

MSA-726 LEASE AGREEMENT

THIS MSA-726 LEASE AGREEMENT ("Lease") dated as of this ____ day of _____, 2016, by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as Landlord, and the CITY OF POMPANO BEACH, FLORIDA, a municipal corporation under the laws of the State of Florida, hereinafter referred to as Tenant.

RECITALS

- A. Landlord is the owner of a parcel of land located in the City of Pompano Beach, Broward County, Florida, said parcel being designated in the Landlord's Long-Range Dredged Material Management Plan as Material Storage Area (MSA) 726, 726-B and 726-C, as more particularly described on Exhibit "A" attached hereto and made a part hereof by reference (the "Premises").
- B. Tenant has been operating the Premises as a passive public park since 1981 pursuant to a lease agreement with Landlord dated August 25, 1981 with a term of twenty- five years ("Original Lease"), which has been extended by two Lease Extension Agreements until August 25, 2016.
- C. Tenant has requested Landlord to further extend the Original Lease.
- D. Landlord is in the process preparing the Premises for use as a staging area for the maintenance dredging of the Intracoastal Waterway ("ICW"), including the removal of all non-native, nuisance vegetation and replacement with native vegetation, as depicted on Exhibit "B" attached hereto and made a part hereof by reference ("Landscape Plan").
- E. Landlord is willing to allow the Tenant to use the Premises as a passive city park upon the terms and conditions of this Lease.

WITNESSETH

THEREFORE, in consideration of the premises the mutual covenants and agreements, and other good and valuable consideration, the sufficiency of which is mutually acknowledged, Landlord and Tenant agree that:

1. INCORPORATION OF RECITALS

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

2. PREMISES/TERM

Landlord hereby leases the Premises to Tenant for a term commencing August 26, 2016, and terminating August 25, 2017 (the "Initial Term").

3. PAYMENT OF RENT

- a. Tenant hereby covenants and agrees to pay to Landlord as rent for the term of this Lease a base rent in the amount of One Hundred and No/100 Dollars (\$100.00) per year ("Rent"). Rent is due and payable annually, in advance, on or before the first day of each year of the Term.

- b. Tenant shall make any and all payments due hereunder to Landlord at that address set forth as follows unless otherwise notified by Landlord in writing:

FLORIDA INLAND NAVIGATION DISTRICT
ATTN: EXECUTIVE DIRECTOR
1314 MARCINSKI ROAD
JUPITER, FLORIDA 33477-9427

- c. Tenant agrees to pay any and all charges and deposits for utilities serving the Premises in addition to said Rent.
- d. Tenant shall pay all ad valorem taxes and non-ad valorem assessments levied against the Premises.
- e. Tenant shall pay such other charges without demand and without setoff all sums of money or charges as required to be paid by Tenant under this Lease. If such amounts or charges are not paid at the time provided in this Lease, they shall be collectible as additional charges with the next installment of rent due hereunder and shall bear interest from the due date thereof to the date of payment at the rate of eighteen percent (18%) per annum or such lesser rate as shall be the maximum permitted by law.

4. COVENANTS OF LANDLORD

Landlord covenants that said Tenant, on paying the said Rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said Premises for the Term aforesaid, PROVIDED ALWAYS, that this Lease is conditioned upon the prompt payment of Rent in the manner and at the time stated herein and that there shall be no breach by Tenant of any of the other covenants or agreements of this Lease on Tenant's part to be performed. In any or either of such events, Landlord may immediately, or at any time thereafter and without demand or notice, enter into and upon the Premises and repossess the same without becoming a trespasser, without prejudice to Landlord's legal rights to recover Rent.

5. RENEWAL OPTION

Provided that there are no uncured Events of Default in existence at the end of the Initial Term or any renewal term, Tenant shall have the option of extending this Lease for up to four (4) additional one (1) year terms (each, a "Renewal Term"). Tenant shall notify Landlord in writing at least sixty (60) days but not more than ninety (90) days prior to the end of the current term that Tenant is exercising its renewal option.

