

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 15, 2008 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment Number One to Lease Agreement (R99-1418D) dated July 27, 1999 with Mil Lake Annex, LLC for the continued use of 31,733 SF of warehouse space for the Palm Beach County Library Department within the Mil-Lake Plaza located in Greenacres.

Summary: The County has leased this space located within the Mil-Lake Plaza located at 4639 Lake Worth Road in Greenacres since 1999. The current term of the Lease Agreement expires on March 31, 2008. This First Amendment: i) extends the term of the Lease Agreement for three (3) years, from April 1, 2008 through March 31, 2011, and provides for two (2) two-year extension options; ii) provides for the County, at its sole cost limited to \$750 per occurrence, to provide general maintenance to the premises; and iii) updates the Notice provisions of both parties. The annual rental rate will increase by 38.64% from \$217,443.50 (\$6.85/sf) to \$301,463.50 (\$9.50/sf), with annual increases of 4% or CPI-U, whichever is less. In 1999, when the County initially entered into the Lease Agreement, the rental rate was below market and still is; however, the Landlord, in agreeing to enter into this amendment to extend the lease term required that the rental rate more accurately reflect current market rental rates. In addition, the new rental rate includes the County's pro-rata share of insurance costs and common area maintenance. The County will also continue to be responsible for real estate taxes which are estimated to be \$39,000 for 2008. The County will continue to pay for all utility costs. All other terms of the Lease Agreement remain unchanged. (PREM) District 2 (HJF)

Background and Justification: On July 27, 1999 (R99-1418D), the Board approved the initial Lease Agreement with Wellington Financial Holdings, Inc. for a period of six (6) years with two (2) options to extend, each for a one (1) year period. The Board has approved extension options (R2005-1710) and (R2006-2226), respectively. The County does not have any County-owned space available for the PBC Library Departments use. In May 2004, Wellington Financial Holdings, Inc. sold the property to Mil Lake Annex, LLC, the new landlord. This First Amendment will provide for the continued use of space for the acquisition, preparation, and non-public storage of library materials, as well as the Outreach Services Section which includes talking books, Books by Mail, the Bookmobile, and the Volunteer Literacy Tutoring Program. Florida Statutes Section 286.23, requires that a Disclosure of Beneficial Interest be obtained when a property held in a representative capacity is leased to the County. Mil Lake Annex, LLC, a Florida limited liability company, the landlord, provided the Disclosure attached hereto as Exhibit "D" to the First Amendment to Lease Agreement. This Disclosure identifies the ownership interests in Mil Lake Annex, LLC, as Carlos Montecalvo with a 10% interest, Mario Montecalvo with a 23.4% interest, Robert Dell'Aquila with a 33.3% interest, and Juan P. Borroni with a 33.3% interest.

Attachments:

- 1. Location Map
- 2. Amendment Number One to Lease Agreement
- 3. Budget Availability Statement

Recommended By: Anthony Wolf 12/26/07
Department Director Date
Approved By: [Signature] 1/9/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	\$150,731.76	\$330,713.50	\$353,522.04	\$204,031.46	\$10,500
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$150,731.76	\$330,713.50	\$353,522.04	\$204,031.46	\$10,500

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget: Yes X No _____

Budget Account No: Fund 1180 Dept 320 Unit 3200 Object 4410
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature]
 1/3/2008
 OFMB
 12/28

[Signature]
 Contract Development and Control
 1/17/08

This amendment complies with our review requirements.

