

**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.

(1) 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.

(2) 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.

(3) 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.

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

(5) 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.

(6) 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.

(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 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]

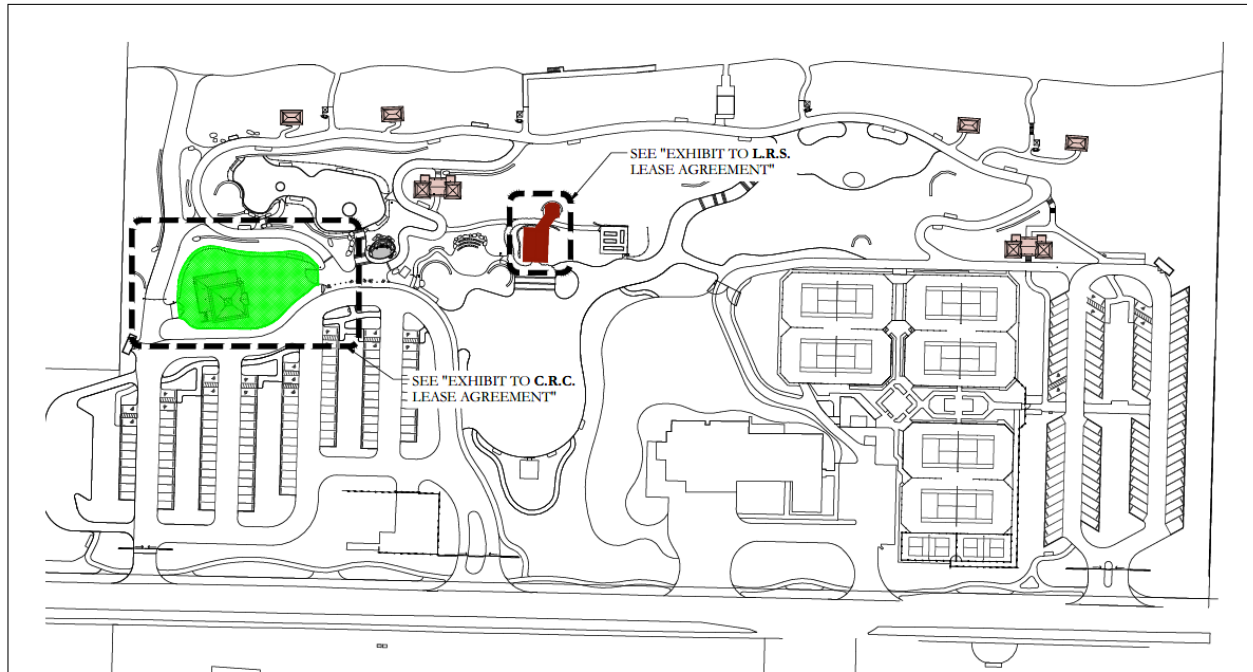
The Preservation Foundation of Palm Beach,  
Inc., a Florida not for profit corporation

By: Amanda Skier  
Name Printed: Amanda Skier  
Title: CEO  
Date: 11/7/24

## 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]