6. USE OF PREMISES/CONDUCT OF BUSINESS

- a. Tenant shall continuously occupy and use the Premises solely as a passive public park (hereinafter called the "Permitted Use").

Tenant shall not make or permit any use the Premises except as specifically provided above without Landlord's prior written consent.

- b. Tenant shall, at Tenant's expense, comply with all laws, ordinances and regulations of the United States, State of Florida and the County of Broward, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises, and shall not make any use of the Premises which shall unreasonably disturb

Landlord's neighbors or otherwise become a nuisance. Tenant shall take reasonable measures to ensure that park patrons do not illegally park on NE 23rd Place, NE 24th Street, and NE 27th Terrace adjacent to the Premises.

7. TENANT'S FIXTURES AND ALTERATIONS

- a. Tenant agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to the Premises without first obtaining the written consent of Landlord, which Landlord may approve or deny in its sole and absolute discretion. All alterations, improvements and additions made by Tenant and all chattels affixed by Tenant to the Premises shall be removed from the Premises at the expiration or earlier termination of this Lease, except as otherwise provided herein.
- b. In addition to the above, Tenant shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at Tenant's expense.
- c. As additional consideration for this Lease, Tenant agrees to install signs identifying the Premises as the property of the Florida Inland Navigation District and stating that it is a future dredged material management facility for the maintenance of the ICW. One sign shall be placed at the entrance to the Premises on NE 24th Street and one sign along the NE 23rd Place frontage. The signs shall be a minimum of 6 square feet and the copy shall be approved by the Landlord.

8. ASSIGNMENT AND SUBLETTING

- a. Tenant shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Lease or any interest of Tenant herein, in whole or in part, nor sublet the whole or any part of the Premises, nor permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each and every instance, which shall not be unreasonably and arbitrarily withheld. The consent of Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Lease or any interest of Tenant herein be assigned or if the whole or any part of the Premises be sublet or used or occupied by others after having obtained Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant and Tenant shall not be released therefrom in any manner.
- b. Should Tenant, in violation of the provisions of this Paragraph, assign this Lease, or sublet the Premises or any portion thereof without obtaining Landlord's prior written consent, then such assignment or sublease shall be null and void and of no force and effect. Such act on the part of Tenant shall be deemed a default of Tenant entitling Landlord to exercise any of the rights and remedies therefor as set forth in Paragraph 17 hereof.
- c. In the event Tenant assigns or sublets the Premises pursuant to this Paragraph 8 of this Lease Agreement, any rent collected by Tenant as sublessor or assignor which exceeds the amount of rent due from Tenant to Landlord hereunder shall be due and payable to Landlord.

9. LIENS

- a. Mechanics' or Materialmen's Liens: Tenant shall not cause or permit any liens of mechanics, laborers or materialmen to stand against the Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on the Premises, by or at the direction of Tenant.

If the Premises or any part thereof or Tenant's leasehold interest therein becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter called a "lien"), other than a lien caused by the actions of the Landlord, Tenant shall promptly notify Landlord of the filing or the threatened filing of any such lien, shall promptly cause the lien to be satisfied or transferred to other security.

- b. Landlord's Liability for Tenant's Liens: It is hereby agreed by the parties hereto that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant or to anyone holding the Premises, or any part thereof, through or under Tenant, and that no liens for any labor or material shall attach to or affect the interest of Landlord in and to the Premises. All contracts for construction or repair shall contain the above cautionary language and shall require all subcontractors, materialmen and laborers to be so advised. Failure of Tenant to so notify and advise such contractor(s) in writing prior to the commencement of any work to be performed shall constitute a default hereunder and entitle Landlord to those rights and remedies set forth in Paragraph 17 hereof.
- c. Public Construction Bond. Tenant shall deliver to Landlord a public construction bond in accordance with Section 255.05, F.S. from any contractor constructing improvements upon the Premises prior to the commencement of any such work. The bond shall be substantially in the form provided in Subsection 255.05(3) or as otherwise approved by Landlord, and shall include Landlord as a Principal. The amount of the bond shall be the amount of the construction contract.

