

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY FOR A PORTION OF MCNAB PARK; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Lease Agreement between the City of Pompano Beach and the Pompano Beach Community Redevelopment Agency for a portion of McNab Park, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and the Pompano Beach Community Redevelopment Agency.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 23rd day of July, 2019.

PASSED SECOND READING this 10th day of September, 2019.



REX HARDIN, MAYOR

ATTEST:



ASCELETA HAMMOND, CITY CLERK

AE:jrm
7/11/19
L:ord/2019-235

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CRA AND THE CITY OF POMPANO BEACH FOR REDEVELOPMENT OF PROPERTY LOCATED IN THE EAST CRA DISTRICT KNOWN AS MCNAB PARK ; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the CRA desires to move McNab House and its garage to McNab Park, to renovate the McNab House and garage, create botanical gardens surrounding McNab House, and to master plan and complete the redevelopment of the remainder of McNab Park to enhance the park and recreational amenities in the park; and

WHEREAS, the City of Pompano Beach is permitted pursuant to its Charter to lease a portion of McNab Park to the CRA, provided the CRA makes capital improvements to the park in accordance with the terms of a lease between the parties.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The Lease Agreement between the Pompano Beach Community Redevelopment Agency and the City of Pompano Beach, relating to redevelopment of the property known as McNab Park, Pompano Beach, Florida (the Lease), a copy of which Lease is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. The proper officials are hereby authorized to execute the Lease, together with such other documents as may be required to effectuate the Lease.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 16th day of July, 2019.



REX HARDIN, CHAIRPERSON

ATTEST:


MARSHA CARMICHAEL, SECRETARY

Orig 25

Return recorded copy to:

Pompano Beach CRA
Attention: Nguyen Tran
100 W. Atlantic Boulevard, Room 276
Pompano Beach, FL 33060

INSTR # 116111531
Recorded 10/15/19 at 09:54 AM
Broward County Commission
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#1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") between the CITY OF POMPANO BEACH, a Florida municipal corporation ("City"), whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, and the POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic ("CRA"), whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, is entered into and effective as of the date this Agreement is fully executed by the Parties ("Effective Date"). The City and CRA shall be collectively referred to as the "Parties," and individually referred to as a "Party."

RECITALS

A. The City is the owner of the municipal park named "McNab Park" located at 2250 East Atlantic Boulevard, Pompano Beach, Florida 33060, and legally described in **Exhibit A**, attached and made a part of this Agreement ("Property").

B. The City desires to lease a portion of the Property to the CRA ("Premises"), and the CRA desires to redevelop the Premises according to the CRA Plan, and create a dining and entertainment destination, the McNab House and Botanical Gardens concept that includes, but is not limited to, a relocated and renovated McNab House serving as a restaurant, lush tropical landscaping and water features throughout the site, and an open English-style garden design with a gazebo for weddings and other special events ("Development"); all complementary to a renovated active park enjoyable by residents.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Recitals**. The above recitals and representations are true and correct and are incorporated herein.
2. **Premises**. City leases to CRA the Premises surveyed and legally described in **Exhibit A**, attached and incorporated in this Agreement.
3. **Term**. The term of this Agreement shall be effective for Fifty (50) years beginning on the Effective Date ("Term"). At least Ninety (90) calendar days before the expiration of the Term, the Parties shall negotiate in good faith for a new term of Fifty (50) years upon the same terms and conditions of this Agreement. The Term or any future

terms of this Agreement, including any renewal options, shall be limited to Fifty (50) year time periods in accordance with Section 250(b) of the City's Charter.

4. **Rent.** The CRA shall pay the total rent of Ten Dollar (\$10.00) per year for the full term of this Agreement ("Rent"). The first payment of Rent shall be due no later than Thirty (30) calendar days after the Effective Date. Rent for the subsequent years during the Term shall be due on each yearly anniversary of the Effective Date. Rent shall be paid at the City's Treasury Division, Room 135, PO Drawer 1300, Pompano Beach, Florida 33061.

5. **CAPITAL IMPROVEMENTS.**

5.1 CRA agrees to spend a minimum of Two Million Seven Hundred Thousand Dollars (\$2,700,000) on Capital Improvements to McNab Park consisting of redevelopment and renovation activities as provided for in Exhibit B of this Agreement. Generally, CRA shall relocate the McNab House, a 2,470 square foot, 2-story historic house and 629 square foot two-story garage structure to the Premises. Each structure will be renovated and shall be owned by the City. The veterans' memorial will be relocated to an alternate location within McNab Park. Pursuant to an approved Site Plan and Master Plan identifying the proposed structures and features to be constructed or installed within the Premises, and subject to the City's approval, CRA shall install a botanical gardens adjacent to the McNab House, renovate the McNab House and the existing community building to operate a restaurant and other entertainment venues, and identify possible innovations and features for McNab Park improvements. The Capital Improvements provided for in this Agreement must be completed within four (4) years of the Effective Date of this Agreement. Failure to complete the Capital Improvements within the four (4) year period shall be a major breach of this lease, entitling the City to all remedies occasioned by default.

