MEMORANDUM

PRCA
Agenda Item No. 2(A)

TO: Honorable Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners

DATE: July 17, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution declaring surplus two County-owned vacant parcels of land totaling approximately 8.69 acres in the Village of Palmetto Bay and located at approximately SW 168th Street and SW 88th Avenue; establishing as Board policy that said parcels are to be passive parks; waiving the provisions of Administrative Order 8-4 as it pertains to review by the Planning Advisory Board; authorizing, pursuant to Florida Statutes section 125.38, the lease of same to the Village of Palmetto Bay for an initial 10-year term with four, 10-year options to renew, for a total rental value to the County during the initial term of $100.00 for the parcels to be utilized as a passive park for the public; and authorizing the County Mayor to execute the lease and exercise all provisions contained therein

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.

Abigail Price-Williams
County Attorney

APW/smm

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners

DATE: September 4, 2019

FROM: Abigail Price-Williams County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Statement of social equity required

_____ Ordinance creating a new board requires detailed County Mayor's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.
9-4-19

RESOLUTION NO. _____

RESOLUTION DECLARING SURPLUS TWO COUNTY-OWNED VACANT PARCELS OF LAND TOTALING APPROXIMATELY 8.69 ACRES IN THE VILLAGE OF PALMETTO BAY AND LOCATED AT APPROXIMATELY SW 168TH STREET AND SW 88TH AVENUE; ESTABLISHING AS BOARD POLICY THAT SAID PARCELS ARE TO BE PASSIVE PARKS; WAIVING THE PROVISIONS OF ADMINISTRATIVE ORDER 8-4 AS IT PERTAINS TO REVIEW BY THE PLANNING ADVISORY BOARD; AUTHORIZING, PURSUANT TO FLORIDA STATUTES SECTION 125.38, THE LEASE OF SAME TO THE VILLAGE OF PALMETTO BAY FOR AN INITIAL 10-YEAR TERM WITH FOUR, 10-YEAR OPTIONS TO RENEW, FOR A TOTAL RENTAL VALUE TO THE COUNTY DURING THE INITIAL TERM OF $100.00 FOR THE PARCELS TO BE UTILIZED AS A PASSIVE PARK FOR THE PUBLIC; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AND EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, the Village of Palmetto Bay ("Palmetto Bay") desires to lease two vacant County-owned properties totaling approximately 8.69 acres and located in the Village of Palmetto Bay which are identified in the attached Composite Exhibit "A", and located at approximately SW 168th Street and SW 88th Avenue ("the Properties"); and

WHEREAS, the County's lease of the Properties to Palmetto Bay is in the public's best interest and welfare by allowing the use of the Properties to be utilized and maintained as a passive park in Palmetto Bay; and

WHEREAS, the Properties have been circulated to all County departments, and it has been determined that the County does not have a need for the Properties, which are therefore declared as surplus; and

WHEREAS, the market values of the Properties as set forth in the Miami-Dade County Property Appraiser's website are as follows: (a) Folio No. 33-5033-000-0040 - $1,833,876; and (b) Folio No. 33-5033-000-0050 - $1,951,488; and

WHEREAS, the Board has determined that Palmetto Bay requires the Properties for passive park use, and that such use would promote public benefit and welfare; and

WHEREAS, the Board desires to establish, as Board policy, that the Properties be passives parks for the use and enjoyment of the public; and

WHEREAS, the lease of the Properties to Palmetto Bay for passive park purposes in accordance with section 125.38 of the Florida Statutes, would be for an initial term of 10 years along with four, 10-years options to renew exercisable by Palmetto Bay, and with a rental value to the County of $100.00 for the initial 10-year term of the lease; and

WHEREAS, pursuant to the terms of the lease agreement, attached hereto as Exhibit "B", Palmetto Bay is required, at its sole cost and expense, to make improvements to the Properties to consist of: (a) installation of a permanent sign(s) which state that the Properties are a passive park, and is created out of a partnership between Miami-Dade County and the Village of Palmetto Bay for the use and benefit of the residents of Miami-Dade County; (b) within the first four years of the lease, the installation of a minimum of six park benches, a nature trail, four interpretive signs (explaining the existence and value of any vegetation and wildlife on the Properties), as well as similar passive park improvements throughout the Properties; and (c) undertaking, at its sole cost and expense, the removal of any invasive exotic plants from the Properties, and planting native hammock and wetland flora throughout the Properties.

1st 4 years

(*) planting native hammock & wetland flora

(*) 6 park benches
(*) Nature trail
(*) 4 interpretive signs
(*) Removal of invasive exotic

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board ratifies and adopts the matters set forth in the foregoing recitals.

Section 2. This Board: (a) declares the Properties as surplus; (b) establishes as policy of this Board that the Properties are to be used as a passive park; (c) waives the provisions of Administrative Order 8-4 regarding review by the Planning Advisory Board; (d) pursuant to section 125.38 of the Florida Statutes, authorizes the lease of the Properties to Palmetto Bay for the limited use as a passive park for an initial 10-year term and four, 10-year options to renew; and (e) authorizes the County Mayor or County Mayor's designee to execute the lease agreement in substantially the form attached as Exhibit "B," and to exercise all provisions contained therein.

Section 3. This Board directs the County Mayor or the County Mayor's designee to provide an executed copy of the lease agreement to the Clerk of the Board and to the Office of the Property Appraiser within 30 days of its execution, and further directs the Clerk of the Board to attach and permanently store a recorded copy of the lease agreement together with this resolution.

The Prime Sponsor of the foregoing resolution is Commissioner Daniella Levine Cava. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman
Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of September, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MRP

Monica Rizo Perez

EXHIBIT A

OFFICE OF THE PROPERTY APPRAISER

Detailed Report

Generated On : 7/1/2019

Property Information	
Folio:	33-5033-000-0040
Property Address:	
Owner	MIAMI-DADE COUNTY GSA R/E MGMT
Mailing Address	111 NW 1 ST STE 2460 MIAMI, FL 33128-1929
PA Primary Zone	9000 AGRICULTURE
Primary Land Use	8080 VACANT GOVERNMENTAL : VACANT LAND - GOVERNMENTAL
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	183,387.6 Sq.Ft
Year Built	0

Assessment Information			
Year	2019	2018	2017
Land Value	$1,833,876	$1,833,876	$1,833,876
Building Value	$0	$0	$0
XF Value	$0	$0	$0
Market Value	$1,833,876	$1,833,876	$1,833,876
Assessed Value	$1,232,772	$1,120,702	$1,018,820

