

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

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| 1. Incorporation of Recitals..... | 4 |
| 2. Renovation Grant and Town Contribution..... | 4 |
| 3. Design Phase..... | 4 |
| 4. Direct Purchase Items. | 5 |
| 5. Construction Phase; Approved Budget..... | 6 |
| 6. Contingencies to Performance..... | 12 |
| 7. Funding Process..... | 13 |
| 8. Separate Accounting..... | 14 |
| 9. Coastal Restoration Center. | 15 |
| 10. Recognition of the Foundation and its Donors..... | 15 |
| 11. Media Communications | 16 |
| 12. Events and Outdoor Classroom Activities..... | 16 |
| 13. Allocation of Park Maintenance Services..... | 17 |
| 14. Repair and Replacement of Renovation Improvements..... | 20 |
| 15. Insurance..... | 21 |
| 16. Indemnification and Insurance..... | 23 |
| 17. Compliance with Laws | 23 |
| 18. Future Redevelopment | 23 |
| 19. Amendments | 24 |
| 20. Counterparts..... | 24 |
| 21. Sovereign Rights..... | 24 |
| 22. Independent Contractor..... | 25 |
| 23. Assignment; Successors and Assigns | 25 |
| 24. Governing Law; Jurisdiction; Waiver of Jury Trial..... | 25 |
| 25. Notices | 25 |
| 26. Construction..... | 26 |
| 27. Severability | 26 |
| 28. Public Entity Crimes | 26 |
| 29. Scrutinized Companies | 26 |
| 30. Annual Appropriation | 26 |
| 31. Public Records. | 27 |
| 32. Exhibits and Riders..... | 28 |
| 33. Entire Agreement..... | 29 |
| 34. Notice and Cure Period..... | 29 |

INDEX

| | | | |
|---|------------|--|------------|
| Agreement..... | 1 | Lease..... | 2 |
| Approvals..... | 12 | Little Red Schoolhouse..... | 2 |
| Bid Documents..... | 7 | Little Red Schoolhouse Lease..... | 1 |
| Capital Grant Agreement..... | 2 | Major Improvement..... | 5 |
| Charges..... | 8, 7 | Master Plan..... | 1 |
| Charter Documents..... | 2 | Naming Rights Resolution..... | 2 |
| Civil Engineering Drawings..... | 5 | Naming Rights Term..... | 16 |
| CMAR..... | 5 | notices..... | 25, 19, 17 |
| CMAR Accounts and Records..... | 13 | OFCI..... | 7, 10 |
| CMAR Agreement..... | 7 | Original Little Red Schoolhouse Lease..... | 2 |
| Coastal Restoration Center..... | 2 | Outdoor Classroom..... | 2 |
| Coastal Restoration Center Nursery..... | 2 | Owner..... | 3, 4, 39 |
| Coastal Restoration Center Site..... | 2 | Park..... | 1, 2 |
| Commencement Date..... | 3 | Park Endowment..... | 3 |
| Comparable Park..... | 20 | Parking Constraints..... | 3 |
| Complete..... | 8 | Permitted Uses..... | 3 |
| Construction Drawings..... | 4 | Phipps Ocean Park Account..... | 14 |
| Construction Manager..... | 3 | Plans and Specs for Major Improvements..... | 6, 5 |
| Construction Team..... | 4 | Playground..... | 2 |
| Contract Grow Items..... | 6 | Playground Equipment..... | 5 |
| Deed Restrictions..... | 3, 2 | Playground Storage and Installation Phase..... | 6 |
| Draw Requests..... | 13 | Premises..... | 2, 3 |
| Effective Date..... | 1, 3 | Prepaid Grant Amount..... | 12 |
| Event(s) of Force Majeure..... | 21, 19 | Project..... | 1 |
| Excess Landscaping Materials..... | 3 | Project Architect..... | 4 |
| Exempt Records..... | 27, 21, 20 | Project Engineer..... | 5 |
| FEMA..... | 21 | Project Schedule..... | 8 |
| Final Construction Documents..... | 5 | Public Records Law..... | 27, 21, 20 |
| Final Landscape Drawings..... | 6 | Public Service Areas..... | 1 |
| Fiscal Year..... | 14 | PZ&B..... | 26 |
| Foundation..... | 1, 2 | Renovation Grant..... | 2 |
| Foundation Default..... | 13, 12 | Renovation Improvements..... | 1, 2 |
| Foundation Improvements..... | 3 | Requirements..... | 5 |
| Foundation Landscaping Contact..... | 19 | RFI's..... | 6 |
| Foundation Parties..... | 3 | Schoolhouse..... | 1 |
| Foundation Representative..... | 9 | Schoolyard Garden..... | 2 |
| GMP..... | 5 | Signage Plan..... | 15 |
| GMP Approval Date..... | 8 | Site Utilities..... | 5 |
| Grant Agreement..... | 4 | Sovereign..... | 24 |
| Hard and soft costs..... | 4 | sq. ft..... | 1 |
| Iguana Control..... | 20 | Taking..... | 12, 11 |
| Interior Improvements..... | 5 | Taxes..... | 4 |
| Landmarks..... | 1 | Term..... | 3 |
| Landscape Architect..... | 4 | Town..... | 1, 2 |
| Landscape Drawings..... | 4 | Town Contribution..... | 3 |
| Landscape Maintenance Contract..... | 18 | Town Representatives..... | 10, 9 |
| Landscaping Maintenance Contractor..... | 18 | Work..... | 53 |

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 described in Exhibit A attached hereto and made a part hereof (the “Renovation Improvements”) 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. The Landmarks Preservation Commission of the Town of Palm Beach (“Landmarks”) approved Certificate of Appropriateness (COA-22-037) for the Park at its November 16, 2022 meeting, and approved site modifications (including the addition of pickleball courts and the reconstruction of an existing lifeguard station) at its March 22, 2023 meeting. The Town Council approved COA-22-037 under ZON-22-107 at its December 13, 2022 meeting, approved site modifications (which including adding pickleball courts and the reconstruction of the lifeguard station) at its April 3, 2023 meeting, and approved site plan modifications under Resolution No. 003-2024 at its January 9, 2024 meeting, the date when the tolling period for the Project commenced, subject to extension for any state of emergency declared by the Governor of the State of Florida and the required statutory notification pursuant to Florida Statute 252.363 duly submitted by the Foundation.

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 the approximate amount in the amount of \$26,465,000.00 included in the Preliminary Budget attached as Exhibit I and subject to the Foundation’s final approval under the terms of this Agreement (the “Renovation Grant”) for the construction and installation of the Renovation Improvements in the locations depicted in the Master Plan. The Renovation Grant will be adjusted, to the extent required by the mutually approved GMP (as hereafter defined) and the costs of the Project Engineer (as hereafter defined) under the procedures and requirements for Foundation consent as described herein. This Agreement provides, in addition, for the Foundation’s direct payment for the procurement of the Playground as hereafter provided. Subject to the terms of this Agreement including Exhibit C, 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-foot 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.

2. To the extent that the Coastal Restoration Center Nursery has additional landscaping materials not required by the Park (“Excess Landscaping Materials”), the Foundation may donate some of the Excess Landscaping Materials (in such amount as 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. The Town has agreed to make a contribution to the cost of the Renovation Improvements in the amount of Two Million and No/100 Dollars (\$2,000,000.00) (“Town Contribution”). Further, the Town is responsible for payment for any improvements to the Public Service Areas and for the services of the Project Engineer for the Public Service Areas. Subject to the foregoing payment obligations of the Town, 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 Project. Accordingly, the Town shall not accept donations or grants from other parties for the cost of redeveloping the Project. 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, nor shall the Town make changes to the Renovation Improvements without the Foundation’s written consent. This Agreement provides that (i) the Town is solely responsible for the costs of the Public Service Areas, and (ii) includes specific requirements for the Foundation’s written consent to changes in the scope and costs of the Renovation Improvements.

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 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 as described in *Exhibit D* (the "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 as its initial contribution to the Park Endowment and other costs and expenses of the Project, in its discretion. Accordingly, and subject to the final approved GMP, 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 Foundation shall pay the cost of such services except to the extent rendered for the Public Service Areas under the terms of a not to exceed contract amount in an amount agreed upon by the Foundation in writing (with respect to the Renovation Improvements) and by the Town in writing (with respect to the Public Service Areas.).

D. The parties have agreed upon (i) final Landscape Drawings, Construction Drawings and the Civil Engineering Drawings (the “Final Construction Documents”) and will continue to work toward (ii) a GMP, and (iii) the final Approvals for the Renovation Improvements. 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 payment obligations for the Project Engineer and Burkhardt Construction as the Construction Manager at Risk (“CMAR”) are specifically limited to the Foundation’s payment obligations set forth in this Agreement. For the avoidance of doubt, the Town, not the Foundation, shall be responsible for the supervision and performance of the Project Engineer and the CMAR. The Project Engineer shall also serve as the Town’s owner’s representative during the performance of the Renovation Improvements. A description of the Final Construction Documents is set forth in Exhibit K attached hereto and made a part hereof.

4. Direct Purchase Items.

A. 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 in effect as of the date the Playground Equipment is purchased, and (ii) the Playground Equipment will be certified to meet the ASTM Technical Standards for public use playground equipment and to the extent required by applicable legal requirements.

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

(2) The Foundation timely has elected to cause the CMAR to accomplish the Playground Storage and Installation Phase (as hereafter defined) for the Playground Equipment and therefore will be included in the GMP. 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.

(3) 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.

B. The proposed GMP and the CMAR Agreement contemplate that the Foundation will contract directly with one or more nurseries selected by the Foundation to grow some of the landscaping for the Project (“Contract Grow Items”). The CMAR shall be responsible for the pick-up, storage, and installation of the Contract Grow Items. The Foundation shall assign the contracts with the nurseries to the CMAR and the CMAR’s warranty under the CMAR Agreement shall apply to the Contract Grow Items. The GMP shall include the cost of maintenance of the Contract Grow Items for the first year following installation to be performed by the subcontractor that provided the installation services. The parties shall coordinate the timing of the pickup and installation of the Contract Grow Items based on the Project Schedule.

5. Construction Phase; Approved Budget.

A. The Town, after issuing a request for qualification, has entered into a Pre-Construction Services Agreement with the 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. The GMP relative to the Renovation Improvements shall not exceed the Renovation Grant (less the Town Contribution), unless the Foundation approves such increased costs in writing in advance. The Town and the Foundation will work 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 together with the Final Landscape Drawings referred to as the “Bid Documents”. The Bid Documents will include, without limitation, requirements for submittal of the timetable for performance of the Approved Renovation Improvements (defined below). 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 or increase the cost of the GMP relative to the Renovation Improvements, shall be subject to the Foundation’s consent and approval rights.

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 will not be 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 application of the contingency and any costs above the GMP for the Renovation Improvements included in the GMP not requested by the Foundation as part of changes to the Bid Documents and approved by the Town, shall be subject to the Foundation’s written approval to pay such costs. For the avoidance of doubt, the Foundation’s written agreement shall be required for the application of the contingency and costs exceeding the approved GMP whether due to a change in the Renovation Improvements, field changes, costs due to existing conditions, or otherwise.

C. The CMAR will furnish the GMP and supporting documentation to the Foundation and the Town for the Foundation and Town’s review and approval. 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. Changes in the Foundation’s obligations under the GMP, including changes to the Project Engineer’s scope for the Renovation Improvements, shall be subject to the Foundation’s prior written consent. If the Foundation does not approve the GMP, it may terminate this Agreement upon written notice to the Town or, at its election, reject the GMP and timely explore other options with the Town including the consideration of any required amendment to this Agreement.

D. Subject to (i) the Foundation’s written approval of the GMP and any required adjustment to the amount of the Renovation Grant in connection with the GMP and (ii) the approval of the Town staff of the cost of the Public Service Areas in the GMP, and (iii) each of their approval to the CMAR Agreement (as hereafter defined) the Town Council will include, as an agenda item, consider approval of a construction agreement with the CMAR substantially in the form attached hereto as Exhibit G (the “CMAR Agreement”); such agenda item will be no later than the first scheduled meeting of the Town Council following satisfaction of the foregoing conditions that meets the deadline for inclusion as an agenda item in a Town Council meeting or, if not meeting such deadline, at the next Town Council meeting; for example, the deadline for the January Town Council meeting would be January 3, 2025 and the deadline for the February Town Council meeting would be January 31, 2025. In the event that the Foundation approves the cost of the Renovation Improvements, but the Town does not approve the cost of the Public Service Areas

the Town may eliminate the Public Service Areas from the CMAR Agreement and GMP. In the event that the Town and the Foundation have not approved the GMP and CMAR Agreement on or before the date that is eighteen (18) months following the date of this Agreement then this Agreement shall terminate with respect to obligations accruing from and after such date as further described in Paragraph 5.O. The Foundation has approved the preliminary budget included in Exhibit I, but such preliminary approval remains subject to the Foundation's written agreement to the GMP and the other written approvals and consent set forth in this Agreement. If the GMP is not approved by the Foundation and the Town by the date that is nine (9) months after the Effective Date (the "GMP Approval Date") either party may terminate this Agreement upon written notice to the other party without any further liability under this Agreement accruing from and after the date of such termination. For the avoidance of doubt, the Foundation may also terminate this Agreement upon notice to the Town at any time prior to its receipt of the GMP. In either event, the Town shall promptly return the Prepaid Grant Amount to the Foundation.

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. 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 and make deductive changes or other changes to the Final Construction Documents to resolve any aspects of the Renovation Improvements delaying or preventing final authorization. The Town shall not be obligated to commence the Renovation Improvements until it has received all required permits or, in the alternative, the Foundation's written agreement to deductive changes that eliminate the need for any otherwise required permit.

F. The Town shall use commercially reasonable and diligent efforts to commence and complete the Renovation Improvements in accordance with a project schedule to be provided to the Town and Foundation by the CMAR (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. "Complete" shall mean the date that a Certificate of Occupancy or its equivalent, including a Temporary or Conditional Certificate of Occupancy, a Certificate of Completion or Certificate of Final Inspection, is issued by the Town of Palm Beach concerning the Renovation Improvements. The Town shall cause the CMAR to promptly complete all punch-list items identified by the Town and Foundation and, if a Temporary or Conditional Certificate of Occupancy is issued, diligently pursue receipt of a final and unconditional Certificate of Occupancy. A preliminary schedule of intended milestones is attached as Exhibit H, which is subject to adjustment based on the actual dates; as noted on the schedule, includes target and not guaranteed dates. Previously occurring dates in the schedule may be subject to adjustment based on actually occurring dates.

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 from time-to-time 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 Foundation's 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 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. Town agrees that the Foundation Representative and other designated Foundation representatives from time to time may participate in any third party meetings with the Town and the CMAR, and the Foundation and the Foundation Representative have the right to review change orders and design changes. The Town acknowledges that the Foundation has engaged Jason B. Zubatkin of Zubatkin Owner Representation LLC, a Cumming Group affiliate, as the Foundation Representative in connection with the Project and will cooperate with the Foundation Representative in connection with the Project. Likewise, the Town will engage the Project Engineer to serve both as the owner's representative and Project Engineer and the Foundation will, likewise, cooperate with the Project Engineer in connection with the Project.

I. The Town shall schedule and conduct meetings at the Town's office or in such other location or method as may be agreed to by Town and the Foundation (which meetings may, at Foundation's option, include representatives of the CMAR, Project Engineer, Foundation Representative, and other relevant participants) on no less than a bi-weekly basis or with such other frequency as may be agreed to by the Town and the Foundation to discuss such matters as procedures, progress, proposed change orders, coordination, and scheduling of the Renovation Improvements.

J. The Town shall, or shall cause the CMAR to, prepare an agenda for each such meeting and deliver such agenda items at least two (2) business days in advance of the meeting. The Town shall require the CMAR, after the meeting, to prepare minutes of the meeting and deliver such minutes to the Foundation and the Foundation's representative with reasonable promptness after the meeting. Both meeting agendas and meeting minutes may be distributed by inclusion on a program or website previously identified to each of the Town and Foundation and which is, as of the date of this Agreement, PROCORE. Further, the Town shall cause the CMAR to send a representative, with full authority to act on behalf of and bind the CMAR, to all meetings and conferences relating to any the Renovation Improvements as may be requested from time to time by the Foundation unless otherwise excused by the Foundation. Each of the Town and Foundation shall cause representatives to attend all meetings who shall be authorized to act on behalf of the

Town and the Foundation, respectively, with respect to the Project subject to any required approvals of the Town Manager, the Town Council, and the Foundation's Executive Committee. Any decision, approval or consent of the Town and Foundation, as applicable, must be duly signed and in writing to be binding against the signing party.

K. 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 or that do not increase the costs of the Renovation Grant, 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 any such changes made without the Foundation's consent.

L. 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 to the extent that Foundation requests and the Town consents the Foundation shall be obligated for any incremental additional costs of the GMP for the Renovation Improvements for the change order changing the scope of the Renovation Improvements without contribution by the Town.

M. 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 GMP for 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, the Project Engineer, or any other party providing goods, services or materials to the Town in connection with the Renovation Improvements.

N. 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 Bid Documents and the CMAR Agreement, at no cost to the Foundation.

O. The Foundation may, at its option and convenience, terminate obligations under this Agreement accruing following the date of such termination at any time by written notice thereof to the Town provided, however, that if the Town has executed the CMAR Agreement and the contingences to this Agreement set forth in Paragraph 6 of this Agreement have expired or been waived, the Foundation's obligations shall be as follows: (e.g., the completion, restoration to original condition, or amended scope as hereafter set forth).

(1) If the CMAR has actually commenced any of the eighteen (18) individual Renovation Improvements listed in Exhibit A (each a “Project Component”), such termination shall be subject to one of the following alternatives:

i. The termination may require completion of certain work (the “Completion Work”), which would, once accomplished, allow the Park to be in safe, usable, and serviceable condition without visually apparent indications that work has commenced and then stopped in which case such termination shall be subject to the Completion Work if so timely elected.

ii. The termination may require removal and restoration of certain work (“Restoration and Repair Work”), that is less than the full scope of any Project Component and would, once accomplished, allow the Park to be in safe, usable, and serviceable condition without visually apparent indications that work has commenced and then stopped in which case such termination shall be subject to the Restoration and Repair Work if so timely elected. Restoration and Repair Work may include, without limitation, the reversal of any prior work on the applicable Project Component and the restoration of the Park to the above required condition.

iii. The termination may require a reduced scope for the Renovation Improvements (“Reduced Scope Work”), that is less than the full scope of any Project Component and would, once accomplished, allow the Park to be in safe, usable, and serviceable condition without visually apparent indications that work has commenced and then stopped in which case such termination shall be subject to the Reduced Scope Work if so timely elected.

iv. The Town will obtain a cost estimate from the CMAR for the costs associated with the three forgoing alternatives so that the Foundation can make an informed election among such alternatives.

v. The Renovation Grant shall be deemed to include any costs imposed by the CMAR Agreement (including, for example, in general conditions) and for delays and schedule modifications required by the CMAR Agreement in connection with the foregoing.

(2) In addition to the above obligations, if the Foundation desires to terminate this Agreement after the Town has executed the CMAR Agreement or if the Foundation’s modification of the scope of the Renovation Improvements causes a termination for convenience of the CMAR Agreement, the Foundation would be responsible for the amount due the CMAR under Section 26.1A and 26.1. B of the CMAR Agreement (without waiver of the Foundation’s obligation to pay for the Renovation Improvements completed as of the date of such notice and any subsequent Restoration and Repair or other work required following the date of the Foundation’s written notice of its election.) Under Section 26.1.A of the CMAR Agreement (which would apply to the Foundation under such circumstances) a termination for convenience expressly excludes damages from such optional termination, including, without limiting the generality thereof, loss of anticipated profits on the Renovation Improvements not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. In such event, the Town shall prepare a final accounting, work with the Foundation to resolve any questions about the final accounting, and promptly return to the Foundation any of the Prepaid Grant Amount due

to the Foundation after such final accounting or, if the Prepaid Grant Amount has been duly expended, the Foundation shall make such payment under this Paragraph 5.O. due to the Town under such final accounting of costs and under the terms and conditions of this Agreement.