5.2 In accordance with Section 250 of the City Charter, at least fifty percent (50%) of the Two Million Seven Hundred Thousand Dollars (\$2,700,000) amount (i.e.: One Million Three Hundred Fifty Thousand Dollars (\$1,350,000)) shall be expended by CRA no later than twenty-four (24) months from the Effective Date of this Agreement; and the balance of the Two Million Seven Hundred Thousand Dollars (\$2,700,000) amount shall be expended by CRA no later than forty-eight (48) months from the Effective Date of this Agreement. Failure to establish to the satisfaction of the CITY that the sums have been expended within the required time periods shall constitute a major breach of this Agreement, entitling the City to all remedies occasioned by default.

6. **Use of Property.**

6.1 The CRA may use and occupy the Premises for uses that are permitted by the City's Zoning Code; for the relocation of the McNab House; renovation of various structures including the McNab House; construction, installation and general operations of proposed and approved commercial establishments, as well as such other improvements as may be determined and approved in the McNab Park Site Plan and

Master Plan (“Permitted Use”). Permitted Uses for the Premises include, but are not limited to, activities determined and approved in the McNab Park Site Plan and Master Plan and any ancillary or incidental uses to such activities.

6.2 If the CRA uses the Premises for a purpose other than a Permitted Use, the City may provide written notice to the CRA demanding discontinuation of the unpermitted use. If the CRA to discontinue the unpermitted use within Thirty (30) calendar days after it receives notice from the City, the City may terminate this Agreement in accordance with Section 13.1.1.

6.3 With the City’s prior written consent, which shall not be unreasonably withheld or delayed, the CRA may install signs on the Premises in accordance with federal, state, and local statutes, laws, ordinances, and codes. The City will cooperate with any applications that the CRA makes for permits, variances, or other right to install signs. The City may install additional signage on the Premises if it is acceptable to the CRA and necessary for new development during the Term except as permitted by Section 16.1 below.

6.4 The CRA covenants that it will not, without the City’s prior written consent, permit the Premises to be used or occupied by any person, firm, entity, or corporation other than the CRA and its employees, agents, and contractors, except as permitted by Section 16.1 below.

6.5 The CRA further covenants that it will not (i) commit any waste, nuisance, or hazardous trade or occupation on, in, or upon the Premises; (ii) take any action, or keep anything in or about the Premises that will increase the risk of any hazard, fire, or catastrophe; (iii) damage the Premises; and (iv) use or occupy or permit the Premises to be used or occupied in any manner that will violate any laws or regulations of any governmental authority.

6.6 CRA covenants and agrees to observe and obey and to require its officers, employees, guests, invitees and those doing business with it, to observe and obey such reasonable and nondiscriminatory rules and regulations of City governing CRA’s conduct and operations and others on the Premises as may from time to time during the letting be promulgated by City for reasons of public safety, health or sanitation and good order. The CRA is obligated to require such observance and obedience on the part of its guests, invitees and business visitors while such persons are on the Premises.

6.7 CRA shall, at its own cost, make approved improvements to the Premises and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Premises in order to comply with sanitary requirements, fire hazard requirements, zoning requirements, setback requirements and other similar requirements designed to protect the public.

7. **Quiet Possession**. The CRA shall and may peaceably and quietly have, hold, and enjoy the Premises during the Term, provided that the CRA performs all the

covenants and conditions that it is required to perform under this Agreement; and the City warrants that it has full right and sufficient title to lease the Premises to the CRA for the Term.

8. **Utilities and Other Services.**

8.1 The City warrants to the CRA that electricity, water, sanitary and drainage sewers are available on the Premises and may be accessible for connection by the CRA. The City will not be responsible to provide any utilities to CRA under this Agreement. The CRA must contact all service providers and make arrangement for such utility services.

8.2 The CRA shall pay all required utility deposits and fees, and all monthly service charges for water, electricity, sewage, and any other utility services furnished to Premises and the improvements made during the Term. If any such services are not separately metered or billed to the CRA, but rather are billed to and paid by the City, the CRA will pay to the City its pro rata share of the cost of such services, as determined by the City, together with its pro rata share of the cost of making such determination.

8.3 The CRA shall be responsible for the costs of all operations on the Premises.

9. **Repairs and Maintenance.**

9.1 The CRA shall, at its sole cost and expense, keep all personal property including, but not limited to, fixtures, structures, equipment, personal property, and landscaping, on the Premises in good working order and condition, and make all necessary repairs to such property. Additionally, the CRA shall be responsible to maintain and repair the exterior of any buildings, including, but not limited to, exterior windows, paint, walls, landscaping, irrigation systems, paving, and swale areas surrounding the Property; the Parking Area; the roof; skylights; foundations; elevators; sidewalks; exterior recreational areas and equipment, windows, floors, and ceilings; and all sprinkler, hot water, heating, ventilating, air conditioning, plumbing, electrical, and life-safety systems, and related appurtenances. All repairs made by the CRA shall be at least substantially similar in quality and class to the original work or installations. The CRA shall also be responsible for providing janitorial services and pest control, where applicable and as required by City on the Premises.