B. Legal Sufficiency:

[Signature]
 1/8/08
 Assistant County Attorney

C. Other Department Review:

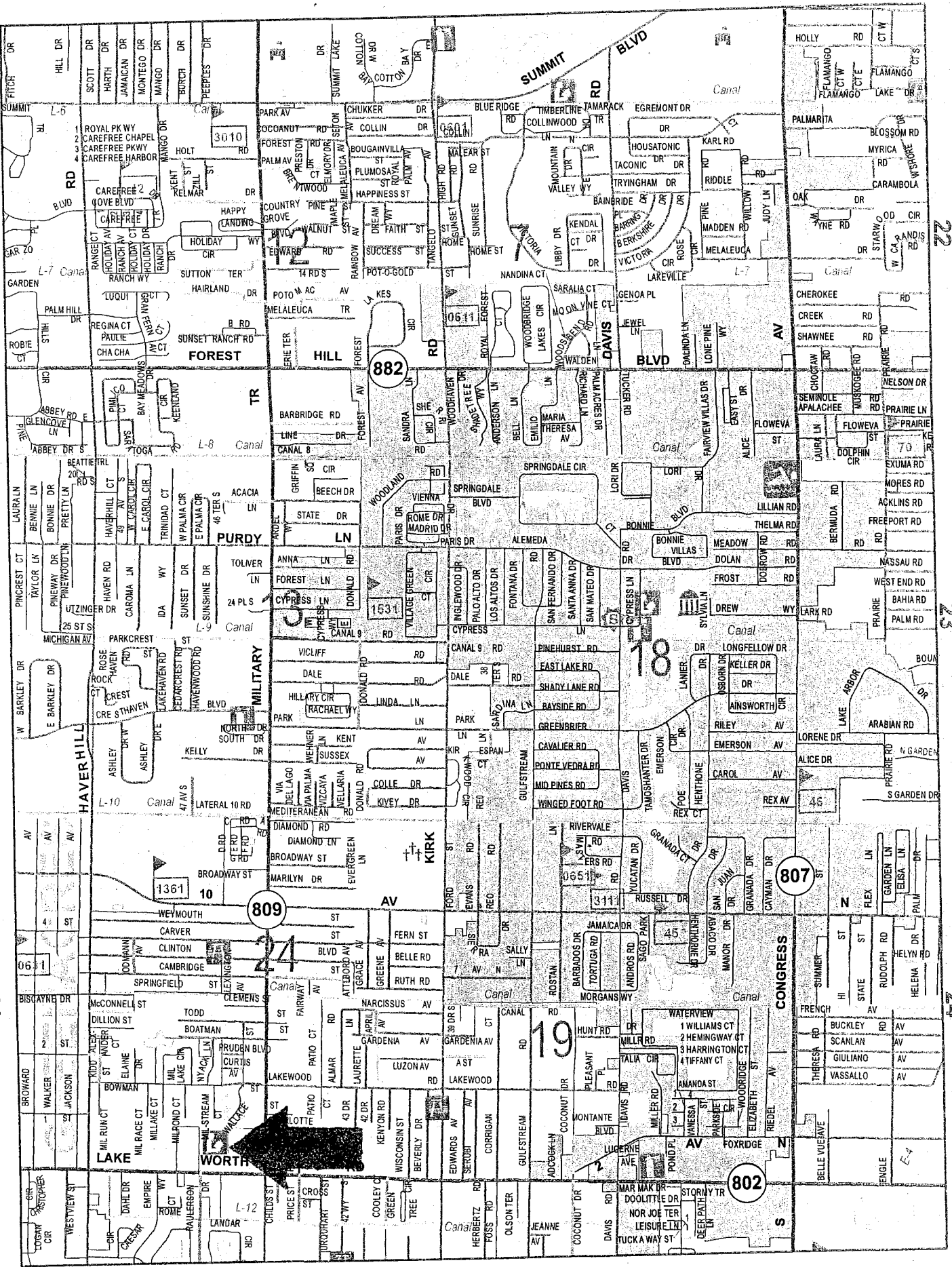
 Department Director

This summary is not to be used as a basis for payment.

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LOCATION MAP

ATTACHMENT #1

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AMENDMENT NUMBER ONE
TO LEASE AGREEMENT

THIS AMENDMENT NUMBER ONE TO LEASE AGREEMENT (“Amendment Number One”) made and entered into on 10th DECEMBER 2007 by and between MIL LAKE ANNEX, LLC, a Florida limited liability company, hereinafter referred to as “Lessor” and PALM BEACH COUNTY, a political subdivision of the State of Florida, on behalf of the Library Taxing District and its related agencies, hereinafter referred to as “Lessee”.

