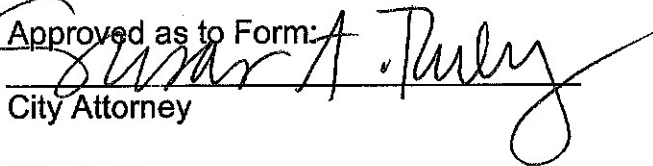
IN WITNESS WHEREOF, the parties have executed this instrument under their respective seals the day and year first above written.

ATTEST:



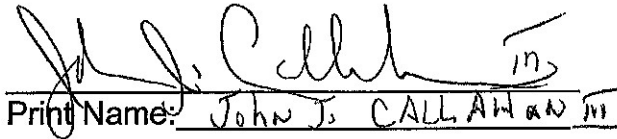
City Clerk

Approved as to Form:



City Attorney

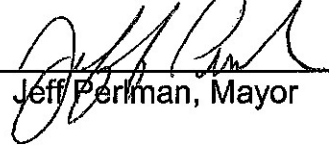
Attested by:



Print Name: John J. CALLAHAN III

CITY OF DELRAY BEACH, FLORIDA

By:



Jeff Perlman, Mayor

DELRAY BEACH PUBLIC LIBRARY  
ASSOCIATION, INC.

By:



Print Name: Daniel M. Murtogh

It's President