10. LIABILITY OF LANDLORD/WAIVER/INDEMNIFICATION

- a. As a consideration for the making of this Lease and in light of the fact that Tenant has had the opportunity to make such inspections and tests as Tenant, in Tenants' judgment, has deemed necessary, Tenant accepts the Premises in its "As-Is Condition" and Landlord shall not be liable for any condition, latent or patent, existing in, on or under the Premises, nor for injury or damage which may be sustained to person or property of Tenant or any other person caused by or resulting from water, rain, groundwater, soil, sand, silt or any other material which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defect of the dikes, pipes, weirs, or other fixtures, from noise, vibration, smoke or odors emanating from the Premises, or from any other source or cause whatsoever, whether the same damage or injury shall be caused by or be due to the negligence of Landlord, nor the interference with light or incorporeal hereditaments, specifically excluding from such indemnification such damage or injury which results from the gross negligence of Landlord, nor shall Landlord be liable for any defect in the Premises, latent or otherwise, except as provided by law.
- b. Tenant, subject to and within the limitations set forth in Section 768.28, F.S., shall indemnify Landlord and save Landlord harmless from and against any and all claims, actions, damages, liability and expense (including disbursements) in connection with the loss of life, personal injury or damage to property or business arising from, related to, or in connection with the occupancy or use by Tenant or by Tenant's employees, guests,

invitees, public invitees and/or licensees of the Premises or occasioned wholly or in part by act or omission of Tenant, its contractors, subcontractors, subtenants, licensees, or concessionaires, or its or their respective agents, servants or employees. Tenant shall keep in force, with companies and in a form acceptable to Landlord during the term of this Lease and any extension or renewal thereof and during such other time as Tenant occupies the Premises or any part thereof, commercial general liability insurance with respect to the Premises with a minimum One Million Dollars (\$1,000,000.00) combined single limit coverage of bodily injury, property damage or combination thereof.

- c. Tenant shall include in any construction contract for work upon or involving the Premises a provision stating that the contractor shall indemnify and hold harmless the Tenant and Landlord, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.
- d. Tenant shall be responsible for the payment of any fines or administrative penalties assessed and any remedial or mitigation actions required due to or arising out of any violation or alleged violation by Tenant or Tenant's employees, agents or contractors of laws, ordinances and regulations of the United States, State of Florida and the County of Broward, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises.
- e. The provisions of this Section 10 shall survive the termination of this Lease.

11. INSURANCE

- a. Tenant will require any of its construction contractors to keep in force, during such time as such contractor occupies the Premises or any part thereof, commercial general liability insurance with respect to the Premises, with companies and in a form acceptable to Landlord, with a minimum One Million Dollars (\$1,000,000.00) combined single limit coverage of bodily injury, property damage or combination thereof.
- b. Tenant will further require its contractor to deposit a certificate (s) of insurance for all policies of insurance required by the provisions of this Paragraph 11 together with satisfactory evidence of the payment of the required premium or premiums therefor with Landlord at or prior to the commencement date, and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. At Landlord's option, Tenant shall require its contractor to deliver copies of insurance policies and all endorsements thereto, together with a certificate that such copies are true and complete.
- c. All policies of insurance required to be carried by Tenant's contractor by Paragraph 11 (a) hereof shall provide that the policy shall not be subject to cancellation, termination or change except after thirty (30) days prior written notice to Landlord and Tenant and shall name Landlord and Tenant as Additional Insured.
- d. All such policies required hereunder shall be obtained from companies licensed, organized and authorized to do business in the State of Florida.
- e. The required insurance shall be primary insurance as respects the Landlord, its Commissioners, officers, employees and agents, and any insurance or self-insurance

maintained by the Landlord, its Commissioners, officers, employees and agents shall be excess of the Tenant's contractor's insurance and shall not contribute to it.