Taxable Value Information			
	2019	2018	2017
County			
Exemption Value	$1,232,772	$1,120,702	$1,018,820
Taxable Value	$0	$0	$0
School Board			
Exemption Value	$1,833,876	$1,833,876	$1,833,876
Taxable Value	$0	$0	$0
City			
Exemption Value	$1,232,772	$1,120,702	$1,018,820
Taxable Value	$0	$0	$0
Regional			
Exemption Value	$1,232,772	$1,120,702	$1,018,820
Taxable Value	$0	$0	$0

Benefits Information				
Benefit	Type	2019	2018	2017
Non-Homestead Cap	Assessment Reduction	$601,104	$713,174	$815,056
County	Exemption	$1,232,772	$1,120,702	$1,018,820

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at http://www.miamidade.gov/info/disclaimer.asp

Version:

OFFICE OF THE PROPERTY APPRAISER

Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0040

Property Address:

Roll Year **2019** Land, Building and Extra-Feature Details

Land Information

Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.21	$1,833,876

Building Information

Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features

Description	Year Built	Units	Calc Value

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Property Information

Folio: 33-5033-000-0040

Property Address:

Roll Year **2018** Land, Building and Extra-Feature Details

Land Information

Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.21	$1,833,876

Building Information

Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features

Description	Year Built	Units	Calc Value

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Property Information

Folio: 33-5033-000-0040

Property Address:

Roll Year **2017** Land, Building and Extra-Feature Details

Land Information

Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.21	$1,833,876

Building Information

Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features

Description	Year Built	Units	Calc Value

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Version:

OFFICE OF THE PROPERTY APPRAISER

Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0040

Property Address:

Full Legal Description
33 55 40 4.21 AC M/L
E1/2 OF NW1/4 OF NE1/4 OF NE1/4
LESS N40FT & LESS E & W
25FT FOR R/W
A/K/A ROCKPIT
F/A/U 30-5033-000-0040

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description

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Version:

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OFFICE OF THE PROPERTY APPRAISER

Detailed Report

Generated On : 7/1/2019

Property Information	
Folio:	33-5033-000-0050
Property Address:	
Owner	MIAMI-DADE COUNTY GSA R/E MGMT
Mailing Address	111 NW 1 ST STE 2460 MIAMI, FL 33128-1929
PA Primary Zone	9000 AGRICULTURE
Primary Land Use	8080 VACANT GOVERNMENTAL : VACANT LAND - GOVERNMENTAL
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	195,148.8 Sq.Ft
Year Built	0

Assessment Information			
Year	2019	2018	2017
Land Value	$1,951,488	$1,951,488	$1,951,488
Building Value	$0	$0	$0
XF Value	$0	$0	$0
Market Value	$1,951,488	$1,951,488	$1,951,488
Assessed Value	$1,311,833	$1,192,576	$1,084,160

Taxable Value Information			
	2019	2018	2017
County			
Exemption Value	$1,311,833	$1,192,576	$1,084,160
Taxable Value	$0	$0	$0
School Board			
Exemption Value	$1,951,488	$1,951,488	$1,951,488
Taxable Value	$0	$0	$0
City			
Exemption Value	$1,311,833	$1,192,576	$1,084,160
Taxable Value	$0	$0	$0
Regional			
Exemption Value	$1,311,833	$1,192,576	$1,084,160
Taxable Value	$0	$0	$0

Benefits Information				
Benefit	Type	2019	2018	2017
Non-Homestead Cap	Assessment Reduction	$639,655	$758,912	$867,328
County	Exemption	$1,311,833	$1,192,576	$1,084,160
Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).				

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Version:

OFFICE OF THE PROPERTY APPRAISER

Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0050

Property Address:

Roll Year **2019** Land, Building and Extra-Feature Details

Land Information

Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.48	$1,951,488

Building Information

Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features

Description	Year Built	Units	Calc Value

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OFFICE OF THE PROPERTY APPRAISER

Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0050

Property Address:

Roll Year **2018** Land, Building and Extra-Feature Details

Land Information					
Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.48	$1,951,488

Building Information						
Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features			
Description	Year Built	Units	Calc Value

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Version:

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Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0050

Property Address:

Roll Year **2017** Land, Building and Extra-Feature Details

Land Information					
Land Use	Muni Zone	PA Zone	Unit Type	Units	Calc Value
GENERAL	AG	9000	Acres	4.48	$1,951,488

Building Information						
Building Number	Sub Area	Year Built	Actual Sq.Ft.	Living Sq.Ft.	Adj Sq.Ft.	Calc Value

Extra Features			
Description	Year Built	Units	Calc Value

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Version:

OFFICE OF THE PROPERTY APPRAISER

Generated On : 7/1/2019

Property Information

Folio: 33-5033-000-0050

Property Address:

Full Legal Description
33 55 40 4.48 AC M/L
E1/2 OF SW1/4 OF NE1/4 OF NE1/4
LESS E & W25FT FOR R/W
F/A/U 30-5033-000-0050

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description

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Version:

EXHIBIT B

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), is being entered into this ____ day of _____, 2019 ("Commencement Date") between Miami-Dade County, a political subdivision of the State of Florida ("Landlord"), and Village of Palmetto Bay, a municipal corporation ("Tenant"), by which Landlord does this day lease unto Tenant, and Tenant does hereby lease from Landlord, two (2) vacant parcels of land, as shown on the attached "Exhibit A" (the "Premises"), for the term described below.

PART I
PREAMBLE

The following sets forth basic data hereinafter referred to in this Agreement, and where appropriate, constitute definitions of the terms hereinafter listed:

A. TENANT:	Village of Palmetto Bay
B. TENANT'S ADDRESS	9705 East Hibiscus Street, Palmetto Bay, Florida 33157
C. LANDLORD:	Miami-Dade County
D. PRESENT NOTICE AND RENT PAYMENT MAILING ADDRESS OF LANDLORD:	111 N.W. First Street, Suite 2460 Miami, Florida 33128
E. PROPERTY DESCRIPTION AND FOLIO NUMBER:	1.) One vacant parcel of land, consisting of approximately 183,387.6 square feet, having Folio No.: 33-5033-000-0040; and 2.) One vacant parcel of land, consisting of 195,148.8 square feet, having Folio No.: 33-5033-000-0050. Both properties being adjacent to one another, and together are described as the Premises.
F. PREMISES:	Two (2) vacant parcels of land, together consisting of approximately 8.69 acres, see "Exhibit A"
G. TERM:	Ten (10) years, commencing on the Commencement Date, as described in Section 3.01.
H. OPTIONS TO RENEW:	Four (4) ten (10) year Option Periods
I. ANNUAL RENT:	Ten ($10.00) Dollars annually. Rent for the entire ten (10) year term shall be paid initially in one (1) lump sum payment to the Landlord, in the amount of One Hundred ($100.00) Dollars. Option Period – Annual Rent shall be Ten ($10.00) Dollars annually, and shall be paid at the beginning of each Option Period, for the entire Option Period, in a one (1) lump sum payment in the amount of One Hundred ($100.00) Dollars.
J. RENT COMMENCEMENT DATE:	The first (1st) day of the month following the Board of County Commissioners' approval.
K. TENANT'S OPERATING EXPENSE:	Tenant shall be responsible to maintain the property including, but not limited to, landscaping, repair and replacement of any improvements, and any equipment, and the prompt removal of any and all trash, garbage, and graffiti.
L. FLORIDA SALES TAX	Tenant shall be responsible for any applicable Sales Tax.
M. PERMITTED USE:	To be used solely as a passive recreational area (passive park), for the children and families utilizing the public services of the Tenant.
N. SECURITY DEPOSIT:	None