Whereas, Wellington Financial Holdings, Inc., the original Lessor, and Lessee entered into that certain Lease Agreement dated July 27, 1999 (R99-1418D) (the “Lease”) for two metal framed single story retail/warehouse buildings located within the Mil-Lake Plaza, 4639 Lake Worth Road, Greenacres, containing approximately 31,733 rentable square feet (the “Premises”), which Lease commenced on August 1, 1999, for a term that expired six (6) years after the Rental Commencement Date as therein defined, with the option to extend the Lease for two (2) additional one (1) year terms; and

Whereas, the Rental Commencement Date was April 1, 2000; and

Whereas, Wellington Financial Holdings, Inc., sold the Premises to Mil Lake Annex, LLC, and provided written notice of the change in ownership to the Lessee on June 3, 2004; and

Whereas, on September 13, 2005, Lessee exercised its first option to extend the Lease for an additional one (1) year term (R2005-1710) commencing on April 1, 2006, and terminating on March 31, 2007; and

Whereas, on October 17, 2006, Lessee exercised its second option to extend the Lease for an additional one (1) year term (R2006-2226) commencing on April 1, 2007, and terminating on March 31, 2008; and

Whereas, the parties desire to extend the term of the Lease for an additional three (3) years with the option to extend the Lease for two (2) additional periods of two (2) years each; and

Whereas, the parties desire to increase the Rent and modify other provisions of the Lease; and

Whereas, Lessor hereby acknowledges that Lessee is not delinquent in the payment of rent and is not in default of any of the terms and conditions of the Lease.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions contained herein, the parties agree to modify the Lease as follows:



ATTACHMENT # 2

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined or amended herein shall have the same meaning as ascribed to them in the Lease.

2. The "Summary of Lease Provisions" page is hereby deleted.

3. **Section 1.03, Length of Term and Commencement Date**, is modified to provide that the term of this Lease is extended for three (3) years commencing on April 1, 2008, and expiring on March 31, 2011, and to provide that Lessee shall have the right and option to extend the Term of this Lease for two (2) additional periods of two (2) years each upon the same terms and conditions contained in the Lease, as amended.

4. **Section 2.01, Annual Gross Rent**, is hereby re-titled "**Annual Rent**" and is modified to (i) delete all references to "Gross" and (ii) to provide that commencing on April 1, 2008, and subject to the provisions of Section 2.02 hereof, as amended, Lessee shall pay Lessor an initial annual Rent, calculated on the basis of \$9.50 per rentable square foot contained within the Premises, of Three Hundred One Thousand Four Hundred Sixty-Three and 50/100 Dollars (\$301,463.50), which shall be payable in advance in equal monthly installments of Twenty-Five Thousand One Hundred Twenty-One and 96/100 Dollars (\$25,121.96).

5. **Section 2.02, Increase in Gross Rent**, is hereby re-titled "**Increase in Rent**" and is modified to (i) delete all references to "Gross" and (ii) to provide that commencing on October 1, 2009, and on each October 1 thereafter (the "Adjustment Date") during the term of this Lease, the annual Rent shall be increased as hereinafter set forth. The annual Rent shall be increased either by four percent (4%) or to the Adjusted Rent, as that term is hereinafter defined, whichever increase is less. On each Adjustment Date, using the Consumer Price Index for all Urban Consumers, All Items, U.S. city average (1982-1984=100) (hereinafter "CPI"), issued by the Bureau of Statistics of the U.S. Department of Labor, the annual Rent payable for the immediately preceding period shall be adjusted by multiplying the then current annual Rent by a fraction, the numerator of which shall be the CPI value for the July immediately preceding the applicable Adjustment Date, and the denominator of which shall be the CPI value for the July of the prior year (the "Adjusted Rent"). In the event that the CPI ceases to be published during the Term of this Lease, or if substantial change is made in the method of establishing or computing the CPI, then the determination of the adjustment in the annual Rent shall be made with the use of such conversion factor, formula or table as may be published by the Bureau of Labor Statistics, or if none available, by any other nationally recognized publisher or similar statistical information chosen by the Lessor.