- f. The policies shall contain a waiver of subrogation against the Landlord, its Commissioners, officers, employees and agents for any claims arising out of the work of the Tenant's contractor.
- g. The policy may provide coverage which contains deductible or self-insured retentions of not more than \$50,000.00 as to Tenant's contractor and no deductible or self-insured retention as to any additional insured without prior approval of the Landlord. The Tenant's contractor shall be solely responsible for deductible and/or self-insured retention.
- h. Liability insurance carriers must have a Best's "Financial Strength Rating" of at least "A-" and a "Financial Size Category" of a minimum of "VII" and must be admitted in the State of Florida.

12. REPAIRS AND MAINTENANCE OF PREMISES

- a. Tenant shall at all times at its sole cost and expense keep and maintain the Premises, including, without limitation, the landscape buffer and perimeter fence and gate, in good order, condition and repair and shall not commit or suffer any waste on the Premises. Without limiting the generality of the foregoing, Tenant shall remove all non-native invasive vegetation on the Premises not less frequently than on a semi-annual basis. After the expiration of any warranties from Landlord's landscaping contractor, Tenant shall, at Tenant's expense, replace any landscape material that subsequently dies or is damaged with the same or better material, as specified in the Landscape Plan.
- b. To the extent allowed by law, Tenant will repair promptly at its own expense any damage to the Premises caused by bringing into the Premises any property or equipment for Tenant's use, or by the installation or removal of such property or equipment, regardless of fault or by whom such damage shall be caused.
- c. In the event Tenant defaults in the performance of any of its obligations under this Paragraph 12, Landlord, in addition to Landlord's other remedies under this Lease, at law or in equity, may, but shall not be obligated to, cure such default on behalf of Tenant and Tenant shall reimburse Landlord upon demand for any sums paid or costs incurred curing such default.

13. GOVERNMENTAL IMMUNITY

Nothing contained herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of its respective agents or employees to the extent permitted by law.

14. INTENTIONALLY DELETED

15. HAZARDOUS MATERIALS:

Tenant agrees that, during the term of this Lease, it:

- a. Shall keep or cause the Premises to be kept free of hazardous wastes or substances.
- b. Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant, or Tenant's assignees, employees, agents or contractors, a release of hazardous wastes or substances onto the Premises.
- c. Shall comply with and ensure compliance by its assignees, employees, agents or contractors and all others under its direction with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- d. The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", if used in this Lease, shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (CERCLA), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and recovery Act, 49 U.S.C. Section 6901 et seq., the Florida Resource and Management Act, Chapter 403, Florida Statutes, the Pollution, Spill, Prevention, and Control Act, Chapter 376, Florida Statutes, or any other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.
- e. Shall immediately provide Landlord with notice of any release or threatened release of hazardous waste on or about the Premises, and shall immediately provide Landlord with notice of any injury or action taken by any local, state, or federal governmental body with respect to hazardous waste on or about the Premises.
- f. Shall remove any hazardous waste or hazardous substances which exceed allowable levels in the ground or the groundwater within the Premises, to the extent caused by or arising from Tenant's use of the Premises.

16. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- a. If Tenant defaults in the payment of any sum of money due hereunder and such default shall continue for three (3) business days after the date of notice from Landlord to Tenant.
- b. If Tenant defaults in fulfilling any of the other covenants of this Lease on Tenant's part to be performed hereunder and such default shall continue for the period of fifteen (15) days after notice from Landlord to Tenant specifying the nature of said default, or, if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said fifteen (15) day period, if Tenant shall not in good faith have commenced the curing or remedying of such default within such fifteen (15) day period and shall not thereafter diligently proceed therewith to completion.
- c. If any execution or attachment shall be issued against Tenant or any of Tenant's property and shall not be discharged or vacated within seven (7) days after the issuance thereof.
- d. The vacation of the Premises by Tenant prior to the end of the Term.

In the Event of Default, Landlord shall provide Tenant with such written notice thereof as shall be required under Florida law.

