

## REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF DELRAY BEACH, a Florida municipal ("CITY"), and the INSTITUTE FOR REGIONAL CONSERVATION, an organization conducting business in the State of Florida, located at 100 E. LINTON BOULEVARD, SUITE 302B, DELRAY BEACH, FLORIDA 33483 ("PRODUCER"). CITY and PRODUCER are collectively referred to as "Parties."

WHEREAS, PRODUCER seeks to collect herbarium specimens (museum vouchers) of both native and nonnative plants found growing on City property for us at the University of South Florida herbarium, with duplicates deposited at other institutions in special circumstances; and

WHEREAS, PRODUCER seeks to collect seeds, cuttings, and divisions of native plants found growing on City property, specifically City beaches and the Atlantic Dunes Park, in order to support its Restoring the Gold Coast program ("PROGRAM"); and

WHEREAS, PRODUCER will use the seeds, cutting, and divisions of native plants collected to work directly with local native plant nurseries to grow and distribute plants within the PROGRAM; and

WHEREAS, CITY finds that providing access to PRODUCER for this service promotes the health, safety, and welfare of the residents of Delray Beach; and

WHEREAS, CITY finds it to be in the public interest to grant PRODUCER a revocable license for the use stated herein under the terms and conditions set forth below.

### WITNESSETH:

IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

1. The recitations set forth above are incorporated herein.
2. DESCRIPTION OF FACILITIES:

CITY hereby grants to PRODUCER the right, license, and privilege of entering property owned by CITY ("Licensed Facilities") in accordance with the terms of this Revocable License Agreement ("Agreement").

3. TERM:

The term of this Agreement shall be from September 1, 2019, through August 30, 2020, unless sooner terminated as indicated under Section 12, TERMINATION.

4. FEES AND PAYMENT:

PRODUCER shall not be required to provide fees or payment for access.

5. USE OF LICENSED FACILITIES:

PRODUCER, its employees, agents, or contractors shall enter, use, and/or occupy the Licensed Facilities solely for the purposes listed in this Agreement. The Licensed Facilities shall not be used for any other purpose whatsoever without written consent of CITY. PRODUCER covenants that it will not, without written consent of CITY, permit the Licensed Facilities to be used or occupied by any person, firm, entity, or corporation other than PRODUCER, its employees, agents, or contractors. PRODUCER further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in, or upon said Licensed Facilities, that no act shall be permitted, and nothing shall be kept in or about said Licensed Facilities that will increase the risk of any hazard, fire, or catastrophe, and that no waste shall be permitted or committed upon or any damage done to said Licensed Facilities. PRODUCER shall not permit the Licensed Facilities to be used or occupied in any manner which will violate any laws or regulations of any governmental authority.

6. ALTERATIONS AND IMPROVEMENTS TO LICENSED FACILITIES:

6.1 PRODUCER may not make any alteration, adjustment, partition, addition, or improvement to the Licensed Facilities, or any part thereof, without obtaining prior written consent of CITY, other than the removal of specimens as detailed in this Agreement. All requests by PRODUCER shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions, or improvements shall, at the CITY's sole discretion, remain the exclusive property of CITY or be removed by PRODUCER upon CITY's request. In the event that CITY shall request removal, PRODUCER shall perform, at its sole cost, removal in a manner that shall return the Licensed Facilities to the condition in which it was received. Any costs necessary to restore or prepare the Licensed Facilities for return shall be the sole responsibility of PRODUCER. All such alterations or improvements shall be made at the sole cost and expense of PRODUCER.

6.2 PRODUCER, upon exiting the Licensed Facilities, shall ensure it is kept in a clean, safe, and sanitary condition similar or equal to the condition upon entry.

7. ASSIGNMENT OR SUBLETTING:

PRODUCER shall have no authority to assign all or any portion of the Licensed Facilities during any term of this Agreement. Should PRODUCER attempt to assign this Agreement, then the Agreement shall be terminated forthwith, automatically, by operation of this clause, without prior notice to PRODUCER.

8. PERSONAL PROPERTY AND DAMAGE:

PRODUCER agrees that all personal property placed upon the Licensed Facilities shall remain the property of PRODUCER and shall be placed upon the Licensed Facilities at the risk of PRODUCER. PRODUCER shall give to CITY, or its agent, prompt written notice, in compliance with the provisions of Section 16, NOTICES, below, of any occurrence, incident, or accident occurring on the Licensed Facilities. In the event that any damage should occur to the Licensed Facilities, PRODUCER shall promptly notify CITY.