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 proof of funds in the amount of the estimated Renovation Grant and the cost of the Playground Equipment, which was accepted by the Town.

B. Within five (5) business days following the final approval of the GMP by the Town and the Foundation, 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. At the Foundation's request, the Town shall provide the Foundation with accounting statements showing the balance, interest earned, withdrawals, and any other relevant information with respect to the Prepaid Grant Amount.

C. The final approval of this Agreement by the Town Council after it has been duly executed by the Foundation on or before November 12, 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 to either December 10, 2024 or January 14, 2025.

D. The receipt of all final approvals, permits, and similar authorizations from all governmental authorities necessary to construct the Renovation Improvements (collectively, the "Approvals") by February 28, 2025, without the filing of any appeal thereafter within the applicable appeal period.

E. In the event that (i) the requirements described in Paragraph 6.C and D have not occurred and the Foundation delivers a notice of termination on or before the date that is thirty (30) days after the applicable date stated in such paragraph, or (ii) an appeal is filed that delays the commencement of construction to such an extent that the approved GMP under the CMAR Agreement expires and either party delivers a notice of termination to the other party within thirty (30) days after the date an appeal is filed, then in such event this Agreement shall terminate without any further liability under this Agreement. Upon termination, the Town shall promptly return the Prepaid Grant Amount to the Foundation.

F. The parties acknowledge and agree that their respective rights and obligations under this Agreement are subject to the termination rights set forth in this Paragraph 6. The Town shall not make any payments to the CMAR or the Project Engineer except as set forth below until (i) the conditions to performance set forth in this Paragraph 6 have been satisfied, and (ii) any other conditions to performance set forth in this Agreement have been satisfied or duly waived.

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, due and owing under the CMAR Agreement, on a monthly basis 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, promptly following the Town's receipt, 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 listed on Exhibit E ("Draw Requests"), 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, be afforded access to, and shall be permitted to review and copy the Town's CMAR Accounts and Records. In addition, 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 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 actual costs substantiated in the Draw Requests) 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 except to the extent that cost savings are for the Public Service Areas.

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 as set forth in Paragraph 5.O hereof. Any amounts paid by the Foundation and not otherwise owed under the CMAR Agreement or to the Project Engineer for the Renovation Improvements shall be refunded to the Foundation. In such event, the Town shall prepare a final accounting of costs, work with the Foundation to resolve any questions about the final accounting of costs, and promptly return any unexpended portion of the Prepaid Grant Amount due to the Foundation. In the alternative, if the Prepaid Grant Amount has been duly expended, the Foundation shall make such payment as may be required by such final accounting of costs and under the terms and conditions of this Agreement.

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, taking cost into account, 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.

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 tent layout shown in Exhibit J is approved by the Town and 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, set forth requirements substantially in conformance with the qualifications set forth in Exhibit F and limit the award candidates to those bidder's complying with the RFQ requirements. Notwithstanding the foregoing, however, the Town and the Foundation will reasonably agree upon modifications to the qualifications set forth in Exhibit F in the event that there are not adequate responses to the RFP because of the qualifications set forth in Exhibit F. 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 plants and the requirement of replacement of native plants 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. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction or a third party governmental authority to be invalid, contrary to applicable legal requirements or unenforceable to any extent, any such provision shall be severed from this Agreement and the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

28. 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.

29. 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,

30. 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.

31. 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.

32. 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: State of Florida Special Category Grant Agreement
- (5) Exhibit E: Supporting Documents For Draw Requests

- (6) Exhibit F: RFQ Requirements for Landscape Maintenance Contractor
- (7) Exhibit G: Form of CMAR Agreement
- (8) Exhibit H: Intended Milestones
- (9) Exhibit I: Preliminary Budget
- (10) Exhibit J: Tent Layout
- (11) Exhibit K: Description of Final Construction Documents
- (12) Rider #1: Coastal Restoration Center Lease
- (13) 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.

33. 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.

34. 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: Amanda Skier

Name: Amanda Skier

Title: CEO & President

Date: 11/7/24

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 |
|---|------|------|---|
| Maintenance of Native Plants/lawns/vegetative screening/invasives | | | |
| 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 | |
| oudoor classroom | | x | |
| wildflower garden | | x | |
| invasive animal removal (iguanas) | x | | |
| Maintenance of Pathways | | | |
| Nature/Pedestrian Paths | x | | |
| Sand Paths to Beach | x | | |
| ADA accessible paths | x | | |
| Dunecrest pathways | x | | |
| pathway lighting | x | | |
| Maintenance of Structures/appurtenant (adjoining) land areas/equipment | | | |
| 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 | | |
| | | | |
| | | | |
| Maintenance of Hardscape/semi permeable parking | | | |
| 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 | |
| | | | |
| Other items | | | |
| 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

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**

EXHIBIT E

- Charges to Construction Contingency
- Change Order Report, including potential change orders
- CM's Requisition, including as back-up:
 - Engineer's certificate of payment
 - CM's certificate of payments due
 - Narrative report of construction/progress
 - CM's and Subcontractor's conditional/interim lien waivers (except for last draw)
 - CM's final contractor's affidavit and CM's and Subcontractor's final lien waivers (for last draw)
 - Revised Project Schedule showing all revisions since the date of CM's last Requisition and an explanation for each such revision;
 - Revised Cash Flow Projection
 - Anticipated Cost Report Summary Sheet
 - Summary of all Change Orders approved and/or requested to date
 - Back-up for stored materials
 - Line Item Breakdown, annotated to reflect all Work actually completed to date, together with a calculation of the percentage of completion, together with an itemized statement of Construction Costs incurred by CM for the period involved;
 - Bills of sale or other appropriate documents to establish Owner's title to any stored materials and other items covered by such Requisition;
 - Update of resource allocations chart and explanation of revisions thereto;
 - Full time sheets for Extra Work performed on a time and materials basis
 - Any other reports, documents or information required by Laws, referred to in the Contract Documents, or reasonably requested by Owner
 - Updated insurance COI (when expired) for CM and subs

EXHIBIT F

RFQ REQUIREMENTS FOR LANDSCAPE MAINTENANCE CONTRACTOR

| |
|---|
| REQUIREMENTS |
| Dedicated, consistent team - will be trained by Botanical Curator for specialized care |
| Irrigation expertise |
| ISA Certified Arborist on staff/available |
| Experienced turfgrass management crew for Great Lawn & North parking overflow area - mower, edger, weed-eater |
| Non-gas equipment only |
| Because of hyperspecialized environment/plants requiring specialized care, need at least one fluent English speaker |
| Crew leader with herbicide license; Natural Areas specialty preferred |
| |
| RULES |
| All equipment must be cleaned and sanitized prior to arriving on site, each visit |
| Check in with Botanical Curator prior to working for specific task assignments |
| Any pressure washing is done with water only, no chemicals |
| |
| |
| TASKS |
| Planting |
| Cleanup of fallen plant material |
| Hand weeding as directed |
| Invasive plant treatment [or control, not removal] |
| Pick up big trash from dune and mangrove areas, as needed |
| Handwatering as instructed |
| Net clean the water feature |
| Irrigation maintenance and repair |
| Assist monthly irrigation check |
| Selective hand pruning as directed |

EXHIBIT G
FORM OF CMAR AGREEMENT

CONSTRUCTION MANAGER-AT-RISK CONTRACT

THIS Contract made and entered into this _____ day of _____, 2024, between THE TOWN OF PALM BEACH, a political subdivision of the State of Florida ("Owner"), and XXXXXXXX. ("Construction Manager").

WITNESSETH:

That the said Construction Manager having been awarded the Contract for the:

Site Location
XXXXXXXXXX

PALM BEACH, FLORIDA
RFQ NO. XXXXXX

In accordance with the Request for Qualifications therefore, and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Construction Manager and the Owner, the Construction Manager hereby covenants and agrees to and with the Owner to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete all Work, as defined in Article 1.4.8 below, in accordance with all requirements of the Contract Documents, and in accordance with all applicable codes and governing regulations. The Contract Documents consist of this Contract, the General Conditions GC-1 through and including GC-77, and the following **Attachments** and **Exhibits**:

Attachments:

1. Insurance Requirements and Certificate of Insurance
2. Forms for Performance and Payment Bonds;
3. The Request for Proposal RFQ No. 2015-39;
4. RFQ No. XXXX-XX Proposal
5. Guaranteed Maximum Price Summary Sheet;
6. Plan Log, Project Schedule; and
7. Town of Palm Beach Direct Purchase Program (dated 11-11-2014, 10 pages).

Burkhardt Guarantee Maximum Price "Exhibits":

- A. Direct Construction Costs (8 pages);
- B. General Conditions (3 pages);
- C. Project Management (2 pages);
- D. Exceptions and Clarifications (3 pages);

ARTICLE 1

The Construction Team and Extent of Contract

1.1 The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Contract, and agrees to furnish the Construction Manager's best skill and judgment, and to cooperate with the Design Consultant in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to use Construction Manager's best efforts to perform and complete the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.1.1 Construction Manager understands and agrees that a material inducement for the Owner entering into this Contract, following a competitive award process authorized under Florida law, was Construction Manager's representations about its expertise in the scheduling, sequencing and construction of the Bradley Park Improvements as well as its superior familiarity with the unique local conditions and geography of the Town of Palm Beach, and the project limits. Construction Manager understands that time is of the essence in connection with the performance of the Work set forth in this Contract, and that even a minor breach of its terms may have a substantial, adverse impact upon the Owner, adjacent merchants, and the seasonal nature of Town of Palm Beach's economy, including the lifestyles of its residents and visitors. Accordingly, Construction Manager hereby affirms that the foregoing is true and correct, and that all anticipated costs to achieve the schedule and design intent have been included in the GMP for the Project.

1.2 The Construction Team. The Construction Manager, the Owner, and the Design Consultant (the "Construction Team") will cooperate together through the completion of construction. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction. The Design Consultant will provide leadership to the Construction Team on all matters relating to design. Nothing herein is intended to make the Owner liable for the acts or deeds of the Construction Manager, it being understood that Construction Manager at all times is an independent contractor.

1.3 Extent of Contract. This Contract is complementary to the Specifications, Drawings, and the General Conditions of the Contract, and together represents the entire integrated agreement between the Owner and the Construction Manager, superseding all prior negotiations, representations or agreements, either written or oral. Where this Contract is expressly in conflict with the General Conditions of the Contract, this Contract will prevail. Where this Contract is silent, the General Conditions of the Contract, and the requirements of the Specifications and Drawings and will prevail, in that order. This Contract may be amended only by written instrument signed by the Owner and the Construction Manager.

1.4 Terms used in the Contract shall have the following meanings:

1.4.1 "Owner" means The Town of Palm Beach, Florida, or "Town," and the terms may be used interchangeably;

1.4.2 "Project" means the XXXXXXXXXX, located as noted above;

1.4.3 "Design Consultant" shall mean XXXXXXXXX;

1.4.4 “Contractor” means Construction Manager, and the terms may be used interchangeably;

1.4.5 “Subcontractor” means one who takes a portion of the contract from the construction manager or from another subcontractor;

1.4.6 “Contract Sum” means Guaranteed Maximum Price (“GMP”), and the terms may be used interchangeably;

1.4.7 “Construction Team” means Owner, Design Consultant and Construction Manager; and

1.4.8 “Work” means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, services, fees, expertise and incidentals provided or to be provided by the Construction Manager to fulfill the Construction Manager’s obligations.

ARTICLE 2

Construction Phase

2.0 Unless otherwise authorized by the Owner, in writing, all Work shall be performed under Contracts with the Construction Manager. THE CONSTRUCTION MANAGER SHALL, WITHOUT LIMITATION:

1. Administer the Construction Phase as provided herein and in the General Conditions of the Contract.
2. Commence actual construction of the Work on **XXXXXXX**, and the acquisition of materials, subcontractor and supplier commitments within ten (10) days after receipt of a written Notice to Proceed from the Owner;
3. Maintain exclusively for this Project a competent staff at the Project site and/or its West Palm Beach, FL main office to coordinate and direct the Work and progress of the Sub-Contractors on the Project; provided however, that one or more of Construction Manager’s project team shall be at the jobsite at all times when work is being performed by its subcontractors or others for whom Construction Manager is directly or vicariously responsible under this Contract. The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the Subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in **Exhibit “C”** to this Contract. Construction Manager shall not change any of those persons agreed to by Owner for the positions set forth in **Exhibit “C”** unless mutually agreed to by the Owner and Construction Manager, in writing. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. All of the Construction Manager’s on-site management and supervisory personnel shall be consistent with the RFQ presentation that preceded the execution of this Contract, and shall not be removed or replaced without the Owner’s written consent. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without entitlement to additional compensation or additional time for the replacement.

a) It is expressly understood and agreed that the amount of \$XXXXXX for the line item personnel set forth in **Exhibit “C”** is a lump sum amount and covers the entire duration of the project, and shall be paid in equal monthly installments, but subject to retainage. It is not subject to audit. To the extent that Construction Manager exceeds said amount, or requires additional personnel to properly and timely discharge its obligations and duties under the Contract, there shall be no entitlement to additional compensation, unless the Contract time is extended due to excusable and compensable changes in the Work or contract duration.

2.1 Establish and maintain a) on-site organization and lines of authority in order to carry out the overall plans of the Construction Team; b) Identify an on-site staff member to represent the Construction Manager, on a daily basis, with authority to negotiate Change Orders and contract modifications with Sub-Contractors that do not create changes in project design or specifications; c) Make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of the Work.

2.2 Establish and maintain a) procedures for coordination among the Owner, Design Consultant, Sub-Contractors and Construction Manager with respect to all aspects of the Work; b) Implement such procedures, incorporate them into a Project resource manual, and distribute manuals to the Construction Team.

2.3 Require of the various Sub-Contractors such Coordination Drawings as may be necessary to properly coordinate the Work among the Sub-Contractors.

2.4 In collaboration with the Design Consultant, establish and implement procedures for tracking and expediting the processing of shop drawings, samples, Requests for Information (“RFI’s”), and other submittals as required by the General Conditions of the Contract.

2.5 Schedule and conduct bi-weekly or more frequent progress meetings with Sub-Contractors to review such matters as job procedures, job safety, construction progress, schedule, shop drawing status and other information as necessary. Construction Manager shall provide prior notice to Owner and Design Consultant of all such meetings, and prepare and distribute minutes. Additionally, Construction Manager shall schedule and attend Team meetings with the Design Consultant and Owner.

2.6 Review the Project schedule with the various Sub-Contractors and review, or expand the level of detail to incorporate specific Sub-Contractor input consistent with the overall completion requirements. Construction Manager shall regularly monitor and update the Project Schedule and various sub-networks as construction progresses; identify potential variances between scheduled and probable completion dates, review schedule for Work not started, or incomplete, and make adjustments in the schedule to meet the scheduled completion date. Construction Manager shall provide summary reports of each monitoring and document all changes in schedule, and prepare regular schedule updates and reporting which shall be included as part of the monthly Project

report.

2.7 Determine the adequacy of the Sub-Contractors' personnel and equipment, and the availability of materials and supplies to meet the schedule. In consultation with the Owner and the Design Consultant, take necessary corrective actions when requirements of a Sub-Contract or a Sub-Contract Schedule are not being met.

2.8 If applicable, whenever Owner-Furnished Contractor-Installed ("OFICI") materials or equipment are shipped to the Project site, the Construction Manager shall notify the Owner and shall be responsible for their inspection and proper storage (unless purchased in connection with **Attachment "7"**), and incorporation into the Work.

2.9 Develop and maintain an effective system of Project cost control which is satisfactory to the Owner. Revise and refine the initially approved Project Construction budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed. Identify variances between actual and budgeted or estimated costs and advise Owner and Design Consultant whenever projected costs exceed budgets or estimates. Cost Control reports shall be included as part of the monthly Project report.

2.10 Maintain a system of accounting satisfactory to Owner and consistent with generally accepted construction accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of the Work or as otherwise requested in writing by the Owner. The Owner, or the Owner's auditors shall have access to all such accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other things relating to this Contract, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

2.11 Develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Design Consultant's responsibilities for, among other things, design, recommend necessary or desirable changes to the Owner and the Design Consultant, review requests for changes and submit recommendations to the Owner and Design Consultant for approval.

2.12 When requested by the Owner or Design Consultant, promptly prepare and submit informal estimates of probable cost for changes proposed in the Work including similar estimates from the Sub-Contractors. If directed by the Owner, promptly secure formal written Change Order Proposals from such Sub-Contractors.

2.13 Be responsible for initiating, maintaining and supervising effective safety programs and require similar programs of the Sub-Contractors. The OSHA guidelines shall serve as the basis for the construction safety program.

2.14 Promptly notify the Owner and, where applicable, the Owner's Risk Manager, in writing, upon receiving notice of filing of any charge of non-compliance from OSHA, or upon receiving notification that a federal or state inspector shall visit or is visiting the Project site.

2.15 At progress meetings with Sub-Contractors, conduct a review of job safety and accident prevention, and prepare minutes of such meetings that will be available to the Owner's Representative on request. The minutes of job safety and accident prevention portion of such progress meetings shall be made available to the Owner's Risk Manager, where applicable, upon

request.

2.16 Designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager and Sub-Contractors involved in the Work, in addition to any other responsibilities assigned to such staff member.

2.17 Make provisions for Project security acceptable to the Owner, to protect the Project site and materials stored off-site, or on-site, against theft, vandalism, fire and accidents, damage, or injury to person(s) or property, etc., as required by job and location conditions.

2.18 Record the progress of the Project. Submit written monthly progress reports to the Owner and the Engineer including information on the Sub-Contractors' Work, the percentage of completion, current estimating, computerized updated monthly Bar Chart scheduling and Project accounting reports, including Estimated Time to Completion and Estimated Cost to Complete. Keep a daily log available to the Owner and the Design Consultant. Report and record such additional information related to construction as may be requested by the Owner.

2.19 The Construction Manager shall be responsible for the removal, encapsulation, transportation and disposal of any hazardous material, including, without limitation, lead-based paint, and any asbestos or asbestos-related products as may be required in connection with the Work. Hazardous material, described by federal guidelines brought by the Construction Manager or the Sub-Contractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the documents, or which was not discovered or should have been discovered during performance of the Pre-Con Agreement, shall be considered a concealed condition and may become the responsibility of the Construction Manager in a Change Order increasing the Guaranteed Maximum Price for any additional costs incurred in connection therewith. Such Change Order shall be submitted in as timely a manner as is reasonably possible after discovery of the concealed condition, as more particularly set forth in the General Conditions.

ARTICLE 3

Additional Services

3.1 Upon the mutual agreement of the Owner and the Construction Manager, and upon written authorization from the Owner, the Construction Manager may provide additional services that are beyond the scope of the Basic Services described in Article 2 herein. The Construction Manager shall be compensated for such additional services by Change Order to be negotiated by the Owner and the Construction Manager at the time of the additional service request, as set forth in the General Conditions.

ARTICLE 4

Owner's Responsibilities

4.1 The Owner will designate a representative to act in its behalf. This representative, or his/her designee will receive progress reports of the Work from the Construction Manager, serve as liaison with the Construction Manager and the Design Consultant, receive and process communications and paperwork, and represent the Owner in the day-to-day conduct of the Project. The Construction Manager will be notified in writing of the representative and of his/her designee or any changes thereto.

ARTICLE 5

Schedule

5.1 The performance of the Work under the Construction Phase of this Contract shall be **substantially completed** by the Construction Manager on or before **XXXXXX** time being of the essence in this Contract, as more particularly set forth in **Attachment “6”** hereto attached and made a part hereof, and receipt of permits, as may be later adjusted by Change Order(s), if any, and subject to adjustment for delays as otherwise provided for in this Contract.