This Agreement consists of the foregoing introductory paragraphs, constituting the Preamble (consisting of paragraphs A through N), along with any and all exhibits, all of which are incorporated herein by this reference. In the event of any conflict between the information contained in the Preamble, and the language in the Standard Lease Provisions, which follow, the terms and conditions found in the Standard Lease Provisions shall control.

STANDARD LEASE PROVISIONS

WITNESSETH:

The Landlord, for and in consideration of the restrictions and covenants herein contained, hereby leases to Tenant and Tenant hereby agrees to lease from Landlord the Premises as described herein, along with the following terms and conditions:

ARTICLE 1
INCORPORATION OF PREAMBLE

1.01 The parties hereto agree that the foregoing Preamble is true and correct, and is incorporated herein by reference.

ARTICLE 2
DESCRIPTION OF PREMISES

2.01 Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord the Premises, which is two (2) vacant parcels of land, together consisting of approximately 8.69 acres, as legally described in Section F of the Preamble, having Folio Numbers 33-5033-000-0040 and 33-5033-000-0050, and all shown, on the attached diagram, marked "Exhibit A", which is incorporated herein by reference.

2.02 Landlord and Tenant agree that the foregoing square footage is only an approximation of size, as the Premises has not been duly measured by the Landlord. Further, the Tenant is fully aware of the size of the Premises and has determined that it is sufficiently suited for its intended purposes.

2.03 Notwithstanding anything to the contrary contained herein, the Premises has been inspected by the Tenant who accepts the Premises in its "as-is" and "where-is" condition, with any and all faults, and who understands and agrees that the Landlord does not offer any implied or expressed warranties as to the condition of the Premises and/or whether it is fit for any particular purpose.

ARTICLE 3
TERM

3.01 The term of this Agreement shall commence on the first (1st) day of the month following the Miami-Dade County Board of County Commissioners' approval of this Agreement, as identified by the date first written above (hereinafter described as the "Commencement Date"), and Landlord and Tenant agree that this Agreement is scheduled to terminate ten (10) years thereafter (hereinafter "Termination Date"). After the Commencement Date, the Landlord shall send the Tenant a Letter of Commencement, identifying both the Commencement Date, and the Termination Date of this Agreement.

3.02 This Agreement shall terminate on the Termination Date, or at the end of any extension or renewal thereof, without the necessity of any notice from either the Landlord or the Tenant to terminate the same, and Tenant hereby waives notice to vacate

or quit the Premises and agrees that Landlord shall be entitled the benefit of all provisions of law with respect to the summary recovery of possession of the Premises from a Tenant holding over to the same extent as if statutory notice had been given. Tenant hereby agrees that if it fails to surrender the Premises at the end of the term, or any renewal thereof, Tenant will be liable to Landlord for any and all damages which Landlord shall suffer by reason thereof, and Tenant will indemnify Landlord against all claims and demands made by any succeeding Tenants and/or developers against Landlord founded upon delay by Landlord in delivering possession of the Premises to such succeeding Tenant and/or developer.

3.03 If Tenant shall be in possession of the Premises after the Termination Date, in the absence of any agreement extending the term hereof, the tenancy under this Agreement shall be in holdover, and become one of month-to-month, terminable by either party on thirty (30) days prior written notice. Such month-to-month tenancy shall be subject to all of the covenants, conditions, provisions, restrictions and obligations of this Agreement.

3.04 Upon the Commencement Date of this Agreement, any and all other lease agreements, if any, that the Landlord has with the Tenant for the same property, shall automatically terminate without further notice to the Landlord or Tenant. This Agreement shall replace and succeed any and all other such agreements in their entirety.

3.05 Provided the Tenant is not otherwise in default, Tenant is hereby granted the option to extend this Agreement for a four (4) additional ten (10) year Option Periods upon the same terms and conditions. The Tenant must provide the Landlord with notice, in writing, of its desire to exercise each option and remain in the Premises at least ninety (90) calendar days prior to the expiration of this Agreement, and if applicable, the expiration of any Option Period.

ARTICLE 4
RENT

4.01 Tenant covenants and agrees to pay to Landlord as rental for a term of one (1) year, commencing on the Commencement Date, and terminating on the Termination Date, the annual rental amount of Ten ($10.00) Dollars. The Tenant shall pay the rent for the entire term in one (1) lump sum payment, at the commencement of this Agreement, which amount equals One Hundred ($100.00) Dollars. The rent during any renewal terms shall be the same as the rental during the initial term.

4.02 The Landlord shall be permitted to accelerate the rent upon any default by the Tenant. Further, the Tenant also agrees that the rent is payable on a lump sum basis, as described above, to Miami-Dade County ISD, c/o Internal Services Department, 111 N.W. First Street, Suite 2460, Miami, Florida

33128-1907, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein

4.03 Tenant also agrees that should it be in possession of the Premises after the Termination Date, or any renewal or extension thereof, that it shall, in addition to being liable to the Landlord for any and all damages as a result of such holdover, be obligated to pay one hundred (100%) percent of the rental rate in existence prior to the period of holdover.

ARTICLE 5
PERMITTED USE OF PREMISES

5.01 Tenant shall occupy the Premises upon commencement of the term in accordance with this Agreement, and thereafter will continuously use the Premises for the Permitted Use, which is strictly as a passive recreational area (passive park), for the children and families utilizing the public services of the Tenant and shall treat all Miami-Dade County residents similarly for usage of the Premises. The passive park shall offer constructive, restorative, and educational benefits, which do not significantly impact the natural, scientific, and wildlife values of the Premises. Passive park activities may include low-intensity recreational activities such as bird watching, observing nature by way of a nature trail, and walking around the perimeter of the Premises. No motorized activity may be conducted on the Premises.

5.02 Tenant shall cause its business to be conducted and operated in such a manner as to ensure that such operation is in compliance with any and all laws, ordinances, rules, and/or regulations, of any and all federal, state, and local governmental agencies.

