

**CAPITAL GRANT AND OPERATING AGREEMENT**

**PHIPPS OCEAN PARK, PALM BEACH, FLORIDA**

by and between

**The Town of Palm Beach, Florida,**  
a political subdivision of the State of Florida

and

**The Preservation Foundation of Palm Beach, Inc.,**  
a Florida not for profit corporation

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## CAPITAL GRANT AND OPERATING AGREEMENT

### PHIPPS OCEAN PARK, PALM BEACH, FLORIDA

This Capital Grant and Operating Agreement (“Agreement”) is entered into as of the last day executed by each of the parties (“Effective Date”) and is between The Town of Palm Beach, Florida, a political subdivision of the State of Florida (the “Town”), and The Preservation Foundation of Palm Beach, Inc., a Florida not for profit corporation (the “Foundation”).

#### Recitals:

A. The Town owns and operates a municipal facility commonly known as Phipps Ocean Park (the “Park”), an approximately 20-acre public park located at 2185 S. Ocean Blvd., Palm Beach, Florida. The Park currently contains, among other improvements, tennis courts, a fire station, a training center, a lifeguard building, a sanitary pump station, and an improvement commonly known as the Little Red Schoolhouse that the Town has leased to the Foundation under that certain 99-year lease dated September 29, 1989 (the “Little Red Schoolhouse Lease”).

B. The Foundation has undertaken a fundraising program to secure funds for the restoration and rebuilding of the Park to restore its natural ecosystems and enhance the Park as a resource for environmental and cultural education (“Project”). The Foundation has proposed the improvements, fixtures and landscaping for the Park (the “Renovation Improvements”) described in Exhibit A attached hereto and made a part hereof and depicted in the approved site plan attached as Exhibit B hereto and made a part hereof (the “Master Plan”). The fundraising program will build on the philanthropic plan of the Phipps family in donating the land for the Park. The portions of the Park currently used as tennis courts, training center, lifeguard building, and beach access point via the dune crest, a fire station, sanitary pump station and otherwise used as public works areas, the locations of which are also designated in Exhibit B (the “Public Service Areas”), will not, except for certain landscape enhancements and certain planned renovations to the lifeguard building, be renovated as part of the Renovation Improvements. The Town and the Foundation intend that the Renovation Grant will cause the Park to be an accessible and gracious recreational facility while increasing its usefulness as a resource for both environmental and cultural education.

C. On December 13, 2022, April 3, 2023 and January 9, 2024, pursuant to Town Council Resolution ZON-22-107 (COA-22-037) (as may be further amended and/or supplemented, the “Development Order”), the Town Council approved a Special Exception with Site Plan Review for modifications to the Park based on the Master Plan, as well as certain variances described in the Development Order. The Town Council also adopted Resolution No. 003-2024 dated January 9, 2024, approving a modified Site Plan dated February 14, 2023.

D. On January 9, 2024, pursuant to Town Council Resolution No. 004-2024 (the “Naming Rights Resolution”), the Town Council approved a seventy-five (75) year naming right to a lead donor of the Foundation for the portion of the Renovation Improvements to be known as the Coastal Conservancy, subject to the terms and requirements set forth therein.

E. As part of the fundraising program, the Foundation has agreed to grant Twenty-Seven Million Eighty-Two Thousand Three Hundred Fourteen and 28/100 Dollars (\$27,082,314.28) (the “Renovation Grant”) for the construction and installation of the Renovation

Improvements in the locations depicted in the Master Plan. The Renovation Grant will also include the costs of the Project Engineer (as hereafter defined.) This Agreement provides, in addition, for the Foundation's direct payments for costs and expenses for the Playground as hereafter provided. Subject to the terms of Exhibit C and the terms and conditions of this Agreement, but subject to the contingencies set forth in Paragraph 6, the Renovation Grant will fund:

- a. moving and rehabilitating the Little Red Schoolhouse to a new, higher location to mitigate the ongoing flooding suffered in its current location,
- b. constructing a new outdoor classroom, schoolyard garden, new bathroom facilities, and new beach pavilions,
- c. developing a wildflower garden, new entrance, walking paths with educational checkpoints,
- d. developing a new playground ("Playground"),
- e. creating a Horizon Plateau gathering area,
- f. enhancing the lifeguard building,
- g. restoring historic ecosystems through the planting of native species,
- h. installing a dense landscape buffer composed of trees and understory plantings at the north end of the park,
- i. installing a 30-foot-wide landscaping buffer and 6-foot concrete wall at the south end of the Park,
- j. installing Site Utilities (as hereafter defined), and
- k. constructing a building to be known as the Coastal Restoration Center consisting of an approximately 2,399 square feet structure ("Coastal Restoration Center") on a site comprising approximately 12,400 square feet ("Coastal Restoration Center Site").

1. The Coastal Restoration Site will contain, in addition to the Coastal Restoration Center, a nursery ("Coastal Restoration Center Nursery"). The Coastal Restoration Center Nursery will be used for the propagation of native species to be used to maintain the landscaping within the Park based on the Landscape Drawings and other Town properties to the extent hereafter provided.

2. To the extent that the Coastal Restoration Center Nursery has additional landscaping materials not required by the Park ("Excess Landscaping Materials"), and such materials are available and reasonably consistent with the Town's landscaping plans for its other properties, the Foundation will permit the Town to deploy such Excess Landscaping Materials (as such excess is reasonably identified by the Foundation) for use in other Town facilities. In addition, the Foundation may donate Excess Landscaping Materials to private property owners for the enhancement of their properties within the Town so long as: (1) the Foundation donation of the Excess Plan Materials is without any consideration to the Foundation,

whether in the form of cash, pledges, or otherwise, and (2) the Foundation does not advertise the availability of the Excess Landscaping Materials and does not permit more than the occasional on-site pick up the Excess Landscaping Materials.

F. Subject to a contribution to be made by the Town in the amount of Two Million and No/100 Dollars (\$2,000,000.00) under this Agreement ("Town Contribution"), the Renovation Grant (including such funds obtained from grants and private contributions), and the Foundation's direct purchase of the Playground Equipment (as hereafter defined) shall be the exclusive source of funds for the Renovation Improvements. Accordingly, the Town shall not accept donations or grants from other parties for the cost of the Renovation Improvements. Except as provided in this Agreement (subject to the terms of this Agreement with respect to future improvements) and except with respect to the Town's Public Service Areas and, with respect to all areas of the Park, requirements for the public health, safety and welfare and in response to emergencies and, the Town shall not make other improvements to the portions of the Park subject to the Master Plan that would adversely affect the visibility, access, or use of the Renovation Improvements to any material extent.

G. In addition to the Renovation Grant, the Foundation shall establish an endowment (the "Park Endowment") to fund the Foundation's obligations under the New Little Red Schoolhouse Lease, the Coastal Restoration Lease and accruing under this Agreement following completion of the Renovation Improvements.

H. Nothing in this Agreement shall abrogate the Town's rights and procedures with respect to the ownership, permitting, and operation of municipal facilities, nor shall anything in this Agreement abrogate the Town's obligation to comply with the Charter of the Town of Palm Beach, Florida as adopted by Ordinance No. 15-78 on December 12, 1978 and by referendum on February 6, 1979, as subsequently amended by the Code of Ordinances of the Town of Palm Beach, Florida (together the "Charter Documents"). Further, nothing in this Agreement shall cause the violation of those certain restrictions set forth in that certain Deed dated May 7, 1948 and recorded in Deed Book 815 at Page 190 of the Public Records of Palm Beach County, Florida ("Deed Restrictions"), and to the extent that any term hereof is determined to violate the Deed Restrictions, this Agreement shall be reformed to omit or cause any such provision to comply with the Deed Restrictions.

I. The Town and the Foundation desire, subject to and contingent upon the contingencies hereafter set forth herein, to enter into this Agreement for the purpose of setting forth the manner in which the Foundation will fund the Renovation Grant, the manner in which the Town will make the Town Contribution and construct the Renovation Improvements, to address the ongoing maintenance, repair and replacement of the Renovation Improvements, and to address the intended future cooperation of the Town and the Foundation.

NOW, THEREFORE, in consideration of the parties' mutual promises set forth in this Agreement and the sum of One Dollar (\$1.00), the receipt and sufficiency of which are hereby conclusively acknowledged, the Town and the Foundation hereby agree as follows.

1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Agreement to the same extent as if fully set forth herein.

2. Renovation Grant and Town Contribution.

A. Subject to the Town's Contribution, the Town will, in a manner consistent with the Charter Documents, apply the Renovation Grant (including funds received by the Foundation from the State of Florida Special Category Grant Agreement) to the costs of the Renovation Improvements under the procedures set forth in this Agreement. To the extent that the Foundation obtains funds in excess of the cost of the Renovation Improvements (when offset by the Town Contribution) in its fundraising campaign, the Foundation may use such excess amount to as its initial contribution to the Park Endowment and other costs and expenses of the Project, in its discretion. Accordingly, all of the hard and soft costs incurred by the Town in connection with the construction of the Renovation Improvements shall be paid by the Town Contribution and Renovation Grant. "Hard and soft costs" shall mean aggregate of (i) engineering, architectural and landscaping design, and project management fees for the Renovation Improvements, plus (ii) filing fees, permit costs, governmental testing, and requirements of applicable law and governmental authorities incurred for or necessitated by the Renovation Improvements, plus (iii) all site development work costs, plus (iv) the actual cost of all labor, supplies, and materials furnished in connection with the Renovation Improvements, including all costs associated with change orders approved by the Town and Foundation.

B. The Town will fund the Town Contribution once the contingencies set forth in Paragraph 6 hereof have been duly satisfied. Town's Contribution shall be fully exhausted prior to the application of the Renovation Grant. The Town may apply the Town Contribution for certain Renovation Improvements rather than others, and to hard and soft costs, in its discretion.

3. Design Phase.

A. The Foundation has previously engaged, with the cost thereof to be paid by the Foundation, the landscaping design firm of Raymond Jungles, Inc. ("Landscape Architect") to develop landscape drawings for the Renovation Improvements intended to restore and preserve the Park's natural ecosystems ("Landscape Drawings").

B. The Foundation has previously engaged, with the cost thereof to be paid by the Foundation, the architectural firm of Fairfax, Sammons & Partners LLC ("Project Architect") to develop construction drawings for the portions of the Renovation Improvements not included in the Landscape Drawings ("Construction Drawings"). The Construction Drawings include, without limitation, requirements for the relocation of the Little Red Schoolhouse to the location indicated in the Master Plan.

C. The Foundation has previously engaged, with the cost thereof to be paid by the Foundation, the engineering firm of Kimley Horn ("Project Engineer") to provide civil engineering services and drawings with respect to the Renovation Improvements ("Civil Engineering Drawings"). The Civil Engineering Drawings include "Site Utilities", namely improvements and infrastructure that provide for the distribution and connection of public utility services including, without limitation, water (domestic and irrigation), fire hydrants, sanitary sewer systems and facilities, stormwater systems and facilities, electrical power, and other essential requirements (phone, data, cable TV, etc.), and lighting, including those within the Coastal Restoration Center, the Little Red Schoolhouse, and other structures to the extent necessitated by the Renovation Improvements. The services of the Project Engineer for permitting and



construction phase services for the work described in the Landscape Drawings, the Construction Drawings and the Civil Engineering Drawings shall be subject to a direct contract by the Town with the Project Engineer and the Project Engineer and the Foundation shall pay the cost of such services except to the extent rendered for the Public Service Areas.

D. The parties have engaged, and will continue to engage, in a collaborative and cooperative process in working toward the final Approvals for the Renovation Improvements, under which the Town's review of the plans for each element of the Park are subject to the process of review in the Town's regulatory capacity to the same extent as any other improvements made by the Town on Town property. The Foundation's performance obligations for the Project Engineer and the CMAR shall be the Foundation's payment obligations set forth in this Agreement and the Town, not the Foundation, shall be responsible for the supervision and performance of the CMAR and Kimley Horn.

4. The Playground. The Foundation has engaged Monstrum to design the Playground and fabricate the playground equipment that is acceptable to the Town ("Playground Equipment"). The Town has agreed to include the Playground Equipment in the Park subject to the following conditions: (i) The Playground Equipment will meet the minimum requirements for playground safety and meet the best practices requirements of the United States Consumer Product Safety Commission as set forth in the Public Playground Safety Handbook, and (ii) be certified by ASTM as meeting the technical standards set forth in its technical manufacturing standards for public use playground equipment and to the extent required by applicable legal requirements.

A. The Foundation shall pay Monstrum directly for the cost of acquiring and shipping the Playground Equipment to the Port of Miami.

B. The Foundation timely has elected to cause the CMAR (as hereafter defined) to accomplish the Playground Storage and the Installation Phase (as hereafter defined) for the Playground Equipment and; accordingly, the GMP (as hereafter defined) includes the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00). The "Playground Storage and Installation Phase" means the off-site storage of the Playground Equipment following its delivery to the Port of Miami, loading and transporting the Playground Equipment from the Port of Miami to the storage site and from the storage site, offloading and staging the Playground Equipment once at the Park, moving any materials from the storage/laydown area to where the Playground Equipment will be installed, installation of the Playground Equipment at its intended site in the Park, obtaining permits, scheduling inspections, reviewing shop drawings, performing project management for the delivery and installation of the Playground Equipment, supplying labor for the installation of the Playground Equipment, securing the work area and providing safety measures, providing insurance, builder's risk insurance, and performing and incurring surveying, testing costs.

C. The Town will be responsible for maintenance of the Playground Equipment and surface on which the Playground Equipment is located consistent with the requirements included in the Monstrum 2024 maintenance manual, but any other required repairs or replacements shall be subject to the terms of this Agreement. The Playground Equipment and its underlying surface shall, at the time of installation and from time to time as required by the Town, be subject to inspection by a certified public playground safety inspector (CPSI) acceptable to the Town.

5. Construction Phase; Approved Budget.

A. The Town, after issuing a request for qualification, has entered into a Pre-Construction Services Agreement with Burkhardt Construction, Inc. as a construction manager at risk (“CMAR”) to provide in writing its professional opinion of a guaranteed maximum price (“GMP”) for implementing the work described in the Landscape Drawings, Construction Drawings and Civil Engineering Drawings, and the Signage Plan. Any changes to the GMP shall be subject to both the Town’s written approval and, to the extent not affecting solely the Public Service Areas, to the Foundation’s written approval. The Town and the Foundation worked with the CMAR to accomplish deductive and value engineering changes to the initial versions of the Landscape Drawings, the Construction Drawings and the Civil Engineering Drawings. The Landscape Drawings modified to reflect the foregoing process of review and revision are referred to herein as the “Final Landscape Drawings”. The Construction Drawings and the Civil Engineering Drawings modified to reflect the foregoing process of review and revision are referred to herein as the “Final Construction Documents” and are together with the Final Landscape Drawings referred to as the “Bid Documents”. The Bid Documents include, without limitation, requirements for submittal of the timetable for performance of the Approved Renovation Improvements (defined below). A description of the Final Landscape Drawings and Final Construction Drawings comprising the Bid Documents is attached hereto as Exhibit D. There shall be no changes to the Bid Documents without the prior written approval of both the Town and the Foundation provided, however, that any components of the Bid Documents for the Public Service Areas and certain municipal facilities such as the lifeguard building shall not be subject to the Foundation’s consent or approval rights in any instance if they are required in connection with public health, safety or welfare but shall otherwise, if they adversely affect the visibility, access, or use of the Renovation Improvements to any material extent, shall be subject to the Foundation’s consent and approval rights. In the event that any of the foregoing would otherwise be the financial responsibility of the Foundation, the Town shall be responsible for such costs and maintenance without payment from the Foundation if its proceeds without the Foundation’s consent as permitted herein.

B. The Town requires the CMAR to have satisfied the Town’s purchasing requirements (including the State of Florida procurement requirements applicable to the Town). The Town acknowledges that the Foundation is not a party to the Town’s agreement with the CMAR and the Foundation’s obligations with respect to the CMAR shall be as set forth in this Agreement, not as set forth in the Town’s agreement with the CMAR. Accordingly, any costs above the final GMP for the Renovation Improvements including but not limited to cost overruns, costs due to existing conditions or field changes, or additional costs resulting from a change in the scope of the Renovation Improvements shall be subject to the Foundation’s written approval to pay such costs.

C. The CMAR has furnished the GMP and supporting documentation to the Foundation and the Town, including deductive and value engineering changes to the initial versions of the Landscape Drawings, the Construction Drawings and the Civil Engineering Drawings to correspondingly reduce the anticipated GMP for the Renovation Improvements. The Foundation’s monetary obligations with respect to the Playground set forth in Paragraph 4 and with respect to the compensation of the Project Engineer for construction phase services are in addition to the CMAR’s GMP. Exhibit E sets forth the Foundation’s monetary obligations for the Renovation Improvements, including the contingency amount included in the GMP (the

“Approved Budget”). Increases in the Foundation’s obligations under the Approved Budget shall be subject to the Foundation’s written consent.

D. The Town will enter into a construction agreement with the CMAR concurrently with or promptly following the Effective Date of this Agreement (the “CMAR Agreement”). The CMAR Agreement will include the Foundation and its members, officers, employees, agents, and contractors as additional insureds for liability purposes. The Town will endeavor to cause the CMAR Agreement to include the Foundation as an indemnitee to the same extent as the Town and also endeavor to include in the CMAR Agreement a waiver of subrogation acceptable to the Foundation. The CMAR Agreement is subject to the Foundation’s review and revocation rights as set forth in Paragraph 6.B of this Agreement.

E. The commencement of construction and installation of the Renovation Improvements is subject to the Town’s permitting and other legally required governmental permits and approvals including, for example, a CCCL Permit from the Florida Department of Environmental Protection to allow construction seaward of the Coastal Construction Control Line and a permit from Florida Department of Transportation for entrances and right of way improvements. The Town shall submit all permit applications and diligently pursue receipt of same. In the event that all of the Approvals in final, non-appealable status are not received by December 31, 2024, at the request of the Foundation or the Town, the Town and the Foundation shall work in good faith to amend the Master Plan and the Bid Documents to add, modify, or remove any improvement or condition delaying or preventing final authorization. For the avoidance of doubt, nothing in this Agreement abrogates the discretion of the Town Council in undertaking reviews and providing approvals under this Agreement in its discretion. The Town will respond promptly to updates on permit status reasonably requested by the Foundation from time to time.

F. The Town shall use commercially reasonable and diligent efforts to commence and complete the Renovation Improvements in accordance with the construction schedule attached as Exhibit F (the “Project Schedule”), subject to timely payment by the Foundation and force majeure, namely unforeseen acts such as acts of God, weather conditions and natural catastrophes, shortages of labor, shortages of materials, pandemics, or other factors, whether similar or dissimilar, outside of the Town’s reasonable control.

G. Subject to written notification to the Town at least one business day in advance and coordination with the Town (and the Town’s coordination with the CMAR) the Foundation representatives, including donors, shall have, accompanied by a Town representative, access to the Park during the renovation and subject to and in compliance with reasonable safety requirements and consistent with the schedule for the Renovation Improvements and in locations in the Park that will not cause delay in the Renovation Improvements; such access shall be subject to the Foundation maintaining and providing evidence of its required liability insurance that includes the Town, the CMAR and its employees and representatives as additional insureds. The Foundation acknowledges that all such access shall be at the Foundations’ sole risk and expense, and the Foundation’s indemnity under this Agreement includes, without limitation, loss, claims and liabilities arising from personal injury (including death) suffered by the Foundation’s representatives and guests during such required periods of access during construction, but in no event shall such indemnity apply in the event of the Town’s gross negligence or willful misconduct.

H. The Foundation may, at its option and at its sole cost and expense, retain a construction professional (typically described as an owner's representative when retained by an owner) ("Foundation Representative") to review, among other things, construction progress, construction documents, and the Town's draw requests for payment. The parties acknowledge and agree that the Foundation may, in connection with the Renovation Improvements engage additional consultants to represent the Foundation which shall be compensated by the Foundation without contribution by the Town.

I. Nothing in this Agreement shall restrict the Town from making changes to the portions of the Final Construction Documents not included in the Renovation Improvements that do not adversely affect the visibility, access, or use of the Renovation Improvements to any material extent, in which case such changes shall be subject to the Foundation's consent provided, however, that the Foundation's consent shall not be required for any such changes to the extent required in connection with public health, safety or welfare or in emergencies. The foregoing does not affect the Town's responsibility, without contribution by the Foundation, for the foregoing.

J. Each of the Town and the Foundation shall reasonably consider requests from the other for change orders to the Final Construction Documents provided, however, that the Foundation shall be obligated for any additive costs for Foundation requested change orders changing the scope of the Renovation Improvements without contribution by the Town.

K. Notwithstanding any term to the contrary in this Agreement, the Town agrees that it shall not, without the Foundation's prior consent, take any action that would increase the cost of the Renovation Improvements or any other costs under this Agreement for which the Foundation is responsible, which is limited to the amount of the Renovation Grant as of the Effective Date. In addition, the Town agrees that it shall not, without the Foundation's prior consent, unless otherwise expressly permitted in this Agreement, enter into amendments, change orders, or other agreements to increase, decrease or modify the Renovation Improvements whether such modifications are to the services of the CMAR, Kimley Horn, or any other party providing goods, services or materials to the Town in connection with the Renovation Improvements.

L. Following completion of the Renovation Improvements, the Town shall use commercially reasonable and diligent efforts to cause the CMAR to promptly comply with its warranty obligations with respect to the Renovation Improvements under the CMAR Agreement, including the correction of any work failing to conform to the requirements of the CMAR Agreement, at no cost to the Foundation.