6. **Section 4.04, Utilities and Services**, is hereby added as follows:

Section 4.04 Utilities and Services

Lessor shall provide water, sewer, electricity, gas and telephone utility service to the Premises boundary, at Lessor's sole cost and expense. Lessee shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges or assessments for water, sewer, electricity, gas, telephone, and trash collection and removal and



any other utility used or consumed by Lessee. Lessor shall not be liable for an interruption or failure in the supply of such service to the Premises resulting from a failure of the utility company to provide service to the Premises.

7. **Section 5.01, Responsibility of Lessor**, is hereby deleted in its entirety and replaced with the following:

Section 5.01 Responsibility of Lessor.

Lessor agrees to repair and maintain in good order and tenable condition during the Term of this Lease and any extension thereof, the Premises (both interior and exterior) and the fixtures and appurtenances therein except for those items which are expressly stated in Section 5.02, Responsibility of Lessee, to be the Lessee's responsibility. Throughout the Term of this Lease, or any extension thereof, Lessor shall be responsible for all costs and expenses associated with the replacement of all or a portion of the HVAC system of the Premises when, in the opinion of a certified HVAC contractor, replacement rather than repair is necessary. Lessor shall be solely responsible for any equipment replacement (exclusive of Lessee provided and owned equipment) required as a result of failure, age, or any other reason other than negligent or intentional acts of Lessee. Lessor shall not be required to make any such repairs occasioned by any negligent or intentional act or omission of Lessee, its agents or employees. If the Lessor, after receipt of notice from Lessee, shall fail to promptly repair any item required to be repaired by Lessor under this Lease within fifteen (15) days of Lessor's receipt of Lessee's notice, the Lessee, at the Lessee's option, may complete such repairs and the amount of any and all expenses incurred by Lessee in doing so shall be deducted from Lessee's subsequent Rent payment obligations under this Lease. Lessor acknowledges that the nature of Lessee's use of the Premises requires that the roof be maintained in watertight condition at all times and agrees to immediately take any and all action as may be required to restore the roof to watertight conditions.

8. **Section 5.02, Responsibility of Lessee**, is hereby deleted in its entirety and replaced with the following:

Section 5.02 Responsibility of Lessee.

Lessee shall repair and maintain in good order and condition, and at Lessee's sole cost and expense limited to \$750.00 per occurrence, the following portions of the Premises: interior walls, partitions, drop ceilings, interior painting, plumbing fixtures, light fixtures, light bulbs, electrical system from the point of entry to the Premises, HVAC maintenance and routine repair, doors, windows, and plate glass. Notwithstanding anything to the contrary contained herein, any interior painting that is done for cosmetic purposes only shall be the full responsibility of Lessee at no cost to Lessor. Lessee shall not be responsible for replacement of any portion of the Premises whatsoever, nor the replacement of any appurtenances or fixtures therein unless such appurtenances or fixtures have been provided by and are owned by Lessee. Notwithstanding the foregoing, Lessee shall have no obligation to make modifications to the Premises required by law, nor have any responsibility for

restoration of the Premises in the event of a casualty. Further, Lessee shall have no obligation to repair any damage arising from any negligent or intentional act or omission of Lessor, its employees, agents, invitees or any third parties. In the event that maintenance activity is required and is not specifically assigned in this Section 5.02 to the Lessee, it shall be the responsibility of the Lessor.

9. **Section 14.01, Notices and Consents**, is modified as follows:

- (a) if to the Lessor at:

Mil Lake Annex, LLC
Attention: Member
P.O. Box 61127
North Miami, FL 33261-1627

- (b) if to the Lessee at:

Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605

10. **Section 14.13, Disclosure of Beneficial Interest**, is hereby added as follows:

Section 14.13 Disclosure of Beneficial Interest.

