

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: January 15, 2008

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: **A) adopt** Resolution authorizing the lease of certain real property to Delray Beach Playhouse, Inc., pursuant to Florida Statutes, Section 125.38; and **B) approve** First Amendment to Lease Agreement with Delray Beach Playhouse, Inc., a Florida not-for-profit corporation, extending the Lease on a month-to-month basis from February 25, 2008, until terminated.

**Summary:** Delray Beach Playhouse, Inc. (Playhouse) has requested a First Amendment to Lease Agreement (R2003-0291) to extend the term of its Lease Agreement for the Jaycee Clubhouse Building in order to continue to hold children's theater workshops and summer camp programs. The lease premises currently consist of one building with 1,759 square feet in Lake Ida 9<sup>th</sup> Street Park. Although the Playhouse recently added a new children's wing to the existing main playhouse building at an approximate cost of \$1,053,000, the children's theater programs are so popular and well attended they have outgrown the new addition, and need to continue to utilize space at the Jaycees Clubhouse. The current lease of the Jaycee Clubhouse expires on February 24, 2008, and the month-to-month extension will run from February 25, 2008, until terminated. Staff recommends the Board approve extending the term of the Lease. District 5 (HF)

**Background and Justification:** On February 25, 2003, the Board approved a Lease Agreement (R2003-0291) with the Delray Beach Playhouse, Inc., for the Jaycee Clubhouse Building to operate the Children's Theater Program during the addition of the new children's wing on the main playhouse building. This addition was partially funded with \$850,000 from the 2002 Park and Recreation Cultural facilities bond issue. In December 2006, the Playhouse completed the new 4,421 square foot addition. Because the children's programs are so successful, continued use of the Jaycee Clubhouse is needed in addition to the newly constructed children's wing in order to accommodate space needs.

The Playhouse is now requesting the lease term be extended on a month-to-month basis until terminated. The First Amendment to Lease Agreement amends Section 1.02 of the Lease Agreement extending the term of the lease on a month-to-month basis until terminated. There are no additional changes to the Lease Agreement.

**Attachments:**

- A. Resolution authorizing First Amendment to Lease Agreement
- B. First Amendment to Lease Agreement
- C. Certificate of Corporate Resolution
- D. Lease Agreement with the Delray Beach Playhouse, Inc. (R2003-0291)
- E. Certificate of Insurance

Recommended by: \_\_\_\_\_

Department Director

12/17/07  
Date

Approved by: \_\_\_\_\_

Assistant County Administrator

\_\_\_\_\_  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(7)</u>	<u>(12)</u>	<u>(12)</u>	<u>(12)</u>	<u>(12)</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	<u>(7)</u>	<u>(12)</u>	<u>(12)</u>	<u>(12)</u>	<u>(12)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes  No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Program N/A

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

Revenue will be posted to 0001-580-5110-4902

**C. Departmental Fiscal Review:** ckopelakis

**III. REVIEW COMMENTS**

**A. OFMB Fiscal And/Or Contract Development and Control Comments:**

Jim Orl 12-20-07  
 OFMB  
 12/20/07 SH 12/20/07 CN 12/19/07

Ann J. Hendry 12/21/07  
 Contract Development & Control

**B. Legal Sufficiency:**

[Signature] 12/21/07  
 Assistant County Attorney

12/21/07  
 This amendment complies with our review requirements.

**C. Other Departmental Review:**

REVISED 09/2003  
 ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

G:\matthew\Parks\Lake Ida\Delray Playhouse Lease\1st Amendment to Jaycee's building for playhouse\Agenda approving first amendment to lease.doc

RESOLUTION \_\_\_\_\_, 2008

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE FIRST AMENDMENT TO THE LEASE OF CERTAIN REAL PROPERTY TO DELRAY BEACH PLAYHOUSE, INC., PURSUANT TO FLORIDA STATUTE SECTION 125.38; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Delray Beach Playhouse, Inc., a Florida not-for-profit corporation authorized to do business in the State of Florida (Playhouse), has made application to the Board of County Commissioners of Palm Beach County requesting Palm Beach County extend the lease term of certain real property owned by Palm Beach County and leased to Playhouse for use by Playhouse for the sole purpose of running a Children's Theater Program and summer camps; and,

**WHEREAS**, Playhouse requires the 1,759 square foot building to continue to operate the Children's Theater Program on the lease premises;

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds that the Delray Beach Playhouse, Inc., a non-profit organization, is organized for the purpose of promoting community interest and welfare, the aforementioned use constitutes a use for the community interest and welfare, such real property is required for such use and such real property is not needed for County purposes; and,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals**

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

**Section 2. Authorization to Lease Real Property**

The Board of County Commissioners of Palm Beach County shall extend the term of its lease with the Playhouse, pursuant to the First Amendment to Lease Agreement attached hereto and incorporated herein by reference for the real property identified in such Amendment for the use identified above for a month-to-month term, until terminated.