9. FACILITY INSPECTIONS:

CITY or its agents, or any authorized employee of said agent, may enter upon said Licensed Facilities to examine same to determine if PRODUCER is properly maintaining and utilizing the Licensed Facilities according to the terms of this Agreement.

10. INDEMNIFICATION

PRODUCER shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, PRODUCER, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement, including, without limitation, any and all claims, losses, liabilities, expenditures, demands, or causes of action of any nature whatsoever resulting from injuries or damages occurring within or without the Facilities sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action, or demand, PRODUCER shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by the City Attorney to defend CITY. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by CITY, any sums due to PRODUCER under this Agreement may be retained by CITY until all of CITY's claims for

indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

If PRODUCER uses a subcontractor, PRODUCER shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 9.

11. INSURANCE:

11.1 PRODUCER shall provide Certificates of Insurance to CITY evidencing its insurance coverage and naming CITY as an additional insured. Other additional insureds may be required at the sole discretion of the City Manager or designee. Failure to provide CITY with the Certificate(s) of Insurance in a form acceptable to CITY may result in CITY immediately terminating this Agreement.

11.2 PRODUCER is required to provide liability insurance with coverage and limits that depend upon the size, scope and location of the event. The policy must be in effect for the dates of the event, including set-up and breakdown days.

11.3 Liquor Liability or Host Liability Endorsements are required if alcohol will be sold or consumed at the event.

11.4 Minimum liability limits for single day events will require minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The minimum limit for Liquor or Host Liability Insurance is \$1,000,000 each common cause and \$2,000,000 in the aggregate.

11.5 Coverage is not to cease and is to remain in force until all performance required of PRODUCER is completed.

12. TERMINATION:

This Agreement is merely a right to use and grants no estate in the Licensed Facilities. This Agreement may be canceled by CITY, acting through its City Manager, Director of Parks & Recreation Department, or designee, with or without cause, at any time prior to the commencement of the event described herein, upon ten (10) days written notice to the PRODUCER of its desire to terminate this Agreement. It is expressly understood by the parties that PRODUCER is receiving from CITY a revocable license, which may be terminated at any time by CITY for any or no cause whatsoever.

13. REPAIR AND DAMAGE OF LICENSED FACILITIES:

It shall be the responsibility of PRODUCER to keep the Licensed Facilities clean, safe, sanitary, and free from trash and debris. The upkeep and maintenance of all areas herein

used by PRODUCER shall be borne by PRODUCER, and PRODUCER agrees to maintain the Licensed Facilities in accordance with the terms and conditions of this Agreement and consistent with prudent and well-reasoned maintenance procedures and techniques.

PRODUCER shall be fully responsible for damage of any kind or nature to the Licensed Facilities and CITY property located thereon caused by the use of the Licensed Facilities by PRODUCER or invitees of PRODUCER. PRODUCER shall be fully responsible for any and all repairs or replacement deemed necessary by CITY to return the Licensed Facilities and CITY property to the condition existing at the commencement of this Agreement, normal wear and tear excluded. PRODUCER shall give to CITY, or its agent, prompt written notice, in compliance with the provisions of Section 16 of this Agreement, NOTICES, of any occurrence, incident, or accident occurring on the Licensed Facilities. In the event any damage should occur to the Licensed Facilities, PRODUCER shall promptly notify CITY.

CITY has no knowledge of any issue or condition of the Licensed Facilities that would make such Licensed Facilities unsafe to PRODUCER's personnel, such as environmental hazards, hazardous substances/materials, and structural and mechanical deficiencies. The Facilities are provided to PRODUCER in an "as is" condition, and no warranties are made regarding the suitability of the Facilities for PRODUCER's use. CITY will have the right to temporarily close the Facilities or any portion thereof to protect property, health or welfare or in an emergency.

PRODUCER acknowledges that any damage to the Facilities may result in forfeiture of the security deposit as described in Section 3.4 of this Agreement.

13. AMENDMENTS:

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

14. SURRENDER UPON TERMINATION:

PRODUCER shall peaceably surrender and deliver the Licensed Facilities to CITY, or its agents, immediately upon expiration of the revocable license term or upon termination of this Agreement.

