

TEMPORARY USE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of January 2020, by and between THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, a body politic created pursuant to Chapter 163, Part III, Florida Statutes, hereinafter referred to as "CRA", and the City of Delray Beach, hereinafter referred to as the "Permittee".

W I T N E S S E T H:

WHEREAS, CRA is the owner and manager of certain real property in the City of Delray Beach, Palm Beach County, Florida, as said property (the "Premises") is legally described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, Permittee has requested the use of the CRA's above-described property for parking on a temporary basis for the 2020 Delray Beach Open; and

WHEREAS, for that property which the CRA manages and does not own, the City has agreed to make arrangements with the owners of that property to obtain permission to use their property, the ownership of each parcel having been identified in the attached; and

WHEREAS, CRA is willing to allow the Permittee to use said area for the purposes hereinafter defined.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, receipt and sufficiency of which is hereby acknowledged, CRA hereby grants to the Permittee and the Permittee hereby accepts the use of the Premises hereinafter defined upon the following terms and conditions:

ARTICLE I BASIC PROVISIONS

Section 1.01 Premises.

The property subject to this Agreement consists of the area as depicted in Exhibit "A" attached hereto and by reference made a part hereof, (the "Premises").

Section 1.02 Length of Term and Commencement Date.

The Term of this Agreement shall be for a period as follows: 6:00 a.m. on Thursday, February 13, 2020 (the "Commencement Date") through 5:00 pm on Monday, February 24, 2020.

Section 1.03 Rent.

The use of the Premises by the Permittee shall be on a rent-free basis.

ARTICLE II CONSTRUCTION OF PREMISES

Section 2.01 Acceptance of Premises.

The Permittee certifies that it has inspected the Premises and accepts same "as is" in its existing condition as of the Commencement Date of this Agreement.

Section 2.02 Alterations.

The Permittee shall not make or permit any improvements, additions, modifications or alterations whatsoever to the Premises.

ARTICLE III CONDUCT OF BUSINESS AND USE OF PREMISES BY PERMITTEE

Section 3.01 Use of Premises.

The Permittee shall use the Premises solely and exclusively for parking purposes. CRA staff shall be allowed access to the parking lot during regular working hours.

Section 3.02 Waste or Nuisance.

The Permittee 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 CRA's fee interest in the Premises.

Section 3.03 Governmental Regulations.

The Permittee shall, at the Permittee's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the Permittee or its use of the Premises. To the extent permissible by law, the Permittee shall indemnify, defend and save CRA harmless from any and all penalties, fines, costs, expenses, suits, claims or damages resulting from the Permittee's failure to perform its obligations in this Section. However, nothing set forth in this section shall constitute a waiver of Sovereign Immunity beyond the limits set forth in Florida Statute §768.28.

Section 3.04 Surrender of Premises.

Upon termination or expiration of this Agreement, the Permittee at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to CRA in the same condition the Premises were in as of the Commencement Date of this Agreement, reasonable wear and tear excepted. If the Permittee fails to remove any of the personal property from the Premises, then upon expiration of the Term of this Agreement, CRA may remove said personal property from the Premises for which the cost the Permittee shall be

responsible and shall pay promptly upon demand.

ARTICLE IV REPAIRS AND MAINTENANCE OF PREMISES

Section 4.01 Responsibility of the Permittee.

All portions of the Premises shall be kept in good repair and condition by the Permittee. At the end of the Term of this Agreement, the Permittee shall deliver the Premises to CRA in good repair and condition as specified herein. Permittee hereby agrees to immediately remove all trash, rubbish, debris, and equipment from the premises upon the termination of the term of their use and to return the premises to the Delray Beach Community Redevelopment Agency in the same manner as it was at the inception of this Agreement. Permittee shall be responsible for electrical service that may be required.

Section 4.02.

The Permittee shall provide such evidence of its corporate good standing in existence to the CRA prior to occupancy, as well as a Certificate of Incumbency as to its current Directors and Officers.

ARTICLE V INSURANCE AND INDEMNITY

Section 5.01 Liability Insurance.

The Permittee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence combined single limit bodily injury and property damage liability. All insurance policies shall name the CRA 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 CRA.

A Certificate of Insurance evidencing such insurance coverage shall be provided to the CRA within fifteen (15) days of the Commencement Date, such Certificate indicating at least thirty (30) days prior notice of cancellation or adverse material change in coverage. The General Liability Policy shall include coverage for Premises - Operations, Contractual Liability, and Broad Form Property Damage Liability coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of the Permittee under this Agreement. In the event that the Permittee shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by the Permittee under this Agreement, CRA may procure same from such insurance carriers as CRA may deem proper, and the Permittee shall pay as Rent, upon demand of the CRA any and all premiums, costs, charges and expenses incurred or expended by CRA in obtaining such insurance. Notwithstanding the foregoing sentence, the Permittee shall nevertheless hold CRA harmless from any loss or damage incurred or suffered by CRA from the Permittee's failure to maintain such insurance.

Section 5.02 Indemnification.

Permittee agrees to be responsible for all claims and damages arising from the grossly negligent actions of its respective agents, officers, elected officials and employees. However, nothing set forth herein shall constitute a waiver of sovereign immunity or an agreement to indemnify the CRA beyond the limits set forth in §768.28.

**ARTICLE VI
LEGAL EXPENSES**

In connection with any litigation, mediation or other proceeding arising out of the Agreement, each party shall bear its own attorney's fees and costs.

ARTICLE VII MISCELLANEOUS

Section 7.01 Entire Agreement.

This Agreement and any Exhibits attached hereto and forming a part thereof as fully set forth herein, constitute all agreements, conditions and understandings between CRA and the Permittee 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 CRA or the Permittee unless reduced to writing and signed by them.

Section 7.02 Notices.

Any consents, approvals and permissions by CRA shall be effective and valid only if in writing any notice by either party 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 CRA:
Delray Beach CRA
20 N. Swinton Avenue
Delray Beach, FL 33444
Attention: Renee Jadusingh

with a copy to:
Goren, Cherof, Doody & Ezrol, P.A.
3099 E. Commercial Blvd., #200
Fort Lauderdale, FL 33308
Attention: Donald J. Doody, Esq.
- (b) If to Permittee:
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

Attention: Samuel Metott

Section 7.03 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 7.04 Governing Law.

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 7.05 Time of Essence.

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

Section 7.06 Severability.

If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of
the day and year first above written.

WITNESSES:

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Executive Director

WITNESS:

CITY OF DELRAY BEACH

By: _____
Permittee

EXHIBIT “A”

