

TEMPORARY USE AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2021, 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 DAVID MANCINI & SONS, INC., a Florida corporation, hereinafter referred to as the "Permittee".

WITNESSETH:

WHEREAS, CRA is the owner 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"** which is attached hereto and incorporated herein by reference; and

WHEREAS, Permittee has requested the use of the Premises in order to establish a staging area on a temporary basis to store construction equipment for the NE 3rd Avenue/Street Streetscape Improvements; and

WHEREAS, CRA is willing to allow the Permittee to use the Premises for the purposes hereinafter defined; and

WHEREAS, the Permittee acknowledges its responsibilities with respect to the use of the Premises in order to insure that no hazardous materials are placed or stored on the Premises.

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 legally described 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 commencing on 21st day of November 2021 (the "Commencement Date") and shall expire on 20th day of May 2022.

Section 1.03 Termination.

The CRA has the right to terminate this Agreement at any time, for any reason, by providing seven (7) days written notice to the Permittee.

Section 1.04 Rent.

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

**ARTICLE II
CONDITION 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, without first receiving written approval of the CRA Executive Director.

**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 storage or staging of the construction equipment for the NE 3rd Avenue/Street Streetscape Improvements Project. The Premises shall not be used or made available for use by the general public during the term of this Agreement. Only the Permittee, its employees, agents, and representatives shall be permitted on the Premises. The Permittee shall install a fence along the perimeter of the Premises consistent with Exhibit "A" to prevent use by the general public. Permittee shall not use the Premises or any portion thereof for any other purpose or purposes whatsoever without CRA's prior written consent. The CRA's representatives may enter the Premises in order to insure that Permittee's use of the Premises is consistent with the terms of this Agreement. The CRA shall not be liable for any loss, damage, or claim arising out of the Permittee's use of the Premises for any reason.

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 Hazardous Materials and Waste.

The Permittee shall not store, contain or dispose of any hazardous materials or waste of any kind on the premises. Permittee shall ensure that any equipment or vehicles parked or stored on the property are in acceptable working condition and do not contain leaks that would result in the contamination of the Premises. Any contamination of the Premises as a result of the work conducted by the Permittee will be the sole responsibility and obligation of the Permittee to conduct any and all necessary studies and

remediation to clean-up said premises.

As used herein, the term “Hazardous Materials” means (i) those substances included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §960 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S. C. §1801 et seq., or the Clean Water Act, 33 U.S.C. §1321 et seq., as amended, and in the regulations promulgated pursuant thereto; (ii) those substances listed in the United States Department of Transportation Table (49 CFR §172.101) or by the Environmental Protection Agency as “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste”, (iii) such other substances, materials and wastes which are regulated, or classified as hazardous or toxic, under applicable local, state or federal laws, ordinances or regulations; and any material, waste or substance which is petroleum, asbestos, polychlorinated, biphenyls, flammable explosives or radioactive materials.

Section 3.04 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. The Permittee shall indemnify, defend and hold the CRA harmless from any and all penalties, fines, costs, expenses, suits, actual or alleged claims or damages resulting from the Permittee's failure to perform its obligations in this Section, including reasonable attorney's fees, court costs, and paralegal expenses incurred at the trial and appellate levels.

Section 3.05 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 reseal and re-stripe the entire parking lot that the Premises is located and 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, as well as any temporary improvements, from the premises upon the termination of the term of their use and to return the premises to the CRA in the same manner as it was at the inception of this Agreement. Permittee hereby agrees to replace any fencing, gates, vegetation, curbing, asphalt, concrete, and signage that are damaged as a result of Permittee's use of the property. The CRA will notify the Permittee of any damage not repaired or replaced, and Permittee shall pay to the CRA all expenses incurred by the CRA in repairing and replacing any damaged item on the property. Permittee shall be responsible for electrical service that may be required. The CRA shall not be responsible for any actual or alleged damage or claim to any of Permittee's equipment, materials or property which Permittee brings to and/or stores on the Premises.

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

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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 prior to 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.

The Permittee shall indemnify, defend and hold harmless the CRA from and against any and all actual or alleged claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any actual or alleged negligence, personal injury, loss of life and/or damage to property sustained in or about the Premises, including, but not limited to, the release of any hazardous materials stored on the Premises, by reason or as a result of the use and occupancy of the Premises by the Permittee, its agents, employees, licensees, invitees, and members of the public generally, and from and against any orders, judgments and/or decrees which may be entered thereon, and from and against all costs, attorney fees, expenses and liabilities incurred in and about the defense of any such claim. In the event CRA shall

be made a party to any litigation for the reasons stated above, or litigation commenced against the Permittee or litigation by the Permittee against any third party, then the Permittee shall indemnify, defend, protect and hold CRA harmless and pay all costs and attorneys' fees incurred by CRA in connection with such litigation, and any appeals thereof. Nothing contained herein shall be construed as a waiver of sovereign immunity enjoyed by the CRA, as provided in Florida Statutes 768.28 as amended, or any other law providing limitations on claims.

**ARTICLE VI
LEGAL EXPENSES**

In the event that it shall become necessary for CRA to employ the services of any attorney to enforce any of its rights under this Agreement or to collect any sums due to it under this Agreement or to remedy the breach of any covenant of this Agreement on the part of the Permittee to be kept or performed, regardless of whether suit be brought, the Permittee shall pay to CRA such reasonable fee as shall be charged by CRA's attorney for such services. Should suit be brought for the recovery of possession of the Premises, or for any sum due CRA under this Agreement, or because of the default by the Permittee of any of the covenants of this Agreement, the Permittee shall pay to CRA all expenses of such suit and any appeal thereof, including a reasonable attorney's fee.

**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 at:

Renée A. Jadusingh, Executive Director
Delray Beach Community Redevelopment Agency
20 North Swinton Avenue
Delray Beach, FL 33444
Telephone No. (561) 276-8640
Facsimile No. (561) 276-8558

with a copy to:

Kim N. Phan, Esq.
kimp@mydelraybeach.com

(b) If to Permittee at:

David Mancini, Jr., Vice President
David Mancini & Sons, Inc.
2601 Wiles Road,
Pompano Beach, FL 33073
Mobile No. 754-264-9594

Section 7.03 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 7.04 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 7.05 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.

ATTEST:

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

Renée A. Jadusingh, Executive Director

Shirley E. Johnson, Chairman

(SEAL)

ATTEST:

DAVID MANCINI & SONS, INC., a Florida
Corporation

Print Name: _____

Print Name: _____

Title: _____

Title: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ (name of officer or agent, title of officer or agent), of David Mancini & Sons, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification

Notary Public – State of Florida

EXHIBIT "A"
Property Control Numbers, Location Map, and Legal Descriptions