5.2 The Construction Manager agrees to complete the Work in accordance with the agreed upon substantial completion date and final completion date set forth in **Attachment “6.”** The Construction Manager acknowledges that time is of the essence throughout this Contract, and that failure to complete the Project within the time set forth in the approved schedule will result in substantial damages to the Owner that are impossible to precisely ascertain. Upon failure of the Construction Manager to substantially complete the Project within the specified period of time, plus approved time extensions, Construction Manager shall pay to the Owner, as liquidated damages and not as a penalty, the sum of **TBD for project(generally use FDOT scale)** for each calendar day in excess of the established substantial contract completion date, plus approved time extensions. After achieving substantial completion, should Construction Manager fail to complete the remaining Work within the time specified for final completion in **Attachment “6”**, plus approved time extensions, if any, and after providing Construction Manager with seven (7) days advance written notice, Owner shall have the right to complete the work through other means, and the costs therefore shall be set-off against retainage remaining in the contract balances, which, if insufficient, the balance shall be paid to Owner by Construction Manager, or its performance bond Surety.

5.3 Construction Manager shall expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable to the Cost of the Work as part of, and subject to the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided for in the General Conditions.

5.4 The Owner shall have the right to occupy, or use, any portion of the Work prior to completion of the Project. If use or occupancy ahead of schedule affects the cost of the Project or the schedule for the Work, the Construction Manager shall so notify the Owner, in writing, and the use or occupancy will be treated as a Change to the Work in accordance with Article 9, herein.

ARTICLE 6

Guaranteed Maximum Price

6.1 The “Guaranteed Maximum Price” (GMP) includes Cost of the Work required by the Contract Documents as defined in Article 8 herein, and the Construction Manager’s Fixed Fee as defined in Article 7 below. The sum of the Cost of the Work and the Construction Manager’s Fixed Fee is guaranteed by the Construction Manager not to exceed the amount of **XXXXXXX**, which is subject to additions and

deductions by Change Order as provided for in the Contract Documents. Costs which would cause the GMP to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

6.2 The GMP includes those taxes in the cost of the Work that are legally enacted at the time that this Contract is fully executed by the parties hereto.

6.3 All savings within the GMP shall inure to the benefit of the Owner exclusively. An adjusting Change Order shall be issued either when a final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the Owner and the Construction Manager. "Savings" are the net difference obtained by deducting from the GMP (as adjusted by Change Orders, if any), the unexpended portions of the Construction Contingency, and the actual expenditures representing the Cost of the Work, as defined in Article 8, herein, including, without limiting the generality hereof, any units quantified in Exhibit "A" not furnished and installed. Liquidated damages, if any, are not a part of this calculation.

6.4 The GMP includes the sum of **XXXXXXXXXX** as the "Construction Contingency" which may be utilized, upon written approval beforehand by Owner, for the purpose of defraying the expenses due to unforeseen circumstances relating to construction such as, but not necessarily limited to, increases in subcontractor costs due to insolvency, correction of defective work (provided that such defective Work was not caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager), and only to the extent that the costs therefore are not recoverable by Construction Manager from insurance, sureties, Subcontractors or suppliers), overtime ordered by the Owner to improve the schedule but not to make up for lost time due to Construction Manager's delays, field issues/conditions which were not anticipated and which result in documented costs to the Work, Owner Furnished/Contractor Installed ("OFCI") material or OFCI equipment failures, and any other cost agreed to mutually by the parties, in writing. The Contractor shall furnish documentation evidencing expenditures charged to this Contingency prior to the release of funds by the Owner. The necessary documentation, and the sufficiency thereof, required for invading the Construction Contingency fund shall be reasonably determined by the Owner. The Design Consultant shall verify the actual costs, if requested by Owner.

6.5 Without limiting the reasons for Owner denying a request for funding from the Construction Contingency, and by way of illustration only, the Construction Contingency shall not be used for a) design errors or omissions which a prudent Construction Manager should reasonably have detected during its Pre-Con performance; b) Construction Manager/Sub-Contractor mistakes in the fabrication, installation, or erection of the Work; c) liquidated damages; and d) any costs and expenses in the event that this Contract is terminated for cause, as elsewhere provided for herein.

6.6 The GMP shall be reduced by the amount of the Contingency fund, if any, remaining at the time of Final Completion of the Project. Under no circumstances shall Construction Manager's Fixed Fee be increased by the distribution of the Construction Contingency in accordance with this Article 6.

6.7 By execution of this Contract, the Construction Manager certifies that costs supporting the fees specified in this Contract are accurate, complete and current at the time of negotiations; and that any other costs that may be furnished the Owner in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Contract, and any additional fees that may be authorized in the future, shall be adjusted to exclude any material sums by which the Owner, in its sole discretion, determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

ARTICLE 7

Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services, as set forth below:

7.1.1 Pre-construction services, for a total amount of ~~XXXXXXXX~~, were completed prior to this agreement within a different contract; therefore, it is excluded from the GMP.

7.1.2 In consideration of the performance of the Work arising out of and in connection with this Contract, Owner agrees to pay the Construction Manager, as total compensation for its labor materials, equipment, management, and services, a Construction Manager at Risk fee ("CMAR") in the amount of ~~XXXXXXXX~~, to be paid monthly on a percentage of completion basis, and subject to the retainage provisions set forth in the General Conditions. The CMAR includes Construction Manager's overhead, profit, and the items enumerated in Article 7.2 through and including 7.2.9 below.

Overhead, profit and bond allowance for compensable Change Orders not funded from the Construction Contingency: Subcontractor overhead and profit not to exceed 10%; Construction Manager overhead and profit not to exceed 10%.

7.1.2.1 As required by Section 255.073, F.S., within ten (10) days from receipt of payment from the Owner, the Construction Manager shall pay each Sub-Contractor out of the amount paid to the Construction Manager on account of such Sub-Contractor's Work, the amount to which said subcontractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Sub-Contractor's Work. The Construction Manager shall, by appropriate agreement with each Sub-Contractor, require each Sub-Contractor to make payments to their Sub-subcontractors in a similar manner, pursuant to the above Florida statute. Make payments to its Subcontractors in a similar manner, as set forth in the above-cited Florida statute.

7.1.3 Pay requests for the Construction Phase shall be documented in accordance with the General Conditions.

7.1.4 Except for the costs enumerated in **Exhibit "C,"** applications for payment shall be predicated on a percentage of completion basis. All payments are subject to retainage as elsewhere provided for in the Contract Documents.

7.2 Construction Manager's CMAR Fee includes, without limitation, the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

7.2.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

7.2.4 Overhead and profit, or general expenses of any kind, except as may be expressly

included in Article 8, herein, as Cost of the Work.

7.2.5 All travel and per diem costs of Construction Manager's employees and consultants.

7.2.6 Those services set forth in Article 2 and its subparts.

7.2.7 Expenses such as long distance telephone calls, internet service, web sites, and cell phones provided to or by Construction Manager's personnel, telephone service at the site, postage, office supplies, courier and express delivery services, and similar items in connection with the Work, unless otherwise provided for in **Exhibit "B."**

7.2.8 Cost of equipment such as typewriters, cameras, radios, computers, pagers, copiers, facsimile equipment, telephones, cell phones, dictating units, trailers, vehicles, and furniture purchased or rented by the Construction Manager, unless otherwise provided for in **Exhibit "B."**

7.2.9 All costs incurred during the guarantee period following Final construction of the Project.

7.3 Adjustments in the Construction Manager's Fixed Fee will only be made, as follows:

7.3.1 Adjustments due to Changes in the Work shall be made as described in the Contract Documents.

ARTICLE 8

Cost of the Work

8.1 The term "Cost of the Work" shall mean costs, including General Conditions costs, as identified in **Exhibit "B"** and the Construction Phase Project Management fee (CPPM," **Exhibit "C"**) (**Exhibits "B"** and **"C"** costs, however, are guaranteed hard and not subject to audit), incurred specifically in and about the performance of the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager, which are not included in Paragraph 7.2, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" used herein shall include the straight time and overtime pay authorized in writing by the Owner, and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment taxes, social security taxes, compensated absences not including vacation time (under limited circumstances, such as extended self-performance by Construction Manager due to subcontractor default or jobsite emergency, "vacation time" may be compensable, provided self-performance is approved by Owner beforehand, in writing), and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager, excluding bonuses.

8.1.1 The GMP includes the amounts set forth in **Exhibits "B" and "C"** for General Conditions and CPPM services, respectively. These numbers are lump sum, and not subject to audit; provided, however, that it is expressly understood and agreed by the parties that the amounts for the line items in said **Exhibits "B" and "C"** are lump sums and intended to cover the entire duration of the project. To the extent that Construction Manager exceeds said amounts, or requires additional personnel, materials, services and equipment to properly and timely discharge its obligations and duties under the Contract, there shall be absolutely no entitlement to additional compensation, unless the Contract time is extended due to excusable and compensable changes in the Work that increase the GMP and/or contract duration.

8.1.2 Subject to the GMP, the Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, and its subparts, through completion of the Work, plus the CPPM (**Exhibit “C”**) which shall be paid in equal monthly installments, and subject to retainage as elsewhere provided for herein.

8.2 Cost of the Work includes, and is limited to, actual documented expenditure for the following cost items:

8.2.1 Subject to prior written approval by the Owner, wages paid for labor in the direct employ of the Construction Manager at the construction site other than those provided under Paragraph 7.2, herein, as a part of the CMAR, and those provided for in **Exhibit “C,”** in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 As and only to the extent not expressly or impliedly included in **Exhibits “A” “B” and “C,”** the cost of all materials, supplies and equipment incorporated into the Work or stored on site, including cost of transportation and storage thereof. At the Owner’s sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and insured.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Sub-Contracts with the Construction Manager.

8.2.4 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.

8.2.5 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** building and operating permit fees, inspection and filing fees, sewer and water fees.

8.2.6 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost of removal and disposal of all debris including clean-up and trash removal.

8.2.7 Cost incurred due to an emergency affecting the safety of persons and/or property.

8.2.8 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager’s own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Sub-Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.

8.2.9 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

8.2.10 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary Project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

8.2.11 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost of watchmen or similar security services, if approved in writing by Owner.

8.2.12 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Contract.

8.2.13 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Sub-Contracts.

8.2.14 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** all costs for reproduction of documents to directly benefit the work.

8.2.15 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** testing laboratory costs, except relating to defective or non-conforming work for which reimbursement is otherwise excluded by the Contract Documents.

8.2.16 Deposits lost for causes other than Construction Manager’s or any Sub-Contractor’s negligence or failure to fulfill a specific responsibility to the Owner under the Contract Documents.

8.2.17 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen that are consumed in the performance of the Work.

8.2.18 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager (upon prior written approval of the Owner, at the standard rate paid at the place of the Project) or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.19 **As and only to the extent not expressly or impliedly included in Exhibits “A” “B” and “C,”** costs associated with setting up and demobilizing tool sheds, Project field offices, temporary fences, temporary roads, and temporary fire protection.

8.3 Costs not to be reimbursed include:

8.3.1 Those costs enumerated in Article 7.2.1 through 7.2.9 above.

8.3.2 Except as provided in Article 8.2.8 above, costs due to the negligence or failure of the Construction Manager, Sub-Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract.

8.3.3 Any cost not specifically and expressly described in Article 8.2 and its subparts, above.

8.3.4 Costs, other than costs included in Change Orders approved by the Owner, in writing, that would cause the GMP to be exceeded.

ARTICLE 9

Changes in the Work

9.1 The Owner, without invalidating this Contract, may order Changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Conditions of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

ARTICLE 10

Discounts

10.1 All quantity and early payment discounts shall accrue to the Owner if (i) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (ii) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 11

Insurance

11.1 The Construction Manager shall provide insurance as required by **Attachment “1”**, hereto attached and made a part hereof.

ARTICLE 12

Other Provisions

12.1 In the event that the terms and provisions of **Exhibit “D”** conflict with or are omitted from the terms and provisions of this Contract and the General Conditions, the terms and provisions of **Exhibit “D”** shall govern with respect to the performance of the Work.

12.2 Included in the GMP is the cost of purchasing all materials and equipment necessary for the Project including, without limitation, federal, state, and local taxes, shipping, handling, loading, unloading, storage, insurance, suretyship, risk of loss, and related product warranties and guaranties. At the Owner’s exclusive option, Owner may elect to implement its Direct Purchase Program, which at the time of executing this Contract is set forth in **Attachment “7”**; **provided** however, following execution of this Contract, the **Attachment “7”** provisions may be revised by the Owner in order to be compliant with regulations promulgated by the State of Florida regarding tax-exempt purchases by a public entity. In the event that the Owner exercises this direct purchase option, in either the Attachment “7” format, or a revised format for compliance reasons, Construction Manager will prepare a deductive Change Order reflecting, at a minimum, the adjustments noted in Part 1.04, **Attachment “7.”** In such event, the provisions of GC 39.2 shall thereafter govern.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Town Manager of The Town Palm Beach, Florida, has made and executed this Contract on behalf of the said Town and caused the seal of the said Town to be affixed hereto, and the Construction Manager has hereunto set its hand and seal the day and year first written. The Construction Manager represents that it is authorized to execute this Contract on behalf of itself and its Surety.

ATTEST:

OWNER:

The Town of Palm Beach, Florida,
a Political Subdivision of the State of Florida

By: _____
Town Clerk

By: _____
Kirk W. Blouin, Town Manager

(Town Clerk name printed)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

Joanne O'Connor, Town Attorney

RECOMMEND APPROVAL

H. Paul Brazil, Director of Public Works

CONSTRUCTION MANAGER:

XXXXXXXXXX

(witness signature)

(witness name printed)

By: _____

(Corporate Seal)

THE TOWN OF PALM BEACH, FLORIDA

*******PROJECT NAME*******

CONSTRUCTION MANAGER AT RISK CONTRACT

GENERAL CONDITIONS

RFQ NO. 2022-01

| | Pages |
|----------------------------------|--------|
| GENERAL CONDITIONS GC-1 to GC-77 | 1 - 62 |

GENERAL CONDITIONS
TABLE OF CONTENTS

ARTICLE

| | |
|-------|--|
| GC-1 | ENTIRE AGREEMENT |
| GC-2 | INDEPENDENT CONSTRUCTION MANAGER |
| GC-3 | AUTHORIZED REPRESENTATIVES |
| GC-4 | NOTICES |
| GC-5 | LAWS AND REGULATIONS |
| GC-6 | STANDARDS AND CODES |
| GC-7 | CODE RELATED INSPECTIONS |
| GC-8 | GOVERNING LAW |
| GC-9 | RIGHTS AND REMEDIES |
| GC-10 | COMMERCIAL ACTIVITIES |
| GC-11 | COOPERATION WITH OTHERS |
| GC-12 | FORMS & DOCUMENTS |
| GC-13 | PUBLICITY AND ADVERTISING |
| GC-14 | TAXES |
| GC-15 | NOT USED |
| GC-16 | UTILITIES |
| GC-17 | SUCCESSORS, ASSIGNS AND ASSIGNMENT |
| GC-18 | EXAMINATION OF CONSTRUCTION MANAGER'S RECORDS |
| GC-19 | COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS |
| GC-20 | PERMIT DRAWINGS AND SPECIFICATIONS |
| GC-21 | CONTRACT INTERPRETATION |
| GC-22 | DISPUTES-WAIVER OF JURY TRIAL |

| | |
|-------|--|
| GC-23 | SUSPENSION |
| GC-24 | DECLARATION OF DEFAULT |
| GC-25 | TERMINATION FOR DEFAULT |
| GC-26 | OPTIONAL TERMINATION-TERMINATION FOR CONVENIENCE |
| GC-27 | EXTENSION OF TIME |
| GC-28 | WARRANTY |
| GC-29 | PATENT INDEMNITY |
| GC-30 | INDEMNITY |
| GC-31 | INSURANCE |
| GC-32 | SITE CONDITIONS |
| GC-33 | NOT USED |
| GC-34 | ACCESS TO WORK AREAS |
| GC-35 | INGRESS AND EGRESS |
| GC-36 | PRECONSTRUCTION CONFERENCE |
| GC-37 | MEETINGS |
| GC-38 | NOT USED |
| GC-39 | DELIVERY, UNLOADING, AND STORAGE |
| GC-40 | WORK AREA |
| GC-41 | PLANT EQUIPMENT AND FACILITIES |
| GC-42 | CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP |
| GC-43 | SUBSTITUTIONS |
| GC-44 | EXPEDITING |
| GC-45 | FIELD LAYOUT OF WORK |
| GC-46 | CONSTRUCTION MANAGER'S FURNISHED DRAWINGS, DATA AND SAMPLES |
| GC-47 | CONSTRUCTION SCHEDULE |

| | |
|-------|---|
| GC-48 | RESPONSIBILITY FOR WORK SECURITY |
| GC-49 | PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT |
| GC-50 | PROTECTION OF EXISTING PROPERTY |
| GC-51 | LABOR |
| GC-52 | EQUAL EMPLOYMENT OPPORTUNITY |
| GC-53 | SAFETY & PROTECTION OF PERSONS & PROPERTY |
| GC-54 | PROJECT SITE PROTECTION |
| GC-55 | FIRE PREVENTION |
| GC-56 | ILLUMINATION |
| GC-57 | BEST MANAGEMENT PRACTICES |
| GC-58 | DUST CONTROL |
| GC-59 | WATER POLLUTION |
| GC-60 | AIR POLLUTION |
| GC-61 | EXPLOSIVES & HAZARDOUS MATERIALS |
| GC-62 | INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP |
| GC-63 | TESTING |
| GC-64 | PROGRESS |
| GC-65 | CHANGES |
| GC-66 | RECORD DRAWINGS AND SPECIFICATIONS |
| GC-67 | MEASUREMENT OF AND PAYMENT FOR WORK |
| GC-68 | PROGRESS PAYMENT PROCEDURES |
| GC-69 | USE OF COMPLETED PORTIONS OF WORK |
| GC-70 | ALLOWANCES AND UNIT PRICES |
| GC-71 | SUBSTANTIAL COMPLETION |
| GC-72 | FINAL INSPECTION AND ACCEPTANCE |
| GC-73 | DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS |

- GC-74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS
- GC-75 CLEANING UP
- GC-76 PROJECT SIGNS
- GC-77 PERFORMANCE AND PAYMENT BONDS

GENERAL CONDITIONS

GC 1 ENTIRE AGREEMENT

- 1.1 This Agreement embodies the entire agreement between Owner and Construction Manager and supersedes all other writings, oral agreements, or representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of the Agreement shall be valid unless reduced to writing and signed by both parties.

GC 2 INDEPENDENT CONSTRUCTION MANAGER

- 2.1 Construction Manager represents that it is extensively experienced in the performance of underground utility work as provided for herein, and that it is properly licensed as a General Contractor in the State of Florida, equipped, organized and financed to perform such work. Construction Manager shall act as an independent contractor and not as the agent of Owner in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractor. Nothing contained in this Contract or any subcontract awarded by Construction Manager shall create any contractual relationship between any such supplier or subcontractor and Owner. Construction Manager shall perform all work in accordance with its own means and methods subject to compliance with the Contract. Construction Manager represents that all subcontractors' agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further acknowledges that the Owner is an intended express third party beneficiary of any such subcontract.

GC 3 AUTHORIZED REPRESENTATIVES

- 3.1 Before starting work, Construction Manager shall designate a competent, authorized representative acceptable to Owner to represent and act for Construction Manager and shall inform Owner in writing, of the name and address of such representative together with a clear definition of the scope of his/her authority to represent and act for Construction Manager and shall specify any and all limitations of such authority. Such representative shall be present or duly represented at the site of work at all times when work is actually in progress. During periods when work is suspended, arrangements for an authorized representative acceptable to Owner shall be made for any emergency work that may be required. All notices, determinations, instructions and other communications given to the authorized representatives of the Construction Manager shall be binding upon Construction Manager. Nothing contained herein shall be construed as modifying the Construction Manager's duty of supervision and fiscal management as provided for by Florida law. The Owner shall designate an authorized representative who will have limited authority to act for the Owner. The Owner will notify the Construction Manager in writing of the name of such representative(s). The Owner's representative will be the Public Works Director, or his designee. Any work performed by the Construction Manager without proper authorization, is performed at the Construction Manager's risk, and the Town shall have no obligation to compensate the Construction Manager for such work, subject to the terms of this Contract as to compensable changes. The Owner has the right to assign various responsibilities of the Owner to the Architect/Engineer of Record, and can do so at any time during the duration of this Contract with written notice to the Construction Manager.

