

# LEASE AGREEMENT

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THIS IS A LEASE AGREEMENT (“Lease”) entered into on \_\_\_\_\_, 2021, by and between the CITY OF POMPANO BEACH, a Florida municipal corporation (“CITY”) and HILLSBORO LIGHTHOUSE PRESERVATION SOCIETY, INC., a Florida not-for-profit corporation (“LESSEE”).

## WITNESSETH

WHEREAS, the CITY owns and operates facilities and other improvements at Hillsboro Inlet Park located at 2700 North Riverside Drive (the “Park”);

WHEREAS, since November 2011, the CITY has leased a portion of one of its buildings in the Park to LESSEE for the purpose of operating a Lighthouse Museum and Visitors Center open to the public;

WHEREAS, the current lease between CITY and LESSEE expires on November 27, 2021, and the parties desire to enter into a new lease on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained in this Lease and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

1. LEASE OF PREMISES. CITY leases to LESSEE and LESSEE leases from CITY, that certain northern portion of the building depicted in Exhibit “A” attached hereto and made a part hereof.

2. PURPOSE. The Premises shall be utilized as a Lighthouse Museum and Visitors Center (“Museum”) to be operated by LESSEE to the extent permitted by law. LESSEE shall be allowed to sell at its cost, lighthouse souvenirs that promote the history of the City of Pompano Beach and the Lighthouse at Hillsboro Inlet. Souvenirs for sale on the Premises are subject to approval of the City Manager or his/her designee which shall not be unreasonably withheld.

3. TERM. The Term of this Lease shall be for a period of five (5) years commencing on November 27, 2021, and may be extended an additional five (5) years or less upon written approval of the parties executed with the same formality of this Lease provided LESSEE gives CITY written notice of its desire to extend the Term sixty (60) days before its expiration.

4. NO ENTRANCE FEE. Lessee shall not charge the public an entrance or admission fee for access to the Museum on the Premises.

5. ACCEPTANCE OF PREMISES. LESSEE acknowledges that it has made a thorough and complete inspection of the Premises and fully accepts the Premises in its present “as is” condition.

6. NO LIENS CREATED. LESSEE covenants and agrees that LESSEE has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the Premises. Should any such lien be filed against CITY, LESSEE shall discharge the same within thirty (30) days thereafter by paying same, filing a bond or as otherwise permitted by law. LESSEE shall not be deemed to be the agent of CITY under any term, paragraph, condition or covenant of this Lease.

7. HOURS OF OPERATION. LESSEE will be permitted to use the Premises between 10:00 a.m. and 4:00 p.m., Monday through Sunday.

8. OPERATING COSTS.

A. LESSEE agrees to promptly pay all operating costs incurred as a result of LESSEE's business operations on the Premises which are not by this Lease an expense of CITY, including, but not limited to, all municipal, county and state ad-valorem and non-ad valorem taxes, and any taxes levied against any of LESSEE's personal property or fixtures located in and about the Premise during the Term of this Lease.

B. LESSEE shall deposit all garbage and trash generated by its business operations on a daily basis in enclosed containers located at the Park. LESSEE shall provide for removal, at LESSEE's sole cost, any garbage and trash that does not fit within the enclosed containers at the Park. Said garbage and trash shall be properly disposed and not be left on the Premises or in the Park.

C. CITY shall provide connections on the Premises for electricity and telephone for LESSEE. CITY shall bill LESSEE for electricity used by LESSEE through the meter at the Premises. LESSEE shall be responsible for obtaining and paying the cost of any other utilities together with any taxes, penalties, surcharges and any other associated charges. If any of these additional services are inadvertently billed to CITY, LESSEE agrees to reimburse CITY within ten (10) days after receipt of the invoice or bill from CITY and also promptly arrange for such utilities to be billed directly to LESSEE.

D. CITY shall be responsible for cleaning the public rest room facilities adjacent to the Premises. LESSEE shall assist the CITY in monitoring the cleanliness of the public rest room facilities.