5.03 Tenant agrees that no changes in the use of the Premises is permitted without the expressed prior written permission of the Landlord. Upon failure of the Tenant to operate the Premises in accordance with the approved use, as herein stated above, this Agreement may be immediately terminated at the Landlord's sole discretion, and it shall become null and void, and any and all improvements on or to the Premises shall become the property of the Landlord, without any payment or compensation to the Tenant.

ARTICLE 6
CONDITION OF PREMISES

6.01 Tenant hereby accepts the Premises in its "as-is" and "where-is" condition, with any and all faults, as it is in at the beginning of this Agreement. Landlord makes no expressed or implied warranty as to the condition of the Premises and/or whether the Premises is habitable or fit for any particular use or purpose. The Landlord expressly refuses to extend and specifically denies any implied warranty as to the condition to the Premises.

6.02 Landlord and Tenant further agree that the Tenant shall be solely responsible for obtaining, securing, and/or maintaining any and all permits and licenses, including, but not limited to, any occupancy permit(s) and/or business license(s).

Tenant agrees to be solely responsible for the cost to obtain any type of permit(s) and/or license(s).

6.03 The parties hereby expressly acknowledge and agree that Tenant shall not occupy or otherwise utilize any portion of the Premises where a particular permit or license is necessary for any use or operation when Tenant does not have such permit or license for any reason whatsoever, and Tenant shall refrain from such use and/or operation unless and until the Tenant has secured, in hand, the appropriate permit(s) and/or license(s) which authorize and warrant the use of such portion or area(s) of the Premises as contemplated under this Agreement, and Tenant has also has fully complied, also at its sole cost and expense, with any and all law, rules, codes and regulations.

6.04 Tenant acknowledges and agrees that the Premises is in need of certain landscaping and maintenance, and accepts fully responsibility to landscape and maintain the Premises, including, but not limited to, complying with the American with Disabilities Act.

ARTICLE 7
UTILITIES

7.01 Tenant shall, during the term hereof, pay any and all charges for water, sewer, trash removal, and electricity for the Premises. Further, Tenant shall be solely responsible for the installation, maintenance, and repair of any and all water lines, sewer pipes, and/or electrical lines or wiring leading and/or from the Premises.

7.02 Tenant agrees that it shall during the term of this Agreement, or any extension or renewal thereof, at its sole cost and expense, examine, regularly maintain and, if necessary, install, improve, and/or pay the cost of lighting fixtures, utility lines, equipment, and systems relating to any and all utilities, including, but not limited to, any and all water lines, and/or sewer pipes leading to and from the Premises.

ARTICLE 8
MAINTENANCE

8.01 Tenant agrees to maintain and keep in good repair, condition, and appearance, during the term of this Agreement, or any extension or renewal thereof, at its sole cost and expense, the landscaping, as well as any and all vegetation, including all grass, hedges, trees, and plants which are now, or in the future, on or near the Premises.

8.02 Tenant, at its expense, shall install, maintain, and keep clean and safe all pathways, sidewalks, walkways, and/or trails, in, adjacent to, or leading to or from the Premises.

8.03 In regard to the general maintenance and occupancy of the Premises, Tenant will at its expense: (a) maintain the Premises in a clean, orderly and sanitary condition and free an infestation of insects, rodents, vermin and other pests; (b) keep any garbage, trash, rubbish and/or other refuse in safe containers that do not encourage the existence

of vermin; (c) cause to have such garbage, trash, rubbish and refuse removed on a daily, weekly, or as needed basis to ensure cleanliness; (d) comply with all laws, ordinances, rules and regulations of governmental authorities regarding the removal of garbage, trash, rubbish and refuse from the Premises; (e) prevent any objectionable odors to emanate or to be dispelled from the Premises; (f) comply with and observe all rules and regulations established by the Landlord from time to time; (g) keep and maintain the Premises in a safe condition, including any and all sidewalks, trees, soil, and ground; and (h) conducts its use and operation in all respects in a dignified manner in accordance with the high standards of other governmental entities located within Miami-Dade County.

8.04 Any damage or injury sustained by any person because of the lack of maintaining the Premises, including but not limited to failure to maintain landscaping, sidewalks, pathways, walkways, trails, soil, trees, lighting, mechanical, electrical, and/or plumbing equipment, if any, as well as any improvements, or due to any other reason or cause, which maintenance, improvement, and/or repair is the cause, the Tenant shall be responsible, and the Tenant shall indemnify and hold the Landlord harmless from and against all claims, actions, damages and liability in connection therewith, including, but not limited to attorneys' fees, other professional fees, and any other cost which Landlord may reasonably incur.

ARTICLE 9
DESTRUCTION OF PREMISES

9.01 Tenant shall be responsible for and shall repair any and all damage caused to the Premises as a result of Tenant's use of the Premises and/or any vandalism, malicious mischief, or criminal acts thereto. The Tenant shall immediately notify the Landlord, in writing, upon discovering any damage to the Premises. Tenant is responsible for maintaining, replacing, and/or repairing any damaged real property, and/or personal property belonging to the Landlord and/or Tenant.

9.02 In the event the Premises should be destroyed or so damaged by hurricane, windstorm, or other casualty to the extent that the Premises is rendered untenantable or unfit for the purpose of Tenant, either party may cancel this Agreement by the giving of ninety (90) calendar days' prior written notice to the other. If either the entire Premises or any improvements which are on the Premises is partially damaged due to an act of God and/or Tenant's negligence, but not rendered unusable for the purposes of this Agreement, the same shall be immediately repaired by Tenant from proceeds of the insurance coverage and/or at its own cost and expense. If the damage shall be so extensive as to render such Premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by Tenant from the proceeds of the insurance coverage policy and/or at its own cost and expense. In the event that said Premises is

completely destroyed due to Tenant's negligence, Tenant shall repair and restore the Premises so that it is equal the condition of the Premises on the date possession was given to Tenant. In lieu of restoring, Tenant shall pay the Landlord the costs to restore the Premises to its original condition. The election of remedies shall be at the sole discretion of Landlord.

ARTICLE 10
IMPROVEMENTS AND REPAIRS

10.01 Landlord and Tenant agree that the Tenant, at its sole cost and expense, within the first twelve (12) months of this Agreement, shall install and maintain on the Premises a permanent sign(s) which state that the Premises is a passive park, and is created out of a partnership between the Landlord and the Tenant for the use and benefit of the residents of Miami-Dade County.

10.02 Landlord and Tenant further agree that the Tenant, at its sole cost and expense, within the first four (4) years of this Agreement, shall install and maintain on the Premises a minimum of six (6) park benches, a nature trail (either around or through the Premises), four (4) interpretive signs (explaining the existence and value of any vegetation and wildlife on the Premises), as well as similar passive park improvements throughout the Premises, for the benefit of residents of Miami-Dade County. Once the improvements are completed, the Tenant shall notify the Landlord in writing that the aforementioned improvements are completed, and ready for inspection by the Landlord.