- 3.2 The Authorized Representative, Qualifying Agents, Project Managers, Superintendents and Supervisors are all subject to prior and continuous approval of the Owner. If, at any time during the term of the Agreement, any individual nominally performing any of the positions named above is, for any reason, unacceptable to the Owner, Construction Manager shall replace the unacceptable personnel with personnel acceptable to the Owner.

GC 4 NOTICES

- 4.1 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site, by certified mail, return receipt requested, or national overnight courier to that party at the addresses shown below:

OWNER: The Town of Palm Beach, Florida
360 South County Road, P.O. Box 2029
Palm Beach, Florida 33480
Attention: Kirk W. Blouin
W/Copies to: Patricia Strayer, P.E.

CONSTRUCTION MANAGER: Burkhardt Construction, Inc.
1400 Alabama Avenue, Suite 20
West Palm Beach, FL 33401
Attention: Marc Kleisley, Vice President
W/Copies to Tony Sabatino, Senior Project Manager

- 4.2 These addresses may be changed by either of the parties by written notice to the other.

GC 5 LAWS AND REGULATIONS

- 5.1 Construction Manager and its employees and representatives shall at all times comply with all applicable laws, codes, ordinances, statutes, rules or regulations in effect at the time work is performed under this Agreement as to the performance of the Work.
- 5.2 If, during the term of this Agreement, there are any changed or new laws, ordinances or regulations not known at the time of signing this Agreement which become effective and which are known to Construction Manager as a licensed general contractor as to the performance and conduct of the Work, and which affect the cost or time of performance of the Agreement, Construction Manager shall immediately notify Owner in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Agreement. Upon concurrence by Owner as to the effect of such changes, an adjustment in the compensation and/or time of performance will be made.
- 5.3 Although the Construction Manager is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, any nonconformity discovered by or made known to the Construction Manager shall be reported promptly to the Architect/Engineer. It is recognized that the Construction Manager's review is made in the Construction Manager's capacity as a contractor and not as a licensed design professional. If any discrepancy or inconsistency should be discovered by Construction Manager between the Agreement and any law, ordinance, regulation, order or decree with respect to the performance of the Work, Construction Manager shall immediately report the same in writing to Owner who will issue such instructions as may be necessary. Owner shall grant extensions of Contract Time and shall reimburse Construction Manager for the costs of all permits, general conditions, and overhead, as well as any costs for inspections or submittals required as a result of

errors, inconsistencies, lack of coordination between Owner and Architect/Engineer, code errors or omissions in the design documents, plans and Specifications for the Project.

- 5.4 Owner expressly warrants the adequacy, accuracy, and code compliance of the plans and Specifications of the Work. (Construction Manager shall be entitled to rely on the completeness and compliance with applicable rules, laws, codes, regulations and ordinances of the documents provided by Owner and Owner's consultants.) Construction Manager shall use its reasonable efforts to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work as to the Construction Manager's performance of the Work, but Construction Manager assumes no responsibility or liability for any failure of the design of the Project to comply with same. However, at no time shall the Construction Manager's effort fall below the commonly accepted knowledge base of a licensed general contractor.
- 5.5 Owner shall not be liable for any costs, delays or damages which Construction Manager incurs as a result of the actions or orders of any other governmental entity or agency that are caused by Construction Manager's failure to comply with the terms of this Agreement.

GC 6 STANDARDS AND CODES

- 6.1 Wherever references are made in the Contract to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes or between any referenced standards and codes the Owner will determine which shall govern. Construction Manager acknowledges that compliance with code requirements represents minimum standards for construction and is not evidence that the Work has been completed in accordance with the Contract Documents.

GC 7 CODE RELATED INSPECTIONS

- 7.1 The Construction Manager recognizes that The Town of Palm Beach, Department of Planning, Zoning and Building ("PZ&B"), is a separate department within the Town that is charged with the inspection of improvements to real property for code compliance. The Construction Manager agrees that it will not assert, as an Owner caused delay or as a defense of any delay on the part of the Construction Manager, any good-faith action or series of actions on the part of PZ&B, including, but not limited to PZ&B's refusal to accept any portion of the Construction Manager's work, if it is ultimately determined that such delay was the result of Construction Manager's failure to comply with the Contract Documents; otherwise, Construction Manager shall be entitled to make a claim for extension of Contract Time or Sum in accordance with the terms of the Contract.

GC 8 GOVERNING LAW

- 8.1 The Contract shall be governed by the laws of the State of Florida and venue of any action shall be in Palm Beach County, Florida.

GC 9 RIGHTS AND REMEDIES

- 9.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

GC 10 COMMERCIAL ACTIVITIES

- 10.1 Construction Manager shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands owned or controlled by Owner. Construction Manager shall not allow its employees to engage in any commercial activities on the site.

GC 11 COOPERATION WITH OTHERS

- 11.1 Owner and other contractors may be working at the site during the performance of this Contract. Construction Manager shall fully cooperate with the Owner, Owner's designated Representative, and other contractors to avoid any delay or hindrance of their work. Owner may require that certain facilities be used concurrently by Construction Manager and other parties and Construction Manager shall comply with such requirements. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager.
- 11.2 If any part of the Construction Manager's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractor's work as fit and proper to receive his work, except as to defects which are not then reasonably discoverable or which may subsequently become apparent in such work performed by others. The Owner shall be reimbursed by the Construction Manager for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by the Construction Manager. The Owner shall be responsible to the Construction Manager for costs and delays incurred by the Construction Manager because of delays, improperly timed activities, damage to the Work, defective construction, or other actions by a separate contractor.

GC 12 FORMS AND DOCUMENTS

- 12.1 The below listed documents are to be used by the Construction Manager and Owner during the administration of this contract. Additional administrative forms may supplement this list upon written notice by the Owner (or Owner's Project representative). Owner reserves the right to modify these forms as it deems necessary. Construction Manager shall maintain logs for Items A-K and provide to Owner monthly.
- A. Request for Information
 - B. Field Instruction
 - C. Field Bulletin
 - D. Construction Change Proposal
 - E. Change Order

- F. Construction Change Directive
- G. Submittal Transmittal
- H. Deficiency Report
- I. Non-Conformance Report
- J. Construction Manager's Daily Report
- K. Substitution Report

GC 13 PUBLICITY AND ADVERTISING

- 13.1 Since Owner records are subject to disclosure under Chapter 119, F.S., Construction Manager shall not make any announcement or release any information or publish any photographs concerning this Contract or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from Owner.

GC 14 TAXES

- 14.1 Construction Manager shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Construction Manager shall make any and all payroll deductions required by law. Construction Manager herein indemnifies and holds the Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

GC 15 NOT USED

GC 16 UTILITIES

- 16.1 Construction Manager to provide and maintain all utilities in work areas to meet the requirements of the Contract. Such utilities shall be furnished by the Construction Manager and shall include, but not be limited to, the following:
- A. Public telephone service for the Construction Manager's use (provided by Construction Manager).
 - B. Construction power as required at each point of construction.
 - C. Water as required throughout the construction.
- 16.2 Prior to final acceptance of the Work the Construction Manager shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the contract. The Construction Manager will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

GC 17 SUCCESSORS, ASSIGNS AND ASSIGNMENT

- 17.1 The Owner and the Construction Manager each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract. It is agreed that the Construction Manager shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous consent of the Owner and concurred in by the Construction Manager's

surety. Construction Manager acknowledges that the Town has entered into this Agreement with Construction Manager after a comprehensive competitive award process, and evaluation of Construction Manager's particular qualifications and skills to perform the Work. Therefore, Construction Manager agrees that the Town may withhold the consent to assignment referred to in this subsection for any reason the Town deems appropriate in its sole and unfettered discretion.

GC 18 EXAMINATION OF CONSTRUCTION MANAGER'S RECORDS

18.1 The Owner, or the Owner's auditors shall have access to all of Construction Manager's accounting records, supporting documentation, correspondence, subcontracts, purchase orders, and other reasonably related documentation relating to this Agreement, at any time during regular business hours, both throughout the performance of the Work, and for a period of four (4) years after final payment of the Work.

GC 19 COORDINATION AND CORRELATION OF DRAWINGS AND SPECIFICATIONS

19.1 The Construction Manager represents that the Construction Manager, Subcontractors, material and equipment suppliers have compared Phasing, Demolition, Structural, Civil and Site Drawings and Specifications and have compared and reviewed all general and specific details on the Drawings and that all readily apparent conflicts, discrepancies, and constructability issues that are within the commonly accepted knowledge base of a licensed general contractor skilled in the installation of large diameter pipes, including its subcontractors, trades persons, manufacturers or other parties required to carry out the Work involved in this Contract, have been clarified during the performance of the Pre-Con Agreement, and are included in the GMP. However, these obligations are for the purpose of facilitating construction by the Construction Manager and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents that are the responsibility of the Architect/Engineer or any other professional consultant of the Owner preparing such Drawings or Specifications. Notwithstanding anything contained in this Agreement to the contrary, Construction Manager shall not be liable to the Owner or Architect/Engineer for damages or costs resulting from errors, omissions, or inconsistencies in the Contract Documents, or for differences between field conditions and the Contract Documents, unless the Construction Manager recognized the issue and knowingly failed to report it to the Owner. Construction Manager shall have the right to rely on the completeness and accuracy of information, Drawings, Specifications, and other Contract Documents provided by Owner, Architect/Engineer, or any other consultant of either.

19.2 The Construction Manager represents that the GMP represents the total cost for complete and functional systems and, therefore, the Construction Manager's review and comparison of all Drawings has taken into consideration the total and complete functioning of all systems as provided and reasonably inferable from the Drawings and Specifications; provided that Owner and Construction Manager acknowledge and agree that the Project involves, without limiting the generality thereof, the installation of underground utilities and, as such, involves unforeseen and unknown conditions that could not reasonably be anticipated by review of the Project prior to the Date of this Agreement. Construction Manager may be entitled to make a claim for unknown or unforeseen conditions discovered in the course of construction of the Work in accordance with the other provisions of this Agreement. Notwithstanding the foregoing, such review and GMP is, as of the date of this Agreement, based on 90% complete Drawings and Specifications.

GC 20 PERMIT DRAWINGS AND SPECIFICATIONS

- 20.1 The Construction Manager shall provide the Owner with two (2) complete sets of the signed and sealed drawings within five (5) days of issuance. If the signed and sealed set of Drawings change the scope of the Work to be performed, the Construction Manager shall notify the Owner, and Architect/Engineer of Record within thirty (30) days of receipt of the permitted Drawings and such notification shall contain a written description of the change, the cost and time, if any.
- 20.2 The Construction Manager shall perform work only in accordance with the signed and sealed drawings and any subsequent revisions thereto.

GC 21 CONTRACT INTERPRETATION

- 21.1 All claims of Construction Manager and all questions the Construction Manager may have concerning interpretation or clarification of this Contract or its acceptable fulfillment shall be submitted promptly in writing to Owner for resolution. Owner, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed fourteen (14) days, which determination shall be considered final and conclusive unless Construction Manager files a written protest pursuant to GC 22 "Disputes". The Construction Manager's protest shall state clearly and in detail the basis thereof. Owner will consider Construction Manager's protest and render its decision thereon within fourteen (14) calendar days. If Construction Manager does not agree with the Owner's decision, the Construction Manager shall promptly deliver written notice to that effect to the Owner. If questions of interpretation are not promptly responded to by the Architect/Engineer or Owner in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Construction Manager shall be entitled to adjustment in the performance time.
- 21.2 Construction Manager is solely responsible for requesting instructions or interpretations and is solely liable for any cost and/or expenses arising from its failure to do so. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicial or otherwise.

GC 22 DISPUTES-WAIVER OF JURY TRIAL

- 22.1 Any and all disputes arising out of or in connection with this Contract shall be resolved through good faith efforts upon the part of Construction Manager and Owner, or its representatives. At all times, Construction Manager shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the Owner or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the Owner or its representatives, who shall reduce such decision to writing. The decision of the Owner or its representatives shall be final and conclusive. Construction Manager's failure to protest Owner's determinations, instructions, clarifications or decisions within thirty (30) calendar days after receipt thereof shall constitute a waiver by Construction Manager of all its rights to further protest, judicially or otherwise.
- 22.2 The Owner and Construction Manager hereby expressly, knowingly and intentionally waive any right they may have to a jury trial in connection with, or in respect to, any litigation or claim based or related to this Agreement, or with regard to performance of the Work, including, but without limitation, any to which the Architect/Engineer shall also be a party.

GC 23 SUSPENSION

23.1 Owner may, at its sole option, suspend, at any time, the performance of all or any portion of Work to be performed under the Contract. Owner will notify Construction Manager of such decision, in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the Work site. During the period of suspension, Construction Manager shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.

23.1.1 Upon receipt of any such notice, Construction Manager shall, unless the notice requires otherwise:

1. immediately discontinue work on the date and to the extent specified in the notice;
2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
4. continue to protect and maintain the Work including those portions on which work has been suspended, and
5. take any other reasonable steps to minimize costs associated with such suspension.

23.1.2 In addition to all amounts that would otherwise be due for work performed prior to the suspension, as compensation for such suspension, Construction Manager will be reimbursed for the following verifiable costs, without duplication of any item, to the extent that such costs directly result from such suspension of work:

1. A standby charge to be paid to Construction Manager during the period of suspension of work which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
2. All reasonable costs associated with mobilization and demobilization of Construction Manager's plant, forces and equipment;
3. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended; and
4. If as a result of any such suspension of work the cost to Construction Manager of subsequently performing work is increased or decreased, an equitable adjustment will be made in the cost of performing the remaining portion of work.

23.2 In no event shall the Construction Manager be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula, or otherwise, in the event of an Owner suspension, unless the home office expense directly relates and is attributable to the suspension. Upon receipt of notice to resume suspended work, Construction Manager shall immediately resume performance of the

suspended work to the extent required in the notice. Any claim on the part of Construction Manager for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Construction Manager shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Construction Manager's non-compliance with the requirements of this Contract.

GC 24 DECLARATION OF DEFAULT

- 24.1 The failure of the Construction Manager to supply enough properly skilled workers or materials, or its failure to make prompt payments to subcontractors or for materials or labor, or to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or to comply in any way with the Contract Documents, shall be sufficient grounds for the Owner to find the Construction Manager in material default and that sufficient cause exists to terminate the Contract for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Construction Manager and approved by the Owner. If a finding of default is made, the Construction Manager and its Surety shall remain responsible for performance of the requirements of the Contract Documents unless and until the Owner terminates the Contract. Upon a finding of default, the Owner shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from Owner detailing the default, within which the Construction Manager and its Surety shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the Owner shall notify the Construction Manager and its Surety in writing that the default has been corrected and that the Construction Manager is no longer in default. If the Construction Manager fails to correct the default within the time allowed, the Owner may terminate the Contract and the employment of the Construction Manager after no less than seven (7) days written notice, without otherwise waiving its rights against the Construction Manager or its Surety. The Construction Manager's entitlement to payment for work properly performed prior to the termination shall survive termination of the Agreement.

GC 25 TERMINATION FOR DEFAULT

- 25.1 Notwithstanding any other provisions of this Contract, Construction Manager shall be considered in default of its contractual obligation under this Contract if the:
- a. Construction Manager fails or refuses to prosecute the Work or any severable part, with the diligence that will insure its completion within the time specified in this Contract;
 - b. Construction Manager fails or refuses to prosecute the Work on any severable part, with the diligence that will insure its completion within the time specified in construction schedules and related milestones issued in conjunction with this Contract;
 - c. Construction Manager fails to complete the Work within the time specified in this Contract;
 - d. Construction Manager fails to deliver the supplies or perform the services required of the Construction Manager under this Contract within the time specified in this Contract;
 - e. Construction Manager fails or refuses to provide sufficient properly skilled workmen or tradesmen;

- f. Construction Manager refuses or fails to supply materials, equipment or services meeting the requirements of this Contract;
 - g. Construction Manager fails to make payments for materials, labor or services to subcontractors, sub subcontractors, suppliers or materialmen of any tier in accordance with such agreements that may exist among them;
 - h. Construction Manager violates laws, ordinances, rules, regulations of any governmental authority having jurisdiction;
 - i. Construction Manager materially breaches any of the provisions of this Contract;
 - j. Construction Manager, or its sub-contractors or lower tier sub-subcontractors refuse or otherwise fail to fully cooperate with the Palm Beach County Inspector General as, if and when requested.
- 25.2 Upon the occurrence of any of the foregoing, Owner or its Project representatives shall notify Construction Manager, in writing, of the nature of the failure and of Owner's intention to either terminate the Contract for default, or to declare the Construction Manager to be in default and make demand upon its Surety to perform, at its sole option.
- 25.3 If Construction Manager or its Surety(ies) does not cure such failure within seven (7) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Construction Manager or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, Owner may, with additional seven (7) days notice to Construction Manager's Surety(ies), if any, terminate in whole or in part Construction Manager's right to proceed with work by written notice and prosecute the Work to completion by contract or by any other method deemed expedient. Owner may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Construction Manager and necessary to complete the Work.
- 25.4 Construction Manager and its sureties, if any, shall be liable, jointly and severally, for all costs in excess of the Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work as scheduled, including cost of administration of any contract awarded to others for completion, plus Liquidated Damages.
- 25.5 Upon termination for default Construction Manager shall:
- A. immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;
 - B. inventory, maintain and turn over to Owner all materials, plant, tools, equipment, and property furnished by Construction Manager or provided by Owner for performance of work;
 - C. promptly obtain cancellation upon terms satisfactory to Owner of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to Owner as directed;

- D. cooperate with Owner in the transfer of information and disposition of work in progress so as to mitigate damages;
- E. comply with other reasonable requests from Owner regarding the terminated work; and
- F. continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated.

25.6 If, upon termination pursuant to this GC-25, it is determined informally or by judicial decision that the Construction Manager was not in default, the rights, obligations, and duties of the parties shall be the same as if the termination had been made pursuant to GC-26 below.

GC 26 OPTIONAL TERMINATION-TERMINATION FOR CONVENIENCE

26.1 Owner may, at its option and convenience, terminate the Contract, in whole or in part, at any time by written notice thereof to Construction Manager, whether or not Construction Manager is in default. Upon any such termination, Construction Manager hereby waives any claims for damages from the optional termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Construction Manager, Owner shall pay Construction Manager in accordance with Subparagraphs below; provided, however, that those provisions of the Contract, which by their very nature survive final acceptance under the Contract, shall remain in full force and effect after such termination .

A. Upon receipt of any such notice, Construction Manager and its Surety shall, unless the notice requires otherwise:

1. Immediately discontinue work on the date and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Contract that is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of work terminated;
4. If requested by the Town in writing, assign to the Town, all right, title and interest of the Construction Manager under the subcontracts terminated. Such Assignment shall not include assumption of Construction Manager's obligations or liabilities under a subcontract. The Town shall have the right (but not the obligation) to assume the Construction Manager's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts shall constitute the Town's assumption of Construction Manager's or other obligations under any such subcontract absent a written document executed by the Town and the subcontractor in which the Town expressly acknowledges an assumption of Construction Manager's obligations, and then only to the extent specified. In no event will the Town

assume any obligation of the Construction Manager under the subcontracts that arise out of or relate to Construction Manager's default prior to such assignment;

5. The Construction Manager shall include in all subcontracts, equipment leases and purchase order, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract to the Owner;
6. Assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract; and,
7. Complete performance of any work that is not terminated.