9.2 If the CRA fails to meet its repair and maintenance obligations under this Section 9, the City may perform such obligations and the CRA shall reimburse the City within Thirty (30) calendar days after receiving an invoice from the City that details the repairs made and the expenses incurred.

9.3 The CRA shall also make any repairs required due to water leakage or any other emergency repairs for any buildings on the Premises. The term "emergency repair" shall include all replacements, renewals, alterations, additions, betterments, and capital

expenses necessary to protect the public's health or safety or to prevent risk to the building.

9.4 The CRA shall begin any repairs required for the mechanical, electrical, or plumbing systems, or any emergency repairs, within Twenty-Four (24) hours after receiving notice from the City.

9.5 If the CRA fails to meet its repair and maintenance obligations, the City may perform such obligations and the CRA shall reimburse the City within Thirty (30) calendar days after receiving an invoice from the City that details the repairs made and the expenses incurred.

10. **Alterations and Improvements.**

10.1 The CRA may make non-structural changes, alterations, or additions to the Premises without seeking consent from the City. All Personalty shall remain the exclusive property of the City unless the Parties agree otherwise in writing.

10.2 The CRA may make structural alterations or additions to the Premises during the Term ("Improvements") that are identified on the approved Site Plan and Master Plan without further City consent. The CRA may make structural alterations or additions to the Premises that are not identified on the approved Site Plan and Master Plan with the City's written consent, which shall not be unreasonably withheld or delayed. The City shall provide a written response within Ten (10) business days of the CRA's request to make any Improvements. The Improvements shall immediately, upon being added to or incorporated in the Premises, be and remain the exclusive property of the City unless the Parties agree otherwise in writing.

10.3 All Personalty and Improvements shall (i) comply with all applicable laws; (ii) be compatible (as determined in good faith by the City) with the buildings and any structures and their mechanical, electrical, heating, ventilating, air-conditioning, and life-safety systems; (iii) not interfere with the use and occupancy of any other portion of the Premises or the Property by any other tenant or their invitees; and (iv) not affect the integrity of the structural portions of any structure or building.

10.4 All Personalty and Improvements, remaining the exclusive property of the CRA, shall be placed, maintained, and operated on the Premises at the CRA's sole risk and obligation. The City shall not be liable for any damage to such Personalty or Improvements, or any theft, misappropriation, or loss of such items, except in the event of any damage, theft, misappropriation, or loss caused by the City, its employees, agents, or contractors.

10.5 Upon the expiration or earlier termination of this Agreement, unless the Parties agree to a new term pursuant to Section 2, the CRA shall, at its sole expense, remove its Personalty and Improvements from the Premises, and repair all damage caused by such removal. Any Personalty and Improvements not removed from the

Premises upon the expiration or earlier termination of this Agreement shall be deemed the property of the City without further liability to the CRA.

11. **Damage and Destruction.**

11.1 If a fire, casualty, or other cause beyond the reasonable control of the Parties damages all or part of the Premises during the Term ("Casualty"), the CRA shall promptly remove all debris resulting from such Casualty, at its sole cost and expense, and rebuild the damaged property to its original condition consistent with current City, state and federal codes.

11.2 The City, should it elect to do so, may make the necessary repairs or replacements and restoration of the Premises, without cost to CRA, except where such Casualty is covered by insurance maintained by CRA, in which case, such insurance shall reduce the City's expenditure. If neither party elects to make such repairs or replacements, then this Agreement shall terminate at the expiration of thirty (30) days and no further rental payments shall be due, except where such payment is outstanding.

11.3 The City, where electing to do so, or the CRA shall diligently commence the necessary repairs or reconstruction of the property damaged by a Casualty. Within Thirty (30) calendar days after a Casualty occurs, the City shall provide the CRA with written notice specifying the time that will be reasonably needed to repair or reconstruct the damaged property.

11.4 **Force Majeure.** The performance by the City and the CRA of their obligations under this Agreement will be excused by delays due to strikes, lockouts, labor trouble, inability to procure labor or materials or reasonable substitutes for them, failure of power, governmental requirements, restrictions or laws, fire or other damage, war or civil disorder, or other causes beyond the reasonable control of the Party delayed, but not delays resulting from changes in economic or market conditions, or financial or internal problems of the Party delayed, or problems that can be satisfied by the payment of money. As a condition to the right to claim a delay under this Section, the delayed Party will (i) notify the other Party of the delay within Seven (7) business days after the delay occurs; and (ii) give the other Party a weekly update, which describes in reasonable detail the nature and status of the delayed Party's efforts to end the delay.

12. **Default.**

12.1 If the CRA voluntarily vacates or abandons the Premises; or

12.2 The CRA materially breaches any of its obligations under this Agreement, and the breach continues for a period of Thirty (30) calendar days after the CRA receives written notice from the City, or such additional time as may be reasonably required if the cure cannot be completed within Thirty (30) calendar days but is timely commenced and is diligently prosecuted; or

12.3 The City materially breaches any of its obligations under this Agreement, and the breach continues for a period of Thirty (30) calendar days after the City receives written notice from the CRA, or such additional time as may be reasonably required if the cure cannot be completed within Thirty (30) calendar days but is timely commenced and is diligently prosecuted.