9. REPAIRS, MAINTENANCE AND SURRENDER. Except as otherwise provided herein, LESSEE, at its sole expense, shall keep and maintain the Premises in the same state of repair and condition as existed on the date of commencement of this Lease, reasonable wear and tear excepted. Such maintenance shall include, but not be limited to, cleaning windows; washing and waxing floors; carpet cleaning; light bulb replacement; and sweeping and cleaning of sidewalks. At expiration of the Term or any earlier termination of this Lease, LESSEE shall yield immediate possession of the Premises to CITY, including any improvements and fixtures, in the same state of repair and condition as existed on the date of commencement of this Lease, reasonable wear and tear excepted.

A. CITY shall make all exterior repairs, including repairs to the roof and sidewalks, as well as repairs required because of water entering the Premises from the roof or other parts of the building or other causes not under the control of LESSEE. CITY shall maintain the exterior of the building in good condition. CITY shall maintain the exterior of the Premises so as to maintain the value of the capital asset in a manner consistent with generally accepted landlord/tenant responsibilities. LESSEE shall immediately provide CITY written notice of any defective or dangerous conditions as said condition becomes known to LESSEE.

B. CITY shall not be liable to LESSEE for damage to LESSEE's property resulting from CITY's acts, omissions or neglect in the maintenance and operation of the demised Premises and facilities; however, CITY shall be liable to LESSEE for damage to LESSEE's property caused by the intentional or negligent acts of CITY employees.

10. RENT. The annual rent for the Premises shall be one dollar (\$1.00) plus any applicable tax. In addition to the annual rent and other charges outlined herein, LESSEE shall pay any and all fees, charges, license fees and taxes of whatever nature resulting from this Lease as required by local, state or federal law or ordinance of the City of Pompano Beach. No security deposit shall be required.

11. INSURANCE. Throughout the Term of this Lease, LESSEE shall maintain insurance coverage in the type and amounts set forth in Exhibit "B" attached hereto and made a part hereof which shall be memorialized in a Certificate of Insurance naming CITY as the Certificate Holder and be approved in writing by the CITY's Risk Manager prior to CITY's execution of this Lease. Furthermore, if CITY engages a third party to operate the demised Premises, then that third party shall also be required to provide insurance coverage in the amounts noted on Exhibit "B" which shall name CITY as the Certificate Holder and be approved in writing by the CITY's Risk Manager prior to being allowed to manage or operate the demised Premises.

Should any of the insurance policies required hereunder be canceled, modified or substantially modified during the Term, the issuing entity shall provide the Certificate Holder thirty (30) days advance written notice.

Both parties waive any right or claim for recovery against the other for any property damage or loss to the extent such damage or loss is covered by an insurance policy required under this Agreement. Both parties shall cause their insurance carrier to endorse all applicable policies waiving the carrier's right of recovery under subrogation or otherwise in favor of the other parties to this Agreement. It is the parties' express intention that the waivers contained in this paragraph apply to all matters described in this Lease, including, without limitation, any matter that is caused in whole or in part by the sole or concurrent negligence of either Party or any of their employees, agents or invitees.

12. ASSIGNMENT AND SUBLEASING. LESSEE shall not, without CITY's prior approval (i) assign or transfer this Lease or any share, part or interest in it or any of the rights or privileges granted by it or (ii) enter into any contract requiring or permitting the doing of anything under this Lease by an independent contractor unless otherwise expressly provided in this Lease. LESSEE further agrees that it shall not enter into any agreement of any nature, formal or informal, with any individual, partnership or corporation concerning business activities at the Premises not

authorized under the terms of this Lease, without CITY's prior approval, it being understood that the only activity that LESSEE may conduct directly or indirectly, along or through others, on, upon or from said demised Premises and facilities located there, be they demised to others or under the control of CITY, is as authorized under the terms of this Lease.

13. LAWS AND ORDINANCES. LESSEE agrees to comply with all applicable state statutes, Broward County and CITY's ordinances, and any safety requirements of all federal, state and local governments. LESSEE shall maintain all required licenses from governmental agencies in full force and effect during the term of this Lease.