B. Upon any such termination, Owner will pay to Construction Manager an amount determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to Construction Manager for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice.
2. The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.3. above.
3. The verifiable costs incurred pursuant to Subparagraph A.4 above.
4. Any other reasonable costs which can be verified to be incidental to such termination of work, including demobilization costs.

26.2 The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all work satisfactorily performed by Construction Manager.

26.3 The Town's Termination for Convenience shall be without waiver or prejudice to, all of the Town's claims, rights and remedies arising out of or related to any default, breach of contract, damages or other claims the Town may have against Construction Manager, or Construction Manager's subcontractors, material men and suppliers of any tier, or any other person or entity at the time of Optional Termination, or arising thereafter.

Construction Manager hereby acknowledges acceptance of the risk and cost of the foregoing and acknowledges and agrees to the foregoing limitation on Construction Manager's claims or damages arising out of, or relating to, an Optional Termination by the Town.

26.4 Construction Manager shall submit within 30 days after receipt of notice of termination, a proposal for an adjustment to the Contract price including all incurred costs described herein. Owner shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Contract shall be amended in writing accordingly.

GC 27 EXTENSION OF TIME

27.1 If the Construction Manager is delayed at any time in the progress of the Work by a written directive issued by the Owner's representative, or any act, omission or neglect of the Owner or the Architect/Engineer, or by a separate contractor employed by the Owner, or by any changes ordered in the Work, or by an act of God, labor disputes, unusual delay in deliveries, or other causes beyond Construction Manager's control, including discovery of unforeseen site conditions, and such delay

extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Owner may reasonably determine.

No extension of Contract Time or increases in Guaranteed Maximum Price (GMP) shall be granted for any delay caused by severe though not unusual weather conditions (other than hurricanes and tornadoes), for any delay which is attributable to slow submittals, or the lack of performance by sub-contractors in failure of obligations under the Contract Documents for which Construction Manager would otherwise be liable.

27.2 The Construction Manager must request the extension of time in writing and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Construction Manager and a denial of the claim for extension of time:

- a. Nature of the delay or change in the Work;
- b. Dates of commencement/cessation of the delay or change in the Work;
- c. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the Work;
- d. Identification and demonstration that the delay or change in work impacts on the approved Bar Chart;
- e. Identification of the source of delay or change in the Work;
- f. Anticipated impact extent of the delay or change in the Work; and
- g. Recommended action to minimize the delay.

27.2.1 The Construction Manager acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

1. All schedule updates, submittals and other requirements of this General Condition have been met;
2. The delay must be due to the Owners or Architect/Engineer's change in the Work or due to an Act of God or matters described in 27.1;
3. The delay which is the subject of the time extension must result in a direct delay to the Critical Path as determined by the Construction Manager's computer generated approved Bar Chart;
4. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within thirty (30) days of occurrence and shall be documented by data substantiating that weather conditions were abnormal for the period of time required for completion of the Work, could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

27.3 The Owner's determination as to the total number of days of Contract extension will be based upon the computer produced construction schedule current at the time of the delay event.

27.4 The Construction Manager shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Owner in writing within seven (7) calendar days after the commencement of such delay, or within ten (10) calendar days of knowledge of a potential delay, whichever is earlier. In any event, within twenty-one (21) days of commencement of the delay, the Construction Manager shall provide in writing the information stated above.

- 27.5 For all changes in the Work in which the Construction Manager claims entitlement to a time extension, the Construction Manager shall provide to the Owner the same information as required above within thirty (30) days of the issuance of the request for change order or direction to change the scope of the Work and the Construction Manager's failure to provide such information shall constitute a waiver by the Construction Manager and a denial of any time extension for that change in the Work. Further, upon execution by the Owner and Construction Manager of any Change Order where no time extension has been requested or granted, that Change Order shall constitute a complete waiver of all claims for dollars or for any extension of time related to that work, or any work impacted by the change.
- 27.6 Delays in the Work attributable to matters described in 27.1 above shall allow Construction Manager to claim for extended general conditions directly incurred by the Construction Manager, plus increased costs directly incurred during any allowed extensions of the performance time.

GC 28 WARRANTY

- 28.1 Unless otherwise provided elsewhere in the Contract, all materials and equipment incorporated into any Work covered by the Contract shall be new and, where not specified, of the highest grade of quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Owner. Unless otherwise provided in the Contract, Construction Manager warrants all equipment, materials, and labor furnished or performed under this Contract, against defects in design, materials and workmanship for a period of twelve months (unless longer guarantees or warranties are provided for elsewhere in the Contract in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Contract, regardless of whether the same were furnished or performed by Construction Manager or by any of its subcontractors of any tier. Even in the event that the Owner assumes partial utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project, subject to the terms of GC 69.
- 28.2 Upon receipt of written notice from Owner of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Construction Manager at a time and in a manner acceptable to Owner in compliance with the Contract Documents.
- 28.3 Construction Manager warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve months from and after the date of acceptance thereof. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from Owner specifying the defects, Owner may perform or cause to be performed the same at Construction Manager's expense.
- 28.4 Construction Manager shall perform such tests as Owner may require to verify that such redesign, repairs and replacements comply with the requirements of this Contract. All costs incidental to such redesign, repair, replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Construction Manager. However, if such testing determines that the Work is not defective, then Owner shall compensate Construction Manager for such costs of testing and any affects on previously completed work.

- 28.5 Construction Manager and its surety or sureties shall be liable for the satisfaction and full performance of the warranties as set forth herein and any damage to other parts of the Work caused by the Construction Manager's failure to perform pursuant to this general condition.
- 28.6 The Construction Manager shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by FAX) notice from the Owner, subject to allowance for long-lead items. If the Construction Manager fails to remedy or remove or replace that Work or material which has been found to be defective or reasonably commence corrective action, then the Owner may remedy or replace the defective or deficient Work at the Construction Manager's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Construction Manager shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Construction Manager shall immediately pay the expenses incurred by the Owner for remedying the defects. If the Owner is not paid within ten (10) calendar days, the Owner may pursue any and all legal remedies it may have against the Construction Manager.
- 28.7 The Construction Manager is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Construction Manager is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the Owner agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Construction Manager of his responsibility.

GC 29 PATENT INDEMNITY

- 29.1 Construction Manager hereby indemnifies and shall defend and hold Owner and its representatives harmless from and against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Owner and its representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the equipment or materials furnished under the Contract by Construction Manager, or out of the processes or actions employed by, or on behalf of Construction Manager in connection with the performance of the Contract, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect/Engineer.
- 29.2 Construction Manager shall, at its sole expense, promptly defend against any such claim or action for which it is responsible under the prior paragraph unless directed otherwise by Owner or its representatives; provided that Owner or its representatives shall have notified Construction Manager upon becoming aware of such claims or actions, and provided further that Construction Manager's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by Owner or representatives. Construction Manager shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials, or processes, or to modify such infringing equipment, materials and processes so they become non-infringing, or obtain the necessary licenses to use the infringing equipment, material or processes, provided that such substituted and modified equipment, materials and processes shall meet all the requirements and be subject to all the provisions of this Contract.

GC 30 INDEMNITY

- 30.1 To the fullest extent provided for by law, Construction Manager agrees to protect, defend, reimburse, indemnify and hold the Owner, its employees, elected officers and representatives and each of them (hereinafter collectively and for the purposes of this paragraph, referred to as "Owner"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including reasonable attorneys' fees, and causes of action of every kind and character against Owner by reason of any damage to property other than the work itself or the environment, economic losses, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, to the extent caused by the Construction Manager's negligent acts or omissions or operations while performing the work, Construction Manager's acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Construction Manager or any breach of the terms of this Contract; provided however that Construction Manager shall not be responsible to Owner for damages resulting out of bodily injury or damages to property which Construction Manager can establish as being attributable to the negligence of Owner, its respective agents, servants, employees, officers, or others for whom Owner is responsible, including separate contractors. The indemnification shall not include the indemnity/defense of Claims or damages resulting from gross negligence or willful, wanton, or intentional misconduct of Owner or its respective officers, directors, or employees, or for statutory violation or punitive damages, except and to the extent the statutory violation or punitive damages are caused by or result from the negligent acts or omissions of the Construction Manager, its agents, employees, or any of the Subcontractors, their agents, or of any tier or their respective employees. The parties acknowledge the requirements of Florida Statute § 725.06 have been fulfilled and apply to this section.
- 30.2 Construction Manager further agrees to hold harmless and indemnify Owner for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting solely from Construction Manager's activities on the Project, whether or not Construction Manager was negligent or even knowledgeable of any events precipitating such a claim or arising as a result of any situation involving Construction Manager's activities.
- 30.3 Said indemnification by Construction Manager shall be extended to include all deliverers, suppliers, furnisher of material or anyone acting for, on behalf of, or at the request of Construction Manager. Construction Manager recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of Twenty dollars (\$20.00), which payment is incorporated into the Contract Sum and such other good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of the State of Florida. This Article 30 and its subparts shall survive termination of this Agreement.

GC 31 INSURANCE

- 31.1 Unless otherwise specified in this contract, Construction Manager shall at its sole expense, maintain in effect at all times during the performance of Work hereunder insurance coverage with limits not less than those set forth in Attachment "1" and with insurers and under forms of policies acceptable to Owner. Construction Manager shall deliver to Owner Certificates of Insurance (and at Owner's options, certified copies of all policies), evidencing that such policies are in full force and effect, no later than ten (10) days after execution of the Contract by Owner and prior to commencing Work on the Project site. Such Certificates shall adhere to the conditions set forth in Attachment "1".

- 31.2 Construction Manager shall purchase and maintain during the life of this Contract Workers Compensation insurance, including Employers Liability, to comply with all applicable State and Federal laws covering all of its employees on the Work site, and in accordance with all of the limits, terms and conditions set forth in Attachment "1". If any Work is sublet, Construction Manager shall require all subcontractors to similarly comply with this requirement unless such subcontractors' employees are covered by Construction Manager's Workers Compensation insurance policy.
- 31.3 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive or Commercial General Liability insurance in accordance with all of the limits, terms and conditions set forth in Attachment "1".
- 31.4 Should any of the Work hereunder involve watercraft owned or operated by Construction Manager or any subcontractor, such shall be insured under the Comprehensive or Commercial General Liability policy, or by other such liability insurance such as Protection and Indemnity.
- 31.5 Construction Manager shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability insurance covering on all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth in Attachment "1."
- 31.6
- 31.7 Should any of the Work hereunder involve the hauling and/or rigging of property in excess of \$500,000.00 or \$250,000.00 in transit, Construction Manager shall procure and maintain "all risk" Transit or Motor Truck Cargo insurance, or similar form of coverage, insuring against physical damage or loss to the property being transported, stored, moved or handled by Construction Manager or any subcontractor pursuant to the terms of this contract, subject to the limits, terms and conditions set forth in Attachment "1".
- 31.8 Should any of the Work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Construction Manager or any subcontractor, Construction Manager shall procure and maintain Aircraft Liability insurance as may later be directed by Owner. Premiums for Construction Manager furnished coverage is not included in the GMP. Notwithstanding the foregoing, Construction Manager shall verify and confirm such coverages are provided by its subcontractors who may use aircraft in connection with Construction Manager's obligations hereunder, such as, but not limited to, aerial photography, and such lower tier coverage(s) is included in the GMP.
- 31.9 The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Construction Manager, are not intended to, and shall not in any manner limit or qualify the liabilities and obligations assumed by Construction Manager under the contract.
- 31.10 The Certificates of Insurance must provide clear evidence that Construction Manager's Insurance Policies contain the minimum limits of coverage and special provisions prescribed in this GC-31, in accordance with all of the limits, terms and conditions set forth in Attachment "1". All involved policies must be endorsed so that thirty (30) days notification of cancellation and any material change(s) in coverage shall be provided to The Town of Palm Beach, Florida. Insurance shall remain in force until all Work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by the formal acceptance by The Town of Palm Beach, Florida. In the event that the insurance certificates provided hereunder indicates that the insurance shall terminate and lapse during the period of this Contract then, in that event, the Construction

Manager shall furnish, at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereunder is in effect. Construction Manager shall not continue to work pursuant to this Contract unless all required insurance remains in effect. Owner may withhold payment to the Construction Manager until coverage is reinstated.

- 31.11 The Construction Manager shall deliver the original Certificates of Insurance to:

The Town of Palm Beach, Florida
360 South County Road, P.O. Box 2029
Palm Beach, Florida 33480
Attn.: Karen Temme, Risk Manager
risk@townofpalmbeach.com

- 31.12 Notices, in original, of cancellation, terminations and alterations of such policies shall be delivered to:

The Town of Palm Beach, Florida
360 South County Road, P.O. Box 2029
Palm Beach, Florida 33480
Attn.: Karen Temme, Risk Manager
risk@townofpalmbeach.com

GC 32 SITE CONDITIONS

- 32.1 Construction Manager shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Contract documents, and through verification with local utility companies and the Owner, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which would be reasonably known to a general contractor of like skill to in any way affect performance of the Contract, or the cost associated with such performance. The failure of Construction Manager to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Contract; provided, however, that the foregoing shall be not be a waiver by the Construction Manager of claims for equitable adjustment in Contract Time or Price, or both, due to (1) subsurface or concealed conditions which differ materially from those indicated on the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction of the character provided in the Contract Documents.

GC 33 NOT USED

GC 34 ACCESS TO WORK AREAS

- 34.1 Owner, and his duly authorized representatives and employees, and all duly authorized representatives of governmental agencies having jurisdiction over Work areas or any part thereof shall, at all reasonable times, for the purpose of determining compliance with Contract requirements and permits, have access to such areas and the premises used by Construction Manager. Construction Manager shall also arrange for Owner, his said representatives and employees, to have access at all reasonable times to all places where equipment or materials are being manufactured, produced, or fabricated for use under the Contract.
- 34.2 Construction Manager's access to the site and storage areas shall be as shown on the plans and as designated by the Owner. Access routes may also be used by Town employees, the public and other separate Town contractors. No other access points shall be allowed unless approved by the Owner. All Construction Manager traffic authorized to enter the site shall be experienced with the route or guided by Construction Manager personnel. The Construction Manager is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic.

GC 35 INGRESS AND EGRESS

- 35.1 Construction Manager's access to the Work area will be permitted only through approaches that will be designated by Owner, and then only in such manner that Construction Manager's traffic will not interfere with Owner's operations. Construction Manager shall, at all times, maintain free unimpeded ingress and egress at the site. Construction Manager personnel are not to enter into any areas of the jobsite other than Work areas and areas of designated access.

GC 36 PRECONSTRUCTION CONFERENCE

- 36.1 As soon as practicable after execution of this Contract, and prior to commencing any Work, a pre-construction conference will be coordinated by the Construction Manager and the Owner. In attendance at said conference will be Owner and any of its representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project and to review any items requiring clarification.

Procedures for the processing and distribution of all documents and correspondence related to the Contract will be established, among other things.

GC 37 MEETINGS

- 37.1 The Construction Manager shall, at its expense, as requested by Owner, attend any and all meetings called by Owner to discuss the Work under the Contract. Such meetings shall be conducted and recorded by the Construction Manager with typed minutes of each meeting distributed to all attendees.

GC 38 NOT USED

GC 39 DELIVERY, UNLOADING AND STORAGE

- 39.1 Construction Manager shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Contract. The storage facilities, methods of storing and security provisions shall meet Owner's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.
- 39.2 Owner-furnished materials will be received and stored by the Owner at an adjacent project location of its choosing; the loading and transport of such materials shall be performed by the Construction Manager, and such labor, equipment and related expenses arising out of or in connection therewith are included in the GMP.

GC 40 WORK AREA

- 40.1 All Construction Manager's Work areas on the jobsite will be assigned by Owner, in writing, and shall be compliant with applicable FDOT permit(s). Construction Manager shall confine its storage, staging, equipment and vehicle parking to the areas so approved. Before commencing Work, the Construction Manager shall provide the Owner with land and cell line numbers where representatives of the Construction Manager may be reached at all times during normal working hours, and for emergency matters. Should Construction Manager find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Construction Manager shall, provide and make its own arrangements for the use of such additional land at no additional cost to Owner.

GC 41 NOT USED

GC 42 CONSTRUCTION MANAGER-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

- 42.1 Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by Owner to order removal of rejected materials and equipment shall not relieve Construction Manager from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.
- 42.2 Construction Manager shall continuously check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Construction Manager's negligence to foresee means of installing equipment into position inside structures.
- 42.3 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications will be acceptable regardless of Owner's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Construction Manager from responsibility for the quality and securing progress of Work as required by the Contract Documents. The Owner shall notify the Construction Manager of defective or unacceptable Work if the Owner discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with the GENERAL CONDITIONS Section entitled, WARRANTY. No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.

- 42.4 Construction Manager shall waive “common practice” and “common usage” as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Construction Manager shall order and schedule delivery of materials in reasonable time to avoid delays in construction. The Construction Manager shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Construction Manager shall notify Owner immediately of recommended substitute(s) to permit Owner’s selection of a suitable substitute.
- 42.5 Owner will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract. Review and approval of all items proposed by Construction Manager for incorporation into the Work will be by Owner. This function by Owner will apply both to approvals for the Contract as initially signed, and to approvals for changes to Contract by modifications during progress of the Work. Reference to manufacturers’ names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise and in accordance with GC 43 below.
- 42.6 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer’s brands or models, Construction Manager shall submit its own choice for Owner’s review and approval, supported by sufficient evidence of conformity with the Contract Documents.

GC 43 SUBSTITUTIONS

- 43.1 Prior to proposing any substitute item, Construction Manager shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in Owner’s interest, and will in no way impact detrimentally upon the Project completion date and schedule.
- 43.2 The burden of proof of equality of a proposed substitution for a specified item shall be upon Construction Manager prior to Owner’s decision on such substitution. Construction Manager shall support its request with sufficient test data and other means to permit Owner to make a fair and equitable decision on the merits of the proposal. Construction Manager shall submit drawings, samples, data, certificates, and additional information as may be required by the Owner for proposed substitute items as required by GC 42 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA & SAMPLES.
- 43.3 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. Owner will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Construction Manager shall allow an additional 15 days for Owner’s review of substitution. All requests for substitutions with submittal data must be made at least fifty (50) days prior to the time Construction Manager must order, purchase, or release for manufacture or fabrication, to the extent knowledge or need for the substitution is available by such time. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance. Approval of a substitution shall not relieve

Construction Manager from responsibility for compliance with all requirements of the Contract. Construction Manager shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

- 43.4 If Owner rejects Construction Manager's substitute item on the first submittal, Construction Manager may make only one additional request for substitution in the same category. On the second request, and all future requests, the Construction Manager shall be invoiced the expenses (including Owner's and Design Professionals' cost and overhead) involved in reviewing submittal data.

GC 44 EXPEDITING

- 44.1 The equipment and material furnished under this Contract may be subject to expediting by Owner, at Owner's expense. Owner shall be allowed reasonable access to the shops, factories, and other places of business of the Construction Manager and its subcontractors and suppliers, for expediting purposes. As required by Owner, Construction Manager shall supply schedules and progress reports for Owner's use in expediting and Construction Manager shall cooperate with Owner and require its subcontractors and suppliers to cooperate with Owner in such expediting. Any expediting performed by Owner shall not relieve Construction Manager of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Contract, provided the costs are paid by Owner to expedite the Work if the Work is otherwise on schedule.

GC 45 FIELD LAYOUT OF WORK

- 45.1 All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Owner in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.
- 45.2 All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Construction Manager, at Construction Manager's expense. Among other things, the Construction Manager or its surveyor shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Construction Manager's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations. Construction Manager, at its expense, shall provide surveys necessary for utility easements.
- 45.3 The Construction Manager shall have the responsibility to carefully preserve all bench marks, reference points and stakes. In case of destruction thereof by the Construction Manager resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be re-established by the Construction Manager, and all reference ties recorded therefore shall be furnished to the Owner. All computations necessary to establish the exact position of the Work shall be made and preserved by the Construction Manager.