6. Contingencies to Performance. The Town's and Foundation's obligations under this Agreement are subject to the following:

A. The Foundation has previously delivered to the Town of proof of funds in the amount of the Renovation Grant and the cost of the Playground Equipment which was accepted by the Town.

B. The Foundation's right to terminate this Agreement by written notice to the Town received on or before 9:00 a.m.. (eastern time) on May 28<sup>th</sup>, 2024 in the event that the Foundation has not then approved the CMAR Agreement.

C. Following the Effective Date, the Foundation's prepayment to the Town of a portion of the Renovation Grant in the amount of \$7 million ("Prepaid Grant Amount"). The Town shall deposit the Prepaid Grant Amount in an interest-bearing account and shall credit the interest earned on the Prepaid Grant Amount to the amounts due from the Foundation for the Renovation Grant. The Town will apply the Prepaid Grant Amount to the first payment request from the CMAR, subject to the terms of Paragraph 7, as a portion of the sums due from the Foundation under this Agreement.

D. the final approval of this Agreement by the Town Council on or before May 14, 2024 without the filing of any appeal thereafter within the applicable appeal period, subject, however, to the right of the Town Council to defer approval up to two (2) times.

E. the receipt of all final approvals, permits, and any similar authorizations from all governmental authorities necessary to construct the Renovation Improvements (collectively, the "Approvals") by December 31, 2024 without the filing of any appeal thereafter within the applicable appeal period.

F. In the event that the contingencies described in Paragraph 6.A or 6.C are not timely satisfied, the Town may terminate this Agreement upon written notice to the Foundation. In the event that either of the contingencies described in Paragraphs 6.D or 6.E are not timely satisfied or an appeal is filed, the Foundation may terminate this Agreement upon written notice to the Town and the Town shall promptly return the Prepaid Grant Amount. This Agreement shall be void and without effect if the Foundation exercises the termination right set forth in Paragraph 6.B. in which event the Town shall promptly return the Prepaid Grant Amount to the Foundation.

G. The parties acknowledge and agree that their respective rights and obligations under this Agreement are subject to the Foundation's termination right set forth in Paragraph 6.B and, if such termination right is not exercised, any modifications, stays ordered, or amendments to this Agreement mutually agreed upon by the parties in settlement of any appeal, each filed within any applicable appeals periods. For the avoidance of doubt, the Town shall not be required to make any payments to the CMAR or the Project Engineer until (i) the conditions to performance set forth in Paragraphs 6.D and 6.E have been satisfied, and (ii) any other conditions to performance set forth in this Agreement have been satisfied or duly waived, and (iii) the Foundation has not timely exercised its right to terminate this Agreement set forth in Paragraph 6.B.

## 7. Funding Process.

A. The Foundation shall have established a separate account for the Renovation Grant prior to the Town's payment of any funds to be provided by the Renovation Grant. The Foundation shall disburse funds from the Renovation Grant monthly within fourteen (14) days from the Town's submittal of requests for payment so that the Town can meet its obligations under the Local Government Prompt Payment Act. The Town will apply the Town Contribution and the Prepaid Grant Amount to the hard and soft costs of the Renovation Improvements first incurred and shall cause the CMAR to update and provide to the Town (and the Town shall provide to the Foundation) its cash flow requirements for the Renovation Improvements from time to time. In the event that such cash flow projections at any time show that the Foundation's payments, when taking the Prepaid Grant Amount and the Town Contribution into account, are not sufficient, the Town shall provide reasonable advance notification to the Foundation to the extent reasonably feasible

under the circumstances and the Foundation shall supplement its intended monthly payment which such additional monthly draws as may be reasonably required.

B. As a condition to payment the Town will provide the Foundation with a copy of each proper and complete pay application or invoice submitted to the Town containing the supporting documents (“Draw Requests”) that the Town is entitled or otherwise obligated to obtain pursuant to the CMAR Agreement (which shall include a certification from the Project Engineer), the Local Government Prompt Payment Act, and Town procedures provided, however, that such submittals may be subject to the Town’s concurrent review. The Town and the Foundation shall cooperate in resolving any questions or concerns that each may have from time to time with respect to the progress of construction and the payments required to be made for the Renovation Improvements. In the event that payment is not due to the CMAR, including on the basis of any deficiencies noted by the Foundation, the Town will withhold payment until the CMAR satisfies any such deficiencies.

C. In the event that the Foundation has made payment as required herein but any amounts included in such payment have been subsequently disqualified by the Town in the Town’s process of review, the Town will credit such excess amount against the sums next billable to the Foundation by the Town.

D. Except to the extent that the Foundation fails to timely make payments as required herein, the Foundation shall not be responsible for interest or penalties for the failure to timely pay an invoice and shall not be responsible for any double payments made to any subcontractors.

E. The CMAR Agreement shall include requirements for the CMAR’s keeping and submittal to the Town of records and accounts related to the cost of the Renovation Improvements (“CMAR Accounts and Records”). The Foundation may, during regular business hours and upon reasonable prior notice to the Town, but not more than annually, be afforded access to, and shall be permitted to audit and copy, the CMAR Accounts and Records. Notwithstanding such annual audit limitation, in the event that the Foundation requests any of the CMAR Accounts and Records not included in the Draw Requests, or any other records relating to the Renovation Improvements, the Town will cooperate in timely providing such item to the Foundation and, further, for the avoidance of doubt, the Foundation may request from time to time copies of the Town’s non-privileged books and records with respect to the Park and this Agreement and the Town shall promptly respond to such requests. The Town shall, and shall cause the CMAR to, preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Foundation shall likewise preserve its records of account for the Renovation Grant for such period.

F. The CMAR Agreement shall include the obligations of performance as set forth in the grant agreement attached to this Agreement as *Exhibit G* (the “Grant Agreement”) and the Town agrees to comply, or shall cause compliance, with such terms of the Grant Agreement.

G. The Town shall reconcile the Prepaid Grant Amount with the subsequent Draw Requests, and should the Town have collected from the Foundation more than the amounts due hereunder the Town shall credit such amounts to the subsequent Draw Requests or, following completion of the Renovation Improvements, refund any excess to the Foundation. The CMAR

Agreement shall provide that any savings under the GMP related to the Renovation Improvements (i.e., if any costs incurred by the CMAR are actually less than the amount stated in the GMP) shall be passed on to the Town (i.e., any such savings shall reduce the amount owed to the CMAR or credited against other amounts due to the CMAR for the Renovation Improvements) and the Town in turn agrees that such savings shall be passed on to the Foundation as the funding party of such costs.

H. Should the Foundation default in its obligation to timely fund any Draw Request the Town may, after consulting with the Foundation and after applicable notice and cure period, exercise its contractual right to terminate the CMAR's scope of work with respect to the Renovation Improvements for convenience, in which event the Foundation shall remain liable to the Town for the actual out of pocket costs for termination for convenience. Any amounts paid by the Foundation and not otherwise owed under the CMAR Agreement or to Kimley Horn for the Renovation Improvements shall be refunded to the Foundation.

8. Separate Accounting. Upon the completion of the Renovation Improvements and until the Foundation's obligations under this Agreement have expired or been earlier terminated, the Town agrees to establish and maintain a designated Phipps Ocean Park revenue and expense account ("Phipps Ocean Park Account"). The Phipps Ocean Park Account will separately account for the income and expenses directly related to the Park in the Town's books and records using the Town's uniform system of accounting, which may include an expense reserve for non-capitalized equipment not to exceed \$10,000 per year, and be on an accrual basis. The Phipps Ocean Park Account's accounting period will be the Town's "Fiscal Year", namely the period from October 1 through September 30 of each calendar year. To the extent that the Phipps Ocean Park Account at the end of any Fiscal Year (taking into account any accrued and unreimbursed expenditures) results in positive net income (i.e., revenue over expenses), the Town will, after setting aside adequate reserves for future expenses under the Town's standard accounting procedures, will credit the Foundation for the expense of the Landscape Maintenance Contract and repairing and maintaining signage in the Park incurred by the Foundation for such Fiscal Year or, to the extent exceeding such costs, against the Foundation's other obligations under this Agreement. If the Phipps Ocean Park Account at the end of any Fiscal Year (taking into account any accrued and unreimbursed expenditures) results in positive net income (i.e., revenue over expenses), the Town shall maintain adequate reserves for future expenses of the Park under the Town's standard accounting procedures before such funds are reallocated to another fund, account, or other Town facility.

9. Coastal Restoration Center.

A. The Town and the Foundation will execute the Coastal Restoration Center Lease in the form attached hereto as Rider #1 upon their execution of this Agreement, with its commencement date being the date that a certificate of occupancy is issued for the Coastal Restoration Center and its effectiveness subject to the terms of Paragraph 31.B hereof.

B. The parties intend that the Coastal Restoration Center Nursery shall provide plants for the replacement of the plant materials under the Landscape Drawings; to the extent that the Coastal Restoration Center Nursery does not supply such plants, and to the extent that the Foundation does not otherwise provide such supply within a reasonable period following the Town's written request from time to time, the Town shall not be bound to use the plant selections that the Coastal Restoration Center Nursery would otherwise provide, as long as the Town has used

reasonable efforts to cause the plantings to be substantially consistent with the original plantings under the Renovation Improvements or at least native species for the 33480 zip code according The Institute for Regional Conversation – Natives for Your Neighborhood.

C. The Foundation shall be solely responsible for paying for all Foundation staff required to operate the Coastal Restoration Center and the Coastal Restoration Center Nursery and such payments shall not be the Town's responsibility. At the Town's request, the Foundation shall annually provide the Town with a report describing its activities in the Coastal Restoration Center.

D. The Foundation shall be solely responsible, with such costs being in excess of the Renovation Grant, for utility connection costs charged by the public utility (including, without limitation, any capital amounts) for the Coastal Restoration Center and Little Red Schoolhouse.

E. The irrigation control for the Coastal Restoration Center shall be onsite at the Coastal Restoration Center.

10. Recognition of the Foundation and its Donors. The parties anticipate that the Foundation will present a proposed signage plan ("Signage Plan") identifying donors to the Foundation for the Renovation Improvements and to provide wayfinding and educational checkpoints signage within the Park. The Foundation shall be solely responsible for the maintenance, repair, replacement and restoration of the signage installed under the Signage Plan, except that the Town shall maintain, repair and replace any signage solely identifying the Town or the Park. The Foundation may remove any signage under the Signage Plan solely identifying either the Foundation and/or a donor at any time. If any signage under the Signage Plan identifies the Town and/or the Park in addition to the Foundation and/or a donor, the Foundation may replace such sign with a sign in substantially the same form identifying only the Town or the Park, as applicable, at any time and from time to time.

A. Subject to the Naming Rights Resolution, the Signage Plan may include exclusive naming rights for portions of the Renovation Improvements, provided that no naming right may exceed the lesser of (1) seventy-five (75) years or (2) the actual useful life of the particular Renovation Improvement (the "Naming Rights Term"). If a Renovation Improvement is destroyed or materially damaged by casualty, for which any required insurance proceeds are not available and subject to the right of the Foundation to pay for reconstruction as set forth in this Agreement, the naming right for such Renovation Improvement shall end. No naming rights shall include the requirement of monetary contribution by the Town for the restoration or renovation of the named Renovation Improvement, nor shall the Town be responsible for any such contribution under this Agreement.

B. The Town Council shall have the right, at a duly public scheduled meeting that is at least thirty (30) days following notice to the Foundation, to revoke the naming right if recognition of the donor would cast disrepute on the Town or circumstances have changed such that the naming right requested by the donor would adversely impact the reputation, image, mission or integrity of the Town.



C. The Signage Plan shall be subject to and consistent with the naming requirements of the Phipps family in connection with its donation of the land for the Park to the Town that the Park in all instances is known and identified as Phipps Ocean Park.

11. Media Communications. The parties shall, promptly following approval of this Agreement by the Town Council, issue a jointly approved press release describing the undertakings and agreements set forth herein. Following issuance of the jointly approved press release, the parties shall reasonably endeavor to coordinate future planned communications. Nothing in this Agreement shall give either the Town or the Foundation the right to speak for the other except only to the extent of any subsequent written consent.

12. Events and Outdoor Classroom Activities.

A. The Town acknowledges that the Foundation's obligations under this Agreement and the continuing support of the Park and other Town projects are dependent on the Foundation's fundraising activities. Accordingly, the Town agrees, subject to the Town's requirements with respect to special events, and subject to the Foundation's application for and the Town's issuance of special events permits and any other required permits from time to time, that the Foundation may hold multiple fundraising and educational programming and events in the Park making use of the Park and its parking facilities including, without limitation, the February fundraising event described in this Paragraph 12.A. The parties shall coordinate the date and time of such events. The Town agrees to use reasonable efforts to ensure that there are no other events scheduled in the Park during the Foundation's events, but in any event if the Foundation holds its annual fundraising event at the Park, then once scheduled, no other special event at the Park may be scheduled for the time and date of the annual fundraising event. The Town agrees that so long as the Coastal Restoration Lease or New Little Red Schoolhouse Lease remain in effect, the Town will not schedule another special event in the month of February without first confirming with the Foundation that the Foundation will not waive this February event right for the subject calendar year(s). Subject to the Town's issuance of permits and the other requirements set forth herein, the Town agrees that the Foundation's events may, at the Foundation's election, be scheduled in the evening after regular Park hours and that, subject to the last sentence of this Paragraph 12.A, any after-hours parking will be at no charge. The parking areas serving the Park are subject to the requirements of a Department of Environmental Protection grant and also serve as a primary location for public beach access and therefore such parking must be provided on a uniform and nondiscriminatory basis and meet the applicable requirements for the issuance of and compliance with applicable permits and legal requirements (including the requirements of any grant) and therefore any provision of this Agreement granting the Foundation specific parking rights or concessions shall be subject to the terms and limitations imposed by any such grant.

B. Subject to permit issuance, the Foundation may hold a groundbreaking ceremony, a ribbon-cutting ceremony, or other type of celebratory ceremony with respect to the redevelopment of the Park, to be scheduled on dates and times coordinated with the Town. The Foundation shall be permitted to ask its donors to participate in such event. This event shall be subject to the terms of this Paragraph 12.

C. The Outdoor Classroom, the Schoolyard Garden, and the fenced areas adjacent to the Little Red Schoolhouse may be gated areas to preserve the educational purposes of these areas and shall be used only for non-profit educational programs for the general public. The

Town agrees that it shall not schedule the use of the Outdoor Classroom and Schoolyard Garden without first confirming that any such event will not conflict with the Foundation's scheduled programs.

D. The parties specifically acknowledge the covenant in the Deed Restrictions prohibiting the "sales of merchandise or the furnishings of services at unreasonable prices". All goods and services provided by the Foundation shall meet the foregoing pricing requirement.

13. Allocation of Park Maintenance Services.

A. Foundation Employees Assigned to the Park. The Foundation intends to employ, at its sole cost and expense, a Botanical Curator, Educator and/or Gardener, and anticipates that the Foundation employees will perform the following services in coordination with the Town and in connection with the maintenance, fertilization and replacement of native plants in the Park under the Landscaping Plan, noting that any persons or entities employed by the Foundation to provide services in the portions of the Park outside of the areas leased to the Foundation shall be required to meet the Town's requirements for providing service to Town properties:

(1) The Botanical Curator shall be responsible for the operation of the Coastal Restoration Center and the Coastal Restoration Center Nursery. During construction, the Botanical Curator will provide guidance to the Town for staging the Coastal Restoration Center Nursery and caring for the plants awaiting planting.

(2) The Educator shall be responsible for the Foundation's educational programs in the Little Red Schoolhouse and the Coastal Restoration Center.

(3) The Gardener shall be responsible for the Coastal Restoration Center Nursery and Park signage containing the names of the Foundation and/or a donor, and any non-permanent art or exhibits permitted from time-to-time subject to the requirement of permits issued by the Town from time to time, each as further described in this Agreement.

(4) The Foundation's employees are subject to change from time-to-time. The Foundation's employment practices with respect to such employees shall in all instances conform to the Equal Opportunity, ADA, E-Verify, Veteran's Preference, each of which is deemed applicable to the Foundation under this Agreement, and other similar policies and procedures.

(5) The Foundation acknowledges that neither it nor its consultants, contractors, staff or representatives may direct Town employees or contractors, and any suggestions shall be directed to the Town's designated staff members and not to working employees or vendors.

(6) The Town will reasonably coordinate the Landscape Maintenance Contract with the Foundation for so long as the Foundation is supplying a material quantity of landscaping materials for the Park. Any providers of service under the Landscape Maintenance Contract must meet the Town's requirements for service providers and personnel operating on Town property.

B. Town Employees Assigned to the Park. The Town agrees that, in connection with its annual budgeting process, it will assign three (3) full time equivalent employees (FTE) to perform the Town's maintenance and related responsibilities with respect to the Park, subject to

occasional assignment to other locations within the Town based on the Town's needs (such as events or lack of adequate staffing) and the occasional assignment to the Park of Town employees regularly assigned to other locations subject to open positions that the Town has posted and is attempting to fill. Further, the Town anticipates assigning approximately 1.5 full time equivalent employees to provide additional security including security for the Park.

C. Landscape Maintenance Contractor. The Town will engage a vendor, through its normal procurement process and in consultation with the Foundation with respect to the Town's request for proposal (RFP) and request for qualification (RFQ), for maintenance of the landscaping installed under the Landscape Drawings and any substitutions or replacements thereof, including without limitation determining the required landscaping irrigation ("Landscaping Maintenance Contractor"). The Town will, in its RFQ for the landscape maintenance contract, include any specialized requirements and expertise determined in coordination with the Foundation and limit the award candidates to those bidder's complying with the RFQ requirements. The Town will include a Foundation representative as a voting member of the selection panel for the Landscape Maintenance Contractor so that the Foundation is involved in the selection of the Landscaping Maintenance Contractor and the contract terms, requirements, and administration of the Town's agreement with the Landscaping Maintenance Contractor ("Landscape Maintenance Contract"). The Town will endeavor to cause the Landscape Maintenance Contract to include the Foundation as an indemnitee to the same extent as the Town and also endeavor to include in the Landscape Maintenance Contract a waiver of subrogation acceptable to the Foundation. The Foundation shall reimburse the Town, within thirty (30) days following the Town's submittal of an invoice from time to time (but not more frequently than monthly) for the costs and expenses for the Landscape Maintenance Contract to the extent that such annual costs exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) annually, prorated for any partial years and adjusted for increases in the Consumer Price Index (CPI) under the Town's generally applicable procedures for the calculation of the CPI. After five (5) years following the Landscaping Maintenance Contractor's first provision of services under the Landscape Maintenance Contract (as the Landscaping Maintenance Contractor may be replaced under any new Landscape Maintenance Contract during such period), the Foundation may timely elect (in a manner that shall ensure no interruption in service) to terminate its obligation to pay for the costs of the Landscape Maintenance Contract effective as of its next renewal date. In the event of the Foundation's timely termination, the Town's requirements of coordination and collaboration set forth in this Paragraph 13.C and any duties herein with respect to the matters under the supervision of the Landscaping Maintenance Contractor, with respect to the continuance of the Landscaping Plan, the maintenance of native plans and the requirement of replacement of native plans with native plants shall also terminate upon the effective date of the Foundation's timely written notice. The Town will require that the Landscape Maintenance Contract shall include the Foundation and its members, officers, employees, agents, and contractors as additional insureds for liability purposes.

D. Harnessing Foundation Expertise. The Town acknowledges that the Botanical Curator, Gardener, and other Foundation employees and consultants will have specialized expertise with respect to the required care of the landscaping included in the Renovation Improvements and the Town and Foundation would like to closely coordinate the services under the Landscape Maintenance Contract with the Foundation's designated representative from time to time ("Foundation Landscaping Contact"), and the Foundation will maintain current contact information for the Foundation Landscaping Contact with the Town. In turn, Town will diligently endeavor to cause the Foundation Landscaping Contact to participate in the Town's walk-throughs

and Park landscaping inspections and as otherwise may be reasonably appropriate from time to time.

E. Ongoing Maintenance and Repair Responsibilities.

(1) Exhibit C attached hereto and made a part hereof sets forth a detailed allocation of responsibilities and/or expenses for ongoing maintenance, repair and replacement for the Park and the Renovation Improvements following substantial completion of the Renovation Improvements, and except to the extent specifically set forth in this Agreement, with those responsibilities allocated to the Foundation being without the requirement of monetary contribution by the Town, except as expressly set forth in this Agreement, and with those responsibilities allocated to the Town being without the requirement of monetary contribution by the Foundation. Except with respect to the Signage Plan and the Foundation's responsibilities under the Coastal Restoration Center Lease and the New Little Red Schoolhouse Lease, the Foundation will discharge its responsibilities under Exhibit C through its funding of the Landscape Maintenance Contract.

(2) To the extent that the Foundation has not discharged any items of responsibility set forth in Exhibit C, the Town shall be permitted to employ its standard procedures with respect to the Town's parks, it being understood that the Town employees do not have the specialized knowledge that this Agreement contemplates and shall not be expected to acquire or employ such knowledge, and that such specialized knowledge will be provided by the Foundation, its consultants, and the Foundation employees assigned to the Park under Paragraph 13.A. hereof.