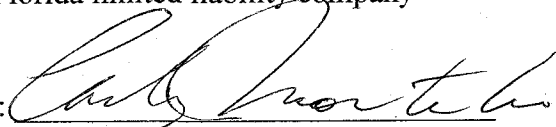
Lessor represents that simultaneously with Lessor's execution of this Amendment Number One, Lessor has executed and delivered to Lessee, the Lessor's Disclosure of Beneficial Interests attached hereto as Exhibit "D", attached hereto and made a part hereof, (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Premises as required by Section 286.23 of the Florida Statutes unless Lessor is exempt under the statute. Lessor warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Premises after the date of execution of the Disclosure until the Effective Date of this Amendment Number One, Lessor shall immediately, and in every instance, provide written notification of such change to the Lessee pursuant to Section 14.01 of this Lease, as amended.

11. This Amendment Number One shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.
12. Except as modified by this Amendment Number One, the Lease remains unmodified and in full force and effect and the parties hereby ratify, confirm, and adopt the Lease, as amended, in accordance with the terms thereof.

IN WITNESS WHEREOF, the parties have caused this Amendment Number One to be executed as of the day and year first written above.

LESSOR:

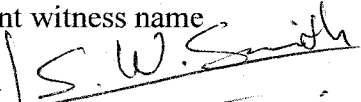
MIL LAKE ANNEX LLC
a Florida limited liability company

By: 
Carlos Montecalvo, Managing Member

WITNESS:


witness signature

ROBERTO DELL AQUILA
print witness name


witness signature

S. Smith.
print witness name

ATTEST:

PALM BEACH COUNTY, a
political subdivision of the State of Florida

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

Assistant County Attorney

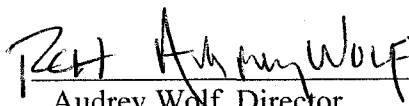

Audrey Wolf, Director
Facilities Development & Operations



EXHIBIT "D"

DISCLOSURE OF BENEFICIAL INTEREST

D

Mil Lake Annex L.L.C.

P.O. Box 611627
North Miami, Florida, 33261-1627

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS (REQUIRED BY FLORIDA STATUTES 286.23)


TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OFFICIALLY DESIGNATED REPRESENTATIVE.

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, hereinafter referred to as "Affiant", who being my first duly sworn, under oath, deposes and states as follows:

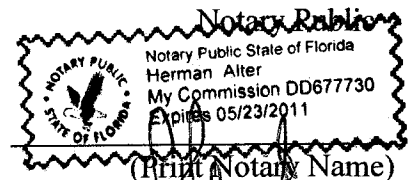
1. Affiant is the Member of Mil Lake Annex, LLC (The Owner) which entity is the owner of the real property legally described in the attached Exhibit "A" (The Property)
2. Affiant's address is 21396 Marina Cove Circle Suite 15Aventura Florida 33180
3. Attached hereto as "Exhibit B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Owner and the percentage interest of each such person or entity.
4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its Lease of the property.
5. Affiant further states that Affiant is familiar with the nature of an oath and with penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.
6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.


_____, Affiant
Carlos Montecalvo

The foregoing instrument was acknowledged before me this 14th day of August, 2007 by Carlos Montecalvo who is personally known to me and who did take an oath.

Notary Stamp



NOTARY PUBLIC
State of Florida at Large

EXHIBIT "A"

Legal Description

Parcel No. 1

The following two parcels of land lying in Section 24, Township 44 South, Range 42 East, Palm Beach County, Florida:

Commencing at the Southeast corner of the Southwest Quarter of Section 24, Township 44 South, Range 42 East, Palm Beach County, Florida; Thence North 87°29'21" West along the South line of said Section 24, a distance of 999.86 feet to a point; Thence North 1°40'08" East, a distance of 240.00 feet to the point of beginning of Parcel 2, Thence continued North 1°40'08" East, a distance of 365.91 feet to a point; Thence South 87°29'21" East, a distance of 131.60 feet to a point; Thence South 2°30'39" West, a distance of 108.90 feet to a point; Thence South 87°29'21" East, a distance of 325.00 feet to a point; Thence South 2°30'39" West, a distance of 256.97 feet to a point; Thence North 87°29'21" West, a distance of 451.22 feet to the point of beginning.