13. **Remedies.**

13.1 If CRA defaults, then the City may elect one of the following remedies:

13.1.1 Termination of this Agreement by providing the CRA with written notice specifying a termination date, which must be at least Thirty (30) calendar days after the date of such notice;

13.1.2 Re-enter and take possession of the Premises; expel the CRA and those claiming a right to possession of the Premises through or under the CRA, from the Premises; and remove their Personalty on the Premises; or

13.1.3 Pay the amount or perform the obligation that the CRA has failed to do, and the CRA shall reimburse the City within Thirty (30) calendar days after receiving an invoice from the City that details the correction made and the expenses incurred.

13.2 If City defaults, then the CRA may elect one of the following remedies:

13.2.1 Termination of this Agreement by providing the City with written notice specifying a termination date which must be at least Thirty (30) calendar days after the date of such notice.

13.2.2 Pay the amount or perform the obligation that the City has failed to do, and the City shall reimburse the CRA within Thirty (30) calendar days after receiving an invoice from the CRA that details the correction made and the expenses incurred.

13.3 This Section shall not deprive either Party of the right it may have to recover damages for breach of this Agreement or to specific performance of this Agreement.

14. **Termination.** In addition to the termination rights provided in the Agreement, the Parties agree to the following:

14.1 The Parties shall have the right to terminate this Agreement for convenience by providing written notice to the City at least Ninety (90) calendar days before the date of termination.

14.2 If at any time the City determines that termination of the Agreement is necessary to protect public health, safety, or welfare, the City may terminate the Agreement upon providing such written notice as the City deems appropriate under the circumstances.

15. **Holdover.** CRA may remain in possession of the Premises after the expiration of this Agreement (“Holdover”), but a Holdover shall not be deemed or construed to be a renewal or extension of the Agreement. Any Holdover by the CRA shall create a month-to-month tenancy, subject to all conditions, provisions, and obligations of this Agreement in effect on the last day of the Term. Either Party may terminate a Holdover at the end of any month upon providing Sixty (60) days written notice to the other Party.

16. **Assignment or Subletting.**

16.1 The CRA may assign or sublet all or portion of the Premises with the City’s prior written consent; provided that the Premises continues to be used for the Permitted Uses. The City shall have the right to terminate this Agreement if the CRA subleases or assigns this Lease to an entity or person that is not acceptable to the City. Notwithstanding the foregoing, the CRA may, without CITY’s consent, sublease or sublet portions of the McNab House and Gardens for retail, commercial or other permitted occupants.

16.2 If the CRA’s interests in the Premises are assigned, in whole or part, pursuant to this Section, such assignment shall not relieve the CRA from all liability under this Agreement. Notwithstanding the foregoing, the City may require the assignee to enter into a lease agreement with City on substantially the same terms as this Agreement.

17. **Change in Ownership /Encumbrances.**

17.1 The CRA shall not encumber any part of the Premises with a mortgage or other encumbrance. The City shall give written notice to the County at least Ninety (90) days before the City intends to encumber or sell any part of the Premises.

17.2 If the City sells any part of the Property during the Term, the City shall immediately, together with the new owner(s), give the CRA written notice identifying the new owner(s). If either the City or the new owner(s) fail to notify the CRA, the CRA shall be entitled to continue treating the City as the owner of the Property until notice is received from both the City and the new owner(s).

17.3 Any mortgage or sale of the Property shall require the execution of a subordination, non-disturbance, and attornment agreement which shall run with the land in favor of the CRA and shall be recorded in the Public Records of Broward County, Florida. Additionally, prior to any sale of the Property, the CRA shall have the right to enter into an automatic Fifty (50) year lease with the new owner(s) under the same terms and conditions of this Agreement.

18. **Surrender.** Subject to all applicable provisions of this Agreement, the CRA agrees that it will peaceably surrender and deliver the Premises to the City upon the expiration or earlier termination of this Agreement.

19. **Taxes and Assessments.** If any taxes, assessments, or other charges are levied by any governmental entity against the Premises, any structures or buildings on the Premises, or any personalty or for operations on the Premises (“Taxes” or “Licenses”), the CRA shall directly pay such Taxes or Licenses to the applicable governmental entity.

20. **Notices.** For a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via email to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

To CRA:

CRA Executive Director
Pompano Beach Community Redevelopment Agency
100 West Atlantic Boulevard
Pompano Beach, FL 33060
Email Address: greg.harrison@copbfl.com

With a copy to:

CRA Director
Pompano Beach Community Redevelopment Agency
100 West Atlantic Boulevard
Pompano Beach, FL 33060
Email Address: nguyen.tran@copbfl.com

To City:

City Manager
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Email Address: greg.harrison@copbfl.com

With a copy to:

City Attorney
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Email Address: mark.berman@copbfl.com

21. **Inspection.**

21.1 The City, its employees, agents, licensees, or contractors may enter the Premises at reasonable times to inspect the Premises without written notice of the inspection.