(3) The Town shall not fertilize, spray pesticides (e.g., mosquito control), insecticide, herbicide, or fungicide, or apply other chemicals to the native plants, except in coordination with the Foundation under the procedures set forth in Paragraph 13.D hereof for so long as the services of a duly qualified Landscaping Maintenance Contractor are available and the Foundation pays for the cost of the Landscape Maintenance Contract (subject to the Town's obligations of contribution set forth in Exhibit C and this Paragraph 13). Nothing in the foregoing or in the Agreement, however, shall require the Town to abstain from such activities if such abstention is reasonably believed to have caused a nuisance, whether a public health nuisance or otherwise.

(4) The Town shall be responsible for periodic inspections and implanting periodic iguana control measures ("Iguana Control"), noting that the Park must be closed during the implementation of such measures. The Town shall seek advice from the designated Foundation Landscaping representative in developing and implementing its plan for Iguana Control.

(5) Except with respect to the Little Red Schoolhouse, the Coastal Restoration Center and those duties allocated to the Foundation under this Agreement and Exhibit C, hereof, the Town will maintain and repair the Park and its lighting components in a manner similar to the procedures generally applicable to the Town's public parks including any duties assumed by the Town herein. Acknowledging that the Town does not have a comparable oceanfront park, the parties agree that such maintenance and repair, to the extent that the varying characteristics of each site do not apply, shall be comparable to the Town's maintenance and repair of Seaview Park ("Comparable Park").

(6) Notwithstanding anything in this Agreement to the contrary, the Town shall expend up to Three Hundred Thousand and No/100 Dollars (\$300,000.00) at the inception of the work contemplated by this Agreement for the removal of invasive plants and species and the replanting of sea oats. In addition, the Town shall purchase additional equipment for the operation of the Park which the Town estimates, taken together with personnel and other expenses, based on current costs, to require an annual cost of approximately Seven Hundred Thousand and No/100 Dollars (\$700,000.00). Such amounts are in addition to and shall not be deducted from the Town Contribution.

F. Each of the Town and Foundation agree to reasonably coordinate their activities in repairing, maintaining and replacing components of the Park and the Renovation Improvements in each instance subject to the Town's unbridled rights with respect to matters of public safety and legal compliance. Permitted modifications to the Renovation Improvements shall be subject to the requirements of coordination with the Foundation in the manner and to the extent set forth in this Agreement.

14. Repair and Replacement of Renovation Improvements. At such time that any of the Renovation Improvements reaches the end of its actual useful life, is destroyed or materially damaged by casualty and the cost to restore or repair the damage exceeds any required insurance proceeds, or otherwise requires capital restoration costs in excess of those anticipated by the Town for the maintenance and repair of standard Town improvements using the Comparable Park as a standard (taking into account the Allocation of Continuing Maintenance Costs), the Town shall request that the Foundation fund such renovation or replacement from the Park Endowment or from other funds. One example of the foregoing, without limitation, would be the use of wood materials or include decorative features such as latticework. To the extent that the replacement of such materials or features is not then included in the Town's budget (including any required Town contributions herein), the Town shall ask the Foundation to contribute any reasonable incremental replacement costs. In the absence of such contribution, the Town may proceed with the Town's typical materials, using the Comparable Park as a standard, or elect to eliminate such item or feature of the Renovation Improvements from the Park. In the event that the Foundation does not respond within thirty (30) days that the Foundation intends to provide funding and does not provide such funds within ninety (90) days following the Town's written request, the Town may elect to repair or replace such component of the Renovation Improvements, to eliminate it from the Park, or replace it using specifications determined by the Town. Nothing in this Agreement shall be deemed a waiver of the Town's authority to make decisions with respect to the operation and use of the Park in the best interest of the Town and its citizens or a waiver of its municipal authority with respect to Town facilities including, without limitation, eliminating or modifying components of the Renovation Improvements that the Town Council determines are inconsistent with the health, safety and welfare of the Town and its residents. If the Foundation timely provides such funds, the parties shall enter into an amendment to this Agreement or a new capital grant agreement in substantially the same form as this Agreement, contingent upon Town Council approval and with modifications necessary for the scope and extent of the restoration. For the avoidance of doubt, any naming rights with respect to a restored Renovation Improvement shall continue under such amendment or new agreement. The foregoing procedures shall not, however, apply to the maintenance and repair of the Coastal Restoration Center, as such obligations shall solely be the Foundation's under Coastal Restoration Center Lease, as hereafter described, or the Little Red Schoolhouse, as such obligations shall solely be the Foundation's under the New Little Red

Schoolhouse Lease attached hereto as Rider #2, each executed by the parties, as set forth in Paragraph 31.B hereof.

15. Insurance.

A. By the Town. The Town acknowledges its ownership of the Park and will provide insurance coverage that is standard and customary for the Town's municipally owned parks; the Town's insurance will be obtained either through purchasing insurance or self-insuring or participating in risk management programs. The Town will not provide, nor will the Town be responsible for providing insurance coverage for the portions of the Park subject to the New Little Red Schoolhouse Lease and the Coastal Restoration Center Lease. In addition, the Town is not responsible for, nor shall the Town provide property insurance for, the replacement of any landscaping, lighting fixtures, walkways, playgrounds, signage, beach pavilions or similar improvements to the extent damage to any of the foregoing would not be insurable under a broad form property insurance policy. However, in the event of destruction or material damage by casualty as to any aspect of the Renovation Improvements which are not required to be insured by the Town, the Town shall follow the applicable grant application procedures to obtain restoration proceeds from the Federal Emergency Management Agency ("FEMA") or another federal or State of Florida insurance program. For the avoidance of doubt, the portions of the Park subject to the New Little Red Schoolhouse Lease and the Coastal Restoration Center Lease will be insured by the Foundation for both liability and property insurance coverage, which shall be primary.

B. By the Foundation. The Foundation shall provide at its own cost and expense during the term of this Agreement, the following insurance coverages and shall provide evidence thereof to Ebix (as hereafter defined) thirty (30) business days prior to the Foundation's performance of any obligations under this Agreement. In addition, all service providers engaged by the Foundation to provide materials or services under this Agreement, including any independent contractors and subcontractors utilized by the Foundation, must comply with these requirements. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies including premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Foundation to advise and to cause each such independent contractor and subcontractor to advise Ebix, the Town's insurance certificate management service provider, at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of this Agreement. The Town reserves the right to reasonably require additional coverages and limits. If the Foundation maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the Foundation. Each of the Foundation's required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials and representatives, the insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above-described insurance. Insurers have and shall have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy.

(1) Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured

under the General Liability coverage. The Foundation's General Liability coverage shall be primary and non-contributory as to the Foundation's indemnity requirements under this Agreement.

(2) For policies written on a claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the term of this Agreement, the Foundation shall purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis as to the Foundation's indemnity requirements.

(3) Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event the Foundation does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

(4) Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State of Florida. Should any scope of work performed under this Agreement qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate federal act coverage must be provided. A waiver of subrogation in favor of the Town must be provided.

(5) Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

(6) Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

#### 16. Indemnification and Insurance.

A. The Town agrees, subject to the limitations and provisions of Florida Statute 768.28, to defend, indemnify, and hold harmless the Foundation and its members, officers, employees, and agents, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by the Foundation, directly or indirectly, wholly or partially, arising from or in connection with the performance or failure to perform under this Agreement by the Town, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with the gross negligence or willful misconduct of the Foundation or its members, officers, employees, or agents. In no event shall the Town be liable for the Foundation's incidental, consequential, indirect, punitive, special or exemplary damages, or for lost profits, unrealized expectations or other similar claims.

B. The Foundation agrees to defend, indemnify, and hold harmless the Town and its officials, representatives and employees from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by the Town, directly or indirectly, wholly or partially, arising from or in connection with the performance or failure to perform under this Agreement by the Foundation, except to the extent that such claims, liabilities,

losses, or expenses arise from or in connection with the gross negligence or willful misconduct of the Town or its members, officers, employees, or agents. In no event shall the Foundation be liable for the Town's incidental, consequential, indirect, punitive, special or exemplary damages, or for lost profits, unrealized expectations or other similar claims.

17. Compliance with Laws. Each of the Town and the Foundation shall at all times comply with applicable laws, executive orders, rules, and regulations, and shall obtain all necessary approvals, permits, and licenses with respect to their obligations under this Agreement.

18. Future Redevelopment. Subject to the casualty and other provisions of this Agreement, if the Town determines that future redevelopment of the Park or any material component is needed within the forty (40) year period following the completion of the Renovation Improvements, the Town shall give notice to the Foundation and the Foundation shall have a right of first offer to donate funds for such redevelopment within thirty (30) days following the Town's notice to the Foundation. If the Foundation accepts, the Town and the Foundation shall work in good faith to agree upon and execute a new capital grant agreement in substantially the same form as this Agreement, contingent upon Town Council approval and with modifications necessary for the scope and extent of the future redevelopment. If the Foundation declines or fails to respond within such time period, then notwithstanding anything to the contrary in this Agreement, the Town may, in such event, determine the nature of such redevelopment, pursue gifts from third parties in connection with such redevelopment project, or proceed with such development at its own expense, provided that any components for which naming rights granted under the terms of this Agreement and are still in effect after application of the casualty and other terms of this Agreement with respect to the Foundation's monetary contributions in the event of required repair or restoration shall not be changed and, subject to the foregoing, such naming rights shall continue. In no event shall any naming rights exceed the actual useful life of any named component or improvement unless otherwise approved by the Town Council. Notwithstanding the foregoing, the parties acknowledge that since the Coastal Conservancy does not include vertical or other improvements in the nature of additional construction, the likelihood is that it will persist for the full seventy-five (75) years of its naming rights term although its useful life, like other Renovation Improvements, shall be subject to act of God including extreme weather and casualty events and the procedures set forth in Paragraph 14 hereof.

19. Amendments. This Agreement may not be amended except by an instrument in writing signed by the Foundation and the Town. No provision of this Agreement and no right or obligation under this Agreement may be waived except by an instrument in writing signed by the party waiving the provision, right, or obligation in question.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

21. Sovereign Rights. The Town retains all of its sovereign prerogatives and rights as a political subdivision of the State of Florida (the "Sovereign") under state and local law with respect to the planning, design, construction, development and operation of the Park. It is expressly understood that notwithstanding any provisions of this Agreement and the Town's status hereunder:



A. The Town retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial and otherwise) as a Sovereign under state and local law and shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and redevelopment of the Park or the operation thereof or be liable in any manner for the same, nor shall any term of this Agreement require the Town to issue any other required permits or grant approvals, rights or concessions to the Foundation that are in conflict with the Town Council's determination of the Town's best interests.

B. The Town shall not by virtue of this Agreement be obligated to grant the Foundation or otherwise grant any approvals of applications for building, zoning, planning development or otherwise under present or future legal requirements of whatever nature applicable to the planning, design, construction, development or operation of the Park.

C. Notwithstanding and prevailing over any contrary provision in this Agreement, any Town covenant or obligation that may be contained in this Agreement shall not bind any other town, city, county, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld or revoked in the discretion of the Town and such other authority in the exercise of its police powers, municipal or governmental authority, provided that the foregoing shall not serve to waive any rights of appeal or other remedies available to the Foundation as a result of any wrongful denial, withholding, or revocation.

22. Independent Contractor. The Foundation is, and shall be, in the performance of provisions pursuant to this Agreement, an independent contractor, and not an employee, agent, or servant of the Town. The Foundation does not have the authority to bind the Town in any promise, agreement or representation other than specifically provided for in this Agreement. The Town shall have no contractual obligation to any person or entity retained or engaged by the Foundation in the performance of this Agreement.

23. Assignment; Successors and Assigns. No party shall assign its rights or obligations under this Agreement in whole or in part, without the prior written approval of the other party, which approval may be withheld in the sole discretion of the party whose approval is required. The terms and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

24. Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be construed under and governed by the laws of the State of Florida without regard to its conflict of laws rules. The State of Florida courts located in Palm Beach County, Florida shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement. Each party waives the right to trial by jury in connection with any claim or controversy arising under this Agreement. The parties agree that they shall attempt to reasonably resolve disputes between themselves prior to the commencement of litigation or the exercise of remedies for non-performance.

25. Notices. All notices 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 overnight mail, or alternatively shall be

delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. Approvals and consents shall likewise be in writing or, if granted in a public forum, memorialized by minutes or resolution. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, 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 hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Town: Town of Palm Beach, Florida  
360 South County Road  
Palm Beach, FL 33480  
Attn: Town Manager

The Foundation: Preservation Foundation of Palm Beach  
311 Peruvian Avenue  
Palm Beach, FL 33480  
Attn: President and CEO

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

26. Construction. No party shall be considered the author of this Agreement 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 Agreement 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, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

27. Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Foundation 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.

28. Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the Foundation certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by the Foundation, this Agreement may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes and the

Foundation will also be responsible for paying all of the Town's reasonable attorney fees and costs, including any costs for investigations,

29. Annual Appropriation. Except only for the Town's Contribution, nothing in this Agreement shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. The Town shall include the Park in its annual budgeting process. The Town's obligations under this Agreement, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations. This Paragraph 29 shall not act or be construed as a waiver of any rights the Foundation may have to pursue its remedies at law or in equity, include, without limitation, any claim the Foundation may have for breach of contract.

30. Public Records.

A. The Foundation acknowledges that the Town is required to comply with applicable laws relating to public records, including Chapter 119, Florida Statutes, ("Public Records Law") and that records submitted by the Foundation to Town or by Town to the Foundation pursuant to this Agreement may be subject to public disclosure. The Foundation shall comply with all applicable provisions of the Public Records Law. The Foundation shall separately submit and prominently identify any records submitted by the Foundation that the Foundation believes to be exempt or prohibited from disclosure under the Public Records Law ("Exempt Records") including the specific statutory authorization for exemption. Simultaneously with the submission of identified Exempt Records, the Foundation shall submit a sworn affidavit from a person with knowledge attesting that the specified records constitute exempt records under the Public Records Law and stating the factual basis for the attestation. In the event a third party submits a request to Town for the release of records that the Foundation has identified as Exempt Records, Town shall promptly notify the Foundation in writing that it has received the request and state whether Town intends to release such records, but Town shall not release such records unless ordered to do so by a court of competent jurisdiction or authorized to do so in writing by the Foundation. The Foundation shall have the right and obligation to assume the defense of any claim arising in connection with these provisions using the services of attorneys selected by the Foundation that are reasonably satisfactory to the Town and whose representation will not create a conflict of interest for the attorneys. The Foundation shall protect, defend, reimburse, indemnify and hold the Town and Town Representatives harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines, penalties, judgments, and damages (including reasonable attorney fees, court costs, and litigation expenses at trial and appellate levels) relating to the non-disclosure of any Exempt Records in response to a records request by a third party. The obligations arising herein shall survive the expiration or sooner termination of this Agreement.

B. To the extent the Foundation is determined to be acting on behalf of Town as stated in Section 119.0701, Florida Statutes, the Foundation shall:

(1) Keep and maintain public records required were Town performing the services under this Agreement;

(2) Upon request from Town, provide Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) Ensure that public records that are exempt are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if the records are not transferred to Town; and

(4) Upon completion of the Agreement, transfer to Town, at no cost, all public records in possession of the Foundation or keep and maintain public records required by Town to perform the service. If the Foundation transfers all public records to Town, upon the completion of the Agreement, the Foundation shall destroy any duplicate public records that are exempt or confidential and exempt. If the Foundation keeps and maintains public records upon completion of this Agreement, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town upon request in a format that is compatible with the information technology systems of Town.

(5) The failure of the Foundation to comply with the applicable provisions of this Paragraph 30.B. shall constitute a breach of this Agreement entitling Town, after written notice to the Foundation and a period not to exceed thirty (30) days for the Foundation to cure such breach, although such thirty day period may be abbreviated under Public Records Law based on the complexity and volume of the Public Records requested, to exercise any remedy provided in this Agreement or under applicable law.

(6) A request for public records regarding this Agreement must be made directly to Town, which will be responsible for responding to any such public records requests. The Foundation will timely provide any requested records to Town to enable Town to respond to the public records request.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR WITH RESPECT TO THE FOUNDATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE TOWN OF PALM BEACH TOWN CLERK AT 360 SOUTH COUNTY ROAD, PALM BEACH, FL 33480 OR (561)838-5416 OR THROUGH THE TOWN OF PALM BEACH PUBLIC RECORDS REQUEST PORTAL.

(7) No Joint Venture. The Foundation agrees and is forever estopped from asserting to the contrary that this Agreement does not in any manner make the Foundation the partner, joint venturer or agent of Town.

31. Exhibits and Riders.

A. The following Exhibits and Riders are attached to this Agreement and are made a part hereof.

- (1) Exhibit A: Index of Renovation Improvements
- (2) Exhibit B: Approved Master Plan
- (3) Exhibit C: Allocation of Duties/Costs between the Town and the Foundation

- (4) Exhibit D: Description of the Final Bid Documents
- (5) Exhibit E: Approved Budget
- (6) Exhibit F: Project Schedule
- (7) Exhibit G: State of Florida Special Category Grant Agreement
- (8) Rider #1: Coastal Restoration Center Lease
- (9) Rider #2: New Little Red Schoolhouse Lease

B. The Town and the Foundation shall execute the Coastal Restoration Center Lease in the form attached to this Agreement as *Rider #1*, and the New Little Red Schoolhouse Lease in the form attached to this Agreement as *Rider #2*, upon their execution of this Agreement, provided, however, that such documents shall not be binding upon either the Town or the Foundation until the contingencies set forth in Paragraph 6 have been satisfied and the Foundation shall not have exercised the termination right set forth in Paragraph 6.

32. Entire Agreement. This Agreement, together with all referenced exhibits and riders, contains the entire agreement between the Foundation and the Town in relation to this subject matter and supersedes any prior or contemporaneous understandings, communications, representations, agreements, or term sheets relating to this subject matter.

33. Notice and Cure Period. Neither party shall be in default of this Agreement, unless the defaulting party fails to cure such default within five (5) business days after receipt of notice of default from the non-defaulting party specifying the grounds for such default. If the default does not involve an emergency that must be addressed in a shorter time frame, the cure period shall be extended if the default is of a nature that it cannot be completely cured within such period solely as a result of non-financial circumstances outside of the defaulting party's control, provided that the defaulting party within such five (5) business day period commences all appropriate actions to cure the default and diligently and continuously pursues such cure in good faith. Such extended cure period shall not, however, apply to the Foundation's contribution of funds under this Agreement. No notice and cure period shall apply in the event that the Foundation fails to maintain the insurance required under this Agreement and maintain sufficient evidence of such insurance with the Town.

(Signatures on the following page)

[Signature Page to Capital Grant and Operating Agreement]

We agree to the terms and conditions set forth above:

Town of Palm Beach

By:\_\_\_\_\_

Name: Kirk Blouin

Title: Town Manager

Date:\_\_\_\_\_

The Preservation Foundation of Palm  
Beach, Inc.

By:\_\_\_\_\_

Name: Amanda Skier

Title: CEO & President

Date:\_\_\_\_\_

APPROVED FOR LEGAL FORM AND  
SUFFICIENCY:

By:\_\_\_\_\_

Name: Joanne O'Connor

Title: Town Attorney

Date:\_\_\_\_\_

## EXHIBIT A

### INDEX OF RENOVATION IMPROVEMENTS

**(Location of the Renovation Improvements is indicated in the approved Master Plan)**

1. Main Entrance: A 4,930 square foot (“sq. ft.”) area defining the main entrance which allows open views across the Great Lawn displaying the Little Red Schoolhouse (“Schoolhouse”).
2. Entrance Plaza: A 4,070 sq. ft. area defining a walkway accessed from the parking lot, shaded and framed with a large Strangler Fig and water features.
3. Dune Playground: A 5,000 sq. ft. dune playground area which offers recreational opportunities for children of all ages.
4. Outdoor Classroom: A 4,200 sq. ft. outdoor classroom appurtenant to the Little Red Schoolhouse strategically located in a space meant to educate and entertain while being immersed in nature.
5. Schoolyard Garden: An educational and teaching garden near the Little Red Schoolhouse showcasing pioneer era plants.
6. Little Red Schoolhouse: The 633 sq. ft. historic pioneer-era schoolhouse will be relocated, elevated, and restored and located in a 2,300 sq. ft. area with planting areas that gives hands-on learning experiences about the historic landscaping, resiliency, and sustainability.
7. Great Lawn: A 19,450 sq. ft. area surrounded by trees with open views of the Little Red Schoolhouse, Entrance Plaza, and the Great Lawn.
8. Wildflower Garden: A 13,000 sq. ft. area with a natural rainwater basin and planted with native species that thrive in moist conditions.
9. Horizon Plateau: A 19,000 sq. ft. area which serves as a gathering space for the Park offering activities, sheltered picnic areas, and open views of the Atlantic Ocean, the mangrove to the west, and the Lake Worth Lagoon.
10. New Picnic Area: A 3,650 sq. ft. shaded area with tables and seating spaces.
11. Coastal Restoration Center: A 2,399 sq. ft. building in a 12,400 sq. ft. area e to educate visitors about native species.
12. Parking Lots: A north and south parking lot with a total of 201 parking spaces.
13. A1A Treatment and Park West: The planting of trees along this 100,000 sq. ft. area to create a dense allée.
14. New Bathrooms: Two restroom buildings totaling 1,662 sq. ft. for visitor use.
15. New beach pavilions: Four beach pavilions totaling 912 sq. ft. located on the crest of the coastal ridge offering sweeping views of the Atlantic Ocean.
16. New pickleball courts: Two pickleball courts located adjacent to the westernmost existing tennis courts.
17. Enhanced landscaping: for the existing Fire Station, tennis courts, and Public Works buildings.
18. Coastal Restoration Center: New construction of the Coastal Restoration Center.