PRODUCER further agrees that it will leave the Licensed Facilities in the condition existing at the commencement of this Agreement, all alterations, adjustments, partitions, additions, or improvements excepted, and normal wear and tear excepted, subject to the repair and maintenance obligations provided in this Agreement.

15. MATERIALITY AND WAIVER OF BREACH:

15.1 CITY and PRODUCER agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement, and that each is, therefore, a material term hereof.

15.2 CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

16. NOTICES:

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

Notice to CITY shall be addressed to:

City of Delray Beach  
100 NW 1st Avenue  
Delray Beach, FL 33444  
Attention: City Manager

With a copy to:

City of Delray Beach  
100 NW 1st Avenue  
Delray Beach, FL 33444  
Attention: Director of Parks & Recreation Department

Notice to the PRODUCER shall be addressed to:

George Gann  
Executive Director & Chief Conservation Strategist  
100 E. Linton Boulevard

Delray Beach, FL 33483

17. INDEPENDENT CONTRACTOR:

PRODUCER is an independent contractor under this Agreement. Services provided by PRODUCER pursuant to this Agreement shall be subject to the supervision of PRODUCER. In providing such services, neither PRODUCER nor its agents shall act as officers, employees, or agents of CITY. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

18. BINDING EFFECT:

All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

19. THIRD PARTY BENEFICIARIES:

Neither PRODUCER nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

20. COMPLIANCE WITH LAWS:

PRODUCER shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement. Specifically, but without limitation, PRODUCER shall obtain any permits required by the State of Florida Division of Plant Industry.

21. SEVERANCE:

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or PRODUCER elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

22. JOINT PREPARATION:

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a

joint effort of the parties, the language has been agreed to by parties to express their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

23. PRIORITY OF PROVISIONS:

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference, and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

24. JURISDICTION, VENUE, WAIVER OF JURY TRIAL:

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. If suit is filed regarding the enforcement of this Agreement each party shall bear its own attorneys' fees and costs. **BY ENTERING INTO THIS AGREEMENT, PRODUCER AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OR ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

25. ENTIRE AGREEMENT:

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this License that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

26. INCORPORATION BY REFERENCE:

The attached Exhibit is incorporated into and made a part of this Agreement.



27. REPRESENTATION OF AUTHORITY:

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

28. MULTIPLE ORIGINALS:

This Agreement may be executed in one (1) copy, which shall be deemed to be an original.

29. PUBLIC RECORDS:

29.1 **IF THE PRODUCER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PRODUCER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1<sup>ST</sup> AVENUE, DELRAY BEACH, FLORIDA, (561) 243-7050, EMAIL: [publicrecordsrequest@mydelraybeach.com](mailto:publicrecordsrequest@mydelraybeach.com)**

29.2 PRODUCER shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, PRODUCER agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the CITY.
- b) Provide the public with access to public records on the same terms and conditions that the CITY would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY all records in possession of the PRODUCER at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY. All records shall be

transferred to the CITY prior to final payment being made to the PRODUCER.

- e) If PRODUCER does not comply with this section, the CITY shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

30. INSPECTOR GENERAL:

PRODUCER is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from PRODUCER and its sub PRODUCERS and lower tier sub PRODUCERS. PRODUCER understands and agrees that in addition to all other remedies and consequences provided by law, the failure of PRODUCER or its sub PRODUCER or lower tier sub PRODUCERS to fully cooperate with the Inspector General when requested may be deemed by the CITY to be a material breach of this Agreement justifying its termination.

31. FORCE MAJEURE:

CITY shall not be responsible for its failure to make the Facilities available or to provide the facilities and services described herein, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restriction (other than CITY), enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, or similar causes or any other causes beyond the control of CITY.

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

ATTEST:

**CITY OF DELRAY BEACH, FLORIDA**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Ncal de Jesus, Interim City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney

WITNESSES:

Erik Lawson  
Print Name: \_\_\_\_\_

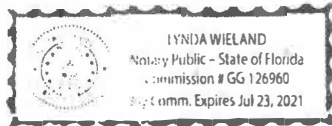
Priscilla Patrick  
Print Name: Priscilla Patrick

PRODUCER

By: [Signature]  
Print George P. Gann

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of July, 2019, by George Donald Gann Jr. (name of person acknowledging), who is personally known to me or who has produced FOL (type of identification) as identification.



[Signature]

Signature of Notary Public - State  
of Florida