21.2 If an emergency arises, and can potentially cause significant damage to persons or property, the City, its employees, agents, licensees, or contractors may immediately enter the Premises to address the emergency and shall promptly notify the CRA of such entry.

22. **Liability and Insurance.**

22.1 To the extent permitted by law, and without either Party waiving its sovereign immunity or waiving any limits established by Section 768.28, Florida Statutes, each Party is responsible for all personal injury and property damage caused, either by commission or omission, by that Party or its officers, employees, or agents.

22.2 Each Party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes, that each Party is self-insured for general liability under state law with coverage limits of Two Hundred Thousand (\$200,000) per person and Three Hundred Thousand (\$300,000) per occurrence, or such monetary waiver limits that may change and be set forth by the Florida Legislature. Self-insurance and/or insurance requirements shall not relieve or limit the liability of either Party, except to the extent provided by Section 768.28, Florida Statutes. Both Parties reserve the right to require other insurance coverage that both Parties deem mutually necessary depending upon the risk of loss and exposure to liability.

22.3 Each Party shall furnish the other Party with written verification of liability protection in accordance with state law prior to the Effective Date of this Agreement.

22.4 **Mutual Release.** The City and the CRA each waives on behalf of itself and its property insurers any and all rights of recovery, claim, action, or cause of action against the other and its agents, officers, servants, partners, shareholders, or employees (collectively, the "Related Parties") for any loss or damage that may occur to or within the Premises or the structures or any improvements to such Premises, or any personal property of such party which is insured against under the required insurance, or which would be insured against under the terms of any the insurance policy required to be carried or maintained by the waiving party, whether or not such insurance coverage is actually being maintained, including, in every instance, such loss or damage that may be caused by the negligence of the other party or its Related Parties. For purposes of this Section, all deductibles shall be considered insured losses. The City and the CRA each agrees to cause appropriate clauses to be included in the required insurance policies necessary to implement the foregoing provisions.

22.5 Waiver of Subrogation. The City and the CRA further mutually agree that their respective insurance companies shall have no right of subrogation against the other and that the required insurance shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair the right of the releaser to recover. The City and the CRA each agree that its respective insurance policies will include such a clause or endorsement so long as the same is obtainable (cost shall not be a basis to claim non-obtainability) and, if not obtainable, shall so advise the other in writing and such notice shall release both parties from the obligation to obtain such a clause or endorsement.

23. **Conflict Resolution.**

23.1 The Parties, through their respective management representatives, shall attempt to amicably resolve any dispute regarding this Agreement in order to avoid litigation.

23.2 If the management representatives are unable to reach an agreement within Thirty (30) calendar days after the dispute arises, the Parties shall submit to a non-binding mediation before any matter is brought to litigation. The mediator for any such non-binding mediation shall be approved by the management representatives. The Parties shall equally share in the costs of the mediator, but each Party shall bear its own attorney's fees in connection with such mediation.

24. **Audit Rights and Retention of Records.**

24.1 The City shall have the right to review and audit the books, records, and accounts of the CRA that are related to the Premises and its operations or this Agreement. The City must give the CRA written notice of its intent to review or audit, or both, at least Thirty (30) calendar days before exercising its rights under this Section.

24.2 The CRA shall keep such books, records, and accounts as may be necessary to document the CRA's activities, and all the monies received, under this Agreement ("Records"). All Records shall be kept in accordance with generally accepted accounting principles. The CRA shall make the Records available to the City at no cost, in written form, and within a reasonable time after it receives the written request from the City.

24.3 All Records shall be maintained for a period consistent with the requirements of the State of Florida's public records law, if applicable, and, at least Three (3) years after the expiration of this Agreement.

24.4 This Section and its obligations shall survive the expiration or earlier termination of this Agreement.

25. **Environmental Contamination.**

25.1 The City represents and warrants to the CRA that as of the Effective Date, neither the City, nor to the best of the City's knowledge has any third party, used, produced, manufactured, stored, disposed of or discharged any hazardous wastes or toxic substances in, under, or about the Premises or Property.

25.2 The CRA covenants that it will not use, produce, manufacture, store, dispose of, or discharge any hazardous wastes or toxic substances in, under, or about the Premises or Property during the Term.

26. **Jurisdiction, Venue, and Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE CITY AND THE CRA HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

27. **Attorney's Fees.** Each Party shall bear its own attorney fees in any litigation or proceeding arising under this Agreement.

28. **Third Party Beneficiaries.** Neither the City nor the CRA intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

29. **Compliance with Laws.** The City and the CRA shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations when performing their respective duties, responsibilities, and obligations under this Agreement.

30. **Materiality and Waiver of Breach.** The City and the CRA agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the Parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement, and that each is, therefore, a material term. Either Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or a modification of this Agreement. A waiver or breach of any provision or modification of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Agreement.