\*Square footage and features subject to change based on Approvals. There shall be no reduction in the thirty (30) foot depth of the landscape buffer in its current location.

**EXHIBIT B**

**APPROVED MASTER PLAN**

**That certain modified site plan approved by the Town Council by Resolution Number 003-2024 dated January 9, 2024**



**EXHIBIT C**  
**ALLOCATION OF DUTIES/COSTS BETWEEN**  
**THE TOWN AND THE FOUNDATION**  
**(Attached)**

Phipps Ocean Park Responsibilities/Maintenance (subject to the terms as outlined in the Capital Grant and Operations Agreement)	Town	PFPB	Comments
<b>Maintenance of Native Plants/lawns/vegetative screening/invasives</b>			
application of organic material		x	The town will pay the first \$100,000 for native plant landscape maintenance. The PFPB will reimburse the Town for the remainder of the costs associated with maintaining items indicated by the 'x' in column C.
health and appearance of native plants		x	
removal and replacement of plant material		x	
Horizon Plateau		x	
Great Lawn		x	
Connector Lawns		x	
vegetative screening around tennis, fire station		x	
dense buffers between condos on north and south side of park		x	
mangrove restoration area		x	
outdoor classroom		x	
wildflower garden		x	
invasive animal removal (iguanas)	x		
<b>Maintenance of Pathways</b>			
Nature/Pedestrian Paths	x		
Sand Paths to Beach	x		
ADA accessible paths	x		
Dunecrest pathways	x		
pathway lighting	x		
<b>Maintenance of Structures/appurtenant (adjoining) land areas/equipment</b>			
Little Red School House		x	Terms for the maintenance of LRS and CRC are indicated via lease
Coastal Restroation Center		x	
Outdoor Classroom		x	
Schoolyard garden		x	
Playground	x		
Beach Pavillions	x		
restrooms and showers	x		

Phipps Ocean Park Responsibilities/Maintenance (subject to the terms as outlined in the Capital Grant and Operations Agreement)	Town	PFPB	Comments
wall around public works building	x		
firehouse	x		
PW area	x		
tennis center and pickleball courts	x		
drinking fountains	x		
lifeguard stand and area	x		
low level lighting	x		
security cameras outside of leased areas	x		
gates and fencing	x		
water features		x	
benches (40)	x		
<b>Maintenance of Hardscape/semi permeable parking</b>			
parking areas	x		
parking entry ways - main entrance and exits	x		
grass overflow area		x	
beach renourishment access path	x		
Dune Crest path	x		
Art installation		x	
rock features		x	
park signage (wayfinding, donor, entry, restrooms)		x	
<b>Other items</b>			
mitigation efforts for soil remediation (if needed)	x		
maintenance of Town standard signage	x		
employment of native plant expert		x	
reservations for park rentals	x		
park event policies and procedures	x		
trash collection removal (outside of lease areas)	x		
parking policies	x		
beach management and policies	x		
Park Monitors and Evening patrol	x		
determining and enforcing park hours	x		
irrigation		x	
utilities	x		Lease dictates utilities costs for LRS and CRC. All other utilities will be paid for by the Town

## **EXHIBIT D**

### **DESCRIPTION OF THE FINAL BID DOCUMENTS**

Construction Drawings prepared by the following dated February 2024 consisting of 238 pages.

1. Civil Engineering Drawings prepared by Kimley-Horn dated February 2024 consisting of 68 pages
2. Landscape Drawings prepared by Raymond Jungles dated February 2024 consisting of 95 pages
3. Architectural Drawings prepared by Fairfax & Sammons dated February 2024 consisting of 75 pages

## EXHIBIT E

### APPROVED BUDGET

**As set forth in Town of Palm Beach Resolution #031-2024,  
and as supplemented by the Foundation's obligations with  
respect to the Playground as set forth in this Agreement and  
the Foundation's obligations with respect to Kimley Horn.**

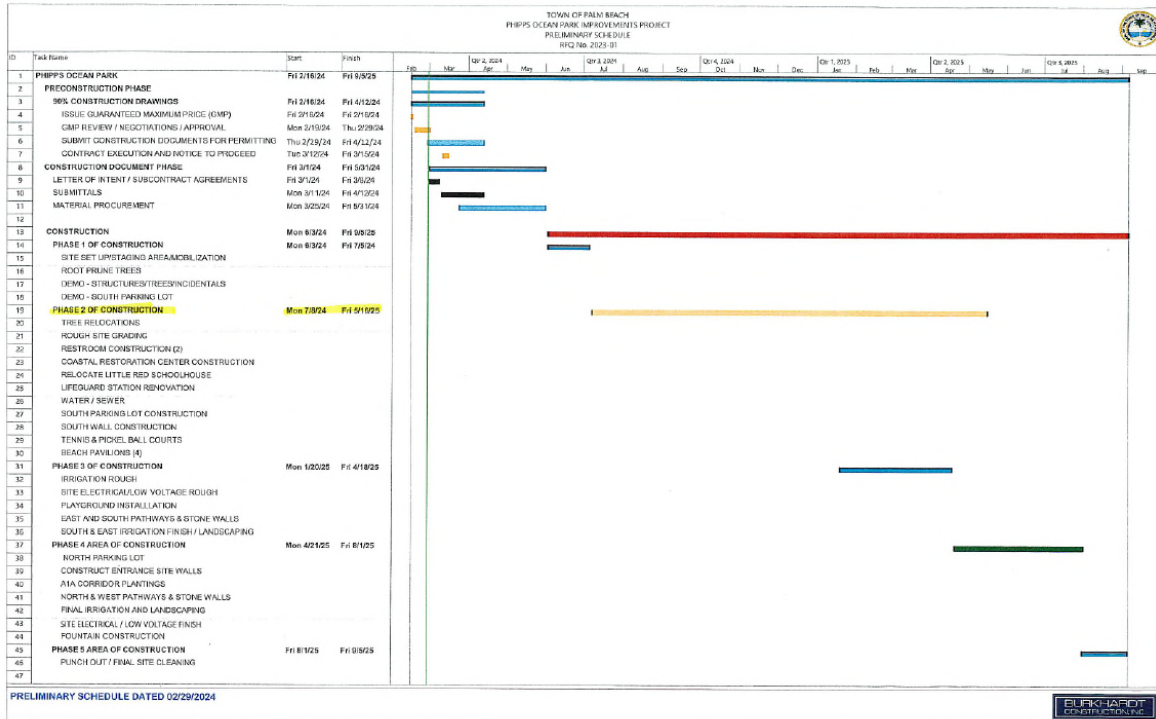
CMAR Total Project Cost	\$30,018,930.15
Less Town contribution (Public Service Areas)	\$ (936,615.87)
less Town contribution (Renovation Improvements)	<u>\$(2,000,000.00)</u>
<b>Preservation Foundation Construction Cost- CMAR Agreement</b>	<b><u>\$27,082,314.28</u></b>

## **EXHIBIT F**

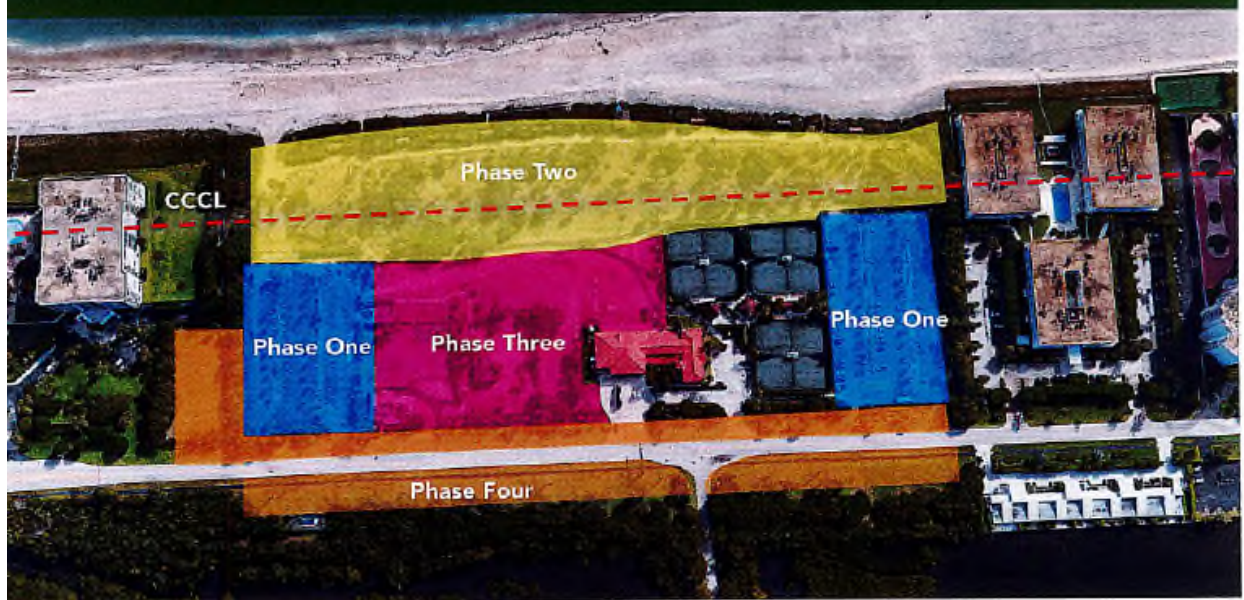
### **PROJECT SCHEDULE**

**[Subject to updates based on the date of this Agreement and the execution of the CMAR Agreement]**

**(attached)**



# Construction Overall Phasing Plan





**EXHIBIT G**

**STATE OF FLORIDA SPECIAL CATEGORY GRANT AGREEMENT**

**That certain Agreement between the State of Florida, Department of State  
and  
The Preservation Foundation of Palm Beach, Inc.  
under Grant Number 24.h.sc.100.097  
to be used exclusively for  
The Little Red Schoolhouse**

**RIDER #1**  
**COASTAL RESTORATION CENTER LEASE**  
**(Attached)**

**GROUND LEASE AGREEMENT**  
**(COASTAL RESTORATION CENTER)**

THIS GROUND LEASE AGREEMENT (“Lease”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024 by and between the Town of Palm Beach a political subdivision of the State of Florida (“Town”), and The Preservation Foundation of Palm Beach, Inc., a Florida not for profit corporation (“Foundation”).

**WITNESSETH:**

A. The Town and the Foundation have entered into that certain Capital Grant and Operating Agreement for Phipps Ocean Park, an approximately 20-acre public park located at 2185 S. Ocean Blvd., Palm Beach, Florida (“Park”), located in Palm Beach, Florida on even date hereto (“Capital Grant Agreement”);

B. The Capital Grant Agreement includes terms under which the Foundation will donate funds to the Town for renovations and improvements (“Renovation Improvements”) to the Park.

C. The Renovation Improvements will include the construction of a building to be known as the Coastal Restoration Center consisting of an approximately 2,399 square feet structure (“Coastal Restoration Center”) on a site comprising approximately 12,400 square feet (“Premises”) as shown on **Exhibit “A”**. The Premises will contain, in addition to the Coastal Restoration Center, a non-commercial nursery (“Coastal Restoration Center Nursery”) to provide plants for the Park and as otherwise permitted under the Capital Grant Agreement. The development and construction of the Premises, including the Coastal Restoration Center and the Coastal Restoration Center Nursery, will be accomplished with funds donated by the Foundation and under construction documents prepared by the Foundation and approved by the Town under the terms of the Capital Grant Agreement, the terms and requirements of which are hereby incorporated by reference.

D. Nothing in this Lease shall abrogate the Town’s rights and procedures with respect to the ownership, permitting, and operation of properties located within the Town, nor shall anything in this Lease abrogate the Town’s obligation to comply with the Charter of the Town of Palm Beach, Florida as adopted by Ordinance No. 15-78 on December 12, 1978 and by referendum on February 6, 1979, as subsequently amended by the Code of Ordinances of the Town of Palm Beach, Florida (together the “Charter Documents”). Further, nothing in this Lease shall cause the violation of those certain restrictions set forth in that certain Deed dated May 7, 1948 and recorded in Deed Book 815 at Page 190 of the Public Records of Palm Beach County, Florida (“Deed Restrictions”), and to the extent that any term hereof is determined to violate the Deed Restrictions, this Lease shall be reformed to omit or cause any such provision to comply with the Deed Restrictions.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the sufficiency of which is conclusively acknowledged, the parties hereto covenant and agree to the following terms and conditions:

## **ARTICLE 1 - RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

## **ARTICLE 2 - EFFECTIVE DATE, TERM**

2.01 Term. This Lease shall be effective on the date that this Lease is approved and signed by the parties ("Effective Date"). The term of the Lease shall commence upon the issuance of a final or temporary certificate of occupancy for the Coastal Restoration Center evidencing its compliance with applicable Requirements (as defined below) ("Commencement Date") and expire on the last day of the month that is seventy-five (75) years thereafter (the "Term"). The Foundation shall be deemed to have accepted the Premises together with all buildings, facilities and other improvements now or hereafter constructed thereon in AS-IS, WHERE-IS condition on the Commencement Date, subject to completion of punch-list items for the Coastal Restoration Center and correction of applicable warranty-items reported during the one-year period thereafter as provided in the Town's construction agreement for the Coastal Restoration Center. All improvements located on the Premises from time to time are referred to herein as the "Foundation Improvements". If the Commencement Date does not occur by the date that is five years after the Effective Date, either party may terminate this Lease upon written notice to the other party. If the Capital Grant Agreement is terminated for any reason, this Lease shall automatically terminate. The performance of the Foundation Improvements shall be governed by the terms of the Capital Grant Agreement.

## **ARTICLE 3 - PREMISES AND PRIVILEGES**

3.01 Lease of Premises. Town hereby demises and leases the Premises to the Foundation, and the Foundation leases and rents the Premises from the Town, subject to the terms, conditions and covenants of this Lease. The Foundation's employees, agents, contractors, invitees, and guests ("Foundation Parties") shall have access to the Premises during the Term of this Lease through the Park and shall be permitted to use the parking in the Park in common with the public. The parking areas serving the Park are subject to the requirements of a Department of Environmental Protection grant and also serve as a primary location for public beach access and therefore such parking must be provided on a uniform and nondiscriminatory basis and meet the applicable requirements for the issuance of and compliance with applicable permits and legal requirements (including the requirements of any grant) (together "Parking Constraints") and therefore any provision of this Agreement granting the Foundation specific parking rights or concessions shall be subject to the terms and limitations imposed by any Parking Constraints. Subject to any Parking Constraints, the Town shall provide the Foundation with five parking passes during the Term of this Lease. Subject to the Town's rights and generally applicable requirements with respect to the Park, the Foundation shall have access to the Premises 24 hours a day, 7 days a week, and 365 days a year provided that the Foundation shall be required to make arrangements with the Town for ingress and egress after closure of the Park's gates for access by the general public. If the Foundation holds any events at the Premises during Park hours, subject to any permitting and Parking Constraints, the Foundation and the Town shall work together to

accommodate guest parking, which may include valet service. If the Foundation holds any events at the Premises after Park hours, subject to any required permitting and Parking Constraints, the Town shall permit use of the parking spaces in the Park at no cost, which may include valet service.

3.02 Permitted Use. The Foundation shall use the Premises only for the following purposes, each in a professional, first class manner and in all respects in compliance with the requirements of any and all federal, state, city, county and local governments, departments, bureaus, agencies or offices thereof, and any other governmental, public or quasi-public authorities having jurisdiction over the Premises, all in a manner consistent with the Deed Restrictions (“Permitted Uses”) for: the operation of the Coastal Restoration Center as a research and educational facility to promote the knowledge and use of native plants and the preservation and restoration of natural ecosystems; and the operation of the Coastal Restoration Center Nursery to propagate native plant species to be used to maintain the landscaping plan for the Park, other local properties and, to the extent that the Coastal Restoration Center Nursery has additional landscaping materials not required by the Park and such materials are available and reasonably consistent with the Town’s landscaping plans for its other properties, the Foundation will permit the Town to deploy such excess landscaping materials (as reasonably identified by the Foundation) for use in other Town facilities. The Foundation may also use the Premises for office and administrative purposes and ancillary uses, such as educational and fundraising events and for programming in furtherance of the Foundation’s mission, provided that any fundraising shall be solely for funds to be used for a charitable purpose and, if applicable, shall be subject, the Foundation’s obligation to obtain charitable solicitation permits under the Town’s then applicable requirements.

3.03 Prohibited Uses. The Foundation agrees the Premises shall be utilized solely for the Permitted Uses and for no other purpose whatsoever without the Town’s prior written consent, which consent the Town may withhold in its sole and absolute discretion.

#### **ARTICLE 4 – RENT, FEES AND CHARGES**

4.01 Rent. Commencing on the Commencement Date and each year thereafter, in advance, the Foundation shall pay rent to the Town in the amount of \$10.00 per year.

4.02 Taxes and Fees. The Foundation shall pay, on or before delinquency, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises or the estate hereby granted, or upon the Foundation, or upon the business conducted on the Premises, or upon any of the Foundation’s property used in connection therewith, or upon sums payable hereunder, including, but not limited to any ad valorem taxes and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of the Foundation (collectively, the “Taxes”), each of which is rent under this Lease. The Foundation hereby covenants and agrees to pay monthly to the Town, as additional rent, any sales, use or other tax, or imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or the County. The Foundation shall be responsible for and shall pay the portion of such real estate taxes and assessments relating to the period beginning with the Commencement Date through and including the expiration of the Term of this Lease. The terms of this section shall not apply to the Foundation for so long as the Foundation has provided the Town, with respect to sales tax, with a then-current certificate of

exemption from the Florida Department of Revenue and, with respect to other taxes, is otherwise exempt.

## **ARTICLE 5 QUALITY AND CHARACTER OF OPERATIONS**

5.01 Continuous Operation. The Foundation agrees to use, occupy and operate the Premises in a reputable manner consistent with and subject to the terms and conditions of this Lease. The Foundation shall provide the Town with written notice of its operating hours from time to time. If the Foundation elects not to operate the Coastal Restoration Center for the Permitted Use, the Foundation shall give written notice to the Town setting forth the basis for suspension, which may include (i) renovations approved by the Town under its required permitting requirements, if applicable, (ii) Events of Force Majeure, (iii) casualty (as provided in ARTICLE 11), or (iv) a Taking (defined below) under ARTICLE 12 that does result in the termination of this Lease. The Foundation shall comply with all the terms and conditions of this Lease notwithstanding any period of closure. Notwithstanding the foregoing, in the event that the Foundation does not operate the Coastal Restoration Center for the Permitted Use for a period of six (6) months or more for a reason other than (i) – (iv) above, and the Foundation does not recommence operation of the Coastal Restoration Center within thirty (30) days after the Town’s notice, the Town may, by written notice to the Foundation, elect any of the following: (i) to terminate this Lease and recapture the Premises in its then AS-IS condition without releasing the Foundation from any liability that arose prior to the date of termination, or (ii) without waiving the option set forth in (i), to allow this Lease to remain in full force and effect.

5.02 Nondiscriminatory Services Requirement. The Foundation shall provide all services to its customers and patrons without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information, in each case, in accordance with the requirements imposed by law, code, ordinance, order, directive, regulation and governmental or quasi-governmental requirements applicable to the Foundation or the Premises including, without limitation, environmental laws (“Requirements”). The Foundation shall include the foregoing requirement in all contracts for goods, materials and services that it may enter into with respect to the operation and maintenance of the Premises. The Requirements include that the Foundation’s employment practices with respect to any of its employees working at or providing services to the Premises shall in all instances conform to the Equal Opportunity, ADA, E-Verify, Veteran’s Preference, each of which is deemed applicable to the Foundation under this Lease.

## **ARTICLE 6**

### **MODIFICATIONS TO THE IMPROVEMENTS**

6.01 Improvements following the Commencement Date. The Foundation may, following the Commencement Date, make improvements to the interior of the Coastal Restoration Center consistent with the Permitted Use without consent of the Town except to the extent that permits or other approvals are generally required for construction within the Town (“Interior Improvements”). If the Foundation desires to make an alteration, addition, or improvement which is not an Interior Improvement (a “Major Improvement”), the Foundation shall cause plans and specifications for the Major Improvement (“Plans and Specs for Major Improvements”) to be prepared and delivered to the Town under the Town’s applicable procedures including, without

limitation, any required review by the Landmarks Preservation Commission. The Town and the Foundation shall in good faith, acting reasonably, attempt to resolve any disputes concerning the Plans and Specs for Major Improvements in an expeditious manner.

(A) The Foundation shall require its general contractor for any Interior Improvements or Major Improvements to provide the following insurance, which requirements shall be superseded by the Town's then insurance requirements in effect at the time that any Town permit is required:

(1) Comprehensive general liability insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Foundation's General Liability coverage shall be primary and non-contributory.

(2) For policies written on a claims-made basis, the contractor shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

(3) Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event the contractor does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

(4) Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State of Florida. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate federal act coverage must be provided. A waiver of subrogation in favor of the Town must be provided.

(5) Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

(6) Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

(7) Any subcontractor working on the Premises shall be required to maintain Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, which shall not exclude products/completed operations.

(B) No Liens. The Foundation shall pay when and as due all charges assessed by any party under any agreement for construction related services entered into by the Foundation

and shall pay or transfer to bond any lien filed against the Foundation's leasehold interest within forty-five (45) days following the filing thereof.