14. INDEMNIFICATION AND SOVEREIGN IMMUNITY. LESSEE shall indemnify, defend, save and hold harmless CITY, its officials, managers, employees, contractors, representatives and other agents, from and against any loss; liability; claim; damage; expense, penalty or fine, including bodily injury, death and property damage arising out of negligent use or operation of the Premises by LESSEE, its employees, representatives, contractors, invitees or other agents. The foregoing indemnification shall include, without limitation, an obligation to repair or pay for damage to the landscaping, personal property, fixtures and improvements located on the Premises. Notwithstanding the foregoing, CITY shall be liable for violation of any laws or intentional or negligent acts of its employees, contractors or other agents. LESSEE will further, upon CITY's request, assume and defend any action that may be brought against CITY as the result of any alleged act or omission of LESSEE, its employees or other agents and shall further assume and pay all associated costs and attorneys' fees which may be incurred by CITY.

For purposes of this Agreement, "Loss" or "Claim" shall mean any obligation; liability; claim; lien or encumbrance; loss; damage; cost, or expense; including, but not limited to, any claim for damage to property or injury to or death of any persons. Each claim for indemnification made hereunder shall be subject to the following provisions: (i) the indemnity shall cover the indemnitee's costs and expenses, including, without limitation, reasonable attorneys' fees, disbursements and court costs related to any actions, suits or judgments incident to any of the matters covered by such indemnity, whether at trial or on appeal and (ii) indemnitee shall notify indemnitor of any Claim against indemnitee covered by the indemnity within thirty (30) days after it has notice of such Claim. However, indemnitee's failure to notify indemnitor shall in no case prejudice indemnitee's rights hereunder unless indemnitor shall be prejudiced by that failure and then only to the extent that indemnitor shall be prejudiced by said failure. Should indemnitor fail to discharge or undertake to defend indemnitee against such liability upon learning of a Claim, the indemnitee may settle such liability and indemnitor's liability hereunder shall be conclusively established by that settlement, the amount of such liability to include both the settlement consideration and indemnitee's reasonable costs and expenses, including attorneys' fees, disbursements and court costs incurred in effecting said settlement.

LESSEE acknowledges and agrees that CITY's provision of in-kind services and benefits shall serve as adequate consideration for such indemnification. Both parties agree they would not have entered into this Agreement without the above-described indemnification.

The obligations of the Parties under this Article shall survive the termination or expiration of this Agreement and remain binding upon them until said obligations are fully observed, kept or performed.

Nothing contained in this Agreement shall be construed as consent from either party to be sued by third parties or to affect in any way the rights, privileges and immunities of CITY, or be intended to serve as a waiver of sovereign immunity as set forth in §768.28, Florida Statutes. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder.

15. OWNERSHIP AT TERMINATION. All fixtures, alterations, improvements, structures, additions and modifications of every kind now existing or later erected, installed or placed within the Premises shall, at the end of the Term or earlier termination of this Lease, be and become the property of CITY and be left in good condition and repair, ordinary wear and tear excepted, unless at CITY's option, it requires LESSEE to remove all or a portion of same at LESSEE's sole expense. LESSEE further agrees to promptly repair and restore all portions of the demised Premises to good condition upon such removal at its sole expense.

A fixture is defined as an article which was a chattel but which by being physically annexed or affixed to the Premises by LESSEE and incapable of being removed without structural or functional damage to the Premises, becomes a part and parcel of it. Non-fixture property personally owned by LESSEE at expiration of the Term or earlier termination of this Lease, shall continue to be owned by LESSEE who may, at its option, remove all such non-fixture property provided LESSEE is not then in default of any covenant or condition of this Lease; otherwise, all property shall remain on the Premises until the damages suffered by CITY from any such default have been ascertained and compensated. Any damage to the Premises caused by LESSEE's removal of any fixtures shall be repaired by LESSEE immediately at its sole expense.