17. REMEDIES IN EVENT OF DEFAULT

- a. In the event of a default hereunder and such default shall continue after the giving of written notice thereof to Tenant, Landlord may at Landlord's option:
 - i. terminate the Lease by and retake possession of the Premises for its own account;
 - ii. demand payment in full of any and all amounts then due for the balance of the then remaining term of this Lease;
 - iii. terminate the Lease and possession of the Premises for the account of Tenant, who shall remain liable to Landlord; or
 - iv. avail itself of any other option or remedy available under Florida law;and, in any event Tenant, shall give up the Premises to Landlord.
- b. If the notices provided herein have been given and this Lease shall be terminated; or if the Premises become vacant or deserted; then, in addition to all other remedies of Landlord, Landlord may without notice re-enter the Premises either by force or otherwise and, by summary proceedings or otherwise, dispossess Tenant and/or the legal representative of Tenant or other occupant of the Premises, and remove effects and repossess and enjoy the Premises, together with all alterations, additions and improvements, all without being liable to prosecution or damages therefor.
- c. If Tenant defaults in the performance of any of the terms and conditions of this Lease and Landlord employs the services of an attorney to enforce performance of Tenant hereunder, Tenant shall pay a reasonable attorney's fee as well as all expenses and costs incurred by the Landlord pertaining thereto and in enforcement of any remedy available to the Landlord.

18. SURRENDER OF POSSESSION/HOLDING OVER

- a. At the end of the tenure of this Lease, Tenant shall quit and deliver up the Premises to Landlord in as good a condition as they are now, excepting reasonable wear and tear.
- b. Should Tenant hold over in possession of the Premises after the expiration of the Term hereof, without the execution of a new lease or extension or renewal agreement, Tenant, at the option of Landlord, shall be deemed to be occupying the Premises from month to month, subject to being terminated by either party upon at least fifteen (15) days written notice, at the rent in effect during the last month of the term or any extension or renewal thereof and otherwise subject to all of the other terms and conditions of the Lease on a monthly basis.
- c. Should Tenant refuse to give up possession of the Premises after the expiration of the term hereof and after demand to do so by Landlord, Landlord may demand double the monthly rent. In addition, Tenant shall be liable for all court costs, attorney's fees and other costs related to removing Tenant from the Premises.

19. ACCESS BY LANDLORD

Landlord may, during the term of this Lease at reasonable times, enter to inspect the Premises at any time. Landlord also reserves the right to enter the Premises at any time to make such repairs, additions or alterations as it may deem necessary for the safety, improvement, or preservation thereof. Landlord shall in no event be liable for any inconvenience, disturbance, loss of business or the damage to Tenant by reason of the performance by Landlord of any work in, upon or under the Premises. Landlord may, during the term of this Lease at reasonable times, enter the Premises upon reasonable advance written notice to Tenant, for the purpose of taking soil and groundwater samples and installing monitoring wells, provided that none of these activities shall unreasonably interfere with Tenant's Permitted Use.

20. RESERVED RIGHT TO USE THE PREMISES

Landlord reserves the right, from time to time, to utilize the Premises, in whole or in part, as determined by Landlord in its sole and absolute discretion, as a staging area and temporary dewatering facility for activities undertaken by the United States of America and/or Landlord, and their contractors, in support of the maintenance of the Intracoastal Waterway from Jacksonville to Miami, Florida. Landlord shall give Tenant not less than sixty (60) days written notice of Landlord's intent to exercise its rights under this paragraph. Landlord shall have the exclusive possession and use of any part or portion of the Premises Landlord, in its sole judgment, deems necessary for such purposes. Landlord may, but shall not be required to, construct a truck entrance/exit near the northwest corner of the Premises. Upon the completion of Landlord's activities, possession shall be restored to Tenant. Any improvements to the Premises which are damaged due to Landlord's exercise of its rights under this paragraph shall be repaired to their prior condition or as close thereto as reasonably possible at Landlord's expense. Tenant shall not be entitled to any reduction or abatement of Rent during any period that Landlord exercises its rights under this Paragraph 20.

21. EXECUTION OF ESTOPPEL CERTIFICATE

At any time, and from time to time, upon the written request of Landlord, Tenant, within ten (10) days of the date of such written request, agrees to execute and deliver to Landlord, without charge and in a form satisfactory to Landlord, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the term of this Lease; (c) certifying that Tenant is in possession of the Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied and performed, except as shall be stated; (e) certifying that Landlord is not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; and (f) such other information as Landlord or mortgagee shall require.