(a) The Landlord and Tenant acknowledge and agree that improvement of the Premises should also include the restoration of the natural flora of the Premises, including, but not limited to, the removal of any invasive exotic plants from the Premises, and planting native hammock and wetland flora throughout the Premises. The Tenant agrees that any cost or expense associated with the restoration of the natural flora of the Premises shall be the Tenant's sole responsibility.

(b) The Landlord hereby agrees to cooperate with the Tenant regarding the restoration of the natural flora of the Premises by assisting with volunteers, and other means, when available, to help with the removal of invasive exotic plants from the Premises.

10.03 Tenant, at its sole cost and expense, may make other improvements to the Premises that it shall deem reasonably necessary to place the Premises in such a state or condition that the Tenant may use it for the purposes described in this Agreement, so long as such improvements are approved in advance by the Landlord in writing.

10.04 Tenant acknowledges and agrees to improve the Premises consistent with any requirements imposed by a governmental entity, or otherwise required by law, including, but not limited to, any zoning requirement or other code or regulation.

10.05 Prior to commencing any improvements, the Tenant must deliver all plans, specifications and scheduling, at its sole cost and expense, to the Landlord, and specifically to the Director of the Internal Services Department for written approval at least thirty (30) days before the commencement of any work. Further, the Tenant shall not commence improvements upon the Premises unless and until it has secured, and has on-hand, sufficient funds or resources to complete the improvement project.

10.06 Tenant shall cause any and all repairs and/or improvements to be performed competently and in a good and workmanlike manner by a duly qualified and licensed person(s) or entities, or utilizing its own employees, using first grade materials, and without interference with or disruption to the nearby residents or landowners.

10.07 Tenant shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by Tenant or its contractor on or about the Premises, and in the event a contractor is utilized, shall obtain and deliver to Landlord "releases" or waivers of liens from all parties doing work on or about the Premises, along with an affidavit from Tenant stating that all bills have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work performed on the Premises.

10.08 Landlord shall have no obligation, financial, regulatory or otherwise, for any and/or all activities necessary to construct, maintain, or repair Tenant's improvements, or for Tenant's operations within on or about the Premises during the term of this Agreement.

10.09 If Tenant's improvements or repair activities or other actions relative to the Premises result in the introduction of hazardous materials or contamination of the soil or ground water, then the Tenant agrees to: (1) immediately notify the Landlord of any contamination, claim of contamination or damage, (2) after consultation and with the approval of the Landlord, to clean up the contamination in full compliance with all applicable statutes, regulations and standards, and (3) to indemnify, defend and hold the Landlord harmless from and against any claim, suits, causes of action, costs and fees, including any and all attorneys' fees arising from or connected with such contamination, claim of contamination or damage.

10.10 All leasehold improvements installed on or about the Premises at any time, except for furniture (park benches) and equipment, shall not be removed from the Premises at any time, unless removal is consented to in advance, in writing, by Landlord; and at the expiration of this Agreement (either on the Termination Date, or any extension or renewal thereof, or upon such earlier termination or cancellation as provided for in this Agreement), all such leasehold improvements shall be deemed to be part of the Premises, and shall not be removed by Tenant when it vacates the Premises, and title

thereto shall vest solely in the Landlord without payment or compensation of any kind or nature to Tenant.

10.11 Should the Tenant bring and/or install any personal property, not mentioned or described hereto, on the Premises, which personal property can be removed without damage to the Premises, such shall remain the Tenant's property and may be removed from the Premises upon the expiration of this Agreement.

10.12 Prior to commencing any improvements and/or repair to any property owned by the Landlord, including the purchase of supplies and/or materials from materialmen and suppliers, and/or before recommencing any such work or repair after a default or abandonment, Tenant shall obtain and deliver to the Landlord, at its sole cost and expense, a payment and performance bond, or such other alternate form of security, each which meet the requirements, as applicable, of Section 255.05, *Florida Statutes*, as set forth below, not less than ten (10) days prior to the anticipated purchase of supplies and/or materials, commencement of the improvements and/or repairs. Said payment and performance bond(s) shall name the Landlord as an additional payee and obligee, the form of such bonds shall be as provided by Section 255.05, *Florida Statutes* and each shall be in the amount of the entire cost of the improvements and/or repair project regardless of the source of funding. The Tenant shall be responsible for recording the bonds in the public records of Miami-Dade County, Florida, and providing notice to contractors, subcontractors, and suppliers, as required by Section 255.05 of the *Florida Statutes*. Said payment and performance bonds shall be maintained in full force and effect for the duration of any improvements and/or repair project. However, the foregoing requirement of securing a performance bond shall not be required when such contract for any improvements and/or repair is estimated, in accordance with generally accepted cost-accounting principles, to have a cost of less than Ten Thousand ($10,000.00) Dollars.

ARTICLE 11
ASSIGNMENT AND SUBLEASE

11.01 Without the written consent of Landlord first obtained in each case, by and through its Board of County Commissioners, Tenant shall not assign, sublet, transfer, mortgage, pledge, or dispose of this Agreement or the term hereof, which consent may be withheld in Landlord's absolute discretion. This prohibition includes, without limitation, (a) any subletting or assignment which would occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's government structure; and (b) an assignment of subletting to or by a receiver or trustee in any federal or state bankruptcy, insolvency, or other proceedings. In no event shall Tenant be permitted to assign or sublet the Premises to any entity that fails to meet the requirements of Section 125.38, *Florida Statutes*.

ARTICLE 12
NO LIABILITY FOR PERSONAL PROPERTY

12.01 All personal property placed or moved in the Premises above described shall be at the sole risk of Tenant or the owner thereof. Landlord shall not be liable to Tenant for any damage to said personal property unless solely caused by or due to the gross negligence of Landlord, Landlord's agents or employees, subject to all limitations of *Florida Statutes*, Section 768.28.

ARTICLE 13
LANDLORD NOT RESPONSIBLE FOR ACTS OF OTHERS

13.01 Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming onto the Premises, including but not limited to invitees, trespassers, and/or licensees for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, for themselves and/or their personal property, from any actions or activity by such person(s), including, but not limited to, such actions or activity which is the direct or indirect cause of any lack of security, insufficient safety measures, failure to provide adequate or sufficient warnings, precautions, and/or inadequate protection to the Premises, the Tenant, or anyone claiming by, through or under the Tenant. To the maximum extent permitted by law, the Tenant agrees to use and occupy the Premises at Tenant's own risk. Tenant shall secure, maintain and utilize security personnel, at its sole cost and expense, as it deems necessary to protect the Tenant, its guests, licensees, and/or the Premises.

