

PALM BEACH COUNTY

AMENDED AND RESTATED LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

BY AND THROUGH ITS

BOARD OF COMMISSIONERS

(County)

and

CITY OF DELRAY BEACH

A FLORIDA MUNICIPAL CORPORATION

(TENANT)

AMENDED AND RESTATED AGREEMENT OF LEASE

THIS LEASE made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and **CITY OF DELRAY BEACH**, a Florida municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Tenant".

W I T N E S S E T H:

WHEREAS, pursuant to a certain Interlocal Agreement between the parties dated July 25, 1995 (R95-992-D), the County acquired certain real property (the "Premises") as more specifically described hereinafter; and

WHEREAS, pursuant to the Interlocal Agreement, County and Tenant entered into that certain Lease Agreement dated July 25, 1995 (R95-993-D), (the "Original Lease Agreement") for use of the Premises located in Delray Beach; and

WHEREAS, the Original Lease Agreement expires on August 9, 2020, and the City wishes to continue to lease the Premises; and

WHEREAS, County further wishes to incorporate into the Original Lease Agreement certain language required by County; and

WHEREAS, County and Tenant agree to rescind and replace the Original Lease Agreement (R95-995-D) with this Amended and Restated Lease Agreement ("Lease").

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC LEASE PROVISIONS

Section 1.01 Premises.

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Tenant to be observed and performed, the County demises and leases to Tenant, and Tenant rents from County the approximately one third (1/3) acre of land improved with a 3,700 square foot residential structure as described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

Section 1.02 Length of Term and Commencement Date.

The Lease shall be effective and binding upon the parties from the Effective Date of the Original Lease Agreement, July 25, 1995 (R95-995-D), and the term of this Lease commenced on August 10, 1995, (the "Commencement Date") and shall extend to August 9, 2055, (the "Term"), unless sooner terminated pursuant to the provisions of this Lease.

Section 1.03 Interlocal Agreement.

This Lease is made and entered into pursuant to the terms of the Interlocal Agreement between the parties dated July 25, 1995 (R-95-992-D), herewith "Interlocal Agreement", the terms, covenants and conditions of which are incorporated herein by reference and made a part hereof. Any failure to fulfill the terms, covenants and conditions of the Interlocal Agreement shall constitute a default hereunder and any default under this Lease Agreement shall constitute a default under the Interlocal Agreement.

ARTICLE II RENT

Section 2.01 Annual Rent.

Tenant shall pay County an annual net rent of One (\$1.00) Dollar (the "Annual Rent"), payable without notice on the Commencement Date and each subsequent anniversary thereof. Annual Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402. This Lease shall be what is commonly referred to as "triple net" to County, it being understood by the parties that County shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the Premises, including without limitation those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

Section 2.02 Assessments and Personal Property Taxes.

Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Tenant's leasehold interest in the Premises, Tenant's Alterations or personal property located on the Premises.

Section 2.03 Additional Rent.

Any and all sums of money or charges required to be paid by Tenant under this Lease other than Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated, and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to Annual Rent.

Section 2.04 Unpaid Fees, Holdover.

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate of one and one-half percent (1½ %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire period of such holdover, double the actual fair market rental value of the Premises.

Section 2.05 Accord and Satisfaction.

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Lease or under the law.

ARTICLE III

CONDITION OF LEASED PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by Tenant.

Tenant certifies Tenant or Tenant's sublessor has been in exclusive possession of the Premises since July 25, 1995 and that Tenant has inspected the Premises and accepts same "As Is", in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located thereon, if any, or the suitability thereof for Tenant's intended use thereof. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Lease. Tenant agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Tenant as specified in Section 4.01 of this Lease.

Section 3.02 Construction of Project.

Tenant shall be solely responsible for any and all improvements, repairs alterations or other work necessary to render the Premises suitable for Tenant's intended use. Tenant shall design and construct such improvements at Tenant's sole cost and expense, in accordance with the requirements of this Lease and in full compliance with applicable building codes and zoning regulations. All of Tenant's construction and improvements shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion.

Section 3.03 Alterations.

Tenant shall not make any improvements, additions, modifications or alterations to the Premises costing in excess of \$25,000 (hereinafter collectively referred to as "Alterations"), without the prior written consent of County in each instance which consent may be granted or withheld in County's sole and absolute discretion. Tenant shall submit detailed plans and specifications for all such Alterations to County for County's written approval prior to commencing work on same. Tenant agrees and acknowledges that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Tenant, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Lease. All work done by Tenant shall be done in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with the approved plans and specifications therefor. Upon giving its approval for any work or Alterations, County may specify whether the Alteration is to be removed by Tenant, at Tenant's sole cost and expense, upon the termination or expiration of this Lease.

Section 3.04 Construction Bonds.

Tenant shall ensure that all improvements are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Tenant's Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Tenant of its obligations arising hereunder.