31. **Severance.** In the event that any part of this Agreement is found to be invalid by a court of competent jurisdiction, that part shall be severed from this Agreement

and the balance of this Agreement shall remain in full force and effect unless both the City and the CRA elect to terminate the Agreement. The election to terminate this Agreement pursuant to this Section shall be made within Ten (10) business days after the court's finding becomes final.

32. **Joint Preparation.** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein, and that the preparation of this Agreement has been their joint effort. The Agreement expresses the Parties' mutual intent, and it shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

33. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the Parties, with the same formality and of equal dignity with this Agreement.

34. **Independent Contractor.** Each Party is an independent contractor under this Agreement. Services provided or acquired by a Party pursuant to this Agreement shall be subject to the supervision of such Party. In providing services, neither that Party nor its agents shall act as officers, employees, or agents of the other Party. No partnership, joint venture, or other joint relationship is created by this Agreement. The Parties do not extend to each other any authority of any kind to bind one another in any respect whatsoever.

35. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk 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 Broward County Public Health Unit.

36. **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms shall be predicated upon any prior representation or agreement, whether oral or written.

37. **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any attached exhibit, any document or events referred to in this Agreement, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

38. **Recording.** The CRA, at its sole cost and expense, shall record this Agreement in the public records of Broward County, Florida within Ten (10) business days after the Effective Date.

39. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns.

40. **Incorporation by Reference.** Attached **Exhibits A and B** are incorporated into and made a part of this Agreement.

41. **Representation of Authority.** Each individual executing this Agreement on behalf of a Party represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

42. **Counterparts / Multiple Originals.** This Agreement may be executed in counterparts. Each executed counterpart will constitute an original document, and all of them, together, will constitute one and the same agreement. It shall not be necessary for every Party to sign each counterpart but only that each Party shall sign at least one such counterpart.

[Signatures on Following Pages]

LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY FOR A PORTION OF MCNAB PARK.

"CITY":

CITY OF POMPANO BEACH

Witnesses:

Cathy A. Sargent

Shelley R. Bartholomew

By: *[Signature]*
REX HARDIN, MAYOR

By: *[Signature]*
GREGORY P. HARRISON, CITY MANAGER

Attest:

Ascleta Hammond
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this 16 day of September, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** 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:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Jennette Forrester Williams
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

Witness:

Audrey L. Sewell

Shelley R. Bartholomew

By: [Signature]
Rex Hardin, Chairman

By: [Signature]
Gregory P. Harrison,
CRA Executive Director

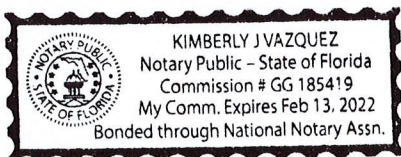
ATTEST:

Marsha Carmichael
Marsha Carmichael, Secretary

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 23rd day of July, 2019 by REX HARDIN as Chairman, GREGORY P. HARRISON, as Executive Director, and MARSHA CARMICHAEL, as Secretary, of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Kimberly J Vazquez
(Name of Acknowledger Typed, Printed or Stamped)
GG 185419
Commission Number

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain Block designated as "PARK", lying West of Block 20, and lying North of Block 21 and lying East of Block 22, LESS the North 10 feet thereof; and that certain unnamed street (Vacated Per O.R. 18407, PG. 282) lying East of S.E. 22nd Avenue and West of S.E. 23rd Avenue, and North of Block 21, and lying South of PARK, of PINEHURST, according to the Plat thereof, as recorded in Plat Book 5, Page 13, Public Records of Broward County, Florida;

LESS

All that portion of a Tract or Parcel of Land designated at "Park", on the Plat of PINEHURST, according to the map or plat thereof as recorded in Plat Book 5, Page 13, Public Records of Broward County, Florida; Beginning at the northwest corner thereof, thence east along the north property line of said Parcel for a distance of 100.00 feet; thence south, parallel to the west line of said Parcel a distance of 90.00 feet, thence west parallel to said north line a distance of 100.00 feet, thence north along the west line of said Parcel, a distance of 90.00 feet to the Point of Beginning; said lands lying and being in Broward County, Florida.