13.02 Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned or caused by any actions or inactions which is the direct or indirect cause of any breaking, bursting, stoppage, or leaking of water, gas, sewer, electricity, telephone, or other utility pipes and/or wiring and/or the effects or results from failed, down, broken or damaged cable and/or wires. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use the Premises at Tenant's own risk.

ARTICLE 14
SIGNS

14.01 Signs will be of such design and form that they are acceptable to the Landlord, and any and all such signs must first be approved by Landlord, specifically the Director of the Internal Services Department, and the cost of painting and installing any sign(s) shall be borne by Tenant. The Tenant is solely responsible to maintain, repair, and/or replace any and all signs on the Premises. All signs shall remain on the Premises upon the termination of this Agreement.

ARTICLE 15
LANDLORD'S RIGHT OF ENTRY

15.01 Landlord or any of its agents shall have the right to enter the Premises during all reasonable

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working hours, upon the giving of twenty-four (24) hours' prior notice to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Said right of entry shall likewise exist for the purpose of removing any unauthorized signs, fixtures, alterations, or additions which do not conform to this Agreement. Notwithstanding the forgoing, Landlord reserves the right to enter the Premises without prior notice, and without being accompanied by an employee of the Tenant in cases and/or instances of an emergency.

ARTICLE 16
PEACEFUL POSSESSION

16.01 Subject to the terms, conditions, and covenants of this Agreement, Landlord agrees that Tenant shall and may peaceably have, hold, and enjoy the Premises without hindrance or molestation by Landlord.

ARTICLE 17
SURRENDER OF PREMISES

17.01 Tenant agrees to surrender to Landlord, at the end of the term of this Agreement or any extension thereof, the Premises in as good condition as the Premises was at the beginning of the term of this Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, in accordance with the terms and conditions of this Agreement.

ARTICLE 18
INDEMNIFICATION AND HOLD HARMLESS

18.01 Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Tenant or its employees, agents, servants, partners, principals, or subcontractors. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Landlord, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 19
LIABILITY FOR DAMAGE OR INJURY

19.01 Landlord shall not be liable for any damage or injury which may be sustained by any party or person on the Premises other than the damage or injury caused solely by the gross negligence of Landlord, its officers, employees, or agents, subject to the limitations of *Florida Statutes*, Section 768.28.

ARTICLE 20
SUCCESSORS IN INTEREST

20.01 It is hereby acknowledged and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Agreement shall extend to and be binding on the respective permitted successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE 21
TERMINATION

21.01 **TERMINATION BY LANDLORD:** The occurrence of any of the following shall cause this Agreement to be terminated by the Landlord, such right to be exercised by Landlord through its County Mayor or Mayor's designee in its sole discretion upon the terms and conditions also set forth below:

A. Automatic Termination:

1) Institution of proceedings in voluntary bankruptcy by the Tenant.

2) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of ninety (90) days.

3) Assignment by Tenant for the benefit of creditors.

4) Failure of Tenant to maintain its non-profit status.

B. Termination after ten (10) calendar days from receipt by Tenant of written notice by certified or registered mail sent to Tenant for any of the following:

1) Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Tenant makes the required payment(s) during the ten (10) calendar day period from date of the written notice.

2) Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the ten (10) calendar day period from date of written notice.

C. Termination after fourteen (14) calendar days from receipt by Tenant of written notice by certified or registered mail sent to the Tenant for the following:

1) Non-performance of any covenant of this Agreement other than non-payment of rent and others listed in A and B above, and failure of the Tenant to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice, or where a court finds that the Tenant has brought a frivolous and/or baseless claim or defense.

D. A final determination in a court of law in favor of the Landlord in litigation instituted by the Tenant against the Landlord, or brought by the Landlord against Tenant (termination shall be at the option of the Landlord).

E. Landlord, through its County Mayor, or Mayor's designee, shall have the right to terminate this Agreement or any portion thereof, at any time, and for any reason whatsoever, by giving the Tenant one hundred eighty (180) calendar days written notice of such termination prior to its effective date. Should the term of this Agreement, at the time the Landlord elects to provide the Tenant with notice of termination, be equal to or less than one hundred eighty (180) calendar days, then notice shall be commensurate with the remaining term of this Agreement.

F. Landlord shall have the right to immediately terminate, or suspend, this Agreement, at any time, in the event of an emergency, as determined in the sole discretion of the County Mayor or the County Mayor's designee, should the Landlord need the Premises for a public purpose, by giving the Tenant twenty-four (24) hours' written notice of such termination or suspension.

21.02 **TERMINATION BY TENANT:** The Tenant, shall have the right to cancel this Agreement at any time by giving the Landlord at least ninety (90) calendar days written notice prior to its effective date.

ARTICLE 22
NOTICES

22.01 It is understood and agreed between the parties hereto that written notice to Landlord shall be mailed, certified mail, return receipt requested, with all postal charges pre-paid or delivered by a nationally recognized delivery service (such as FedEx or DHL) and addressed to the Director, Internal Services Department, 111 N.W. 1st Street, Suite 2460, Miami, Florida 33128, and with a copy to the County Attorney's Office, 111 N.W. 1st Street, 28th Floor, Miami Florida 33128, in order to constitute sufficient notice to Landlord; and written notice addressed to Tenant shall be mailed or delivered to the address of Tenant at: 9705 East Hibiscus Street, Palmetto Bay, Florida 33157, shall constitute sufficient notice to Tenant to comply with the terms of this Agreement. Notices provided herein in this paragraph shall include all notices required in this Agreement or required by law.

ARTICLE 23
INSURANCE

23.01 Prior to occupancy, unless the Tenant is self-insured, the Tenant shall furnish to the Director of Real Estate Development Division of Miami-Dade County, c/o Internal Services Department, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, a Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Tenant as required by Florida Statute 440.

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B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. Coverage must include Abuse and Molestation Liability. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. Using vans or mini-vans with seating capacities of fifteen (15) passengers or more, the limit of liability required for Automobile Liability Insurance is $500,000.

23.02 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Landlord's Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to do business in Florida" issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

23.03 Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

NOTE: CERTIFICATE HOLDER MUST READ:
MIAMI-DADE COUNTY
111 N.W. 1st STREET
SUITE 2340
MIAMI, Florida 33128

23.04 Compliance with the foregoing insurance requirements shall not relieve Tenant of its liability and obligations under this Article or under Article 18; Indemnification and Hold Harmless, or any other section or portion of this Agreement.

23.05 Tenant shall be responsible for ensuring that the insurance certificates required in conjunction with this Article remain in full force for the duration of this Agreement. If insurance certificates are scheduled to expire during the term of the Agreement, Tenant shall be responsible for submitting new or renewed insurance certificates to the Landlord at a minimum of thirty (30) calendar days in advance of such expiration.