## **ARTICLE 7 - OBLIGATIONS OF THE FOUNDATION**

7.01 Nuisance or Injury. The Foundation shall not commit any nuisance or injury on the Premises and shall not do, or reasonably permit to be done, anything which may result in the creation, commission or maintenance of such nuisance or injury on the Premises.

7.02 Vapors, Fumes or Emissions. The Foundation shall not create, nor permit to be caused or created upon the Premises any obnoxious odor or noxious gases.

7.03 Hazardous Conditions. The Foundation shall not do or permit to be done any act or thing upon the Premises that would constitute a hazardous condition increasing the risk normally attendant upon the operations permitted by this Lease.

7.04 Security of Premises. The Foundation acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities. The Foundation expressly acknowledges that any special security measures deemed necessary or desirable by the Foundation for additional protection of the Premises and improvements constructed thereon shall be the sole responsibility of the Foundation.

## **ARTICLE 8 - MAINTENANCE AND REPAIR**

8.01 Maintenance/Repair of Premises. The Foundation shall be responsible for and shall undertake all repairs and maintenance of and replacements to the Premises whether such repair or maintenance be ordinary or extraordinary, structural or otherwise throughout the Term of this Lease. All maintenance, repairs and replacements shall be in a quality and class reasonably comparable to the quality and class of the Renovation Improvements (taking into account the age of the Renovation Improvements and any replacements, modifications and additions thereof, and ordinary wear and tear) and shall be at the Foundation's sole cost and expense and consistent with all applicable Requirements. The Foundation shall keep all Foundation Improvements on the Premises, including, without limitation, all buildings, structures, pavement, facilities, landscaping and other improvements and fixtures, above and below ground, storm drainage, plumbing and HVAC systems, interior and exterior signage, roofing and all other improvements, in good condition and repair throughout the Term of this Lease. For purposes of this Section 8.01, "good condition and repair" means maintaining the Premises at a level necessary to keep the Premises in clean and good working condition (taking into account ordinary wear and tear) in compliance with all Requirements and that all areas remain in a safe and attractive condition throughout the Term of this Lease.

8.02 Cleanliness of Premises.

(A) The Foundation shall maintain the Premises in a clean and safe condition at all times in compliance with the Requirements.



(B) The Foundation shall be responsible for trash removal for the Premises and agrees to deposit trash, garbage and debris in the Town's waste disposal dumpster in the Park (adhering to any generally applicable recycling or other waste disposal criteria). The Foundation shall ensure exterior building areas are maintained in a neat and clean manner and remain reasonably free from trash and debris at all times and otherwise in compliance with the Requirements.

8.03 Landscaping. The Foundation shall maintain all landscaping on the Premises in good condition and free from unsightly conditions in a manner consistent with all Requirements.

8.04 Inspections. The Town and its employees and representatives shall have the right to enter the Premises following reasonable prior notification during regular business hours for the purpose of determining whether or not the Foundation is in compliance with this Lease, but the foregoing shall not restrict their rights of entry to the extent generally available to the members of the public.

## **ARTICLE 9 - UTILITIES**

9.01 Utility Costs. Following the Renovation Improvements, the Foundation shall be solely responsible for the payment of all impact, connection, and all other fees with respect to the development, construction, operation, and all other activities related to the Premises. The Foundation shall pay when due all charges, fees, and deposits (collectively, "Charges") for all public and private utility services including, but not limited to, water, sewer, stormwater, electricity, gas, light, heat, air conditioning, telephone, trash removal, cable television, and other utility and communication services that are provided to any portion of the Premises during the Term of this Lease. The Renovation Improvements shall include separate meters for the Premises and the Foundation shall open separate utility accounts for all separately metered utilities serving the Premises.

9.02 Interruption of Service. No failure, delay or interruption in supplying any utility services for any reason whatsoever (whether or not a separate charge is made therefor) shall be construed to be an eviction of the Foundation or grounds for any claim by the Foundation under this Lease for offsets or damages, consequential or otherwise.

## **ARTICLE 10 INSURANCE REQUIREMENTS**

10.01 Insurance Policies. The Foundation shall provide, at its own cost and expense, the following insurance during Term of this Lease, and shall provide required evidence thereof to the Town thirty (30) business days prior to any occupancy of the Premises. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida each of which must have an A.M. Best Company financial and performance rating of A-IX or better. The insurance shall be evidenced by certificates and/or policies that include the amount of premiums, noting that they have been paid. It shall be an affirmative obligation of the Foundation to advise Ebix in writing at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any required insurance. The Town reserves the right to require higher limits if, due to the passage of time, the limits of insurance set forth herein are reasonably deficient, provided, however, that except with respect to liability insurance the Foundation shall only be required to provide such

higher limits if such insurance is generally available at commercially reasonable premiums and the limits are not increased more than once every two (2) years. The Foundation acknowledges and agrees that the requirements contained in this Article, or Town's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by the Foundation under this Lease.

(1) Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Foundation's General Liability coverage shall be primary and non-contributory.

(2) For policies written on a claims-made basis, Foundation shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the Foundation shall purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

(3) Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos, as applicable) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event the Foundation does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

(4) Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State of Florida. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate federal act coverage must be provided. A waiver of subrogation in favor of the Town must be provided.

(5) Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

(6) Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

10.02 Additional Insured Endorsement. The Foundation shall endorse the Town as "Additional Insured" on each of the liability policies required to be maintained by the Foundation hereunder with the exception of Worker's Compensation/Employers Liability Insurance. Each "Additional Insured" endorsement shall read: "Town of Palm Beach, Florida, including its agents, officers, past and present employees, elected officials and representatives", or as otherwise approved or modified by Town, provided Town delivers written notice of any required modification to the Foundation.

#### 10.03 Certificate of Insurance.

(A) The Foundation shall provide the Town with evidence of insurance, evidencing limits, coverages and endorsements required herein Commercial General Liability insurance prior to the Commencement Date.

(B) In the event coverage is cancelled or is not renewed, the Foundation shall provide Town a new certificate of insurance or certificates of insurance evidencing replacement coverage prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read as required above, or as otherwise approved or modified by Town, provided Town delivers written notice of any required modification to the Foundation. In the event that the Town does not have timely evidence of replacement insurance before any lapse, then the Town may purchase any such insurance on behalf of the Foundation, and the Foundation shall reimburse Town for the cost hereof, as additional rent, within thirty (30) days following the Town's periodic tender of an invoice.

10.04 Waiver of Subrogation. The Foundation hereby waives all rights of subrogation against the Town and its agents, officers, past and present employees, elected officials and representatives (collectively, the "Town Representatives") to the same extent as if the Town had required property insurance for the improvements on the Premises for their full replacement cost and as if the Foundation had obtained such insurance, including without limitation, windstorm and flood coverage, with such waiver applying to the same extent as if the Foundation actually carried such insurance without deductible. Neither insurers nor the Foundation shall have any recourse against the Town or the Town Representatives for payment or assessments in any form on any perils save only for the Town's gross negligence or willful misconduct.

10.05 Premiums and Proceeds. The Foundation shall be responsible for all of the Foundation's premiums, including, without limitation, for property, flood and wind insurance policies to the extent that the Foundation elects to maintain such insurance. The Foundation agrees that all property, flood and windstorm insurance proceeds, to the extent that the Foundation has elected to secure such coverage, shall be made available for use to promptly replace, repair or rebuild the Foundation Improvements.

10.06 Deductibles, Coinsurance & Self-Insured Retention. The Foundation shall be fully and solely responsible for the Foundation's deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy and each of which shall be subject to the waiver of subrogation herein to the same extent as if such amounts were covered by third party insurance.

10.07 Right to Review or Adjust Insurance. Town may reject any insurer that is not in compliance with the financial standards of this Lease or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Town shall provide the Foundation a written notice of rejection, and the Foundation shall replace such insurer with a company or companies that meeting the requirements set forth in this Lease within thirty (30) days of receipt of the notice. In addition, the Town may periodically (but not more than one (1) time in every two (2) years) adjust the amounts of required liability insurance to be maintained pursuant to Section 10.01, if due to the passage of time or the claims history of such policies the amounts thereof are reasonably insufficient.

10.08 No Representation of Coverage Adequacy. The Foundation acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for the Town. The Foundation agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect the Foundation against any loss exposures, whether as a result of this Lease or otherwise.

10.09 Specialty Insurance. In the event that any portion of the Premises is used by the Foundation for uses that reasonably require additional forms of insurance including, for example and without limitation, for classroom purposes, the Foundation shall carry such form of insurance in appropriate amounts naming each of the Town and the Town Representatives as an additional insured.

## **ARTICLE 11 - DAMAGE TO OR DESTRUCTION OF PREMISES**

11.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, the Foundation shall promptly remove all debris resulting from such damage from the Premises and shall take other commercially reasonable actions to place the Premises in a condition to ensure the safety of persons entering upon the Premises. If the Foundation fails to promptly comply with the provisions of this Section 11.01, the Town may, but shall not be required to notify the Foundation in writing of such failure, and Town may but shall not be required to take such measures as it deems reasonably necessary to render the Premises in a safe condition if the Foundation fails to comply within thirty (30) days after written notice from Town provided however that the Town may, in the event of imminent danger to life or property, exercise such self-help rights without prior notice except only to the extent reasonable under the circumstances. The Foundation shall fully assume and be liable to Town as additional rent for payment of any actual, reasonable out-of-pocket costs incurred by Town pursuant to this Section 11.01, which costs shall be due and payable to Town within thirty (30) days from the date the Foundation receives written notice together copies of with receipts and invoices evidencing such costs provided by Town. The Foundation acknowledges that Town may cause the corrective action to be completed by third party contractors or Town employees in its sole discretion. In the event the work is performed by Town employees, Town shall be entitled to invoice the Foundation based upon the actual hourly rate of pay for such employees, plus any costs associated with materials and equipment (and no other internal costs of Town shall be permitted under this paragraph.).

11.02 Foundation Post-Casualty Obligations. Except as otherwise provided for in this Lease, if the Foundation Improvements, or any portion thereof, are damaged by fire or other casualty, the Foundation shall, at its sole discretion, either (i) raze the Foundation Improvements at its sole cost and expense provided the Foundation leaves such portion of the Premises in clean and safe condition in compliance with the Requirements and plants grass or other landscaping materials in the area where the Foundation Improvements were removed and continues to comply with all of the other terms and conditions of this Lease, (ii) repair, restore or rebuild the Foundation Improvements, or (iii) elect to terminate this Lease upon the Foundation's completion of the work required under (i) above provided, however, that the Foundation shall give the Town written notice and the opportunity to waive the requirement of razing prior to accomplishing the same. Any repair, restoration or rebuilding of the Foundation Improvements shall be as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as the Foundation may elect to make in conformity with the provisions of this Lease and the Requirements. In the event the Foundation

elects to restore or rebuild the Foundation Improvements pursuant to this Section 11.02, the Foundation shall commence restoration as soon as reasonably practicable after any such casualty and shall diligently pursue such restoration to completion at the Foundation's sole cost and expense in accordance with the requirements contained in this Lease.

## **ARTICLE 12 – CONDEMNATION**

12.01 Complete Taking. If the entire Premises are taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a "Taking"), then this Lease will cease and terminate as of the date on which the condemning authority takes possession. If this Lease is so terminated, the Town and the Foundation shall be entitled to make claims to the condemning authority as follows:

(A) The Town shall be entitled to make a claim for the fair market value (at the time of Taking) of the Town's fee simple interest in the portion of the Premises taken or condemned and considered as vacant and unimproved, and unencumbered;

(B) The Foundation shall be entitled to make a claim for the fair market value (at time of Taking) of its leasehold interest under this Lease and in the Foundation Improvements from the date of the Taking through the remainder of the Term of this Lease and any other claims permitted under applicable laws; and

(C) The Town shall be entitled to make a claim for its reversionary value of the Foundation Improvements after deducting the value of the Foundation Improvements which are part of the Foundation's claim in paragraph (B) above.

12.02 Partial Taking. If there is a partial taking but as a result of the partial taking, the remainder of Premises cannot be operated by the Foundation for the Permitted Uses conducted thereon, then the Foundation may terminate this Lease upon written notice to the Town delivered no more than forty-five (45) days after the Foundation and the Town have been notified of the portion of the Premises to be condemned. If the Foundation elects to terminate this Lease, any claim for the condemnation award shall be governed by Section 12.01 above, as if a complete condemnation had occurred.

12.03 Restoration after Taking. If this Lease does not terminate due to a Taking, then:

(A) The Foundation will be required to restore the remaining portion of the Premises with due diligence in accordance with the provisions of this Lease pertaining to alterations and renovations;

(B) The entire proceeds of the Foundation's portion of the award will be treated in the same manner as insurance proceeds are to be treated under this Lease until the restoration work has been completed; and

(C) If the award is insufficient to pay for the restoration work, the Foundation will be responsible for the remaining cost and expense if it does not elect to terminate this Lease in connection with such Taking.

12.04 Temporary Taking. If there is a Taking of the temporary use (but not title) of all or any part of the Premises, this Lease will remain in full force and effect. The Foundation will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term of this Lease and the Town will receive the balance of the award.

### **ARTICLE 13 - ENCUMBRANCES**

The Foundation shall not have the right to mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises.

### **ARTICLE 14 - TITLE TO IMPROVEMENTS**

14.01 Title to Improvements on the Premises. The Foundation shall be deemed to be the owner of a leasehold interest in the Foundation Improvements during the Term of this Lease. Upon expiration or earlier termination of this Lease, the Foundation Improvements, above and below ground, constructed or placed upon the Premises by the Foundation shall become the absolute property of Town, and Town shall have every right, title, and interest therein.

14.02 FF&E. Notwithstanding the foregoing, any movable furniture, trade fixtures, equipment, personal property or intellectual property shall remain the property of the Foundation and may be removed by the Foundation in accordance with the terms of this Lease.

14.03 Evidence of Transfer. Upon the request of Town, the Foundation shall provide Town with a bill of sale or other evidence of the transfer of ownership of its leasehold interest in the Foundation Improvements upon the expiration or earlier termination of this Lease.

14.04 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

### **ARTICLE 15 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**

15.01 Expiration. This Lease shall automatically terminate at the end of the Term of this Lease.

15.02 Default The occurrence of any one or more of the following events shall constitute a material default of this Lease by the Foundation (each a "Foundation Default"):

(A) The failure by the Foundation to make payment required to be made by the Foundation hereunder, as and when due, where such failure shall continue for a period of five (5) business days after written notice thereof from Town. For purposes hereof, any default that can be cured by the payment of money including, for example, the failure to obtain the insurance required under this Lease, shall be deemed a Foundation Default under this Section 15.02(A).

(B) The failure by the Foundation to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Foundation, subject to extension of time for such performance due to Events of Force Majeure duly noticed by the Foundation to Town, where such failure continues for a period of thirty (30) days after written notice thereof from Town to the Foundation setting forth with reasonable specificity the nature of

the alleged breach provided, however, that if the nature of the Foundation's Default is such that more than thirty (30) days are reasonably required for its cure, then the Foundation shall not be deemed to be in default if the Foundation commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing herein shall, however, serve to excuse the Foundation's obligation to comply with any violation of the Deed Restrictions or any laws, ordinances, rules, regulations and orders.

(C) (a) the making by the Foundation of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against the Foundation of a petition to have the Foundation adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless (i) in the case of a petition filed against the Foundation, the same is dismissed within ninety (90) days, or (ii) in the case of a petition filed by the Foundation, The Foundation is the subject of a reorganization but continues performing its obligations with respect to the Premises under this Lease; (c) the appointment of a trustee or receiver to take possession of substantially all of the Foundation's assets located at the Premises or of the Foundation's interest in this Lease, where possession is not restored to the Foundation within forty-five (45) days; or (d) the attachment, execution or other judicial seizure of substantially all of the Foundation's assets located at the Premises or of the Foundation's interest in this Lease, where such seizure is not discharged within forty-five (45) days.

15.03 Remedies. If a Foundation Default shall occur, Town, at any time after the periods set forth in Section 15.02(A), 15.02(B), and 15.02(C), and provided the Foundation has failed to cure such Foundation Default within such applicable period, may exercise any and all remedies available at law or equity. If a Foundation Default shall occur, then the Town, shall have the following rights and remedies which are cumulative and without waiver of the Town's other remedies:

(A) to restrain, by injunction, the commission of or attempt or threatened commission of a Foundation Default and to obtain a decree specifically compelling performance of any such term or provision of the Lease; and

(B) to terminate this Lease or Foundation's right of possession and terminate any and all obligations that the Town may have under this Lease, in which event the Town shall be released and relieved from any and all liability under this Lease. If this Lease is terminated as set forth in this subsection (B), the Town shall have the right to exercise any of the following actions: (i) take possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of the Foundation and the Town shall be entitled to recover any reasonable costs and expenses incurred in recovering possession of the Premises, (ii) re-enter and re-take possession of the Premises for the account of Town, thereby terminating any further liability under this Lease on the part of the Foundation and Town. Notwithstanding the foregoing, Town shall have a cause of action to recover sums due and remaining unpaid as of the date of termination when Town retakes possession of the Premises for the account of Town; and (iii) except as expressly set forth otherwise in this Lease, pursue any other remedy now or hereinafter available to Town under the laws of the State of Florida.

For the avoidance of doubt, Town shall have the right to bring an action for its damages upon the occurrence of a Foundation Default (beyond the expiration of applicable notice and cure periods) and Town reserves all rights which laws of the State of Florida confer upon a landlord

against the Foundation in default. Taking into account the specialized nature of the Foundation's use and the terms of the Capital Grant Agreement, the Town shall endeavor to use commercially reasonable efforts to mitigate its damages following a Foundation Default.

Notwithstanding anything to the contrary in this section, prior to exercising any remedies, specifically include termination of this Lease or termination of Foundation's right of possession, the Foundation and the Town shall work together in good faith to resolve the dispute to pursue the objective of having the Coastal Restoration Center open and operational to serve the public.

15.04 Surrender of Premises. The Foundation expressly agrees that it shall immediately surrender the Premises to Town in the condition required under this Lease upon expiration or termination of this Lease, and in addition thereto, the Foundation shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of the Foundation not removed by the Foundation shall, at the option of Town, become the property of Town, or alternatively, may be disposed of by Town at the Foundation's expense. In the event the Foundation shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, the Foundation shall be liable to Town for any and all actual damages, but not consequential or special damages.

15.05 Waiver of Landlord's Lien. Town waives any contractual, statutory, or other landlord's lien (other than judgment liens) on any trade fixtures, furniture, equipment, and other personal property installed in or located on the Premises by Foundation.

## **ARTICLE 16 - ASSIGNMENT, TRANSFER AND SUBLETTING**

16.01 Consent Required. Foundation may not assign this Lease or sublease the Premises without the prior written consent of the Town which consent the Town may withhold in its sole and absolute discretion. Notwithstanding the foregoing, following the Commencement Date, the Town Council shall reasonably consider any request by the Foundation to approve an assignment to a successor organization or a charitable organization with the same or similar charitable purpose as the Foundation. Provided that Foundation obtains any required permits and approvals, temporary licenses to vendors during events shall not be deemed a sublease of the Premises.

## **ARTICLE 17 - INDEMNIFICATION**

The Foundation shall indemnify, defend, and save harmless the Town and the Town Representatives from and against any and all loss, damage, claim, demand, liability, and expense (including reasonable and documented attorneys' fees at trial and all appellate levels) resulting from claims by third parties and based on any acts or omissions (specifically including negligence of any Foundation Party and the Foundation's failure to comply with this Lease), of the Foundation Parties in connection with the use or occupancy of the Premises by the Foundation Parties; provided, however, the Foundation shall not be responsible for any loss, damage, claim, demand, liability, or expense to the extent attributable to the gross negligence or willful misconduct of the Town or any Town Representative, although the simple negligence of Town and the Town Representatives shall be included in the foregoing indemnity. The Foundation shall have the right to assume the defense of any claim covered by this indemnity on behalf of both itself and the Town and Town Representatives, provided that the attorneys selected by the Foundation to handle the



defense are reasonably satisfactory to Town and the representation will not result in a conflict of interest for the attorneys. Further, the Foundation may not settle any claim covered by this Article without the prior written consent of Town. This Article shall not be construed to restrict, limit, or modify the Foundation's insurance obligations under this Lease. The obligations arising under this Article shall survive the expiration or sooner termination of this Lease. The foregoing indemnity includes, without limitation, any claim, suit, demand or proceeding brought by a third party against the Town and any Town Representatives as a governmental entity, even if such claim, suit, demand or proceeding would not be applicable to the Foundation as a private entity.

## **ARTICLE 18 - SIGNAGE**

The Foundation may install and operate upon the Premises, at the Foundation's sole cost and expense, exterior signs consistent with the approved signage plan for the Park or as otherwise approved by the Town from time to time.

## **ARTICLE 19 - LAWS, REGULATIONS AND PERMITS**

19.01 General. The Foundation agrees that throughout the Term of this Lease, the Foundation shall at all times be and shall remain in full and complete compliance with all Requirements, as now or hereafter amended. The Foundation shall not use or reasonably permit the use of the Premises for any illegal purpose.

19.02 Permits and Licenses Generally. The Foundation agrees that it shall, at its sole cost and expense, be responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Lease by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by the Foundation, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, the Foundation's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of Town, the Foundation shall provide to Town copies of any and all permits and licenses which Town may request.

19.03 Safety Regulation. The Foundation agrees that it shall conduct its operations and activities under this Lease in compliance with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all the Foundation Parties.