EXHIBIT B

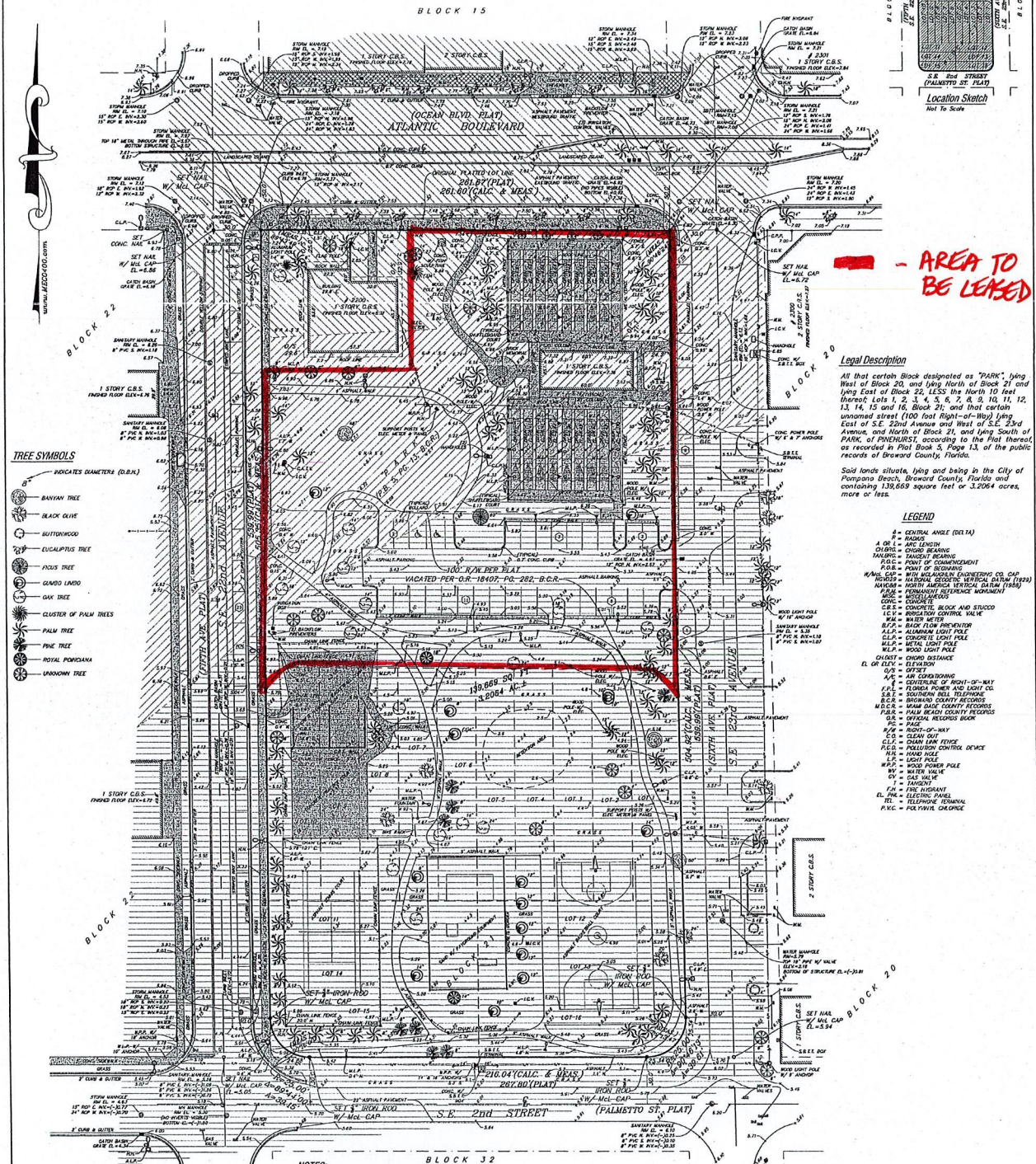
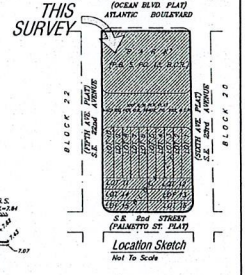
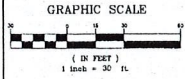
CAPITAL IMPROVEMENTS

A project is being designed to relocate the McNab House, a 2,470 square foot, 2-story historic house and 629 square foot two-story garage structure to McNab Park. Both the McNab House and garage will be renovated. Botanical gardens will be created, the existing community building will be renovated, and the veteran's memorial will be relocated within the park. Collectively, the McNab House, garage and botanical gardens are referred to as McNab House and Gardens. A McNab Park Master Plan will be developed for the entire park in an effort to activate and improve the entire park; however, only the McNab House and Gardens will be improved at this stage until further directed by the CRA Board and City Commission.

EXHIBIT 1

prepared by
McLAUGHLIN ENGINEERING COMPANY (LB#285)
1700 N.W. 64th STREET, SUITE 400
FORT LAUDERDALE, FLORIDA 33309
PHONE: (954) 763-7611 FAX: (954) 763-7615

RECORD LAND SURVEY PARK & BLOCK 21, PINEHURST P.B. 5, PG. 13, B.C.R.



- ### TREE SYMBOLS
- INDICATES DIAMETER (D.B.H.)
 - BANYAN TREE
 - BLACK OLIVE
 - BUTTERNUT
 - CUCURBITACEAE TREE
 - PAVIA TREE
 - OAK TREE
 - GUANO LAND
 - CLUSTER OF PALM TREES
 - PALM TREE
 - PIKE TREE
 - ROYAL POMEGRANATE
 - GRANDPINE TREE

Legal Description
All that certain Block designated as "PARK", lying West of Block 22, and lying North of Block 21 and lying East of Block 22, LESS the North 10 feet thereof; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, Block 21, and that certain unnamed street (100 foot Right-of-Way) lying East of S.E. 2nd Avenue and West of S.E. 2nd Avenue, and North of Block 21, and lying South of PARK, of PINEHURST, according to the Plat thereof as recorded in Plat Book 5, Page 13, of the public records of Broward County, Florida.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing 139,669 square feet or 3.2064 acres, more or less.