22. INTENTIONALLY DELETED

23. EMINENT DOMAIN

- a. If the whole of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to date and

b. If any part of the Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Premises unsuitable for Tenant's Permitted Use, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for Tenant's Permitted Use, then Landlord shall promptly restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent.

c. In the event of any condemnation or taking as aforesaid, whether whole or partial, Tenant shall not be entitled to any part of the award paid for such condemnation, Landlord is to receive the full amount of such award, and Tenant hereby expressly waives any right or claim to any part thereof.

d. Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's operations by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's fixtures, leasehold improvements and equipment.

In the event this Agreement shall be the subject of litigation between the parties hereto for any reason whatsoever, the prevailing party in such litigation shall recover from the other party the costs of such action, including, but not limited to, reasonable attorneys' fees incurred in any and all mediation, arbitration, trial, appellate, post-judgment, bankruptcy and administrative proceedings. In the event of any litigation arising out of or resulting from this Lease, the venue of such litigation shall be had only in the state or federal courts in Palm Beach County, Florida.

Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

With copy to: Mark Beaudreau
Recreation Program Administrator

1801 NE 6th Street
Pompano Beach, Florida 33060

If to Landlord: Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477
Attention: Executive Director

With a copy to: Peter L. Breton, Esq.
Breton, Lynch, Eubanks et al.
605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

26. MISCELLANEOUS

- a. Tenant has inspected the Premises and is familiar with its present condition and takes said Premises in "As-Is" condition.
- b. The failure of Landlord or Tenant to take any action against the other for violation of any of the terms of the Lease shall not prevent a subsequent act of a similar nature from being a violation of the Lease.
- c. No act or agreement to accept surrender of the Premises from Tenant shall be valid unless in writing signed by the parties hereto.
- d. This Lease fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Lease shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed, amended or terminated unless in writing and signed by the parties hereto.
- e. **THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.**
- f. Tenant hereby acknowledges Tenant's responsibility to ensure Tenant's property is maintained within or upon the said Premises at Tenant's expense.

- g. Tenant shall not change or install additional locks on any gates without Landlord's express written consent. In the event Tenant changes or installs additional locks, Tenant shall provide Landlord with duplicate keys therefor at Tenant's expense.
- h. If any term or condition of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Lease shall not be affected thereby, and this Lease shall be valid and enforceable to the fullest extent permitted by law.
- i. Receipt of rent by Landlord, with knowledge of any breach of this Lease by Tenant, or of any default by Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease.
- j. This Lease shall not be recorded in the Office of the Clerk of any Circuit Court in the State of Florida, except that Landlord may file a memorandum of this Lease.
- k. This Lease shall be construed under the laws of the State of Florida.
- l. The Section headings of this Lease are for convenience only and are not to be considered in construing the same.
- m. This Lease may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- n. Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Lease; (b) it has all necessary power and authority to enter into this Lease and to perform the agreements contained in this Lease; and (c) the person signing this Lease on behalf of such party is authorized to execute and deliver this Lease on behalf of such party.
- o. The parties participated in the drafting of this Lease and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of: or against, any party in interpreting this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.
- p. **RADON GAS**

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 YOUR COUNTY PUBLIC HEALTH UNIT.

- q. This Lease supersedes and replaces the Original Lease, as amended.

IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

Signed, sealed and delivered
in the presence of:

Witness

Print Name: _____

Witness

Print Name: _____

Approved as to form and legal sufficiency:

Peter L. Breton, Esq., General Counsel

Witnesses:

Print Name: _____

Print Name: _____

Attest:

ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

AS TO LANDLORD:

FLORIDA INLAND NAVIGATION DISTRICT

BY: _____
Mark Crosley, Executive Director

DATED: _____

AS TO TENANT:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

(SEAL)

The foregoing instruments were acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

TAL:jrm
8/12/16
L:agr/recr/2016-1125