16. DEFAULT. It is agreed that upon LESSEE's default in keeping and performing any and all terms and conditions of this Lease, CITY may, at its option, declare this Lease terminated and after providing LESSEE thirty (30) days written notice to cure such default, re-enter and take possession of the Premises. The power granted to CITY in this paragraph is in addition to any other rights or remedies which CITY may have under the existing laws of the State of Florida with regard to removal of tenants, distress or other legal recourse. All rights and remedies available to CITY may be exercised concurrently or separately.

17. WAIVER AND MODIFICATION.

No waiver by either party with respect to performance, manner, time or any obligation of either party or any condition hereunder shall be considered a waiver of that party's rights with respect to the particular obligation or condition beyond those expressly waived in writing or a waiver of any other rights of the party making the waiver or any other obligations to the other Party. The failure of CITY to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements, or as a waiver of any other covenants, conditions and agreements.

Either Party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided, such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

18. DAMAGE TO PREMISES. In the event the Premises or the building in which the Premises is located is damaged or destroyed by fire or other casualty, CITY, at its expense, may promptly repair or rebuild same as soon as funds are available, but CITY shall not be obligated to repair, rebuild, restore or replace any fixtures, equipment, displays or other property installed by LESSEE or others pursuant to this Lease nor will CITY be liable for damage to the Premises.

CITY, at its sole option, may elect not to repair or reconstruct the Premises or the building in which it is located, and upon CITY's written notice to LESSEE of such election, LESSEE's obligation shall cease and this Lease shall thereupon terminate. However, if CITY does not give written notice of termination, LESSEE's obligation shall abate during the existence of any damage or other casualty which renders the demised premises unsuitable for LESSEE's continued operation of the Museum.

19. LEASE ADMINISTRATORS. For day-to-day issues that arise during the Term of this Lease, the CITY's Lease Administrator shall be Mark Beaudreau, Recreation Programs Administrator, and LESSEE's Lease Contract Administrator shall be Kenneth J. Herman as further identified below.

20. NOTICES AND DEMANDS. Whenever notice, demand or other communication may or shall be given by one party to another hereunder, it must be in writing and forwarded (i) upon the parties' mutual written consent, via trackable email that provides delivery/read receipts or (ii) postage prepaid via certified U.S. mail or other trackable common carrier such as FedEx, UPS, etc., and forwarded to the representative and mailing address set forth below until changed by written notice in accordance with this paragraph and a contemporaneous copy sent to the designated email that provides the delivery method and tracking number.

CITY:	City Manager City of Pompano Beach 100 West Atlantic Boulevard Pompano Beach, Florida 33060 <a href="mailto:Greg.Harrison@copbfl.com">Greg.Harrison@copbfl.com</a> Phone: 954-786-4601
WITH A COPY TO:	Mark Beaudreau, Recreation Programs Administrator 1801 NE 6 <sup>th</sup> Street Pompano Beach, Florida 33060 <a href="mailto:Mark.Beaudreau@copbfl.com">Mark.Beaudreau@copbfl.com</a> Phone: 954-786-4184
LESSEE:	Kenneth J. Herman, President/Director Hillsboro Lighthouse Preservation Society, Inc. 3203 Robbins Road Pompano Beach, Florida 33062 <a href="mailto:president@hillsborolighthouse.org">president@hillsborolighthouse.org</a> Phone: 954-695-7535

21. IMPROVEMENTS. LESSEE shall not make any improvements to the Premises without the prior written permission of the CITY's Contract Administrator who may require submission of proposed designs, construction plans, specifications and other contract documents.

A. Any improvements shall only be done by properly licensed persons in accordance with the laws of the State of Florida.

B. LESSEE and any subcontractors shall be responsible for obtaining and paying for all required permits.

22. RIGHT TO ENTER. CITY may enter the Premises at any time upon giving reasonable notice to the LESSEE so long as CITY's presence does not unduly interfere with LESSEE's operation of the Museum. In the event of an emergency, CITY shall not be required to give LESSEE notice prior to entering the Premises.