- ### LEGEND
- A = CENTRAL ANGLE (D.B.M.)
 - B = ANGLE
 - CA = CURVED ALIGNMENT
 - CA = CHORD BEARING
 - CA = CURVED BEARING
 - P.O.C. = POINT OF COMMENCEMENT
 - P.O.I. = POINT OF INTERSECTION
 - P.O.T. = POINT OF TANGENCY
 - M.A.S. = MINIMUM ANGLE SURVEYING SYSTEM (1983)
 - N.A.S. = NORTH AMERICAN VERTICAL DATUM (1988)
 - P.O.S. = POINT OF SIGHT
 - CONC. = CONCRETE
 - CONC. BLOCK AND STUCCO
 - C.S.V. = CEMENT SET VALVE
 - IR = IRIGATOR CONTROL VALVE
 - M.A. = METER
 - B.F.P. = BACK FLOW PREVENTER
 - A.L.P. = ALUMINUM LIGHT POLE
 - C.L.P. = CONCRETE LIGHT POLE
 - M.L.P. = METAL LIGHT POLE
 - W.L.P. = WOOD LIGHT POLE
 - CH.O. = CHORD OBSERVATION
 - EL. OR ELEV. = ELEVATION
 - OFF. = OFFSET
 - A.V. = AIR CONDITIONING
 - R.O.W. = RIGHT-OF-WAY
 - R.P. = REPAIR PILE OF RIGHT-OF-WAY
 - S.A.T. = SOUNDBY BELL TELEPHONE
 - P.C. = PAVEMENT CONTROL DEVICE
 - M.B.C. = MAIN GAS COUNTY RECORDS
 - P.C. = PALM BEACH COUNTY RECORDS
 - O.R. = OFFICIAL RECORDS BOOK
 - P.A. = PAGE
 - R/W = RIGHT-OF-WAY
 - C.O. = CLEAN OUT
 - C.S. = CLEAN SAN FENCE
 - P.C.D. = PAVEMENT CONTROL DEVICE
 - P.C. = PAVEMENT CONTROL DEVICE
 - P.C. = PAVEMENT CONTROL DEVICE
 - W.P. = WOOD POWER POLE
 - W.V. = WATER VALVE
 - C.V. = CAST VALVE
 - T. = TANGENT
 - P.I. = PILE INFRANT
 - E.L. = ELECTRIC PANEL
 - T.L. = TELEPHONE TERMINAL
 - P.V.C. = POLYVINE CHLORIDE

- ### FLOOD ZONE HATCH LEGEND:
- FLOOD ZONE "X", ANNUAL CHANCE OF FLOOD HAZARD
 - FLOOD ZONE "X", 0.2% ANNUAL CHANCE OF FLOOD HAZARD
 - FLOOD ZONE "XV", ELEVATION="1"

OFFICE NOTES

FIELD BOOK NO. LB# 126/37-41, ETR. LB# 376/26
JOB ORDER NO. 0-5770 V-4311
CHECKED BY: ROR
DRAWN BY: ROR
FIELDWORK BY: F.V.

- ### NOTES:
- This survey reflects easements and rights-of-way, as shown on above referenced record plat(s). The subject property was not obstructed for other easements, road restrictions or rights-of-way as record by McLaughlin Engineering Company.
 - Underground Improvements if any not located.
 - This drawing is not valid unless sealed with an embossed surveyor's seal.
 - Boundary survey information does not infer title or ownership.
 - All iron rods 5/8"; unless otherwise noted.
 - Reference Bench Mark: Broward County Engineering Department, Benchmark #0071, Elevation 9.572 (NOV03) converted to 9.973 (MAY04).
 - Elevations shown refer to North American Vertical Datum (1988) and are indicated thus: "ft. Elev. = 8.5".
 - This property has a Flood Zone "X", Elev.=8.8, "X", 0.2% Annual Chance of Flood Hazard & "XV", Annual Chance of Flood Hazard Per Flood Insurance Rate Map No. 120110078 N. Dated: August 18, 2014. Currently Fund No. 120055.
 - Underground Utility Locations shown herein, if any, are those upon which the engineer has relied. McLaughlin Engineering Company does not confirm the accuracy of this data. The exact location of all utilities should be confirmed prior to design or construction.
 - Elevations per North American Vertical Datum (1988) derived from National Geodetic Vertical Datum (1929) data and converted using U.S. Army Corps of Engineers software (Version 6.0.1) obtained from <http://www.mch.com/mc/>

NOTE:
Block Corner Rods not delineated on plat.
Assumed to be 25.00 feet from historical records.

CERTIFICATION

We hereby certify that this survey meets the "Standards of Practice" as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 51-17.05 Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Dated at Fort Lauderdale, Florida, this 27th day of March, 1990.
Resurveyed this 17th day of May, 2019.

McLAUGHLIN ENGINEERING COMPANY

JERALD A. McLAUGHLIN
Registered Land Surveyor No. 5269
State of Florida.

FILE NO. 90-3-009(19)