**Section 3. Conflict with Federal or State Law or County Charter.**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

**Section 4. Effective Date.**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

COMMISSIONER ADDIE L. GREENE, CHAIRPERSON  
COMMISSIONER JEFF KOONS, VICE CHAIR  
COMMISSIONER KAREN T. MARCUS  
COMMISSIONER ROBERT J. KANJIAN  
COMMISSIONER MARY MCCARTY  
COMMISSIONER BURT AARONSON  
COMMISSIONER JESS R. SANTAMARIA

The Chair thereupon declared the resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk and Comptroller

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN DELRAY BEACH  
PLAYHOUSE, INC. AND PALM BEACH COUNTY FOR AN EXTENSION OF THE  
LEASE TERM ON A MONTH TO MONTH BASIS**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** is made and entered into on \_\_\_\_\_, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, FL 33401, hereinafter referred to as "COUNTY", and DELRAY BEACH PLAYHOUSE, INC., a Florida not-for-profit corporation, and authorized to do business in the State of Florida, 950 NW 9th Street, Delray Beach, FL 33444, herein referred to as the "PLAYHOUSE".

**WHEREAS**, PLAYHOUSE and COUNTY entered into a Lease Agreement dated February 25, 2003 (R-2003-0291) the "Lease", wherein PLAYHOUSE was granted a five (5) year lease of a 1,759 square foot building located in Lake Ida Park 9<sup>th</sup> Street; and.

**WHEREAS**, the term of the Lease Agreement commenced on February 25, 2003, and expires on February 24, 2008; and

**WHEREAS**, PLAYHOUSE is using the building for children's theater programs; and

**WHEREAS**, PLAYHOUSE is desirous of extending the term of the Lease on a month-to-month basis, until terminated; and

**WITNESSETH:**

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The term of the Lease Agreement is hereby extended on a month-to-month basis commencing on February 25, 2008, and extending until terminated as set forth hereinafter.
3. Tenant shall pay County monthly rent of one (\$1.00) dollar per month, payable on the 1<sup>st</sup> day of each month in arrears.
4. Either party may terminate the Lease by providing notice of termination to the other party not less than 15 days prior to the end of any monthly period.
5. Except as provided herein, each and every other term of the Lease Agreement shall remain in full force and effect and the Lease Agreement is reaffirmed as modified herein.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have signed this Amendment as of the day and year first above written.

**ATTEST:**  
**SHARON R. BOCK, Clerk**  
**And Comptroller**

**PALM BEACH COUNTY, FLORIDA, BY ITS**  
**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Commissioner, Addie L. Greene, Chairperson

**APPROVED AS TO FORM AND**  
**LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND CONDITIONS**

By: \_\_\_\_\_  
County Attorney

By: *Dennis L. Eshleman*  
Dennis L. Eshleman, Director  
Parks and Recreation Department

**WITNESSES:**

**DELRAY BEACH PLAYHOUSE, INC.**  
**FEI Number: 590991183**

By: *Susan Easton*  
Signature  
SUSAN EASTON  
Print Witness Name

By: *Alyce Silverman*  
Name (Type or Print)

Title: \_\_\_\_\_  
Seal

By: *George M. Allerton*  
Signature  
GEORGE M. ALLERTON  
Print Witness Name



**CERTIFICATE OF CORPORATE RESOLUTION**

I, Alyce Silverman, President of the Delray Beach Playhouse, organized and existing under the laws of the State of Florida and having its principal place of business at 950 NW 9th Street Delray Beach, FL 33444, hereby certify that the following is a true copy of a resolution adopted by the Board of Directors of the Corporation at a meeting convened and held on Monday November 12, 2007 at which a quorum was present and voting throughout and that such resolution is now in full force and is in accordance with the provisions of the by-laws of the Corporation.

**RESOLVED:** That Alyce Silverman has the authority to sign a lease amendment between Palm Beach County and the Delray Beach Playhouse for the Lake Ida 9<sup>th</sup> Street Jaycess.

I further certify that this Corporation is duly organized and existing, and has the power to take the action called for by the foregoing resolution.