### **19.04 Environmental and Natural Resource Laws, Regulations and Permits.**

(A) Violation of any part of the foregoing provisions or disposal by the Foundation of any hazardous substances in violation of the provisions of this Section 19.04 shall be deemed to be a Foundation Default under this Lease. As between Town and the Foundation, the Foundation hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of hazardous substances in violation of the Requirements on or from the Premises by the Foundation on and after the Commencement Date, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon the Foundation pursuant to the terms of this

Lease. All such remedies of Town with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

(B) The Foundation agrees to protect, defend, reimburse, indemnify and hold the Town Representatives harmless from and against any and all loss, damage, claim, demand, liability and expense (including reasonable and documented attorneys' fees at trial and all appellate levels) arising from, resulting out of or in any way caused by or connected to the improper use, handling, storage, and/or disposal of hazardous substances in violation of the Requirements on or from the Premises by the Foundation on and after the Commencement Date, but excluding to the extent caused by the entry upon the Premises and affirmative acts of the Town or Town Representatives, whether prior to or after the date of this Lease. The parties acknowledge and agree that the foregoing indemnification is in addition to, and a supplement of, the Foundation's indemnification agreement set forth in ARTICLE 17. The obligations arising under this Section 19.04 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 20 - AMERICANS WITH DISABILITIES ACT**

Following the Commencement Date, the Foundation and the Premises shall comply with the applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and any similar or successor laws, ordinances, rules, regulations and orders, including, but not limited to 28 CFR Part 36, 49 CFR Parts 27 and 37, and shall cooperate in a commercial and reasonable standard with Town to ensure the Foundation remains in compliance with such requirements throughout the Term of this Lease.

## **ARTICLE 21 - DISCLAIMER OF LIABILITY**

THE FOUNDATION HEREBY DISCLAIMS, AND HEREBY RELEASES THE TOWN REPRESENTATIVES FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY THE FOUNDATION PARTIES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF FOR LOSS, DAMAGE OR INJURY TO THE FOUNDATION IMPROVEMENTS OR PERSONAL PROPERTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS AND TO THE EXTENT SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A TOWN REPRESENTATIVE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES.

## **ARTICLE 22 – TOWN NOT LIABLE**

The Town shall not be responsible or liable to the Foundation for any claims for compensation or any losses, damages or injury whatsoever sustained by the Foundation resulting from failure of any of the following: (a) water supply, heat, air conditioning, electrical current, or sewerage or drainage facility unless caused by the gross negligence or willful misconduct of Town; or (b) caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of

materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any other cause, whether beyond or within the control of Town.

## **ARTICLE 23 - MISCELLANEOUS**

23.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

23.02 Independent Contractor. The Foundation or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Town shall in no way be responsible therefor.

23.03 Governmental Authority. Nothing in this Lease shall be construed to waive or limit Town's governmental authority as a political subdivision of the State of Florida to regulate the Foundation or its operations. The Town's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor to alter or impair Town's governmental functions, including, but not limited to, Town's right to lawfully exercise its regulatory authority over the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of Town's governmental authority.

23.04 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

23.05 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

23.06 Venue; Jurisdiction; Waiver of Jury Trial. Exclusive venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida. Each of the parties knowingly and voluntarily waives the right to trial by jury in connection with any claim or controversy arising under this Lease or otherwise arising between them.

23.07 Notices. All notices 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 overnight mail, or alternatively shall be delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, 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 hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Town: Town of Palm Beach, Florida  
360 South County Road  
Palm Beach, FL 33480  
Attn: Town Manager

The Foundation: Preservation Foundation of Palm Beach, Inc.  
311 Peruvian Avenue  
Palm Beach, FL 33480  
Attn: President and CEO

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

23.08 Section Headings. The heading of the various articles and sections of this Lease 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 Lease or any part or parts of this Lease.

23.09 Recording. Neither this Lease nor any memorandum or short form hereof may be recorded. The parties acknowledge that this Lease shall be a public record.

23.10 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

23.11 Approvals by the Town. All requests for action or approvals by the Town will be sent to the Town Manager for decision as to who within the Town, including Town Council of the Town of Palm Beach, must act or approve the matter on behalf of the Town.

23.12 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 Lease. 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.

23.13 Broker. Each of the Town and the Foundation represent and warrant that they have not dealt or communicated with any real estate broker in entering this Lease, and indemnify and save the other harmless from any claims for a commission from any real estate broker based on such party's dealings with such broker.

23.14 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, the Foundation 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.

23.15 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, the Foundation certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by the Foundation, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

23.16 Annual Appropriation. Nothing in this Lease shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Town's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations. This Section 23.16 shall not act or be construed as a waiver of any rights the Foundation may have to pursue its remedies at law or in equity, include, without limitation, any claim the Foundation may have for breach of contract.

23.17 Entirety of Agreement. The parties agree that this Lease 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 conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto. The parties may amend this Lease only by a written agreement signed and delivered by the parties.

23.18 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

23.19 Incorporation by References. All exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference.

23.20 No Third-Party Beneficiaries. 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 Town and/or the Foundation.

23.21 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, floods, extreme weather (such as tropical storms or hurricanes), casualty, acts of terrorism, war or other emergency, pandemics, epidemics, restraint by court or other public authority, litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution and/or approval, inability to obtain labor or materials, or moratoriums (an "Event(s) of Force Majeure"). Where there is an Event of Force Majeure the party prevented from or delayed in performing its obligations under this Lease must promptly notify the

other party giving full particulars of the Event of Force Majeure and that party must use its reasonable efforts to mitigate the effect of the Event of Force Majeure upon its or their performance and fulfillment its or their obligations under the Lease. Upon conclusion of the Event of Force Majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner.

23.22     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 the Palm Beach County public health department.

23.23     Public Records.

(A)       The Foundation acknowledges that Town is required to comply with applicable laws relating to public records, including Chapter 119, Florida Statutes, (“Public Records Law”) and that records submitted by the Foundation to Town or by Town to the Foundation pursuant to this Lease may be subject to public disclosure. The Foundation shall comply with all applicable provisions of the Public Records Law. The Foundation shall separately submit and prominently identify any records submitted by the Foundation that the Foundation believes to be exempt or prohibited from disclosure under the Public Records Law (“Exempt Records”) including the specific statutory authorization for exemption. Simultaneously with the submission of identified Exempt Records, the Foundation shall submit a sworn affidavit from a person with knowledge attesting that the specified records constitute Exempt Records under the Public Records Law and stating the factual basis for the attestation. In the event a third party submits a request to Town for the release of records that the Foundation has identified as Exempt Records, Town shall promptly notify the Foundation in writing that it has received the request and state whether Town intends to release such records, but Town shall not release such records unless ordered to do so by a court of competent jurisdiction or authorized to do so in writing by the Foundation. The Foundation shall have the right and obligation to assume the defense of any claim arising in connection with these provisions using the services of attorneys selected by the Foundation that are reasonably satisfactory to the Town and whose representation will not create a conflict of interest for the attorneys. The Foundation shall protect, defend, reimburse, indemnify and hold the Town and Town Representatives harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines, penalties, judgments, and damages (including reasonable attorney fees, court costs, and litigation expenses at trial and appellate levels) relating to the non-disclosure of any Exempt Records in response to a records request by a third party. The obligations arising herein shall survive the expiration or sooner termination of this Lease.

(B)       To the extent the Foundation is determined to be acting on behalf of Town as stated in Section 119.0701, Florida Statutes, the Foundation shall:

(1)       Keep and maintain public records required were Town performing the services under this Lease;

(2) Upon request from Town, provide Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of the Lease and following completion of the Lease if the records are not transferred to Town; and

(4) Upon completion of the Lease, transfer to Town, at no cost, all public records in possession of the Foundation or keep and maintain public records required by Town to perform the service. If the Foundation transfers all public records to Town, upon the completion of the Lease, The Foundation shall destroy any duplicate public records that are exempt or confidential and exempt. If the Foundation keeps and maintains public records upon completion of the Lease, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town upon request in a format that is compatible with the information technology systems of Town.

A request for public records regarding this Lease must be made directly to Town, who will be responsible for responding to any such public records requests. the Foundation will provide any requested records to Town to enable Town to respond to the public records request.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FOUNDATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE TOWN OF PALM BEACH TOWN CLERK.

23.24 Quiet Enjoyment. Town covenants and agrees that so long as no Foundation Default shall exist, the Foundation may peaceably and quietly hold and enjoy the Premises for the Term of this Lease without hindrance or interruption by Town. During the Term of this Lease, the Foundation shall be entitled to exclusive possession of the Premises and the Town shall not grant any other rights to use the Premises, including, without limitation, any easements, licenses or other occupancy rights.

23.25 Non-discrimination. In accordance with Requirements, the parties shall not discriminate against any person, group of persons or entity on the basis of race, gender, religion, national or ethnic origin, age or disability.

23.26 Survival. Notwithstanding any early termination of this Lease, the Foundation and Town shall remain obligated hereunder to perform any financial obligation imposed thereon arising on or prior to the date of such termination that remains unsatisfied as of the effective date of termination.

23.27 Irrevocable Waiver of Certain Rights. To induce Town to enter into this Lease:

(A) The Foundation agrees and is forever estopped from asserting to the contrary that: (i) this Lease is a single lease pursuant to which the collective Premises are demised as a whole to the Foundation, and (ii) except as specifically permitted under the terms of this Lease,

this Lease is a unitary, indivisible, unseverable instrument pertaining to all but not less than all of the Premises;

(B) The Foundation agrees and is forever estopped from asserting to the contrary that this Lease does not in any manner make the Foundation the partner, joint venturer or agent of Town;

(C) The Foundation agrees and is forever estopped from asserting to the contrary that if, notwithstanding the provisions of this Section, this Lease were to be determined or found to be in any proceeding, action or arbitration under state or federal bankruptcy, insolvency, debtor-relief or other applicable laws to constitute multiple leases demising multiple properties, that such multiple leases could not, by the debtor, trustee, or any other party, be selectively or individually assumed or rejected; and

(D) The Foundation forever knowingly waives and relinquishes any and all rights under or benefits of the provisions of the United States Bankruptcy Code Section 365 (11 U.S.C. § 365), or any successor or replacement thereof or any analogous state law, to selectively or individually assume or reject the multiple leases comprising this Lease following a determination or finding in the nature of that described in the foregoing Subsection (C).

[SIGNATURE BLOCKS ON FOLLOWING PAGES]



[SIGNATURE PAGE OF GROUND LEASE]

The parties have executed this Lease as of the dates set forth below their respective signatures.

**THE TOWN OF PALM BEACH**, a political  
subdivision of the State of Florida

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Town Clerk

APPROVED AS TO FORM AND SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE TOWN OF  
PALM BEACH ONLY:

By: \_\_\_\_\_

Town Attorney

[SIGNATURE PAGE OF GROUND LEASE]

The Preservation Foundation of Palm Beach,  
Inc., a Florida not for profit corporation

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

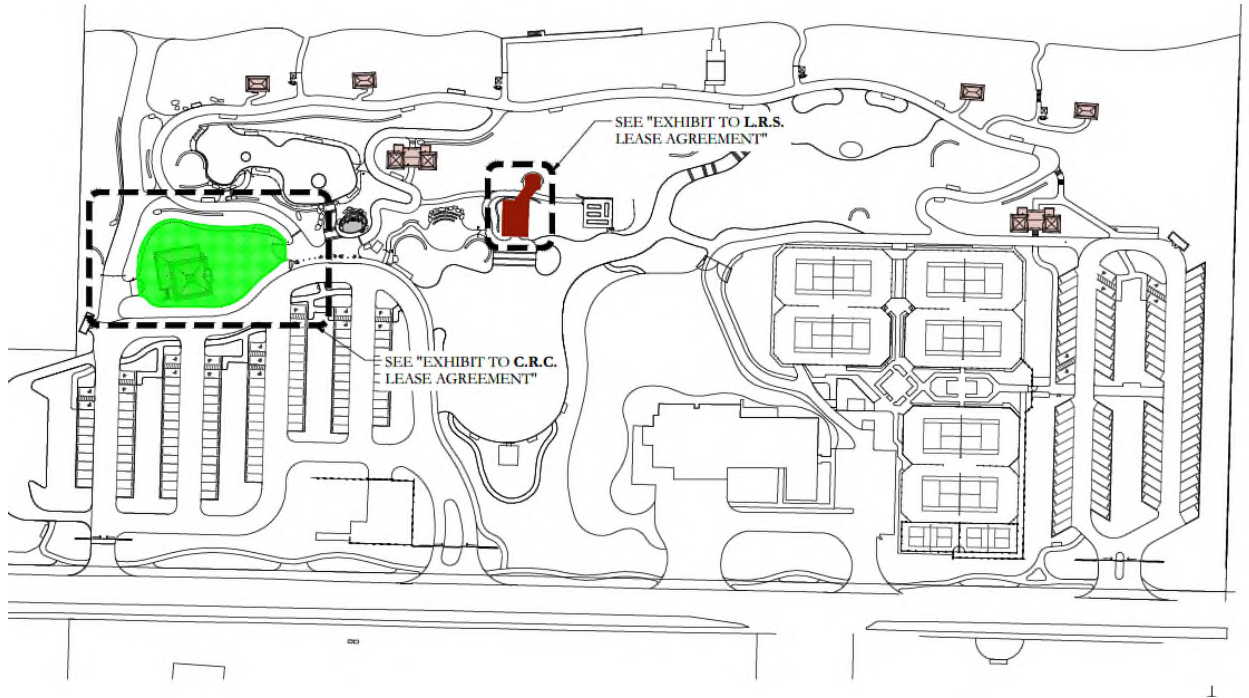
Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A"

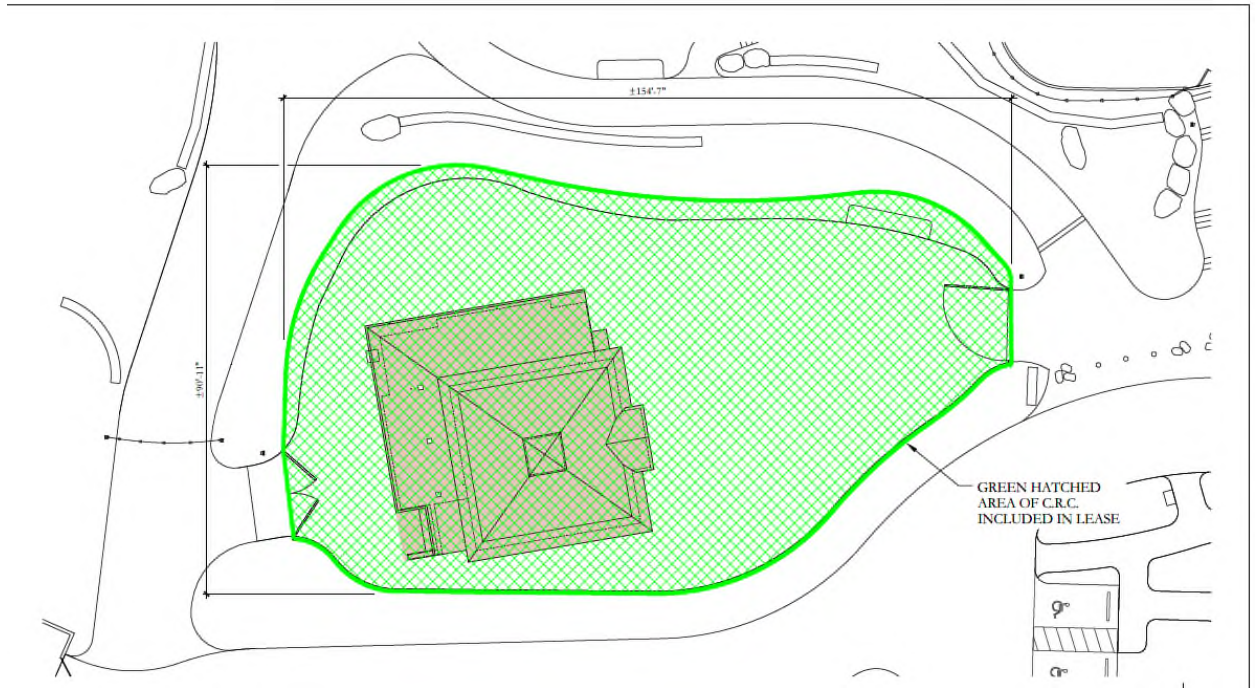
### LOCATION OF THE PREMISES IN THE PARK

(Referred to in this Exhibit as "C.R.C.")



[Continued on next page]

**LOCATION OF THE COASTAL RESTORATION CENTER BUILDING  
AND THE COASTAL RESTORATION CENTER NURSERY IN THE PREMISES  
[AS-BUILT DIMENSIONS SUBJECT TO CHANGE]**



The above plan is intended to show the general location of the Premises, subject to adjustment based on the location of the actual initial improvements once completed.\*\*

**RIDER #2**

**NEW LITTLE RED SCHOOLHOUSE LEASE**

**(Attached)**

**GROUND LEASE AGREEMENT**  
**(LITTLE RED SCHOOLHOUSE)**

THIS GROUND LEASE AGREEMENT (“Lease”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024 by and between the Town of Palm Beach a political subdivision of the State of Florida (“Town”), and The Preservation Foundation of Palm Beach, Inc., a Florida not for profit corporation (“Foundation”).

**WITNESSETH:**

E. The Town and the Foundation entered into that certain Lease dated as of September 29, 1989 (“Original Little Red Schoolhouse Lease”) under which the Town leased to the Foundation, and the Foundation leased from the Town, a building known as the Little Red Schoolhouse (“Little Red Schoolhouse”), located in an approximately 20 acre public park known as Phipps Ocean Park located at 2185 S. Ocean Blvd., Palm Beach, Florida (“Park”). The Original Little Red Schoolhouse Lease shall terminate on the date that the Renovation Improvements, as hereafter defined, render the current location of the Little Red Schoolhouse inappropriate for further use pending the relocation and renovation contemplated by this Lease, and the parties agree to execute such further instruments that may then be required to evidence such termination.

F. The Town and the Foundation have entered into that certain Capital Grant and Operating Agreement for the Park on even date hereto (“Capital Grant Agreement”).

G. The Capital Grant Agreement includes terms under which the Foundation will donate funds to the Town for renovations and improvements (“Renovation Improvements”) to the Park.

H. The Renovation Improvements will include the relocation and restoration of the Little Red Schoolhouse, and improvements to areas appurtenant to the relocated Little Red Schoolhouse to serve as an outdoor classroom (“Outdoor Classroom”) and a schoolyard garden (the “Schoolyard Garden”), the locations of which is depicted on **Exhibit “A”**. The relocation and restoration of the Little Red Schoolhouse and the creation of the Outdoor Classroom and the Schoolyard Garden will be accomplished with funds donated by the Foundation and under construction documents prepared by the Foundation and approved by the Town under the terms of the Capital Grant Agreement, the terms and requirements of which are hereby incorporated by reference.

I. Nothing in this Lease shall abrogate the Town’s rights and procedures with respect to the ownership, permitting, and operation of properties located within the Town, nor shall anything in this Lease abrogate the Town’s obligation to comply with the Charter of the Town of Palm Beach, Florida as adopted by Ordinance No. 15-78 on December 12, 1978 and by referendum on February 6, 1979, as subsequently amended by the Code of Ordinances of the Town of Palm Beach, Florida (together the “Charter Documents”). Further, nothing in this Lease shall cause the violation of those certain restrictions set forth in that certain Deed dated May 7, 1948 and recorded in Deed Book 815 at Page 190 of the Public Records of Palm Beach County, Florida (“Deed”).

Restrictions”), and to the extent that any term hereof is determined to violate the Deed Restrictions, this Lease shall be reformed to omit or cause any such provision to comply with the Deed Restrictions.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the sufficiency of which is conclusively acknowledged, the parties hereto covenant and agree to the following terms and conditions:

#### **ARTICLE 24 - RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

#### **ARTICLE 25 - EFFECTIVE DATE, TERM**

25.01 Term. This Lease shall be effective on the date that this Lease is approved and signed by the parties (“Effective Date”). The term of the Lease shall commence upon the issuance of a final or temporary certificate of occupancy for the Little Red Schoolhouse following its relocation and restoration under the terms of the Capital Grant Agreement evidencing its compliance with applicable Requirements (as defined below) (“Commencement Date”) and expire on the last day of the month that is seventy-five (75) years thereafter (the “Term”). The Foundation shall be deemed to have accepted the Premises in AS-IS, WHERE-IS condition on the Commencement Date, subject to completion of punch-list items and correction of applicable warranty-items reported during the one-year period thereafter as provided in the Town’s construction agreement for the relocation and restoration of the Little Red Schoolhouse. If the Commencement Date does not occur by the date that is five years after the Effective Date, either party may terminate this Lease upon written notice to the other party. If the Capital Grant Agreement is terminated for any reason, this Lease shall automatically terminate and the Original Little Red Schoolhouse Lease shall remain in effect. The performance of the Renovation Improvements shall be governed by the terms of the Capital Grant Agreement.