Section 3.05 Contractor Requirements.

Tenant shall also require contractors to furnish for the benefit of County a payment and performance bond to County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. Tenant 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 County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonable determines to be necessary.

Section 3.06 No Liens.

Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Tenant's Premises or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said 10 day period, County may do so and thereafter charge Tenant, and Tenant shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT

Section 4.01 Use of Premises.

The parties acknowledge that the primary purpose of the County in leasing the Premises to Tenant is to establish additional beach parking and to enhance the recreational potential of the beach area. Therefore, Tenant shall have to right to use Premises in any manner which substantially furthers the foregoing purposes. In additionally, Tenant may utilize the Premises for parks and recreation related educational opportunities on the Premises, including, without limitation, a marine education center. Tenant shall have the right to use the Premises for such purposes provided that such uses shall constitute a parks and recreation use under the County's parks program, as determined by the County's Parks and Recreation Director. Tenant shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

Section 4.02 Waste or Nuisance.

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of 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 fee interest in the Premises or which results in an unsightly condition. All refuse is to be removed from the Premises at Tenant's sole cost and expense and Tenant will keep such refuse in proper fireproof containers on the interior of the Premises until removed. Tenant will keep the access to the Premises, the parking areas and other contiguous areas

to the Premises free and clear of obstruction. Tenant, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

Section 4.03 Governmental Regulations.

Tenant shall, at Tenant'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 Tenant or its use of the Premises, or the Premises generally. Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents on the Premises or any adjacent land in any manner not permitted by law. Tenant shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

Section 4.04 Non-Discrimination.

The County is committed to assuring equal opportunity in the award of Leases and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Tenant warrants and represents that throughout the term of this Lease, including any renewals thereof, if applicable, all individuals shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information with respect to any activity occurring at the Premises or conducted pursuant to this Lease. Failure to meet this requirement shall be considered default of this Lease.

Tenant warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Section 4.05 Surrender of Premises.

Upon termination or expiration of this Lease, Tenant, at its sole cost and expense, if so directed by County, shall remove Tenant's personal property, removable fixtures, equipment and Alterations from the Premises and shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Lease, reasonable wear and tear excepted. Upon surrender of the Premises, title to any and all remaining improvements, Alterations or property within the Premises shall vest in County.

Section 4.06 Hazardous Substance

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Tenant or any third party, shall be reported to County immediately upon the knowledge thereof by Tenant. Tenant shall

be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Tenant, or Tenant's agents, licensees, invitees, subcontractors or employees.

Tenant hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials upon the Premises or violation of this provision. Tenants responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to alter or diminish any statutory or common law liability of Tenant.

Tenant acknowledges that County would not have entered into this Lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Lease.

ARTICLE V REPAIRS AND MAINTENANCE OF PREMISES

Section 5.01 Responsibility of County and Tenant.

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. Tenant shall keep and maintain all portions of the Premises, and all Alterations or improvements currently existing or constructed hereinafter on or about the Premises, in good condition and repair, at Tenant's sole cost and expense. All alterations and personal property of Tenant shall remain the property of the Tenant at Tenant's sole risk for the Term of this Lease, or any extension or renewal thereof.

Section 5.02 County's Right to Inspect.

County or County's agents shall have the right, upon reasonable prior notice to Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises and the improvements located thereon. Any such entrance into the Premises shall be conducted by County in a manner calculated to minimize interference with or disruption of Tenant's operations within the Premises.

ARTICLE VI UTILITIES

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, water, sewer, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

ARTICLE VII INSURANCE

Without waiving the right to sovereign immunity as provided by s.768.28 f.s., Tenant acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and

\$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Tenant maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under s.768.28 f.s., Tenant shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

Tenant agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

Tenant agrees to maintain property insurance, which includes builder's risk insurance, while the project is in the course of construction in an amount at least equal to the estimated completed project value as well as subsequent modifications of that sum. When construction is completed, Tenant agrees to maintain all-risk property insurance, including the perils of wind and, if the property is located in a Special Flood Hazard Zone, flood for adequate limits of coverage on the building(s) and contents based on a replacement cost calculation. Tenant agrees to be fully responsible for any deductible, uncovered loss, or self-insured retention under the all-risk property insurance.

When requested, Tenant shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligations under this Interlocal Agreement

ARTICLE VIII INDEMNIFICATION

It is understood and agreed that Tenant is merely a Tenant of County and is an independent contractor and is not an agent, servant or employee of County or its Board of County Commissioners. Tenant shall to the extent permitted by law, indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Lease including without limitation those arising as a result of Tenant's use and occupancy of the Premises, any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises by reason, during or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees, invitees and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Tenant or by Tenant against any third party, then Tenant shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Notwithstanding anything herein to the contrary, Tenant shall not be obligated to indemnify or hold harmless County for matters which are judicially determined to be attributable to the negligent or intentional acts or omissions of County. Tenant recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof in accordance with the laws of the State of Florida. This section shall survive the termination of this Lease. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

ARTICLE IX DESTRUCTION OF PREMISES

Section 9.01 Damage or Destruction by Fire, War or Act of God.