23. SIGNAGE. LESSEE, may, at its own expense, erect or place a sign advertising the Museum on the Premises with the pre-approval of the CITY as to size, location and content. Thereafter, LESSEE shall maintain said sign in a good state of repair and repair any damage to the sign.

24. INSPECTION. CITY reserves the right to inspect the Premises at all reasonable hours in order to ensure compliance with this Lease and with any and all attendant CITY rules and regulations in force from time to time and posted in visible locations or given to LESSEE. LESSEE agrees to observe those rules and regulations in connection with its use of the property and LESSEE's obligations and responsibilities under this Lease.

25. RISK OF LOSS. CITY shall not be liable for any loss by reason of damage, theft or otherwise to the tools, equipment, contents, belongings and personal effects of LESSEE or LESSEE's agents, employees, guests or visitors located in or about the Premises, or for damage or injury to LESSEE or LESSEE's agents, employees, guests or visitors. CITY shall not be liable if such damage, theft or loss is caused by LESSEE, LESSEE's agents, employees, guests or visitors.

26. PARKING. LESSEE, its employees, subcontractors and invitees to the Museum shall have use of the paved parking lot at the Park property.

27. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL; NON-EXCLUSIVITY. This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Lease shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Lease must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

28. **ATTORNEY'S FEES.** In the event of any litigation involving the provisions of this Agreement, both Parties agree the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through trial and all appellate levels. The provisions of this paragraph shall survive termination of this Agreement.

29. **FORCE MAJEURE.** Neither party shall be obligated to perform any duty, requirement or obligation hereunder if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, pandemic, acts of nature or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations hereunder by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail said event and diligently proceed to correct the adverse effect(s) or by the parties' mutual agreement, may reschedule performance of the Work or services to a later date. The parties agree, that to this Article, time is of the essence.

30. **RADON GAS NOTIFICATION.** 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 county health department.

31. **SUCCESSORS.** This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

32. **TERMINATION.** CITY may terminate this Lease without cause with (30) days written notice to the LESSEE.

33. **GOVERNING LAW.** This Agreement shall be construed and enforced according to the laws of the State of Florida, notwithstanding conflict of law provisions of the State of Florida.

34. **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Lease Agreement shall not render the other provisions unenforceable, invalid or illegal.

35. **SURVIVAL.** The provisions in the following numbered paragraph of this Lease shall survive its expiration or earlier termination: No. 27, "Governing Law; Venue; Waiver of Jury



Trial; Non-Exclusivity; No. 14, Indemnification and Sovereign Immunity and this No. 35, "Survival".

36. ENTIRE AGREEMENT AND INTERPRETATION. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Agreement on the day and year first above written:

**“CITY”**

**CITY OF POMPANO BEACH**

By: \_\_\_\_\_  
REX HARDIN, MAYOR

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

**"LESSEE"**

Witnesses:

*Kate Belcher*  
*Kate Belcher*  
Consuelo Lewis  
Consuelo Lewis

**HILLSBORO LIGHTHOUSE  
PRESERVATION SOCIETY, INC.**, a Florida  
Not-For-Profit Corporation

By: *Kenneth J. Herman*  
KENNETH J. HERMAN  
PRESIDENT/DIRECTOR

STATE OF FLORIDA  
COUNTY OF BROWARD

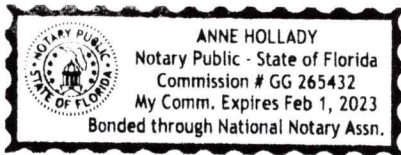
The foregoing instrument was acknowledged before me this 21 day of October, 2021 by **KENNETH J. HERMAN** as **PRESIDENT/DIRECTOR**, of HILLSBORO LIGHTHOUSE PRESERVATION SOCIETY, INC. He is personally known to me or who has produced Florida Drivers License (type of identification) as identification.

NOTARY'S SEAL:

*Anne Hollady*  
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady  
(Name of Acknowledger Typed, Printed or Stamped)

GG 265432  
Commission Number



FP:jmz  
10/14/21  
l:agr/recr/2022-17f