GC 46 CONSTRUCTION MANAGER FURNISHED DRAWINGS, DATA AND SAMPLES

46.1 Review and permission to proceed by Owner as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Construction Manager and does not relieve Construction Manager from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required shall be submitted to the Owner for review.

46.2 All correspondence from the Construction Manager to the Owner shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Construction Manager for accuracy, completeness and compliance with Contract requirements. These drawings and schedules shall be stamped and signed by Construction Manager certifying to such check. The certification stamp shall read as follows:

“I certify that I have checked this submittal for accuracy, completeness and compliance with Contract requirements, and it has been coordinated with all other submittals and Contract Documents.”

| | |
|------------------------------|-------|
| _____ | _____ |
| SIGN | DATE |
| Burkhardt Construction, Inc. | |

46.3 DRAWINGS.

46.3.1 Where drawings are required for (a) fabrication of Construction Manager furnished equipment; (b) installing Construction Manager furnished material or equipment; or (c) planning and performance of the Work under Contract; such drawings shall be originally generated and submitted by and at the expense of the Construction Manager before fabrication, installation or performance is commenced. Each submittal shall be made not less than thirty-five (35) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least fourteen (14) calendar days for review by the Architect/Engineer. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work.

46.3.2 For drawings greater in size than 11” x 17”, one reproducible and four copies shall be submitted to the Owner by and at the expense of the Construction Manager. The Owner will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the Owner’s review comments will be returned to the Construction Manager. A reproducible copy of drawings equal to or less than 11” x 17” is not necessary, but five copies of the unfolded drawings must be transmitted to the Architect/Engineer and Owner.

46.3.3 If drawings show variations from the Contract requirements that are readily apparent from Construction Manager’s review as required by this Contract, the Construction Manager shall describe such variations in writing, separate from the drawings, at the time of submission. If the Owner approves any such variation(s), it will issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued. The terms of this Section GC 46 shall not diminish Architect/Engineer’s or other consultant of Owner’s professional or contractual obligations.

- 46.3.4 Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances, i.e. – bending radius, deflections, slopes. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.
- 46.3.5 All drawings submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the Specifications. The Architect/Engineer and Owner will conduct a review of Construction Manager's drawings and a drawing marked with one of the following review comments will be returned to the Construction Manager:
1. No exceptions taken.
 2. Make corrections noted. No resubmittal.
 3. Make corrections noted. Resubmit.
 4. Rejected.
 5. Not required for review.
- 46.3.6 The Construction Manager must incorporate the changes indicated, resubmit and obtain a Code 1, 2 or 5 notation before release for shipment can be granted.
- 46.4 SAMPLES.
- 46.4.1 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.
- 46.4.2 Where samples are required, they shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least 21 calendar days for Owner's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Construction Manager's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable.
- 46.4.3 Samples that have been reviewed may, at Architect/Engineer's and Owner's option, be returned to the Construction Manager for incorporation into the Work.
- 46.5 Catalogues, Data and Certificates.
- 46.5.1 Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Construction Manager. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the Bar Chart schedule approved by the Owner, in writing. Allow at least 21 calendar days for Architect/Engineer

and Owner's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review.

- 46.5.2 Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Construction Manager's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Construction Manager shall be certified and dated by the Construction Manager on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications. Architect/Engineer and Owner will conduct a review of Construction Manager's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph 46.3.5, above, will be returned to the Construction Manager.

GC 47 CONSTRUCTION SCHEDULE

- 47.1 Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Construction Manager shall prepare and submit a construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity.
- 47.1.1 The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Construction Managers at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Construction Manager furnished material and equipment. The schedule shall be computer generated Bar Chart drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.
- 47.1.2 The construction schedule shall include the following:
- a. Brief description of each activity.
 - b. All submittals, samples, approvals, fabrication, and deliveries for equipment and materials.
 - c. Activities showing scheduled start and finish, late start and finish.
 - d. Relations between activities.
 - e. Duration of activities.
 - f. Contractual and other major milestones including phasing.
 - g. Schedule activities to include labor and material.
 - h. An allowance for delays due to weather. Contract Time extensions for weather delays will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.
- 47.1.3 Upon acceptance by Owner of the Bar Chart Schedule, in writing, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the Owner.
- 47.1.4 The detailed schedule submittal shall include five (5) color copies of the following:
- a) Time Scaled Diagram.
 - b) Bar Chart in the following formats:

- 1) Sorted by activity.
 - 2) Sorted by early start.
 - c) Precedence and Successor report.
 - d) Narrative report.
 - h) Computer diskette, if applicable (One copy)
 - i) Submittals shall be organized under Standard CSI format.
- 47.1.5 The Schedule shall be updated monthly and submitted along with an updated CD accompanied, if applicable, by an Application for Payment. Construction Manager shall meet with the Owner and Architect/Engineer of Record to review and verify:
- a) Actual start and finish dates for completed activities.
 - b) Remaining duration required to complete each activity started, scheduled to start, but not completed.
 - c) Logic and time, for change orders that are to be incorporated into the schedule.
 - d) Percentage for completed and partially completed activities.
- 47.2 Following development and submittal of the construction schedule as aforesaid, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.
- 47.3 The Construction Manager shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:
- a. Subcontractor Construction (Subnetworks) - Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.
 - b. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.
- 47.4 The Construction Manager shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Construction Manager and the Owner. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

- 47.5 The Construction Manager shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Contract will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Contract, and maintain updated information as required regarding the interface with other contracts.
- 47.6 The Construction Manager agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Contract completion date will not be met, the Construction Manager shall execute some or all of the following remedial actions at Construction Manager's sole cost and expense:
- a) Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.
 - b) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
 - c) Reschedule the Work in conformance with the specification requirements.
- 47.7 Prior to proceeding with any of the above actions, the Construction Manager shall notify the Owner of the proposed schedule changes. Such actions shall be incorporated by the Construction Manager into the diagram before the next update, at no additional cost.

48 RESPONSIBILITY FOR WORK SECURITY

- 48.1 Construction Manager shall, at its expense, at all times conduct all operations under the Contract in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Construction Manager shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Construction Manager shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition.
- 48.2 Construction Manager shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three days of each incident.

GC 49 PROTECTION OF WORK IN PROGRESS, MATERIALS AND EQUIPMENT

- 49.1 Construction Manager shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Contract. Excluded from Construction Manager's responsibility is any loss or damage which results from acts or omissions of the Owner or its representatives or other contractors.
- 49.2 Permanent openings or thoroughfares for the introduction of work and materials to the construction site shall be protected so that upon completion, the entire Work will be delivered to the Owner in proper, whole and unblemished condition.

GC 50 PROTECTION OF EXISTING PROPERTY

- 50.1 Construction Manager shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Construction Manager's operations, Construction Manager shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.
- 50.2 Construction Manager shall conduct its operation so as not to damage any existing buildings or structures. The Construction Manager shall verify that means and methods of construction used inside, adjacent to, under or over existing structures will not cause damage. The Construction Manager shall provide protection methods which insure the safety of persons on the jobsite and the general public.
- 50.3 Unless otherwise specifically provided in the Contract, Construction Manager shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by Owner. Thereafter, and before it begins such Work, Construction Manager shall give due notice to Owner of its intention to start such Work. Construction Manager shall not be responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Construction Manager.
- 50.4 Construction Manager shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by Owner, do not reasonably interfere with the performance of this Contract.
- 50.5 Construction Manager shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Construction Manager.

GC 51 LABOR

- 51.1 Construction Manager shall employ only competent and skilled personnel to perform the Work. Construction Manager shall, if requested to do so by Owner, remove from the jobsite any personnel of Construction Manager whom Owner determines unfit or acting or working in violation of any provision of this contract.
- 51.2 Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.
- 51.3 Construction Manager shall comply with and shall cooperate with Owner in enforcing jobsite conditions and job work rules which directly affect the performance of the Work including, but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

- 51.4 The Construction Manager and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and Town holidays, shall be performed without additional expense to the Owner. The Construction Manager shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Construction Manager or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
- 51.5 Construction Manager shall submit a "Construction Manager's Daily Report" for each day work is accomplished. Reports shall be submitted daily to Owner.

GC 52 EQUAL EMPLOYMENT OPPORTUNITY

- 52.1 During the performance of this Contract, the Construction Manager agrees as follows:
- A. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Construction Manager will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.
 - B. The Construction Manager will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.
 - C. The Construction Manager will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Owner, advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - D. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - E. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - F. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Construction Manager may be declared

ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Construction Manager will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Construction Manager may request the United States to enter into such litigation to protect the interest of the United States.
- H. All regulations, guidelines, and standards lawfully adopted under the governing statutes.

GC 53 SAFETY & PROTECTION OF PERSONS & PROPERTY

53.1 RESPONSIBILITY FOR SAFETY AND HEALTH

- 53.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Contract ("Work"). The Construction Manager shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner and Users who may be affected thereby. The Construction Manager shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the Owner. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Construction Manager with respect thereto.
- 53.1.2 All Work, whether performed by the Construction Manager, its Sub-Construction Managers or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:
 - a. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and
 - b. all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.
- 53.1.3 Should the Construction Manager fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Construction Manager.
- 53.1.4 The Construction Manager shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any

worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Construction Manager to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Construction Manager shall promptly comply.

53.1.5 The Construction Manager shall defend, indemnify and hold the Owner, the Owner's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Construction Manager, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition.

53.1.5.1 As and to the extent that the Work involves trench excavations exceeding five (5) feet in depth, pursuant to Chapter 553.60, et.seq, F.S. (Trench Safety Act), Construction Manager certifies that such law(s) will be fully complied with during construction of the Project. Any and all costs arising out of or in connection with being compliant with for the Trench Safety Act are included in the GMP.

53.1.6 In any and all claims against those indemnified hereunder by any employee of the Construction Manager, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Construction Manager or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

53.2 PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS

53.2.1 The Construction Manager shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The Owner, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal safety, loss control and security programs. In such event, however, the Construction Manager shall not be relieved of its aforesaid responsibilities and the Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Construction Manager by this Contract.

53.2.2 Until final acceptance of the Work by the Owner pursuant to GC 72 of this Contract, the Construction Manager shall have full and complete charge and care of and, except as otherwise provided in this subparagraph or elsewhere in this Contract, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever, except to the extent caused by Owner, its representatives, or contractors.

53.2.3 The Construction Manager shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before

final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration:

A. Is directly due to errors in the Contract Documents which were not discovered by the Construction Manager and which the Construction Manager could not have discovered through the exercise of due diligence;

B. Is caused by the agents or employees or contractors of the Owner (unless (1) the Construction Manager has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (2) such loss or damage would be covered by any policy or policies of insurance which the Construction Manager is required to maintain hereunder, whether the Construction Manager actually maintains such insurance or not, or (3) is otherwise covered by a policy or policies of insurance maintained by the Construction Manager, whether or not required hereunder).

53.3 SURFACE AND SUBSURFACE WATER

53.3.1 Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the Owner for its prior written approval. All such Work shall entitle Construction Manager to make a claim for change to Contract Time and Price.

53.4 EMERGENCIES

53.4.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Construction Manager shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Construction Manager to take necessary emergency action shall entitle the Owner to take whatever action it deems reasonably necessary, including, but not limited to, suspending the Work as provided in GC 23.

53.4.2 The Owner may offset any and all costs or expenses of whatever nature, including reasonable attorneys' fees, paid or incurred by the Owner in taking such emergency action against any sums then or thereafter due to the Construction Manager. The Construction Manager shall defend, indemnify and hold the Owner harmless against any and all costs or expenses pursuant to this Paragraph, by whomsoever incurred. If the Construction Manager shall be entitled to any additional compensation or extension of time claimed on account of emergency work which is not due to the fault or neglect of the Construction Manager or its subcontractors or sub-subcontractors, it shall be handled as provided in GC 65.

53.5 OWNER'S STANDARDS

53.5.1 The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Construction Manager shall comply, and to review the efficacy of all protective measures taken by

the Construction Manager. The exercise of or failure to exercise any or all of these rights by the Owner shall not relieve the Construction Manager of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Construction Manager.

GC 54 PROJECT SITE PROTECTION

- 54.1 Construction Manager, at its expense, shall maintain such protection as provided in General Conditions Section (GC 53) titled SAFETY & PROTECTION OF PERSONS & PROPERTY in a satisfactory condition until removal is authorized by Owner. Construction Manager, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to Owner. The Construction Manager will provide parking for its employees within the designated work areas. Construction Manager employees will not be allowed to park in areas which are used by any facilities which remain in operation.

GC 55 FIRE PREVENTION

- 55.1 Construction Manager shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Construction Manager. This includes keeping the Contract Work area clear of all trash at all times.
- 55.2 All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the Owner. Construction Manager shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Construction Manager to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC 56 ILLUMINATION

- 56.1 When any work is performed at night or where daylight is shut off or obscured, Construction Manager shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.
- 56.2 Any nighttime and pre-dawn construction must be approved beforehand by the Owner, in writing. Construction Manager shall at all times be fully compliant with Sea Turtle and related wildlife rules and regulations promulgated by all Federal, State, and local authorities applicable within and adjacent to the work areas, at no additional cost to Owner.

GC 57 BEST MANAGEMENT PRACTICES

- 57.1 Construction Manager shall be responsible for evaluating the site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated

Substances. For example, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.

- 57.2 Regulated Substances are substances that are known to cause significant harm to human health and the environment (including surface and groundwater). The Unified Land Development Code (ULDA) Section 9.3, Wellfield Protection, regulates the storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water suppliers. In addition, the ULDC, Section 9.6, Excavation, requires that Best Management Practices for the Construction industries be followed for Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.
- 57.3 If any Regulated Substances are stored on the construction site, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, ground waters, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
- 57.4 Construction Manager shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
- 57.5 Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site and shall be disposed of in a proper manner as prescribed by law.

GC 58 DUST CONTROL

- 58.1 The Construction Manager, for the duration of the Contract, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

GC 59 WATER POLLUTION

- 59.1 Construction Manager shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

GC 60 AIR POLLUTION

- 60.1 The Construction Manager shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Palm Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Palm Beach County Air Pollution Board Regulations.

GC 61 EXPLOSIVES & HAZARDOUS MATERIALS

- 61.1 Construction Manager shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, labeling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Construction Manager will notify the Owner immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the Owner. The Construction Manager shall maintain and Post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.
- 61.2 In the event that hazardous material is improperly handled or stored by the Construction Manager, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Construction Manager shall immediately notify the Owner and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Construction Manager's sole cost and expense. Further, Construction Manager shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities caused by such materials being brought on site by Construction Manager or anyone employed by it. However, the parties acknowledge that the Project consists of existing structures. Accordingly, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Construction Manager. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in the Contract. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, Subcontractors, Architect, Architect's consultants and agents, and employees of any of them from and against Claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described above and has not been rendered harmless; provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity. If, without negligence on the part of the Construction Manager or anyone for whom it is responsible, the Construction Manager is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Construction Manager for all cost and expense thereby incurred.

GC 62 INSPECTION: REJECTION OF MATERIALS AND WORKMANSHIP

- 62.1 All materials and equipment furnished and work performed shall be properly inspected by Construction Manager, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by Owner. Construction Manager shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose Owner shall be afforded full and free access to the shops, factories or places of business of Construction Manager and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Construction Manager covers all or any portion of the Work prior to any quality surveillance or test by Owner, the cost of any necessary uncovering and replacing shall be borne by Construction Manager. Neither the failure to make such quality surveillance, observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Construction Manager for such work, materials or equipment shall prejudice the rights of Owner thereafter to correct or reject the same as hereinafter provided.
- 62.2 If any material, equipment or workmanship is determined by Owner, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Contract, Owner shall notify Construction Manager in writing that such material, equipment or work is rejected and the Owner reserves the right to withhold payment on any such item. Thereupon, Construction Manager shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Contract.

GC 63 TESTING

- 63.1 Unless otherwise provided in the Contract, Drawings and Specifications shop testing of materials or work shall be performed by the Construction Manager and in accordance with the Technical Specifications. Field testing of materials or work shall be performed by Construction Manager. Should tests in addition to those required by the contract documents be desired by Owner, Construction Manager will be advised in reasonable time to permit such testing. Such additional tests may be at Owner's expense unless such additional tests are required due to Construction Manager's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Construction Manager's expense. Construction Manager shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Construction Manager shall provide reasonable and accurate notice of when construction activities which require Owner's testing services are required. Construction Manager shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

GC 64 PROGRESS

- 64.1 Construction Manager shall give Owner full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Construction Manager's actual progress is inadequate to meet the requirements of the Contract, Owner may so notify Construction Manager who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Owner, Construction Manager does not improve performance to meet the currently approved Contract construction schedule, Owner may require an increase in Construction Manager's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to Owner. Neither such notice by Owner nor Owner's failure to issue such notice shall relieve Construction Manager of its obligation to achieve the quality of work and rate of progress required by the Contract.
- 64.2 Failure of Construction Manager to comply with the reasonable instructions of Owner may be grounds for determination by Owner that Construction Manager is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, Owner may terminate Construction Manager's right to proceed with the performance of the Contract, or any separable part thereof, in accordance with the applicable provisions of this Contract.

GC 65 CHANGES

- 65.1 Owner may, at any time, without invalidating the Contract and without notice to the Surety(ies), make changes in the Work by issuing a Change Order.
- 65.2 Owner will issue written orders to Construction Manager for any changes except that in the event of an emergency which Owner determines immediately endangers life or property, Owner may issue oral orders to Construction Manager for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work.
- 65.3 Construction Manager shall commence such changed work so that all dates set forth in Construction Manager's current construction schedule as accepted by Owner will be met, subject to Construction Manager's right to make a claim for extension in time or Contract price. In the event of an emergency which Owner determines immediately endangers life or property, Construction Manager shall immediately commence such changes as required by Owner in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle Owner to invoke the provisions of section GC 25 entitled TERMINATION FOR DEFAULT.
- 65.4 Unless otherwise required, Construction Manager shall, within twenty-one (21) calendar days following receipt of a written Field Directive, submit in writing to Owner a Contract Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to Owner of performing the change under the Contract in comparison to what the cost would have been, had such change not been offered.
- 65.5 The proposal shall state the Construction Manager's added and/or deleted compensation in detail, including, but not limited to:

- a. Material quantities and unit prices;
- b. Labor man-hours and wages by craft;
- c. Equipment type and size and rental rate;
- d. Overhead, profit, and bond allowance of 10%;
- e. Subcontract costs with back-up detail as specified (in items a), b), c), with subcontract overhead and profit not to exceed 10% in the aggregate;
- f. Time extension, if any;
- g. A detailed description of any impacts this change will have on any activities on the existing schedule which would affect any of the Milestone Dates;
- h. Proof of payment of any tax liability resulting from a specific change (if requested by Owner); and,
- i. General Condition costs.