In the event the Premises shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, Tenant shall restore the Premises to the same condition then that which existed prior to such casualty. Tenant shall commence such restoration within a reasonable time after such casualty but in no event later than one hundred and eighty (180) days of such casualty. Tenant shall thereafter diligently pursue such restoration to completion.

ARTICLE X ASSIGNMENT AND SUBLETTING

Section 10.01 Consent Required.

Tenant may not assign, mortgage, pledge or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of County, which may be granted or withheld at County's absolute discretion. County acknowledges Tenant has entered into a sublease with The Friends of Sandoway House Nature Center, Inc. dated _____. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE XI DEFAULT

Section 11.01 Default by Tenant.

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Tenant's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease on Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after notice from County unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event Tenant shall be entitled to a reasonable period under the circumstances; or (iii) Tenant's vacating or abandoning the Premises. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by Tenant, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the thirty (30) day period and the County is so notified, this Lease will continue.

Section 11.02 Default by County.

County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

Section 11.03 Waiver, Accord and Satisfaction.

The waiver by County or Tenant of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.

**ARTICLE XII
ANNUAL BUDGETARY FUNDING**

This Lease and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Lease to the contrary, either party may cancel this Lease for any reason upon 180 days prior written notice to the other party.

**ARTICLE XIII
QUIET ENJOYMENT**

Upon payment by the Tenant of the Rent, Additional Rent, and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XIV
MISCELLANEOUS**

Section 14.01 Entire Agreement.

This Lease and any Exhibits attached thereto, constitute all agreements, conditions and understandings between County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon County or Tenant unless reduced to writing and signed by them.

Section 14.02 Notices.

All notices, consents, approvals, and elections (collectively "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied, faxed or emailed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier, fax or email if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

with a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone: 561-355-2225
Fax: 561-355-4398

and:

Parks & Recreation Department
Attention: Director
2700 Sixth Avenue South
Lake Worth, Florida 33461
Telephone: 561-966-6600

(b) If to the Tenant at:
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Telephone: 561-243-7090
Fax:

With a copy to:

Delray Beach City Attorney
200 NW 1st Avenue
Delray Beach, FL 33444
Telephone: 561-243-7090
Fax: _____
Email: _____

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

Section 14.03 Severability.

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 14.04 Broker's Commission.

Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 14.05 Recording.

Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of County, which may be granted or withheld at County's sole discretion.

Section 14.06 Waiver of Jury Trial.

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LEASE.

Section 14.07 Governing Law and Venue.

This Lease shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Lease will be held in a State court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 14.08 Radon.

Radon is a naturally occurring radioactive gas that, when it has 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 and radon testing may be obtained from County's public health unit.

Section 14.09 Time of Essence.

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

Section 14.10 Waiver.

The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained.

The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.

Section 14.11 Non-exclusivity of Remedies.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 14.12 Construction.

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

Section 14.13 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

Section 14.14 Survival.

Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

Section 14.15 No Third Party Beneficiary.

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of the County and/or Tenant.

Section 14.16 Palm Beach County Office of the Inspector General Audit Requirements.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 14.17 Effective Date of Lease.

This Lease 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 14.18 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

Section 14.19 Headings.

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 14.20 Condemnation.

If the Premises, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Tenant's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Premises, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Premises temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Premises improvements or otherwise perform any work upon same as a result of any such taking.

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

WITNESS:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

TENANT:

By: _____
Mayor

ATTEST:

By: _____
Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
City Attorney

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

Signed and delivered
in the presence of:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Department Director

EXHIBIT "A"

THE "PREMISES"

Commencing at the intersection of the Western boundary line of Ocean Boulevard (State Road A-1-A) with the North line of Beach Lot 24, plat of the fractional East 1/2 of Section 16, Township 46S, Range 43E, according to the Plat thereof, as recorded in Plat Book 1 at Page 25, of the Public Records of Palm Beach County, Florida; thence Southerly along said West boundary line of Ocean Boulevard, a distance of 27.16 feet to the Point of Beginning; thence Westerly parallel to said North line of Beach Lot 24, a distance of 215.06 feet to a Point; thence Southerly making an angle with the preceding course of 91°37' measured from East to South; thence 73.03 feet to a Point; thence Easterly parallel to said north line of Beach Lot 24, a distance of 209.01 feet to a Point; said point being in Western boundary line of Ocean Boulevard; thence Northerly along said boundary line a distance of 73.45 feet to the Point of Beginning.