#### **ARTICLE 26 - PREMISES AND PRIVILEGES**

26.01 Lease of Little Red Schoolhouse. Town hereby demises and leases the Little Red Schoolhouse and an appurtenant utility structure to the Foundation (the “Premises”), and the Foundation leases and rents the Premises from the Town, subject to the terms, conditions and covenants of this Lease. The Foundation’s employees, agents, contractors, invitees, and guests (“Foundation Parties”) shall have access to the Premises during the Term of this Lease through the Park and shall be permitted to use the parking in the Park in common with the public. Subject to the Town’s rights and generally applicable requirements with respect to the Park, the Foundation shall have access to the Premises 24 hours a day, 7 days a week, and 365 days a year provided that the Foundation shall be required to make arrangements with the Town for ingress and egress after closure of the Park’s gates for access by the general public. If the Foundation holds any events at the Premises during Park hours, subject to any permitting and the requirements of any grant and other third-party agreements binding the Town, the Foundation and the Town shall work together to accommodate guest parking, which may include valet service.

26.02 Permitted Use. The Foundation shall use the Premises only for the following purposes, each in a professional, first class manner and in all respects in compliance with the requirements of any and all federal, state, city, county and local governments, departments,

bureaus, agencies or offices thereof, and any other governmental, public or quasi-public authorities having jurisdiction over the Premises, all in a manner consistent with the Deed Restrictions (“Permitted Uses”) for: conducting and presenting school tours, educational programs, historical exhibits and displays, and activities related thereto, each on a non-commercial basis and consistent without limitation, with the requirement of the Deed Restrictions including, without limitation, the covenant in the Deed Restrictions prohibiting the “sales of merchandise or the furnishings of services at unreasonable prices”. All goods and services provided by the Foundation shall, without limitation of the other Deed Restrictions, meet the foregoing pricing requirement.

26.03     Prohibited Uses. The Foundation agrees the Premises shall be utilized solely for the Permitted Uses and for no other purpose whatsoever without the Town’s prior written consent, which consent the Town may withhold in its sole and absolute discretion.

26.04     Outdoor Classroom and Schoolyard Garden. The Town and the Foundation will cooperate to cause the Outdoor Classroom and the Schoolyard Garden to be available to the Foundation in support of and in connection with the educational uses of the Premises, and the Town shall coordinate any scheduling of the Outdoor Classroom and the Schoolyard Garden so that its use does not conflict with the Foundation’s scheduled events.

## **ARTICLE 27 – RENT, FEES AND CHARGES**

27.01     Rent. Commencing on the Commencement Date and each year thereafter, in advance, the Foundation shall pay rent to the Town in the amount of \$10.00 per year.

27.02     Taxes and Fees. The Foundation shall pay, on or before delinquency, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises or the estate hereby granted, or upon the Foundation, or upon the business conducted on the Premises, or upon any of the Foundation’s property used in connection therewith, or upon sums payable hereunder, including, but not limited to any ad valorem taxes and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of the Foundation (collectively, the “Taxes”), each of which is rent under this Lease. The Foundation hereby covenants and agrees to pay monthly to the Town, as additional rent, any sales, use or other tax, or imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or the County. The Foundation shall be responsible for and shall pay the portion of such real estate taxes and assessments relating to the period beginning with the Commencement Date through and including the expiration of the Term of this Lease. The terms of this section shall not apply to the Foundation for so long as the Foundation has provided the Town, with respect to sales tax, with a then-current certificate of exemption from the Florida Department of Revenue and, with respect to other taxes, is otherwise exempt.

## **ARTICLE 28 QUALITY AND CHARACTER OF OPERATIONS**

28.01     Continuous Operation. The Foundation agrees to use, occupy and operate the Little Red Schoolhouse in a reputable manner consistent with and subject to the terms and conditions of this Lease. The Foundation shall provide the Town with written notice of its operating hours from time to time. If the Foundation elects not to operate the Little Red



Schoolhouse for the Permitted Use, the Foundation shall give written notice to the Town setting forth the basis for suspension, which may include (i) renovations approved by the Town under its required permitting requirements, if applicable, (ii) Events of Force Majeure, (iii) casualty (as provided in ARTICLE 11), or (iv) a Taking (defined below) under ARTICLE 12 that does result in the termination of this Lease. The Foundation shall comply with all the terms and conditions of this Lease notwithstanding any period of closure. Notwithstanding the foregoing, in the event that the Foundation does not operate the Little Red Schoolhouse for the Permitted Use for a period of six (6) months or more for a reason other than (i) – (iv) above, and the Foundation does not recommence operation of the Little Red Schoolhouse within thirty (30) days after the Town’s notice, the Town may, by written notice to the Foundation, elect any of the following: (i) to terminate this Lease and recapture the Little Red Schoolhouse in its then AS-IS condition without releasing the Foundation from any liability that arose prior to the date of termination, or (ii) without waiving the option set forth in (i), to allow this Lease to remain in full force and effect.

28.02 Nondiscriminatory Services Requirement. The Foundation shall provide all services to its customers and patrons without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information, in each case, in accordance with the requirements imposed by law, code, ordinance, order, directive, regulation and governmental or quasi-governmental requirements applicable to the Foundation or the Premises including, without limitation, environmental laws (“Requirements”). The Foundation shall include the foregoing requirement in all contracts for goods, materials and services that it may enter into with respect to the operation and maintenance of the Premises. The Requirements include that the Foundation’s employment practices with respect to any of its employees working at or providing services to the Premises shall in all instances conform to the Equal Opportunity, ADA, E-Verify, Veteran’s Preference, each of which is deemed applicable to the Foundation under this Lease.

## **ARTICLE 29**

### **MODIFICATIONS TO THE IMPROVEMENTS**

29.01 Improvements following the Commencement Date. The Foundation may, following the Commencement Date, make improvements to the interior of the Little Red Schoolhouse consistent with the Permitted Use without consent of the Town except to the extent that permits or other approvals are generally required for construction within the Town (“Interior Improvements”). If the Foundation desires to make an alteration, addition, or improvement which is not an Interior Improvement (a “Major Improvement”), the Foundation shall cause plans and specifications for the Major Improvement (“Plans and Specs for Major Improvements”) to be prepared and delivered to the Town under the Town’s applicable procedures including, without limitation, any required review by the Landmarks Preservation Commission. The Town and the Foundation shall in good faith, acting reasonably, attempt to resolve any disputes concerning the Plans and Specs for Major Improvements in an expeditious manner.

(A) The Foundation shall require its general contractor for any Interior Improvements or Major Improvements to provide the following insurance, which requirements shall be superseded by the Town's then insurance requirements in effect at the time that any Town permit is required:

(7) Comprehensive general liability insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Foundation's General Liability coverage shall be primary and non-contributory.

(8) For policies written on a claims-made basis, the contractor shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

(9) Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event the contractor does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

(10) Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State of Florida. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate federal act coverage must be provided. A waiver of subrogation in favor of the Town must be provided.

(11) Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

(12) Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

(13) Any subcontractor working on the Premises shall be required to maintain Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, which shall not exclude products/completed operations.

(B) No Liens. The Foundation shall pay when and as due all charges assessed by any party under any agreement for construction related services entered into by the Foundation and shall pay or transfer to bond any lien filed against the Foundation's leasehold interest within forty-five (45) days following the filing thereof.

## **ARTICLE 30 - OBLIGATIONS OF THE FOUNDATION**

30.01 Nuisance or Injury. The Foundation shall not commit any nuisance or injury on the Premises and shall not do, or reasonably permit to be done, anything which may result in the creation, commission or maintenance of such nuisance or injury on the Premises.

30.02 Vapors. Fumes or Emissions. The Foundation shall not create, nor permit to be caused or created upon the Premises any obnoxious odor or noxious gases.

30.03 Hazardous Conditions. The Foundation shall not do or permit to be done any act or thing upon the Premises that would constitute a hazardous condition increasing the risk normally attendant upon the operations permitted by this Lease.

30.04 Security of Premises. The Foundation acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities. The Foundation expressly acknowledges that any special security measures deemed necessary or desirable by the Foundation for additional protection of the Premises and improvements constructed thereon, shall be the sole responsibility of the Foundation.

## **ARTICLE 31 - MAINTENANCE AND REPAIR**

31.01 Maintenance/Repair of Premises. The Foundation shall be responsible for and shall undertake all repairs and maintenance of and replacements to the Premises whether such repair or maintenance be ordinary or extraordinary, structural or otherwise throughout the Term of this Lease. All maintenance, repairs and replacements shall be in a quality and class reasonably comparable to the quality and class of the Renovation Improvements (taking into account the age of the Renovation Improvements and any replacements, modifications and additions thereof, and ordinary wear and tear) and shall be at the Foundation's sole cost and expense and consistent with all applicable Requirements. The Foundation shall keep all Renovation Improvements on the Premises, including, without limitation, all buildings, structures, pavement, facilities, landscaping and other improvements and fixtures, above and below ground, storm drainage, plumbing and HVAC systems, interior and exterior signage, roofing and all other improvements, in good condition and repair throughout the Term of this Lease. For purposes of this Section 8.01, "good condition and repair" means maintaining the Premises at a level necessary to keep the Premises in clean and good working condition (taking into account ordinary wear and tear) in compliance with all Requirements and that all areas remain in a safe and attractive condition throughout the Term of this Lease.

31.02 Cleanliness of Premises.

(A) The Foundation shall maintain the Premises in a clean and safe condition at all times in compliance with the Requirements.

(B) The Foundation shall be responsible for trash removal for the Premises and agrees to deposit trash, garbage and debris in the Town's waste disposal dumpster in the Park (adhering to any generally applicable recycling or other waste disposal criteria). The Foundation shall ensure exterior building areas are maintained in a neat and clean manner and remain

reasonably free from trash and debris at all times and otherwise in compliance with the Requirements.

31.03 Inspections. The Town and its employees and representatives shall have the right to enter the Premises following reasonable prior notification during regular business hours for the purpose of determining whether or not the Foundation is in compliance with this Lease, but the foregoing shall not restrict their rights of entry to the extent generally available to the members of the public.

## **ARTICLE 32 - UTILITIES**

32.01 Utility Costs. Following the Renovation Improvements, the Foundation shall be solely responsible for the payment of all impact, connection, and all other fees with respect to the development, construction, operation, and all other activities related to the Premises. The Foundation shall pay when due all charges, fees, and deposits (collectively, "Charges") for all public and private utility services including, but not limited to, water, sewer, stormwater, electricity, gas, light, heat, air conditioning, telephone, trash removal, cable television, and other utility and communication services that are provided to any portion of the Premises during the Term of this Lease. The Renovation Improvements shall include separate meters for the Premises and the Foundation shall open separate utility accounts for all separately metered utilities serving the Premises.

32.02 Interruption of Service. No failure, delay or interruption in supplying any utility services for any reason whatsoever (whether or not a separate charge is made therefor) shall be construed to be an eviction of the Foundation or grounds for any claim by the Foundation under this Lease for offsets or damages, consequential or otherwise.

## **ARTICLE 33 INSURANCE REQUIREMENTS**

33.01 Insurance Policies. The Foundation shall provide, at its own cost and expense, the following insurance during Term of this Lease, and shall provide required evidence thereof to the Town thirty (30) business days prior to any occupancy of the Premises. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida each of which must have an A.M. Best Company financial and performance rating of A-IX or better. The insurance shall be evidenced by certificates and/or policies that include the amount of premiums, noting that they have been paid. It shall be an affirmative obligation of the Foundation to advise Ebix in writing at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any required insurance. The Town reserves the right to require higher limits if, due to the passage of time, the limits of insurance set forth herein are reasonably deficient, provided, however, that except with respect to liability insurance the Foundation shall only be required to provide such higher limits if such insurance is generally available at commercially reasonable premiums and the limits are not increased more than once every two (2) years. The Foundation acknowledges and agrees that the requirements contained in this Article, or Town's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by the Foundation under this Lease.

(14) Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Foundation's General Liability coverage shall be primary and non-contributory.

(15) For policies written on a claims-made basis, Foundation shall maintain a retroactive date prior to or equal to the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the Foundation shall purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

(16) Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos, as applicable) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event the Foundation does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

(17) Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State of Florida. Should the scope of work performed by contractor qualify its employee for benefits under federal workers' compensation statute (example, US Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate federal act coverage must be provided. A waiver of subrogation in favor of the Town must be provided.

(18) Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

(19) Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

33.02 Additional Insured Endorsement. The Foundation shall endorse the Town as "Additional Insured" on each of the liability policies required to be maintained by the Foundation hereunder with the exception of Worker's Compensation/Employers Liability Insurance. Each "Additional Insured" endorsement shall read: "Town of Palm Beach, Florida, including its agents, officers, past and present employees, elected officials and representatives", or as otherwise approved or modified by Town, provided Town delivers written notice of any required modification to the Foundation.

33.03 Certificate of Insurance.

(A) The Foundation shall provide the Town with evidence of insurance, evidencing limits, coverages and endorsements required herein Commercial General Liability insurance prior to the Commencement Date.

(B) In the event coverage is cancelled or is not renewed, the Foundation shall provide Town a new certificate of insurance or certificates of insurance evidencing replacement

coverage prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read as required above, or as otherwise approved or modified by Town, provided Town delivers written notice of any required modification to the Foundation. In the event that the Town does not have timely evidence of replacement insurance before any lapse, then the Town may purchase any such insurance on behalf of the Foundation, and the Foundation shall reimburse Town for the cost hereof, as additional rent, within thirty (30) days following the Town's periodic tender of an invoice.

33.04 Waiver of Subrogation. The Foundation hereby waives all rights of subrogation against the Town and its agents, officers, past and present employees, elected officials and representatives (collectively, the "Town Representatives") to the same extent as if the Town had required property insurance for the improvements on the Premises for their full replacement cost and as if the Foundation had obtained such insurance, including without limitation, windstorm and flood coverage, with such waiver applying to the same extent as if the Foundation actually carried such insurance without deductible. Neither insurers nor the Foundation shall have any recourse against the Town or the Town Representatives for payment or assessments in any form on any perils save only for the Town's gross negligence or willful misconduct.

33.05 Premiums and Proceeds. The Foundation shall be responsible for all of the Foundation's premiums, including, without limitation, for property, flood and wind insurance policies to the extent that the Foundation elects to maintain such insurance. The Foundation agrees that all property, flood and windstorm insurance proceeds, to the extent that the Foundation has elected to secure such coverage, shall be made available for use to promptly replace, repair or rebuild the Renovation Improvements.

33.06 Deductibles, Coinsurance & Self-Insured Retention. The Foundation shall be fully and solely responsible for the Foundation's deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy and each of which shall be subject to the waiver of subrogation herein to the same extent as if such amounts were covered by third party insurance.

33.07 Right to Review or Adjust Insurance. Town may reject any insurer that is not in compliance with the financial standards of this Lease or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Town shall provide the Foundation a written notice of rejection, and the Foundation shall replace such insurer with a company or companies that meeting the requirements set forth in this Lease within thirty (30) days of receipt of the notice. In addition, the Town may periodically (but not more than one (1) time in every two (2) years) adjust the amounts of required liability insurance to be maintained pursuant to Section 10.01, if due to the passage of time or the claims history of such policies the amounts thereof are reasonably insufficient.

33.08 No Representation of Coverage Adequacy. The Foundation acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for the Town. The Foundation agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect the Foundation against any loss exposures, whether as a result of this Lease or otherwise.

33.09 Specialty Insurance. In the event that any portion of the Premises is used by the Foundation for uses that reasonably require additional forms of insurance including, for example and without limitation, for classroom purposes, the Foundation shall carry such form of insurance in appropriate amounts naming each of the Town and the Town Representatives as an additional insured.

#### **ARTICLE 34 - DAMAGE TO OR DESTRUCTION OF PREMISES**

34.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, the Foundation shall promptly remove all debris resulting from such damage from the Premises and shall take other commercially reasonable actions to place the Premises in a condition to ensure the safety of persons entering upon the Premises. If the Foundation fails to promptly comply with the provisions of this Section 11.01, the Town may, but shall not be required to notify the Foundation in writing of such failure, and Town may but shall not be required to take such measures as it deems reasonably necessary to render the Premises in a safe condition if the Foundation fails to comply within thirty (30) days after written notice from Town provided however that the Town may, in the event of imminent danger to life or property, exercise such self-help rights without prior notice except only to the extent reasonable under the circumstances. The Foundation shall fully assume and be liable to Town as additional rent for payment of any actual, reasonable out-of-pocket costs incurred by Town pursuant to this Section 11.01, which costs shall be due and payable to Town within thirty (30) days from the date the Foundation receives written notice together copies of with receipts and invoices evidencing such costs provided by Town. The Foundation acknowledges that Town may cause the corrective action to be completed by third party contractors or Town employees in its sole discretion. In the event the work is performed by Town employees, Town shall be entitled to invoice the Foundation based upon the actual hourly rate of pay for such employees, plus any costs associated with materials and equipment (and no other internal costs of Town shall be permitted under this paragraph.).

34.02 Foundation Post-Casualty Obligations. Except as otherwise provided for in this Lease, if the Renovation Improvements, or any portion thereof, are damaged by fire or other casualty, the Foundation shall, at its sole discretion, either (i) raze the Renovation Improvements at its sole cost and expense provided the Foundation leaves such portion of the Premises in clean and safe condition in compliance with the Requirements and plants grass or other landscaping materials in the area where the Renovation Improvements were removed and continues to comply with all of the other terms and conditions of this Lease, (ii) repair, restore or rebuild the Renovation Improvements, or (iii) elect to terminate this Lease upon the Foundation's completion of the work required under (i) above provided, however, that the Foundation shall give the Town written notice and the opportunity to waive the requirement of razing prior to accomplishing the same. Any repair, restoration or rebuilding of the Renovation Improvements shall be as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as the Foundation may elect to make in conformity with the provisions of this Lease and the Requirements. In the event the Foundation elects to restore or rebuild the Renovation Improvements pursuant to this Section 11.02, the Foundation shall commence restoration as soon as reasonably practicable after any such casualty and shall diligently pursue such restoration to completion at the Foundation's sole cost and expense in accordance with the requirements contained in this Lease.

## ARTICLE 35 – CONDEMNATION

35.01 Complete Taking. If the entire Premises are taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof (in each case, a “Taking”), then this Lease will cease and terminate as of the date on which the condemning authority takes possession. If this Lease is so terminated, the Town and the Foundation shall be entitled to make claims to the condemning authority as follows:

(A) The Town shall be entitled to make a claim for the fair market value (at the time of Taking) of the Town’s fee simple interest in the portion of the Premises taken or condemned and considered as vacant and unimproved, and unencumbered;

(B) The Foundation shall be entitled to make a claim for the fair market value (at time of Taking) of its leasehold interest under this Lease and in the Renovation Improvements from the date of the Taking through the remainder of the Term of this Lease and any other claims permitted under applicable laws; and

(C) The Town shall be entitled to make a claim for its reversionary value of the Renovation Improvements after deducting the value of the Renovation Improvements which are part of the Foundation’s claim in paragraph (B) above.

35.02 Partial Taking. If there is a partial taking but as a result of the partial taking, the remainder of Premises cannot be operated by the Foundation for the Permitted Uses conducted thereon, then the Foundation may terminate this Lease upon written notice to the Town delivered no more than forty-five (45) days after the Foundation and the Town have been notified of the portion of the Premises to be condemned. If the Foundation elects to terminate this Lease, any claim for the condemnation award shall be governed by Section 12.01 above, as if a complete condemnation had occurred.

35.03 Restoration after Taking. If this Lease does not terminate due to a Taking, then:

(A) The Foundation will be required to restore the remaining portion of the Premises with due diligence in accordance with the provisions of this Lease pertaining to alterations and renovations;

(B) The entire proceeds of the Foundation’s portion of the award will be treated in the same manner as insurance proceeds are to be treated under this Lease until the restoration work has been completed; and

(C) If the award is insufficient to pay for the restoration work, the Foundation will be responsible for the remaining cost and expense if it does not elect to terminate this Lease in connection with such Taking.

35.04 Temporary Taking. If there is a Taking of the temporary use (but not title) of all or any part of the Premises, this Lease will remain in full force and effect. The Foundation will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term of this Lease and the Town will receive the balance of the award.



## **ARTICLE 36 - ENCUMBRANCES**

The Foundation shall not have the right to mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises.

## **ARTICLE 37 - TITLE TO IMPROVEMENTS**

37.01 Title to Improvements on the Premises. The Foundation shall be deemed to be the owner of a leasehold interest in the Renovation Improvements during the Term. Accordingly, the Town shall be the fee simple owner of the real property and the Renovation Improvements, above and below ground, constructed or placed upon the Premises.

37.02 FF&E. Notwithstanding the foregoing, any movable furniture, trade fixtures, equipment, personal property or intellectual property shall remain the property of the Foundation and may be removed by the Foundation in accordance with the terms of this Lease.

37.03 Evidence of Transfer. Upon the request of Town, the Foundation shall provide Town with a bill of sale or other evidence of the transfer of ownership of its leasehold interest in the Foundation Improvements to the Town upon the expiration or earlier termination of this Lease.

37.04 Survival. The provisions of this Article shall survive expiration or termination of this Lease.

## **ARTICLE 38 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION**

38.01 Expiration. This Lease shall automatically terminate at the end of the Term of this Lease.

38.02 Default The occurrence of any one or more of the following events shall constitute a material default of this Lease by the Foundation (each a "Foundation Default"):

(A) The failure by the Foundation to make payment required to be made by the Foundation hereunder, as and when due, where such failure shall continue for a period of five (5) business days after written notice. For purposes hereof, any default that can be cured by the payment of money including, for example, the failure to obtain the insurance required under this Lease, shall be deemed a Foundation Default under this Section 15.02(A).