- 65.5.1 The parties understand and agree that for any changes in the work, whether by Change Directive as addressed elsewhere herein, or Change Order, Construction Manager shall have no entitlement to overhead, profit, bond allowance, general conditions, or additional fees to the extent such Change Directives or Change Orders are funded by and within the Construction Contingency as provided for in Article 6.4 of the Contract. To the extent that a compensable change order is issued that adjusts the GMP, entitlements set forth in 65.5 above govern, as applicable.
- 65.6 Under no circumstances shall Construction Manager apply for or be entitled to recover extended home office overhead costs associated with a change in the Work, whether or not calculated in accordance with the Eichleay Formula. The Parties may agree if justified in accordance with GC 27, to an extension of time in connection with any changes to the Work. Any time extension request submitted after the twenty-one (21) calendar day time period noted above, will not be considered.
- 65.7 If Construction Manager does not propose the method of compensation for such change or any part thereof within the time required, or if any proposed method is not acceptable, or if a method of compensation for such change, or any part thereof cannot be agreed upon, Construction Manager shall proceed upon direction (Construction Change Directive) with such change.
- 65.8 A Construction Change Directive (CCD) is a written order prepared by the Architect/Engineer of Record and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD may be used in the absence of total agreement on the terms of Change Order or to complete work which, if not accomplished, could adversely affect the existing schedule. Upon receipt of the CCD, the Construction Manager shall promptly proceed with the change in the Work involved. When the Owner and Construction Manager agree with the determination made by the Architect/Engineer or Record concerning the adjustments in the Contract Sum and/or Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by the preparation of a Change Order.
- 65.9 If, at any time after Construction Manager commences such change, and a method of compensation other than time and material is agreed upon, such compensation will be made in accordance with such agreement. In any event, Construction Manager shall keep accurate records of the actual cost to Construction Manager for such change. Costs for which Construction Manager shall be entitled to compensation on a direct cost basis as described above, are as follows:

- a. Direct Labor Cost - Payment will be made for all manual classifications up to and including foremen, but shall not include superintendents, assistant superintendents, general foremen, office personnel, time-keepers and maintenance mechanics. The time charged to changes will be subject to the daily approval of Owner and no charges shall be accepted unless evidence of such approval is submitted by Construction Manager with its billing.

Labor rates used to calculate the direct labor costs shall be those rates in effect during the accomplishment of the change. In addition to the direct payroll costs, the direct labor costs shall include payroll taxes and insurance, vacation allowance, subsistence, travel time and overtime premium and any other payroll additives required to be paid by Construction Manager by law or collective bargaining agreements. Copies of certified pertinent payrolls shall be submitted to Owner.

- b. Equipment Costs - Payment for the rental and operation of the equipment furnished and used by Construction Manager shall be made for all construction and automotive equipment or tools with a new cost at point of origin of one thousand dollars or less each. Equipment time charged to changes will be subject to daily written approval of Owner and no charges will be accepted unless evidence of such approval is submitted with Construction Manager's billing.

The equipment rental and operation rates include costs for rental, fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the change. Equipment rental rates for Construction Manager-owned equipment used in this Contract shall be those contained in the RENTAL RATE BLUE BOOK as published by K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95110-1313, (800-669-3282) and current at the time that work for any specific Change is performed. When equipment is used for time and material changes which does not reasonably resemble Blue Book rental rates, the rental rate shall be negotiated and agreed upon in writing.

If Construction Manager-owned equipment is not available and equipment is rented from outside sources, payment will be computed on the basis of actual invoice cost. Rental rates for non-owned equipment must be approved in advance by Owner.

When the operated use of equipment is infrequent and, as determined by Owner, such equipment need not remain at the site of the Work continuously, payment shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at Owner's direction shall be paid for at a standby rate.

Unless otherwise provided in the Contract, all equipment rental rates shall be agreed upon in writing before commencing any change. When a specific piece of rental equipment, normally used to perform unchanged Contract Work is used for time and material changed work, the applicable rental rate shall be the actual rate paid by the Construction Manager at the time the Work is performed.

Transportation costs for bringing equipment to the jobsite and for returning equipment to the point of origin, exclusively for use on time and material work, will be reimbursed to

Construction Manager based on invoices, provided that prior written approval has been given to Construction Manager.

Overtime shall be paid as per Method 2 described in said RENTAL RATE BLUE BOOK.

No compensation will be made to the Construction Manager for equipment repair, equipment maintenance or idle equipment time.

- c. Material Costs - Payment for the cost of materials furnished by Construction Manager for use in performing the change will be made, provided such furnishing and use of materials was as specifically authorized and the actual use was verified by Owner. Payment will be the net cost to Construction Manager delivered at the job and vendor's invoice shall accompany the billing along with the verification by Owner of such use of such materials.
- d. Contract and Outside Service Costs - Payment for work and services subcontracted by Construction Manager in the performance or completion of the change will be made only when both the subcontractor and the terms of payment to such subcontractor have been approved in writing by Owner before the subcontractor starts to work on the change.
- e. Tools and Equipment - Payment will be made for tools and equipment with a new cost of One Thousand Dollars, or less, each, only upon approval by the Owner.

65.10 For any changes involving deductive items, the following shall apply to the amount of allowable overhead, profit and bond allowance:

- a. For deductive changes only (those which contain no additive items), there will be no reduction in overhead and profit and, likewise, no addition by the Construction Manager for processing.
- b. For changes containing both additions and deductions covering related work or substitutions, the overhead and profit shall be figured on the net increase if any, with respect to that change, plus 15% thereof covering overhead, profit, and bond allowance.

65.11 No change order or CCD shall be valid until approved and signed by the Owner. The Architect/Engineer of Record is not authorized to bind the Owner to changes relative to changes in Contract cost and or time. The Architect/Engineer may only recommend acceptance or rejection. If a proposed change is deemed beneficial to the Project and is within the limits set forth in the contract, the Owner may cause to be issued an appropriate change order to the Contract with or without the Construction Manager's signature.

65.12 The Architect/Engineer of Record will have the authority to order minor changes in the Work which do not involve adjustment to the Contract Sum or Time and are not inconsistent with the intent of the Contract documents. Such changes shall be effected by written order and shall be binding on the Owner and Construction Manager. The Construction Manager shall carry out such written orders promptly, and the Construction Manager shall receive no additional compensation therefore, nor there be any change in the Contract Time. The Architect/Engineer shall immediately provide written notices to the Owner beforehand of all minor changes in the Work.

- 65.13 Execution of change order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the modification(s) constitutes, in whole or part, a cardinal change to the contract.

GC 66 RECORD DRAWINGS AND SPECIFICATIONS

A. Drawings:

1.Conformed Documents - Prior to the first application for payment, Construction Manager shall show proof of conformed documents with all Bid addenda identified on the record drawings and on his field set of drawings. Supplemental information following the bid shall be included and updated monthly for review with the application for payment.

2.Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner for inspection at any time.

3.Final Records - The Construction Manager shall furnish to Owner in electronic form via thumb drive and/or SD card and hard copy of a complete set of field marked-up as-builts with RECORD clearly printed on each sheet, together with CADD files in electronic format which the Construction Manager shall also furnish to its Surveyor for its final review and issuance of final as-builts. Construction Manager shall also furnish to the Town the As-Builts in AutoCAD.

B. Specifications:

1. Progress Records - During construction, Construction Manager shall keep a marked-up and up-to-date set of Specifications showing as-is conditions on the site annotated to clearly indicate all substitutions that are incorporated into the Work. Where selection of more than one product is specified, annotation shall show which product was installed. These Specifications shall be available to Owner for inspection at any time.

2. Final Records - The Construction Manager shall furnish to Owner a complete set of marked-up as-built Specifications with RECORD clearly printed on cover. Submittal shall also include one electronic copy on thumb drive and/or SD card. Owner, at its expense, will furnish Construction Manager a set of Specifications for mark-up by Construction Manager. Construction Manager shall accurately and neatly transfer all annotations from progress as-builts to final as-builts.

C. Manuals:

1. Manuals - As a condition precedent to Substantial Completion, the Construction Manager shall furnish to Owner one complete set of manuals and applicable operating instructions as referenced in Technical Specifications and one electronic copy on thumb drive and/or SD card.
2. Unless otherwise specified, manuals to be bound in 3-ring binder with contents clearly indicated on outside cover.

D. Endorsement:

1. Construction Manager shall sign each final record drawing and the cover of the record Specifications and shall note thereon that deviations and annotations are complete and accurate.
2. The Construction Manager shall provide a signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of construction as a condition precedent to Final Acceptance.

GC 67 MEASUREMENT OF AND PAYMENT FOR WORK

- 67.1 Estimates and all support data shall be prepared by Construction Manager and submitted in writing for Owner's approval on or about the end of each month covering the amount and value of work satisfactorily performed by Construction Manager up to the date of such estimate. Such estimates shall be based on the construction schedule completed activity cost, as approved, and may be confirmed by actual measurement of the Work in place. Estimates shall be based on cumulative total quantities of work performed. Estimates may include materials or equipment not incorporated into the Work provided the requirements set forth below are met. An AIA G-702 type format for such estimates shall be predicated upon Exhibits comprising the GMP, and said format shall be agreed upon prior to, or no later than, application for the first progress payment.

The quantity of work to be paid for under any item for which a unit price is fixed in the Contract shall be the amount or number, approved by Owner, of units of work satisfactorily completed with the Contract and computed in accordance with applicable measurement for payment provisions of the Contract.

- 67.2 Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided such materials meet the requirements of this Contract, plans, and Specifications and are delivered to acceptable locations at the Project Site or to other sites in Palm Beach County that are acceptable to the Owner (bonded warehouse). Such material must be stored in a secure manner, acceptable to the Owner, and in accordance with any manufacturer's recommendations.
- 67.3 Delivered cost of such stored or stockpiled materials may be included in any subsequent payment request once the Construction Manager meets the following conditions:
- a. An applicable purchase order or supplier's invoice is provided listing the materials in detail, cost of materials and identifying this specific contract, by name.

- b. The material is insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
- c. Once any stored material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the Work.
- d. Evidence that Construction Manager has verified quantity and quality of materials delivered (verified packing list).

- 67.4 It is further agreed between the parties that the transfer of title and the Owner's payment for any stored or stockpiled materials pursuant to this General Condition shall in no way relieve the Construction Manager of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this contract, plans and Specifications. Construction Manager shall make all surveys necessary for determining all quantities of work to be paid for under the Contract. Copies of field notes, computations, and other records made by Construction Manager for the purpose of determining quantities shall be furnished to Owner upon request. Construction Manager shall notify Owner prior to the time such surveys are made. Owner, at its discretion, may arrange to have its representative witness and verify all surveys made by Construction Manager for determining quantities of work to be paid for under the Contract. Measurements and computations shall be made by such methods as Owner may consider appropriate for the class of work measured.
- 67.5 The dividing limits, lines or planes between adjacent items or classes of excavation, concrete, or other types of work where not definitely indicated on the drawings or in the Specifications, shall be determined by Owner.
- 67.6 No payments of invoices (or portions thereof) shall at anytime constitute approval or acceptance of the Work under this Contract, nor be a waiver by Owner of any of the terms contained herein.

GC 68 PROGRESS PAYMENT PROCEDURES

- 68.1 The Construction Manager shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders shall be added as separate line items. The schedule of values shall be submitted to the Owner and Architect/Engineer of Record for review and approval prior to "Commencement of Work."
- 68.2 The Construction Manager will prepare and submit three (3) original copies of monthly invoices for work completed during the one month period. Pay Applications shall be submitted in the format of the sample form given to the Construction Manager at the Pre-Construction meeting. All information must be completed for the pay application to be accepted. Owner's account number(s) for the Project will be given at the Pre-Construction meeting and will be placed at the top right hand corner of each application. These payment applications will be reviewed by all parties in attendance at the monthly pay application meetings. Prior to formal submission of the Application the Construction Manager shall submit a rough draft plus two extra copies for the Owner and Architect/Engineer of Record to review. Submit final approved copies three (3) to: the Architect/Engineer of Record, whose approval is required prior to submission to the Owner.
- 68.3 If the pay estimate and support data are not approved, the Construction Manager is required to submit new, revised or missing information according to the Owner's instructions. Otherwise, the Construction Manager shall prepare and submit to Owner an invoice in accordance with the estimate as approved. Owner will pay Construction Manager, in accordance with Florida Prompt

Payment Act (FS 218.70). Retainage, in the amount of 10%, will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. After 50% completion of the Work has been achieved, the Owner may, at its sole discretion and with consent of Surety, implement a reduction in retainage. However, in no instance can the amount retained be less than the value of the Work the Owner determines remains to be put in place or required to be performed as remedial activities.

68.4 Each application for payment shall be accompanied by the following:

- a. A notarized "Affidavit of Disbursement of Previous Periodic Payments to subcontractors" from the Construction Manager for the portion of work up to the date of that particular pay application.
- b. An Owner approved construction schedule update.

68.5 NOT USED

68.6 If one or more "Notice of Non-Payment" is received by the Owner, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the Owner. Upon request, Construction Manager shall furnish acceptable evidence that all such claims or liens have been satisfied. On bonded projects only, the Owner may allow, with consent of Surety and indemnification of the Town against any claims, payment for work which there is an outstanding Notice of Non-Payment.

68.7 Any amount otherwise payable under the Contract may be withheld, in whole or in part, if:

- a. Any claims are filed against Construction Manager by Owner or third parties; or
- b. Construction Manager is in default of any Contract condition; or
- c. Defective work or material is not remedied; or
- d. Construction Manager persistently fails to carry out the Work in accordance with the Contract Documents; or
- e. Construction Manager fails to submit an owner-approved updated Schedule with each Application for Payment.

68.8 To the extent Owner has made proper payments hereunder, if claims or liens filed against Construction Manager or property of Owner connected with performance under this Contract are not promptly removed by Construction Manager after receipt of written notice from Owner to do so, Owner may remove such claims or liens and all costs in connection with such removal shall be deducted from withheld payments or other monies due, or which may become due, to Construction Manager. Construction Manager shall have no less than thirty (30) days to remove or bond off such lien after notice. If the amount of such withheld payments or other monies due Construction Manager under the Contract is insufficient to meet such cost, or if any claim or lien against Construction Manager is discharged by Owner after final payment is made, Construction Manager and its surety or sureties shall promptly pay Owner all costs (including attorneys' fees) incurred thereby regardless of when such claim or lien arose.

68.9 Following issuance, by the Architect/Engineer of Record, of a Certificate of Substantial Completion, Construction Manager may submit special payment request, provided the following have been completed:

- a. Obtain permits, certificates of inspection and other approvals and releases by governing authorities, required for the Owner's occupancy and use of the Project.
- b. Complete final site cleaning of the Work.
- c. Submit record documents (record drawings).
- d. Submit listing of work to be completed before final acceptance.
- e. Settle liens and other claims.
- f. Obtain Consent of Surety for partial release of retainage.
- g. Settle Liquidated Damages due to Owner, if any.

68.10 Upon receipt by Owner of Construction Manager's written Notice of Final Completion of its work under this Contract, in accordance with GC 72, Owner shall verify all work has been completed on the Project. When all work has been verified as complete, and the Construction Manager completes and submits the items listed below, the Construction Manager may submit a final invoice.

- a. Complete work listed as incomplete at the time of Substantial Completion and obtain Architect/Engineer certification of completed Work.
- b. Submit proof of payment on fees, taxes or similar obligations.
- c. Transfer operational, access, security and similar provisions to Owner; remove temporary facilities, tools and similar items.
- d. Obtain Consent of Surety for final payment and/or partial release of retainage.
- e. All information required by GC 66.
- f. Obtain certification of as-built (record) drawings from Architect/Engineer of Record.

GC 69 USE OF COMPLETED PORTIONS OF WORK

- 69.1 Whenever, as determined by Owner, any portion of work performed by Construction Manager is in a condition suitable for use, Owner may initiate certificate of Substantial Completion (Partial Utilization) for that portion and take possession of or use such portion. Such use by Owner shall in no case be construed as constituting final acceptance, and shall neither relieve Construction Manager of any of its responsibilities under the Contract, nor act as a Waiver by Owner of any of the conditions thereof, provided, that Construction Manager shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of work, Construction Manager shall be entitled to an equitable adjustment in its compensation and/or schedule under this Contract.
- 69.2 If, as a result of Construction Manager's failure to comply with the provisions of the Contract, such use proves to be unsatisfactory to Owner, Owner shall have the right to continue such use until such portion of work can, without injury to Owner, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or equipment, as necessary for such work to comply with the Contract; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve months unless otherwise mutually agreed upon in writing between the parties.
- 69.3 Construction Manager shall not use any permanently installed equipment unless such use is approved by Owner in writing. Where Construction Manager's written request is granted for the use of certain equipment, Construction Manager shall properly use and maintain, and upon completion of its use, and at its expense, recondition such equipment to the satisfaction of Owner. If Owner furnishes an operator for such equipment, such operator's services shall be performed

under the complete direction and control of Construction Manager and shall be considered Construction Manager's employee for all purposes other than the payment of such operator's wages, workmen's compensation or other benefits paid directly or indirectly by Owner.

GC 70 ALLOWANCES AND UNIT PRICES

- 70.1 Construction Manager has included in the GMP all unit prices and allowances. Items covered by unit prices shall be supplied for such amounts as the Town may direct.
- 70.2 Unit prices shall apply to revisions to the Work as applicable. Unit Prices are "all inclusive," and cover all labor, material, supervision, tools, equipment, insurance taxes, fringe benefits, coordination, engineering, overhead, profit, performance and payment bonds, and all other things necessary. If in the event that a final audit of the quantity of units that are ultimately furnished and installed reflects less units than those estimated on Exhibit "A," a deductive Change Order shall be issued reducing the GMP accordingly at the corresponding unit prices set forth in said Exhibit.

GC 71 SUBSTANTIAL COMPLETION

- 71.1 The date of Substantial Completion is the date established by the Architect or Engineer (A/E) and approved by the Owner when the Project is sufficiently complete to permit the Owner to use it for its intended purpose and the items listed below in 71.4 are complete. Substantial Completion of the Work shall mean the completion of the entire Project.
- 71.2 The Construction Manager shall notify the A/E in writing when the Construction Manager considers the Project Substantially Complete and attach a comprehensive list of incomplete work and items needing correction with dates indicating when the items listed will be completed.
- 71.3 Once the A/E has received notice from the Construction Manager, the A/E will promptly inspect the Work. The A/E may refuse to inspect the Work if the Work is obviously not substantially complete or when the Construction Manager's list is not complete.
- 71.4 The following items shall be completed prior to a request by the Construction Manager for inspection for Substantial Completion of the Project.
- a. All general construction completed.
 - b. All roadway restoration completed.
 - c. All site restoration completed.
 - d. All painting shall be completed; all signs installed.
 - e. All electrical work complete, equipment and fixtures in place, connected, cleaned and ready for use.
 - f. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
 - g. All Project components shall be cleaned.

- h. Project site shall be cleared of the Construction Manager's excess equipment, storage shacks, trailers, and/or building supplies. All temporary construction shall be removed.
 - i. All operations and maintenance manuals for all equipment shall have been submitted.
 - j. Manufacturers' certifications and warranties shall be delivered to Owner.
 - k. All operations and maintenance training related literature, software and back-up disks shall have been provided.
 - l. All required spare parts as well as any special tools shall have been provided.
 - m. The Project record Drawings and Specifications shall be submitted in accordance with GC 66.
- 71.5 If Substantial Completion is not obtained at the inspection, called by the Construction Manager, for reasons which are the fault of the Construction Manager, the cost of any subsequent inspections requested by the Construction Manager for the purpose of determining Substantial Completion shall be the responsibility of the Construction Manager and shall be assessed against the final payment application.
- 71.6 Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the Construction Manager within 14 calendar days, and in any event prior to any request for Final Inspection and Acceptance.

GC 72 FINAL INSPECTION AND ACCEPTANCE

- 72.1 When the Construction Manager considers that all work under the Contract is complete as previously referenced in GC 71, Construction Manager shall so inform Owner and A/E in writing. In addition, when items on the punch list as recorded at the Substantial Completion inspection have been corrected and the Owner is satisfied that all work under the Contract is completed and is in accordance with the requirements of this Contract, Owner shall notify Construction Manager in writing of final acceptance of its work under this Contract.
- 72.2 The Owner will make final payment to the Construction Manager of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items, for which a Change Order will be issued:
- 1. Liquidated Damages, as applicable.
 - 2. At the discretion of the Owner, one-and-a-half (1.5) times the value of outstanding items, corrective Work, or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the Owner within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Construction Manager does hereby waive any and all claims to all monies withheld by the Owner to cover the value of all such uncompleted or uncorrected items.