23.06 If the Tenant is self-insured, the Tenant, upon the Commencement Date, shall furnish to the Landlord a self-insurance letter, written on the Tenant's letterhead, evidencing the fact that the Tenant is self-insured, and such letter shall be subject to the satisfaction and approval of the Landlord.

ARTICLE 24
PERMITS, REGULATIONS & SPECIAL ASSESSMENTS

24.01 Tenant covenants and agrees that during the term of this Agreement, Tenant will obtain any and all necessary permits, licenses and approvals, and that all use of the Premises will be in conformance with all applicable laws, ordinances, rules, regulations, including all applicable zoning regulations.

24.02 Any and all charges, taxes, or assessments levied against the Premises shall be paid by Tenant, and failure to do so will constitute a breach of this Agreement.

24.03 Landlord as Sovereign

It is expressly understood that notwithstanding any provision of this Agreement and the Landlord's status thereunder:

(a) The Landlord retains all of its sovereign prerogatives and rights and regulatory authority as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Premises or the operation thereof, or be liable for the same; and

(b) The Landlord shall not by virtue of this Agreement be obligated to grant the Tenant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Premises.

24.04. No Liability for Exercise of Police Power

Notwithstanding and prevailing over any contrary provision in this Agreement, or any Landlord covenant or obligation that may be contained in this Agreement, or any implied or perceived duty or obligation including but not limited to the following:

(a) To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist the Tenant, regardless of the purpose required for such cooperation;

(b) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;

(c) To apply for or assist the Tenant in applying for any county, city or third party permit or needed approval; or

(d) To contest, defend against, or assist the Tenant in contesting or defending against any challenge of any nature;

shall not bind the Miami-Dade County Board of County Commissioners, the Regulatory and

Economic Resources department, or any division thereof, or any other county, city, federal, or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the Landlord or any other applicable governmental agencies in the exercise of its police power; and the Landlord shall be released and held harmless, by the Tenant from and against any liability, responsibility, claims, consequential or other damages, or losses to the Tenant or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the parties recognize that the approval of any building permit and/or site plan application if applicable will require the Landlord to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Agreement, the Landlord shall have no obligation to approve, in whole or in part, any application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver. The Landlord's obligation to use reasonable good faith efforts in the permitting of the use of Premises shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any requests or inquiries by Tenant as authorized by this Agreement. Moreover, in no event shall a failure of the Landlord to adopt any of the Tenant's request or application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver be construed a breach or default of this Agreement.

ARTICLE 25
FORCE MAJEURE

25.01 The Landlord and Tenant hereby agree that term "*Force Majeure*" in this Agreement, and when applied to this Agreement, shall mean an unforeseen event or occurrence that is beyond the control of one or both of the parties, such as a war, strike, riot, crime, acts of nature, or act of God (e.g., flooding, earthquake, hurricane) that in fact prevents one or both parties from fulfilling their respective obligation(s) in a timely manner under this Agreement. *Force Majeure* shall excuse the party or parties from liability or obligation only during the period of time when the extraordinary event occurs and the circumstances beyond the party or parties' control continue to prevent the party or parties from performance under this Agreement. *Force Majeure* is specifically not intended to shield or otherwise excuse the negligence or malfeasance of a party, as where non-performance is caused by lack of foresight, prudence and/or failure to exercise precautionary measures.

25.02 A party asserting *Force Majeure* as an excuse for delay or non-performance shall have the burden of proving that failure to perform could not

have been avoided by the exercise of due care by that party, that reasonable steps were taken to minimize any delay, as well as to avoid any damages caused by subsequent foreseeable events, that all non-excused obligations were timely fulfilled, and that the other party was timely notified, in writing, of the likelihood of or the actual occurrence of the extraordinary event which would justify such an assertion, so that reasonable measures could be contemplated and possibly taken by the other party, and the other party has in fact recognized, in writing to the party asserting a claim of *Force Majeure*, that the occurrence is an event equating to *Force Majeure*.

25.03 Tenant and Landlord shall be excused only for the period of any delay associated with the *Force Majeure* event, and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of this Agreement when prevented from so doing by cause or causes beyond Tenant's or Landlord's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of Tenant or Landlord.

ARTICLE 26
WAIVER

26.01 If, under the provisions hereof, Landlord or Tenant shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of Landlord's or Tenant's rights hereunder, unless expressly stated in such settlement agreement. No waiver by Landlord or Tenant of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by Landlord or Tenant of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of lesser amount than the annual payments of rent (or additional rent if such obligations are stipulated) shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to Landlord be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to or waiver of Landlord's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Agreement. Further, any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to Landlord may not be deemed to limit or restrict the Landlord in any manner whatsoever, and such endorsement or statement shall have no effect whatsoever, and shall be deemed to have never been written at all. No reentry by Landlord shall be considered an acceptance of a surrender of this

Agreement.

ARTICLE 27
DEFAULT OF TENANT AND REMEDIES

27.01 Consistent with and in addition to Article 21, Termination, above, if Tenant shall fail to pay any annual payment or item of rent on the date when the same becomes due and if such violation or failure continues for a period of ten (10) calendar days after written notice thereof to Tenant by Landlord, then Landlord may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, as may be applicable.

27.02 Consistent with and in addition to Article 21, Termination, above, should Tenant elect or fail to perform or observe any covenant or condition of this Agreement (other than a default involving the payment of rent), which default has not been cured within ten (10) calendar days after the giving of notice by Landlord, unless such default is of such nature that it cannot be cured within such ten (10) day period, in which case no event of default shall occur so long as Tenant shall commence the curing of the default within such ten (10) day period and shall thereafter diligently prosecute the curing of same, and/or such remedy for any such default is not otherwise addressed in this Agreement, then the Landlord shall be permitted to terminate this Agreement, and immediately take possession of the Premises.

27.03 Should Tenant vacate or abandon, or fail to take occupancy of, the Premises at any time during the term of this Agreement, Landlord shall be permitted to immediately take possession of the Premises.

27.04 Upon any default, and after the expiration of any cure period, Landlord may, with or without judicial process, enter upon the Premises and take possession of any and all improvements and all personal property of Tenant situated in the Premises, without liability for trespass or conversion, and may sell or otherwise dispose of any and all such property after thirty (30) calendar days' notice to Tenant, which notice shall constitute reasonable and sufficient notice (so long as such property is valued by the Landlord at more than One Thousand ($1,000.00) Dollars, otherwise, such property shall be considered abandoned by the Tenant, and Landlord shall have no obligation to either store, maintain, sell or otherwise dispose of the personal property). The proceeds of any such sale or disposition shall be applied first to the payment of all costs and expenses of conducting the sale and/or caring for and/or storing said property, including attorneys' fees; second, toward the payment of any indebtedness, including (without limitation) indebtedness for rent and other expenses, which may be due or become due to Landlord; and third, to pay Tenant, on demand in writing, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid, so long as Tenant in fact makes such demand within sixty (60) calendar days of any such

sale or disposition of property.