(B) The failure by the Foundation to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Foundation, subject to extension of time for such performance due to Events of Force Majeure duly noticed by the Foundation to Town, where such failure continues for a period of thirty (30) days after written notice thereof from Town to the Foundation setting forth with reasonable specificity the nature of the alleged breach provided, however, that if the nature of the Foundation's Default is such that more than thirty (30) days are reasonably required for its cure, then the Foundation shall not be deemed to be in default if the Foundation commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Nothing herein shall, however, serve to excuse the Foundation's obligation to comply with any violation of the Deed Restrictions or any laws, ordinances, rules, regulations and orders.

(C) (a) the making by the Foundation of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against the Foundation of a petition to have the Foundation adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless (i) in the case of a petition filed against the Foundation, the same is dismissed within ninety (90) days, or (ii) in the case of a petition filed by the Foundation, The Foundation is the subject of a reorganization but continues performing its obligations with respect to the Premises under this Lease; (c) the appointment of a trustee or receiver to take possession of substantially all of the Foundation's assets located at the Premises or of the Foundation's interest in this Lease, where possession is not restored to the Foundation within forty-five (45) days; or (d) the attachment, execution or other judicial seizure of substantially all of the Foundation's assets located at the Premises or of the Foundation's interest in this Lease, where such seizure is not discharged within forty-five (45) days.

38.03 Remedies. If a Foundation Default shall occur, Town, at any time after the periods set forth in Section 15.02(A), 15.02(B), and 15.02(C), and provided the Foundation has failed to cure such Foundation Default within such applicable period, may exercise any and all remedies available at law or equity. If a Foundation Default shall occur, then the Town, shall have the following rights and remedies which are cumulative and without waiver of the Town's other remedies:

(A) to restrain, by injunction, the commission of or attempt or threatened commission of a Foundation Default and to obtain a decree specifically compelling performance of any such term or provision of the Lease; and

(B) to terminate this Lease or Foundation's right of possession and terminate any and all obligations that the Town may have under this Lease, in which event the Town shall be released and relieved from any and all liability under this Lease. If this Lease is terminated as set forth in this subsection (B), the Town shall have the right to exercise any of the following actions: (i) take possession of the Premises by any lawful means and re-enter and re-take possession of the Premises for the account of the Foundation and the Town shall be entitled to recover any reasonable costs and expenses incurred in recovering possession of the Premises, (ii) re-enter and re-take possession of the Premises for the account of Town, thereby terminating any further liability under this Lease on the part of the Foundation and Town. Notwithstanding the foregoing, Town shall have a cause of action to recover sums due and remaining unpaid as of the date of termination when Town retakes possession of the Premises for the account of Town; and (iii) except as expressly set forth otherwise in this Lease, pursue any other remedy now or hereinafter available to Town under the laws of the State of Florida.

For the avoidance of doubt, Town shall have the right to bring an action for its damages upon the occurrence of a Foundation Default (beyond the expiration of applicable notice and cure periods) and Town reserves all rights which laws of the State of Florida confer upon a landlord against the Foundation in default. Taking into account the specialized nature of the Foundation's use and the terms of the Capital Grant Agreement, the Town shall endeavor to use commercially reasonable efforts to mitigate its damages following a Foundation Default.

Notwithstanding anything to the contrary in this section, prior to exercising any remedies, specifically include termination of this Lease or termination of Foundation's right of possession,

the Foundation and the Town shall work together in good faith to resolve the dispute to pursue the objective that the Little Red Schoolhouse remains open and operational to serve the public.

38.04 Surrender of Premises. The Foundation expressly agrees that it shall immediately surrender the Premises to Town in the condition required under this Lease upon expiration or termination of this Lease, and in addition thereto, the Foundation shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of the Foundation not removed by the Foundation shall, at the option of Town, become the property of Town, or alternatively, may be disposed of by Town at the Foundation's expense. In the event the Foundation shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, the Foundation shall be liable to Town for any and all actual damages, but not consequential or special damages.

38.05 Waiver of Landlord's Lien. Town waives any contractual, statutory, or other landlord's lien (other than judgment liens) on any trade fixtures, furniture, equipment, and other personal property installed in or located on the Premises by Foundation.

### **ARTICLE 39 - ASSIGNMENT, TRANSFER AND SUBLETTING**

39.01 Consent Required. Foundation may not assign this Lease or sublease the Premises without the prior written consent of the Town which consent the Town may withhold in its sole and absolute discretion. Notwithstanding the foregoing, following the Commencement Date, the Town Council shall reasonably consider any request by the Foundation to approve an assignment to a successor organization or a charitable organization with the same or similar charitable purpose as the Foundation. Provided that Foundation obtains any required permits and approvals, temporary licenses to vendors during events shall not be deemed a sublease of the Premises.

### **ARTICLE 40 - INDEMNIFICATION**

The Foundation shall indemnify, defend, and save harmless the Town and the Town Representatives from and against any and all loss, damage, claim, demand, liability, and expense (including reasonable and documented attorneys' fees at trial and all appellate levels) resulting from claims by third parties and based on any acts or omissions (specifically including negligence of any Foundation Party and the Foundation's failure to comply with this Lease), of the Foundation Parties in connection with the use or occupancy of the Premises by the Foundation Parties; provided, however, the Foundation shall not be responsible for any loss, damage, claim, demand, liability, or expense to the extent attributable to the gross negligence or willful misconduct of the Town or any Town Representative, although the simple negligence of Town and the Town Representatives shall be included in the foregoing indemnity. The Foundation shall have the right to assume the defense of any claim covered by this indemnity on behalf of both itself and the Town and Town Representatives, provided that the attorneys selected by the Foundation to handle the defense are reasonably satisfactory to Town and the representation will not result in a conflict of interest for the attorneys. Further, the Foundation may not settle any claim covered by this Article without the prior written consent of Town. This Article shall not be construed to restrict, limit, or modify the Foundation's insurance obligations under this Lease. The obligations arising under this Article shall survive the expiration or sooner termination of this Lease. The foregoing indemnity includes, without limitation, any claim, suit, demand or proceeding brought by a third party against

the Town and any Town Representatives as a governmental entity, even if such claim, suit, demand or proceeding would not be applicable to the Foundation as a private entity.

#### **ARTICLE 41 - SIGNAGE**

The Foundation may install and operate upon the Premises, at the Foundation's sole cost and expense, exterior signs consistent with the approved signage plan for the Park or as otherwise approved by the Town from time to time.

#### **ARTICLE 42 - LAWS, REGULATIONS AND PERMITS**

42.01 General. The Foundation agrees that throughout the Term of this Lease, the Foundation shall at all times be and shall remain in full and complete compliance with all Requirements, as now or hereafter amended. The Foundation shall not use or reasonably permit the use of the Premises for any illegal purpose.

42.02 Permits and Licenses Generally. The Foundation agrees that it shall, at its sole cost and expense, be responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Lease by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by the Foundation, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, the Foundation's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of Town, the Foundation shall provide to Town copies of any and all permits and licenses which Town may request.

42.03 Safety Regulation. The Foundation agrees that it shall conduct its operations and activities under this Lease in compliance with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all the Foundation Parties.

42.04 Environmental and Natural Resource Laws, Regulations and Permits.

(A) Violation of any part of the foregoing provisions or disposal by the Foundation of any hazardous substances in violation of the provisions of this Section 19.04 shall be deemed to be a Foundation Default under this Lease. As between Town and the Foundation, the Foundation hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of hazardous substances in violation of the Requirements on or from the Premises by the Foundation on and after the Commencement Date, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon the Foundation pursuant to the terms of this Lease. All such remedies of Town with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

(B) The Foundation agrees to protect, defend, reimburse, indemnify and hold the Town Representatives harmless from and against any and all loss, damage, claim, demand, liability and expense (including reasonable and documented attorneys' fees at trial and all appellate

levels) arising from, resulting out of or in any way caused by or connected to the improper use, handling, storage, and/or disposal of hazardous substances in violation of the Requirements on or from the Premises by the Foundation on and after the Commencement Date, but excluding to the extent caused by the entry upon the Premises and affirmative acts of the Town or Town Representatives, whether prior to or after the date of this Lease. The parties acknowledge and agree that the foregoing indemnification is in addition to, and a supplement of, the Foundation's indemnification agreement set forth in ARTICLE 17. The obligations arising under this Section 19.04 shall survive the expiration or earlier termination of this Lease.

#### **ARTICLE 43 - AMERICANS WITH DISABILITIES ACT**

Following the Commencement Date, the Foundation and the Premises shall comply with the applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act of 1973 and any similar or successor laws, ordinances, rules, regulations and orders, including, but not limited to 28 CFR Part 36, 49 CFR Parts 27 and 37, and shall cooperate in a commercial and reasonable standard with Town to ensure the Foundation remains in compliance with such requirements throughout the Term of this Lease.

#### **ARTICLE 44 - DISCLAIMER OF LIABILITY**

THE FOUNDATION HEREBY DISCLAIMS, AND HEREBY RELEASES THE TOWN REPRESENTATIVES FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY THE FOUNDATION PARTIES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF FOR LOSS, DAMAGE OR INJURY TO THE RENOVATION IMPROVEMENTS OR PERSONAL PROPERTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS AND TO THE EXTENT SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A TOWN REPRESENTATIVE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES.

#### **ARTICLE 45 – TOWN NOT LIABLE**

The Town shall not be responsible or liable to the Foundation for any claims for compensation or any losses, damages or injury whatsoever sustained by the Foundation resulting from failure of any of the following: (a) water supply, heat, air conditioning, electrical current, or sewerage or drainage facility unless caused by the gross negligence or willful misconduct of Town; or (b) caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any other cause, whether beyond or within the control of Town.

#### **ARTICLE 46 - MISCELLANEOUS**

46.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or

remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

46.02     Independent Contractor. The Foundation or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Town shall in no way be responsible therefor.

46.03     Governmental Authority. Nothing in this Lease shall be construed to waive or limit Town's governmental authority as a political subdivision of the State of Florida to regulate the Foundation or its operations. The Town's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor to alter or impair Town's governmental functions, including, but not limited to, Town's right to lawfully exercise its regulatory authority over the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of Town's governmental authority.

46.04     Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

46.05     Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

46.06     Venue; Jurisdiction; Waiver of Jury Trial. Exclusive venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida. Each of the parties knowingly and voluntarily waives the right to trial by jury in connection with any claim or controversy arising under this Lease or otherwise arising between them.

46.07     Notices. All notices 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 overnight mail, or alternatively shall be delivered by the United States Postal Service, Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, 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 hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Town:	Town of Palm Beach, Florida
	360 South County Road
	Palm Beach, FL 33480
	Attn: Town Manager

The Foundation:                      Preservation Foundation of Palm Beach, Inc.  
311 Peruvian Avenue  
Palm Beach, FL 33480  
Attn: President and CEO

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

46.08      Section Headings. The heading of the various articles and sections of this Lease 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 Lease or any part or parts of this Lease.

46.09      Recording. Neither this Lease nor any memorandum or short form hereof may be recorded. The parties acknowledge that this Lease shall be a public record.

46.10      Binding Effect The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

46.11      Approvals by the Town. All requests for action or approvals by the Town will be sent to the Town Manager for decision as to who within the Town, including Town Council of the Town of Palm Beach, must act or approve the matter on behalf of the Town.

46.12      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 Lease. 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.

46.13      Broker. Each of the Town and the Foundation represent and warrant that they have not dealt or communicated with any real estate broker in entering this Lease, and indemnify and save the other harmless from any claims for a commission from any real estate broker based on such party's dealings with such broker.

46.14      Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, the Foundation 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.

46.15      Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, the Foundation certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba

or Syria. If Town determines, using credible information available to the public, that a false certification has been submitted by the Foundation, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

46.16 Annual Appropriation. Nothing in this Lease shall obligate Town during any fiscal year to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Town's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations. This Section 23.16 shall not act or be construed as a waiver of any rights the Foundation may have to pursue its remedies at law or in equity, include, without limitation, any claim the Foundation may have for breach of contract.

46.17 Entirety of Agreement. The parties agree that this Lease 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 conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto. The parties may amend this Lease only by a written agreement signed and delivered by the parties.

46.18 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

46.19 Incorporation by References. All exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference.

46.20 No Third-Party Beneficiaries. 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 Town and/or the Foundation.

46.21 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, floods, extreme weather (such as tropical storms or hurricanes), casualty, acts of terrorism, war or other emergency, pandemics, epidemics, restraint by court or other public authority, litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading to its execution and/or approval, inability to obtain labor or materials, or moratoriums (an "Event(s) of Force Majeure"). Where there is an Event of Force Majeure the party prevented from or delayed in performing its obligations under this Lease must promptly notify the other party giving full particulars of the Event of Force Majeure and that party must use its reasonable efforts to mitigate the effect of the Event of Force Majeure upon its or their performance and fulfillment its or their obligations under the Lease. Upon conclusion of the Event of Force Majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An Event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner.



46.22     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 the Palm Beach County public health department.

46.23     Public Records.

(A)       The Foundation acknowledges that Town is required to comply with applicable laws relating to public records, including Chapter 119, Florida Statutes, (“Public Records Law”) and that records submitted by the Foundation to Town or by Town to the Foundation pursuant to this Lease may be subject to public disclosure. The Foundation shall comply with all applicable provisions of the Public Records Law. The Foundation shall separately submit and prominently identify any records submitted by the Foundation that the Foundation believes to be exempt or prohibited from disclosure under the Public Records Law (“Exempt Records”) including the specific statutory authorization for exemption. Simultaneously with the submission of identified Exempt Records, the Foundation shall submit a sworn affidavit from a person with knowledge attesting that the specified records constitute Exempt Records under the Public Records Law and stating the factual basis for the attestation. In the event a third party submits a request to Town for the release of records that the Foundation has identified as Exempt Records, Town shall promptly notify the Foundation in writing that it has received the request and state whether Town intends to release such records, but Town shall not release such records unless ordered to do so by a court of competent jurisdiction or authorized to do so in writing by the Foundation. The Foundation shall have the right and obligation to assume the defense of any claim arising in connection with these provisions using the services of attorneys selected by the Foundation that are reasonably satisfactory to the Town and whose representation will not create a conflict of interest for the attorneys. The Foundation shall protect, defend, reimburse, indemnify and hold the Town and Town Representatives harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines, penalties, judgments, and damages (including reasonable attorney fees, court costs, and litigation expenses at trial and appellate levels) relating to the non-disclosure of any Exempt Records in response to a records request by a third party. The obligations arising herein shall survive the expiration or sooner termination of this Lease.

(B)       To the extent the Foundation is determined to be acting on behalf of Town as stated in Section 119.0701, Florida Statutes, the Foundation shall:

(1)       Keep and maintain public records required were Town performing the services under this Lease;

(2)       Upon request from Town, provide Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3)       Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of the Lease and following completion of the Lease if the records are not transferred to Town; and

(4) Upon completion of the Lease, transfer to Town, at no cost, all public records in possession of the Foundation or keep and maintain public records required by Town to perform the service. If the Foundation transfers all public records to Town, upon the completion of the Lease, The Foundation shall destroy any duplicate public records that are exempt or confidential and exempt. If the Foundation keeps and maintains public records upon completion of the Lease, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town upon request in a format that is compatible with the information technology systems of Town.

A request for public records regarding this Lease must be made directly to Town, who will be responsible for responding to any such public records requests. the Foundation will provide any requested records to Town to enable Town to respond to the public records request.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FOUNDATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE TOWN OF PALM BEACH TOWN CLERK.

46.24 Quiet Enjoyment. Town covenants and agrees that so long as no Foundation Default shall exist, the Foundation may peaceably and quietly hold and enjoy the Premises for the Term of this Lease without hindrance or interruption by Town. During the Term of this Lease, the Foundation shall be entitled to exclusive possession of the Premises and the Town shall not grant any other rights to use the Premises, including, without limitation, any easements, licenses or other occupancy rights.

46.25 Non-discrimination. In accordance with Requirements, the parties shall not discriminate against any person, group of persons or entity on the basis of race, gender, religion, national or ethnic origin, age or disability.

46.26 Survival. Notwithstanding any early termination of this Lease, the Foundation and Town shall remain obligated hereunder to perform any financial obligation imposed thereon arising on or prior to the date of such termination that remains unsatisfied as of the effective date of termination.

46.27 Irrevocable Waiver of Certain Rights. To induce Town to enter into this Lease:

(A) The Foundation agrees and is forever estopped from asserting to the contrary that: (i) this Lease is a single lease pursuant to which the collective Premises are demised as a whole to the Foundation, and (ii) except as specifically permitted under the terms of this Lease, this Lease is a unitary, indivisible, unseverable instrument pertaining to all but not less than all of the Premises;

(B) The Foundation agrees and is forever estopped from asserting to the contrary that this Lease does not in any manner make the Foundation the partner, joint venturer or agent of Town;

(C) The Foundation agrees and is forever estopped from asserting to the contrary that if, notwithstanding the provisions of this Section, this Lease were to be determined or found to be in any proceeding, action or arbitration under state or federal bankruptcy,

insolvency, debtor-relief or other applicable laws to constitute multiple leases demising multiple properties, that such multiple leases could not, by the debtor, trustee, or any other party, be selectively or individually assumed or rejected; and

(D) The Foundation forever knowingly waives and relinquishes any and all rights under or benefits of the provisions of the United States Bankruptcy Code Section 365 (11 U.S.C. § 365), or any successor or replacement thereof or any analogous state law, to selectively or individually assume or reject the multiple leases comprising this Lease following a determination or finding in the nature of that described in the foregoing Subsection (C).

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

[SIGNATURE PAGE OF GROUND LEASE]

The parties have executed this Lease as of the dates set forth below their respective signatures.

**THE TOWN OF PALM BEACH**, a political  
subdivision of the State of Florida

By: \_\_\_\_\_

By: \_\_\_\_\_

Date:\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Town Clerk

APPROVED AS TO FORM AND SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE TOWN OF  
PALM BEACH ONLY:

By: \_\_\_\_\_

Town Attorney

[SIGNATURE PAGE OF GROUND LEASE]

The Preservation Foundation of Palm Beach,  
Inc., a Florida not for profit corporation

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

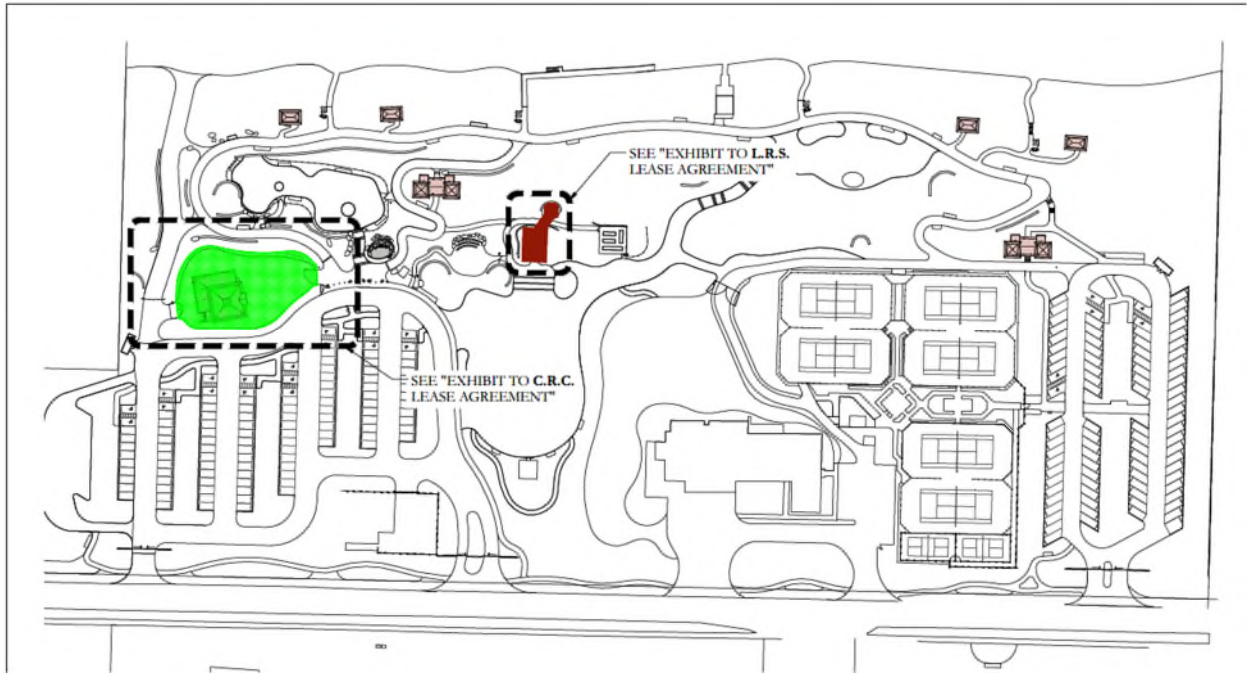
Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A"

### LOCATION OF THE LITTLE RED SCHOOLHOUSE IN THE PARK

(Referred to in this Exhibit as "L/R.S.")



The above plan is intended to show the general location of the Little Red Schoolhouse, subject to adjustment based on the location of the actual initial improvements once completed.

[Continued on next page]

LOCATION OF THE LITTLE RED SCHOOLHOUSE, OUTDOOR CLASSROOM,  
AND SCHOOLYARD GARDEN

[AS-BUILT DIMENSIONS SUBJECT TO CHANGE]

[AS SET FORTH IN THE LITTLE RED SCHOOLHOUSE LEASE THE OUTDOOR  
CLASSROOM AND SCHOOLYARD GARDEN IS NOT PART OF THE PREMISES]