- 72.3 Neither final acceptance of the Work, nor payment therefore, nor any provision of the Contract Documents shall relieve the Construction Manager of responsibility for defective or deficient materials or work. If, within one (1) year or as provided for elsewhere in the General Conditions or Technical Specifications after Substantial Completion, any of the Work is found to be defective, deficient or not in accordance with the Contract Documents, the Construction Manager shall correct, remove and replace it promptly after receipt of a written notice from the Owner and correct and pay for any damage to other Work resulting in therefrom.

GC 73 DISPOSAL OF MATERIAL OUTSIDE PROJECT LIMITS

- 73.1 The Construction Manager shall make his own arrangements for disposal of materials outside the Project limits and shall pay all costs involved. The Owner reserves the right to retain any salvage material or equipment scheduled for removal. Should the Owner elect to retain salvaged materials or equipment, the Construction Manager will provide appropriate on-site storage and protection. The Owner will be responsible for transporting from the site any materials or equipment it has elected to retain. Off-site disposal of any items not retained by the Owner shall be the responsibility of the Construction Manager.
- 73.2 When any material is to be disposed of outside the Project limits, the Construction Manager shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file in writing with the Owner said permit or the certified copy thereof together with a written release from the property owner absolving the agency of any and all responsibility in connection with the disposal of material on said property.
- 73.3 When material is disposed of as above provided and the disposal location is visible from the Project, the Construction Manager shall dispose of the material in a neat and uniform manner to the satisfaction of the Owner.

GC 74 IDENTITY OF INTEREST WITH SUBCONTRACTORS/SUPPLIERS

- 74.1 The Construction Manager represents to the Owner that neither the Construction Manager, nor any officer, director, partner or shareholder who holds ten percent (10%) or more of the outstanding stock of the Construction Manager, has any financial interest in, or as an officer, director, partner or ten percent (10%) plus shareholder of any firm, person or entity which has been or may be contracted with to furnish labor, material, equipment or professional services in connection with the construction or the Project. Construction Manager agrees to give written notification and obtain the approval of the Owner before entering into any Contract on this Project with any subcontractor or materialman where there exists any identity of interest.

GC 75 CLEANING UP

- 75.1 Construction Manager shall, at all times, at its expense, keep its work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Construction Manager shall, within 48 hours, remove all of its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of work.

GC 76 PROJECT SIGNS

- 76.1 Construction Manager, shall construct a Project job sign as indicated and described on Site Sign Detail. Construction Manager shall coordinate location of sign with Owner's representative and

install within 21 days after Owner's issuance of "Notice to Proceed". Any deletion/addition of lettering during the life of the Project will be at the Construction Manager's expense. Construction Manager will remove and properly dispose of sign at final acceptance of project. With the exception of the right reserved by the Owner to erect a sign in connection with the Project and unless otherwise provided in the Contract Documents, Construction Manager shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising or identifying device, without prior written approval of Owner.

GC 77 PERFORMANCE AND PAYMENT BONDS

- 77.1 Within ten (10) calendar days following the Owner's action to approve this Agreement, Construction Manager shall furnish Performance and Payment Bonds in form as set forth in Attachment "2" written by a surety company acceptable to Owner. It is the Construction Manager's obligation to record a copy of the statutory Payment Bond among the Public Records of Palm Beach County, Florida.

Exhibit H
Intended Project Milestones

PHIPPS MILESTONE SCHEDULE



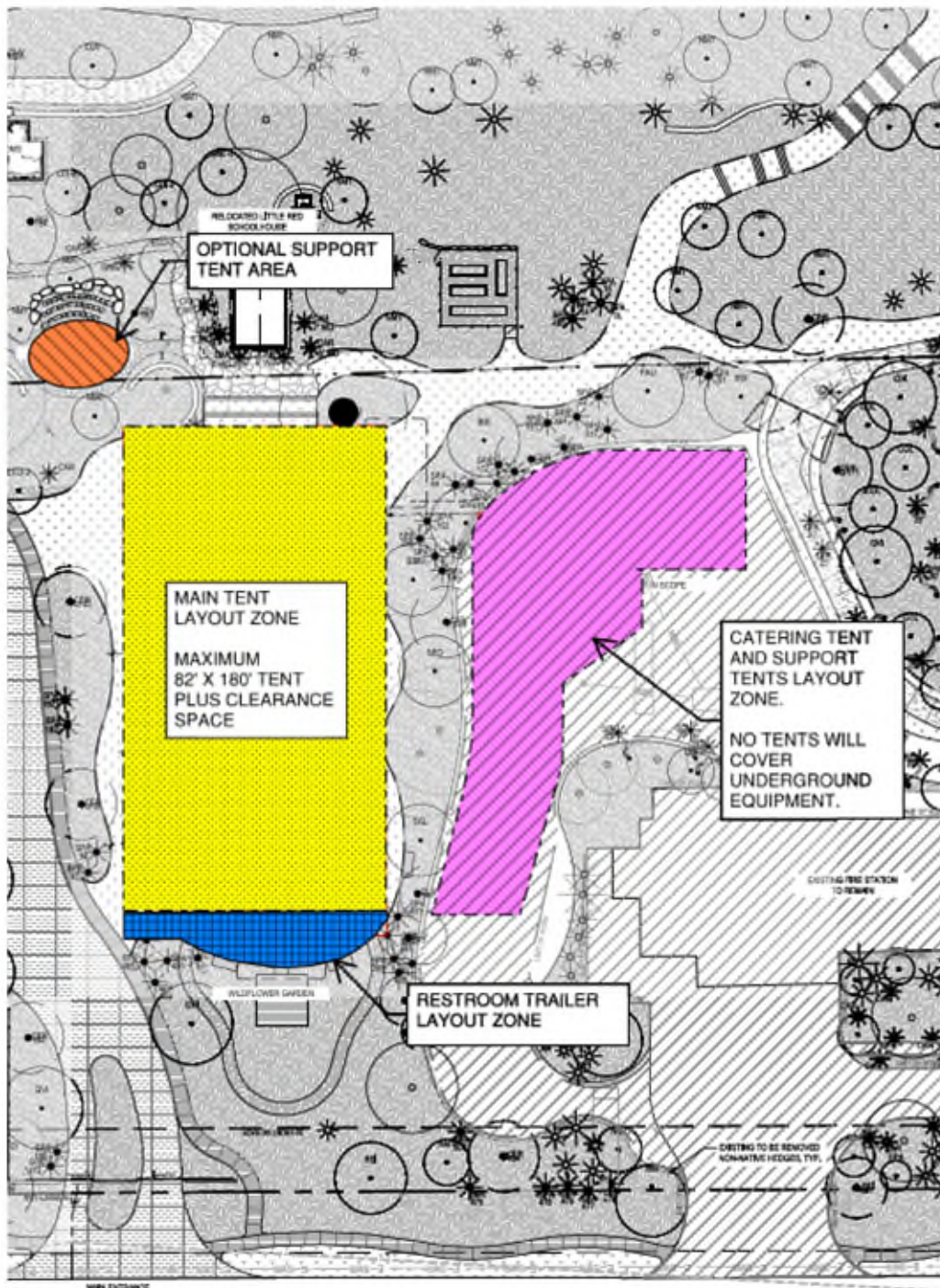
| Task Name | Duration | Start Date | End Date | Q3 | | | Q4 | | |
|--|-------------|-----------------|-----------------|-----|-----|-----|-----|-----|-----|
| | | | | Jul | Aug | Sep | Oct | Nov | Dec |
| GMP Schedule | 147d | 09/09/24 | 03/31/25 | | | | | | |
| 1 Complete VE & Design Decision Direction | 6d | 09/20/24 | 09/27/24 | | | | | | |
| 2 Design Team Production of Revised Bid Set | 26d | 09/06/24 | 10/11/24 | | | | | | |
| 3 Finalize Subcontractor Bid List | 12d | 09/20/24 | 10/07/24 | | | | | | |
| 4 Page Turn / Final Approval of Revised Bid Set | 5d | 10/14/24 | 10/18/24 | | | | | | |
| 5 Pre-Bid Meetings with Subcontractors | 5d | 10/14/24 | 10/18/24 | | | | | | |
| 6 Final Bid Set Published | 5d | 10/21/24 | 10/25/24 | | | | | | |
| 7 BCI GMP Bid Process | 7w | 10/28/24 | 12/13/24 | | | | | | |
| 8 GMP Negotiations | 12d | 12/16/24 | 12/31/24 | | | | | | |
| 9 GMP Review & Approval by PFPB | 8d | 01/01/25 | 01/10/25 | | | | | | |
| 10 GMP Review & Approval by TOPB | 2d | 01/14/25 | 01/15/25 | | | | | | |
| 11 Town Council January Meeting | 2d | 01/14/25 | 01/15/25 | | | | | | |
| 12 Beach Renourishment (To be confirmed) | 87d | 12/01/24 | 03/31/25 | | | | | | |
| 13 Construction Start | TBD | | | | | | | | |
| Administrative | 75d | 09/20/24 | 01/02/25 | | | | | | |
| 14 Initial Budget & Schedule Approval by TOPB & PFPB | 6d | 09/20/24 | 09/27/24 | | | | | | |
| 15 Target: TOPB Building Department Approvals | 49d | 10/28/24 | 01/02/25 | | | | | | |
| 16 Target: DEP CCCL Approval | 49d | 10/28/24 | 01/02/25 | | | | | | |
| 17 Target: DOT Approval | 49d | 10/28/24 | 01/02/25 | | | | | | |
| 18 Town Council November Meeting | 2d | 11/11/24 | 11/12/24 | | | | | | |
| 19 Target for Development Agreement Approval by TOPB Council | 2d | 11/11/24 | 11/12/24 | | | | | | |
| 20 | | | | | | | | | |
| 21 | | | | | | | | | |
| 22 | | | | | | | | | |
| 23 | | | | | | | | | |

NOTE: Permit approvals are targets only and not guaranteed approval dates. DEP approval timeline of playground is unknown.

Exhibit I
Preliminary Budget

| | Detail | Totals | Notes |
|--|--------------|---------------------|---|
| Hard Costs | | | |
| Trade Costs | \$18,000,000 | | <i>Per Cumming 7/29/24 Trade Costs</i> |
| GCs, GRs, Contractor Markups | \$5,065,000 | | <i>Per BCI GMP</i> |
| Legacy Tree Allowance | \$1,500,000 | | <i>To be procured as part of GMP</i> |
| Owner Hard Costs | | | |
| Tennis Court Reno / Fencing | By TOPB | | <i>Excluded from GMP</i> |
| Lifeguard Station Reno | By TOPB | | <i>Excluded from GMP</i> |
| Electrical Panel Replacement | By TOPB | | <i>Excluded from GMP</i> |
| Clearing & Grubbing By Others | incl | | <i>Included for \$50K by Cumming</i> |
| 12'x18' shed By Owner (LH.105) | By TOPB | | <i>Excluded from GMP</i> |
| Subtotal Hard Costs | | \$24,565,000 | |
| Soft Costs (Unspent) | | | |
| Kimley Horn & Consultants CA & Permitting Fees | \$1,900,000 | | <i>KH 4/18/24 Proposal (executed but not delivered)</i> |
| Subtotal Soft Costs | | \$1,900,000 | |
| Total | | \$26,465,000 | |

Exhibit J
Tent Layout



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: _____

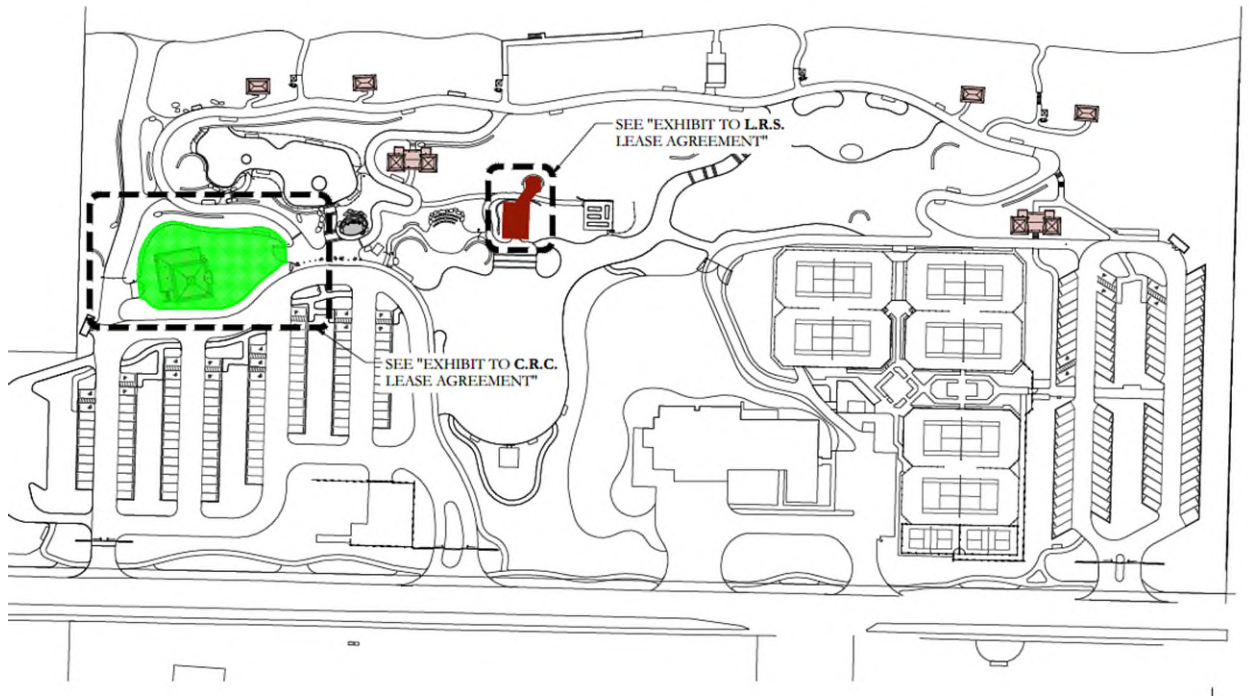
Title: _____

Date: _____

EXHIBIT "A"

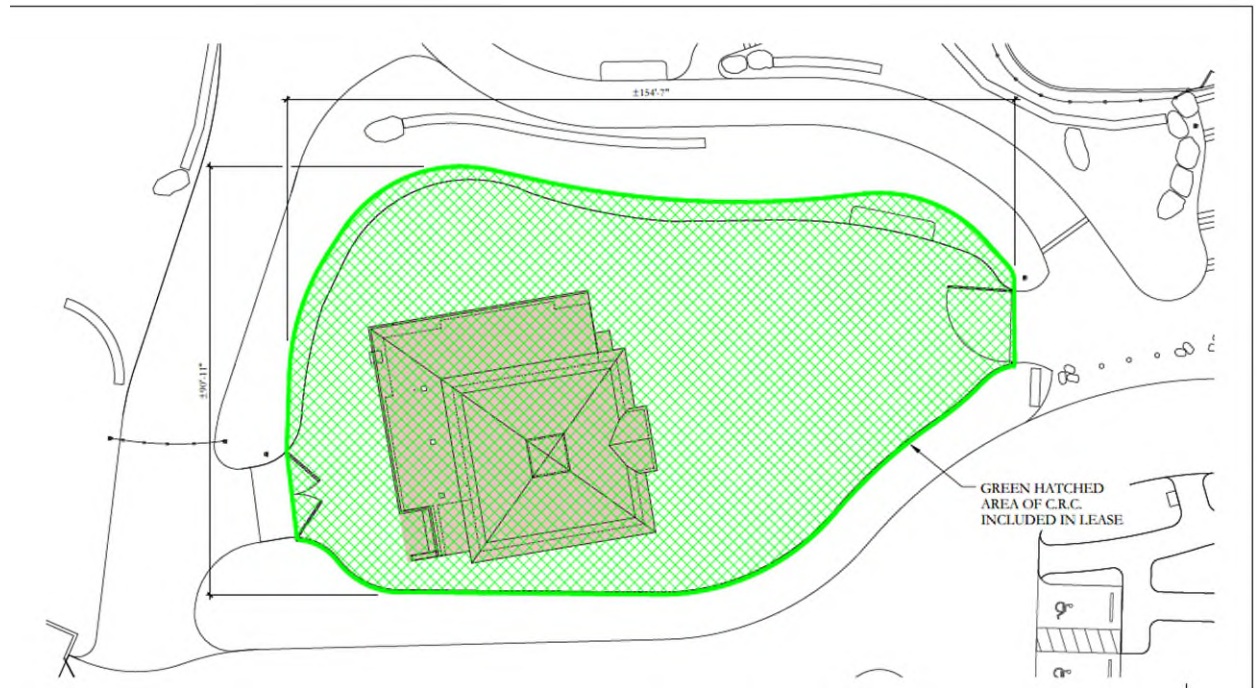
LOCATION OF THE PREMISES IN THE PARK

(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:

A. 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.

B. 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").

C. 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.

D. 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.

E. 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 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 3 - PREMISES AND PRIVILEGES

3.01 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.

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: 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.

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.

3.04 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 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 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.

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 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:

(B) 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.

(7) 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.

(8) 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.

(9) 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.

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

(11) 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.

(12) 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.

(C) 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 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.

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 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

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

(18) 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 Renovation 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 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 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 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.

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 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.

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 to the Town 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. 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 that the Little Red Schoolhouse remains 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 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 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 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: _____

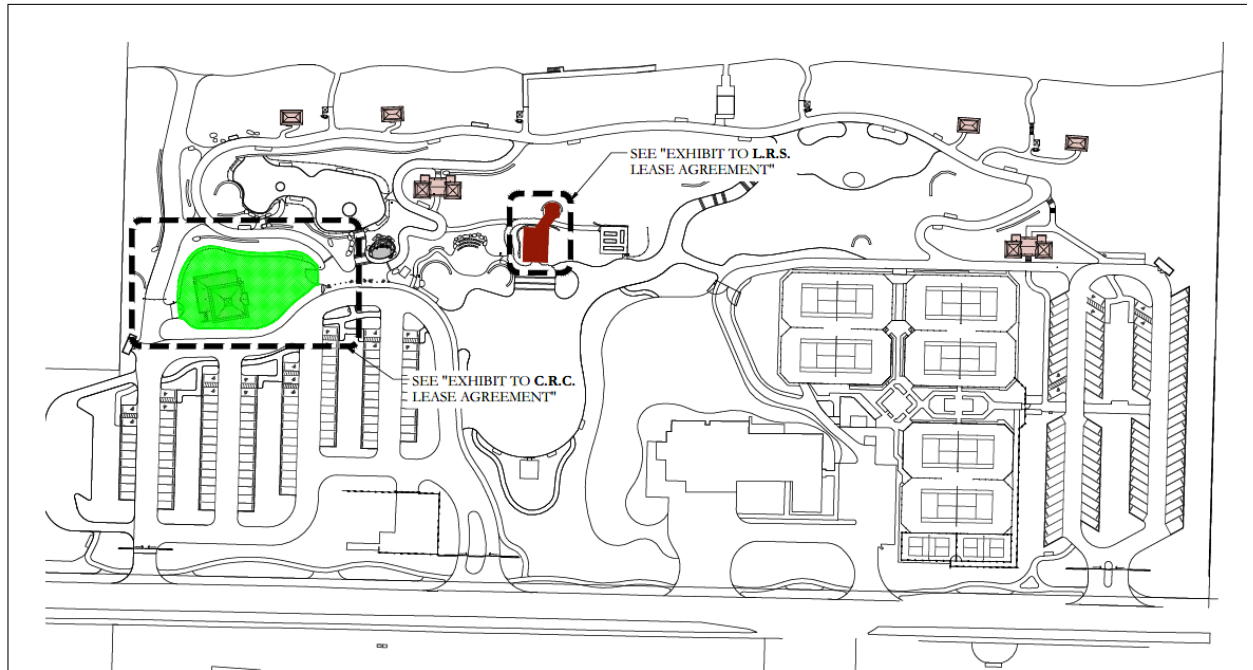
Title: _____

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]