27.05 Upon any default, Landlord may perform, on behalf of and at the expense of the Tenant, any obligation of Tenant under this Agreement which Tenant has failed to perform and of which Landlord shall have given Tenant notice of, the cost of which performance by Landlord, together with interest thereon, at the highest legal rate of interest as permitted by the State of Florida, and shall be immediately payable by Tenant to Landlord.

27.06 Landlord and Tenant acknowledge and agree that notwithstanding the provisions of Section 27.05 above, and regardless of whether an event of default shall have occurred, Landlord may exercise the remedy described in Section 27.05 without any notice to Tenant if Landlord, in its good faith judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation by Tenant constitutes an emergency.

27.07 If this Agreement is terminated or cancelled by Landlord, Tenant nevertheless shall remain liable for any and all rent and damages which may be due, become due or sustained by Landlord, along with any and all reasonable costs, fees and expenses including, but not limited to, attorneys' fees, costs and expenses incurred by Landlord in pursuit of its remedies hereunder, or in renting the Premises or a portion thereof to others.

27.08 All rights and remedies of Landlord under this Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to Landlord under applicable law.

ARTICLE 28
ADDITIONAL PROVISIONS

28.01 Non-Discrimination

The Tenant for itself, and its successors and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

In the use of Premises, Tenant will comply with Resolution No. 9601 dated March 24, 1964, which states that as a matter of policy, there shall be no discrimination based on race, color, creed, gender, or national origin, and Resolution No. 85-92 dated January 21, 1992, which states that there shall be no discrimination on the basis of disability in connection with any Miami-Dade County property or facilities operated or maintained under lease agreements, license, or other agreement from Miami-Dade County or its agencies. No person, on the grounds of race, sex, age, color, national origin, or physical handicap, shall be excluded from participation therein, or be denied the benefits thereof, or be otherwise subjected to discrimination.

In the construction of any improvements on, or under such land, and in the furnishings of services thereon, no person on the grounds of race, sex, age, national origin, or physical handicap, shall be excluded from participation therein or be denied the

benefits accruing therefrom, or be otherwise subjected to discrimination.

Tenant agrees, in accordance with Chapter 11A of the Miami-Dade County Code, that it shall not discriminate against any employee, subtenant, person, etc. on the basis of race, color, religion, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation, gender identity or gender expression, or status of domestic violence, dating or stalking.

28.02. Serious Injury or Death. Tenant agrees that it will immediately notify the Landlord should any person sustain(s), or is found to have, a serious bodily injury or dies on or about the Premises. The parties hereby agree that the definition of serious bodily injury shall include, but not be limited to, any injury to a person which requires medical treatment either at a hospital or by emergency medical technicians. Further, in instances where someone sustained a serious bodily injury or died, in addition to any other requirement(s) regarding notice under this Agreement, the Tenant shall also immediately (same day, or in situations where the same day is not possible, then next day) call the Landlord's Internal Services Department, and notify the Landlord's Director of the Internal Services Department of such incident, in detail, with or without the name of the individual that died or sustained the serious bodily injury. Further, in instances where an individual died or sustained a serious bodily injury, the Tenant must complete a detailed injury and incident report and immediately (same day or next day) send it to the Landlord, in accordance with the terms of the notice provisions found in this Agreement. The Tenant hereby agrees that it will immediately comply with all of the foregoing requirements notwithstanding any other obligation, including but not limited to, any agreement for confidentiality that it owes or may owe to any other governmental agency, and/or to any friend or member of a person's family.

28.03 Security. Tenant is solely responsible for securing and maintaining its own security in and around the Premises. Should the Tenant, at any time and for any reason, believe that security and/or additional security is needed to protect the Tenant, or any of its invitees, guests, licensees, employees, staff, management, and/or the property belonging to any of the foregoing, as well as the Premises, then it is understood that Tenant shall, at its sole cost and expense, hire and maintain such security. Tenant expressly acknowledges and agrees that any and all security staff and equipment that Landlord has or may have for any adjacent or nearby property owned by the Landlord is there to solely protect and secure the Landlord and its interest in such property. Tenant further acknowledges and agrees that the Landlord at any time may increase or decrease its security staff and/or equipment pertaining to any adjacent or nearby property owned by the Landlord without any prior notice or permission from or to Tenant.

28.04 Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement which has been drafted by counsel for both Landlord and Tenant.

28.05 Headings. The headings of the various paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment, or describe the scope, context or intent of this Agreement, or any part(s) of this Agreement.

28.06 Successors and Assigns. The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns, except as may be otherwise provided herein.

28.07 Holidays. It is hereby agreed and declared that whenever the day on which a payment or performance is due under the terms of this Agreement, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next following business day. Any mention in this Agreement of a period of days for performance shall mean calendar days.

28.08 Relationship of Parties. This Lease does not create the relationship of principal and agent, or of mortgagee and mortgagor, or a partnership, or a joint venture, or any association between Landlord and Tenant, other than the sole relationship between Landlord and Tenant being that of landlord and tenant, or lessor and lessee.

28.09 Severability. If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

28.10 Survival. The parties hereby acknowledge and agree that many of the duties and obligations in this Agreement will survive the term, termination, and/or cancellation hereof. Accordingly, the respective obligations of the Tenant and the Landlord under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation, or expiration hereof.

28.11 Brokers. Landlord and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement.

ARTICLE 29
GOVERNING LAW AND VENUE

29.01 This Agreement, including any exhibits, attachments, and/or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) are incorporated herein by reference, and shall be governed by and construed in accordance with the laws of the State of Florida.

29.02 The Landlord and Tenant hereby agree that venue shall be Miami-Dade County, Florida, and as a result, any litigation, action, cause of action, including, but not limited to any lawsuit, shall be brought and presented exclusively in a court located in Miami-Dade County, Florida.

ARTICLE 30
WRITTEN AGREEMENT

30.01 The parties hereto agree that this Agreement sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms, and/or conditions in this Agreement may be added to, modified, superseded, or otherwise altered, except as may be authorized herein, or by a resolution approved by the Miami-Dade Board of County Commissioners.

THE REMAINDER OF THIS PAGE HAS
INTENTIONALLY BEEN LEFT BLANK
ONLY THE SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written, with full power and authority to execute such document.

VILLAGE OF PALMETTO BAY,
a municipal corporation,

_____
WITNESS

_____
Eugene Flinn
Mayor
(Tenant)

_____
WITNESS

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
DEPUTY CLERK

By: _____
Mayor
(Landlord)

Approved by the County Attorney as

to form and legal sufficiency _____

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