**DIRECTORS**

Alyce Silverman  
President

11/21/07  
Date

John McKenna  
Vice President

11/13/07  
Date

Elizabeth Thomas  
Secretary

11/14/07  
Date

[Signature]  
Treasurer

11/19/07  
Date

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

R-2003-0291

A/MS 6-0

Mccks

Meeting Date: February 25, 2003

Consent

Regular

Ordinance

Public Hearing

Department: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: A) adopt Resolution authorizing the lease of certain real property to Delray Beach Playhouse, Inc., pursuant to Florida Statute Section 125.38; and B) approve Lease Agreement with Delray Beach Playhouse, Inc., for the Lake Ida Park 9<sup>th</sup> Street Jaycees Clubhouse Building in Lake Ida Park.

**Summary:** Since 1957 the Delray Beach Playhouse, Inc., a Florida not for profit corporation, has leased 2.16 acres in Lake Ida Park 9<sup>th</sup> Street for the purpose of operating a Community Theater. The Delray Beach Playhouse, Inc., has requested a lease on the former Jaycees Clubhouse Building in Lake Ida Park, 9<sup>th</sup> Street, for use by their children's theater programs for a period of five years or until construction of a new \$1.2 million children's theater addition to the existing playhouse is completed. Annual rent will be \$10 per year and the term of the lease will commence on February 25, 2003, and run through February 24, 2008, unless sooner terminated. The Department has reviewed its options for use of the Clubhouse Building for recreational programs but has determined the structure is of insufficient size and utility for County operated programs. Staff recommends approval of the lease based on the Playhouse's continued recreational and cultural contributions to the community. (District 3 HF)

**Background and Justification:** The Delray Beach Playhouse, Inc., a Florida not for profit corporation, has leased 2.16 acres in lake Ida Park from the County since the late 1950's. The Playhouse has constructed and operated a Community Theater on this site and has approximately ten years remaining on its current lease (R94-1549). The Delray Beach Jaycees leased what is known as the Jaycees Clubhouse building in Lake Ida Park between 1969 and 2002 (R97-883D). The Jaycees lease expired in July 2002, and the Jaycees' requested that the Parks and Recreation Department consider leasing the building to the Playhouse for their children's theater programs.

The Playhouse has used the Jaycees clubhouse for its children's theater programs in the past originally through an agreement with the Jaycees, and this past summer under a use agreement with the Parks and Recreation Department. The Department has reviewed its options for use of the Clubhouse Building for recreational programs but has determined the structure is of insufficient size and utility for County operated programs.

(Continued on page 3)

Attachments:

- A. Resolution Authorizing Lease
- B. Lease Agreement
- C. Letter from the Delray Beach Playhouse
- D. Insurance Certificate

Recommended by:

*Ronnie Johnson*  
Director

1/29/03

Date

Approved by:

*Ja Cremer*  
Assistant County Administrator

2/19/03

Date



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

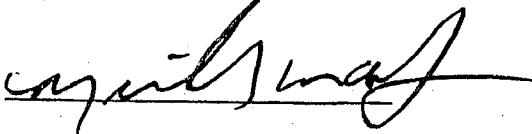
Fiscal Years	2003	2004	2005	2006	2007
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>NET FISCAL IMPACT</b>	<u>(10)</u>	<u>(10)</u>	<u>(10)</u>	<u>(10)</u>	<u>(10)</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Is Item Included in Current Budget? Yes  No

Budget Account No.: Fund  Agency  Org.  Object

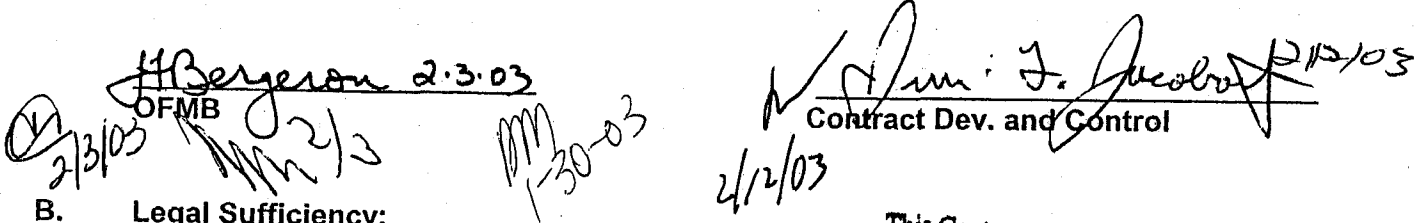
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
 Revenue will be recognized when received.

**C. Departmental Fiscal Review:** 

**III. REVIEW COMMENTS:**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

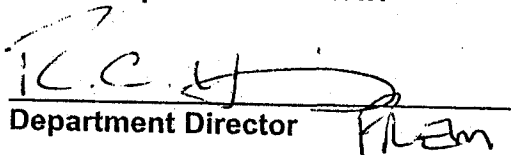


**B. Legal Sufficiency:**

This Contract complies with our contract review requirements.