Together with:

Commencing at the Southeast corner of the Southwest quarter of Section 24, Township 44 South, Range 42 East, Palm Beach County, Florida; Thence North 87°29'21" West along the South line of Section 24, a distance of 999.86 feet to a point; Thence North 1°40'08" East, a distance of 605.91 feet to a point; Thence South 87°29'21" East, a distance of 131.60 feet to a point; Thence South 2°30'39" West, a distance of 108.90 feet to the point of beginning.

Thence South 87°29'21" East, a distance of 325.00 feet to a point; Thence North 2°30'39" East, a distance of 7.90 feet to a point; Thence North 87°29'21" West, a distance of 325.00 feet to a point; Thence South 2°30'39" West, a distance of 7.90 feet to the point of beginning.

Parcel No. 2

A non-exclusive mutual and reciprocal right-of-way for the benefit of Parcel No. 1, for the purpose of ingress and egress, parking and utilities as granted and created in that Cross Easement Agreement recorded in Official Records Book 3897, Page 604, over and across the following:

All of the lands encompassed in the Plat of Mil-Lake Plaza, P.C.D., according to the Plat thereof, as recorded in Plat Book 44, Page 88, of the Public Records of Palm Beach County, Florida, LESS AND EXCEPTING THEREFROM, those lands described as Parcel No. 1 hereinabove.

Parcel No. 3

Non-exclusive easements as granted in that certain Cross Easement Agreement dated January 21, 1998, by and between WayJohn, Inc., d/b/a Kentucky Fried Chicken, Mil-Lake Corporation, d/b/a Mil-Lake Shopping Center and Scotty's, Inc., recorded January 26, 1998 in Official Records Book 10197, Page 585, Public Records of Palm Beach County, Florida.

Mil Lake Annex L.L.C.

P.O. Box 611627
North Miami, Florida, 33261-1627

Exhibit "B"

SCHEDULE TO BENEFICIAL INTEREST IN PROPERTY

Name: Mil Lake Annex LLC
Address: 21396 Marina Cove Circle Suite 15Aventura Florida 33180
Percentage of Interest 100%

Individual Owners of Mil Lake Annex LLC

Carlos Montecalvo	10.0%	21396 Marina Cove Circle Suite 15Aventura Florida 33180
Mario Montecalvo	23.4%	3702 NE 171st Street North Miami Florida 33160
Roberto Dell'Aquila	33.3%	3702 NE 171st Street North Miami Florida 33160
Juan P. Borroni	33.3%	3702 NE 171st Street North Miami Florida 33160

BUDGET AVAILABILITY STATEMENT

RECEIVED

REQUEST DATE: 12/7/2007

DEC 12 2007

REQUESTED BY: Nicholas Lambiase, Jr., CPM, Property Specialist, FD&O - PREM

SENT TO: Lavinia Gardner, Director Finance and Facilities, Library Department

PROJECT NAME: Library Annex Mil-Lake Plaza Amendment No. 1

IS ITEM INCLUDED IN CURRENT BUDGET: YES X NO

BUDGET ACCOUNT NO:

FUND: 1180 DEPT: 320 UNIT: 3200 OBJ: 4410 PROGRAM:

FIVE YEAR SUMMARY OF FISCAL IMPACT:

FISCAL YEARS	2008	2009	2010	2011	2012
CAPITAL EXP.	_____	_____	_____	_____	_____
RENT	<u>\$150,731.75</u>	<u>\$301,463.50</u>	<u>\$313,522.04</u>	<u>\$163,031.46</u>	_____
OPERATING COSTS	_____	<u>\$ 29,250.00</u>	<u>\$ 40,000.00</u>	<u>\$ 41,000.00</u>	<u>\$10,500.00</u>
MONTHLY UTILITIES	_____	_____	_____	_____	_____
EXTERNAL REVENUE	_____	_____	_____	_____	_____
PROGRAM INCOME (CTY)	_____	_____	_____	_____	_____
IN KIND MATCH (CTY)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$150,731.75</u>	<u>\$330,713.50</u>	<u>\$353,522.04</u>	<u>\$204,031.46</u>	<u>\$10,500.00</u>

PROPOSED BCC MEETING DATE: 1/8/2008

BAS APPROVED BY: Lavinia D. Gardner DATE: 12/11/2007

ATTACHMENT #3