  
 Assistant County Attorney 2/18/03

**C. Other Department Review:**

  
 Department Director

REVISED 11/98 ADM FORM 01  
 This summary is not to be used as a basis for payment.

**Background and Justification:**

The Delray Beach Playhouse continues to provide valuable recreational and cultural services to the community and last year provided over 6,200 hours of classroom training at their Young Actor's Workshops to more than 150 children. The Playhouse also recently initiated a \$1.2 million fund raising campaign to add a Children's Theater to the existing Playhouse and hopes to raise funds and complete the project within the next five years. The County's 2002 Recreation and Cultural G.O. Bond Issue that was recently approved by voters includes \$850,000 in funding for construction of this project. Staff recommends approval of the lease agreement as it will allow the Playhouse to continue its Children's Theater program until a new addition to the existing Playhouse is completed.

RESOLUTION NO. 2003- 0291

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY TO DELRAY BEACH PLAYHOUSE, INC., PURSUANT TO FLORIDA STATUTE SECTION 125.38; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Delray Beach Playhouse, Inc., a not for profit corporation authorized to do business in the State of Florida ("Playhouse"), has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County lease certain real property owned by Palm Beach County to the Playhouse for use by the Playhouse for children's theater purposes;

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds that the Playhouse, a not for profit organization, is organized for the purpose of promoting community interest and welfare, the aforementioned use constitutes a use for the community interest and welfare, such real property is required for such use and such real property is not needed for County purposes.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals**

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

**Section 2. Authorization to Lease Real Property**

The Board of County Commissioners of Palm Beach County shall lease to the Playhouse, pursuant to the Lease attached hereto and incorporated herein by reference, for a term of five years and an annual rental of ten (\$10.00), the real property identified in such Lease for the use identified above.

**Section 3. Conflict with Federal or State Law or County Charter.**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

**Section 4. Effective Date.**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner Aaronson who moved its adoption. The Motion was seconded by Commissioner Masilotti, and upon being put to a vote, the vote was as follows:

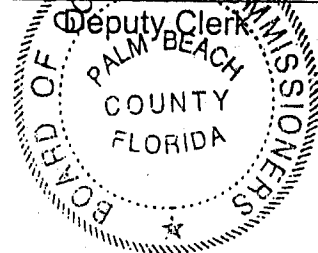
COMMISSIONER KAREN T. MARCUS, CHAIR	- Aye
COMMISSIONER TONY MASILOTTI, VICE CHAIR	- Aye
COMMISSIONER JEFF KOONS	- Aye
COMMISSIONER WARREN H. NEWELL	- Aye
COMMISSIONER MARY MCCARTY	- Absent
COMMISSIONER BURT AARONSON	- Aye
COMMISSIONER ADDIE L. GREENE	- Aye

The Chair thereupon declared the resolution duly passed and adopted this 25 day of February, 2003.

PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

Dorothy H. Wilken, Clerk

By: *Dorothy H. Wilken*



APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: *[Signature]*  
Assistant County Attorney

G:\jmatthew\Parks\Lake Ida\Delray Playhouse Lease\Final Lease\Resolution.wpd

**R2003 0291**

**FEB 25 2003**

**PALM BEACH COUNTY**

**LEASE AGREEMENT**

**between**

**PALM BEACH COUNTY**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**and**

**DELRAY BEACH PLAYHOUSE, INC.**

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AGREEMENT OF LEASE

THIS LEASE made and entered into FEB 25 2003, by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and DELRAY BEACH PLAYHOUSE, INC., a Florida not for profit corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Tenant".

**WITNESSETH:**

**WHEREAS**, County is the owner of certain real property as more specifically described hereinafter which Tenant desires to lease from County; and

**WHEREAS**, County is willing to lease such property to Tenant for the use set forth hereinafter;

**WHEREAS**, the Tenant is the Delray Beach Playhouse, Inc., a not for profit Florida corporation operating for the public benefit to the community;

**NOW THEREFORE**, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I  
BASIC LEASE PROVISIONS**

**Section 1.01 Premises.**

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Tenant to be observed and performed, the County demises and leases to Tenant, and Tenant rents from County, the real property reflected in Exhibit "A" attached hereto and made a part hereof (the "Premises").

**Section 1.02 Length of Term and Commencement Date.**

This Lease shall be effective upon the Effective Date as defined hereinafter. The term of this Lease shall commence upon the Effective Date (the "Commencement Date"), and shall extend for a period of five ( 5 ) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Lease. The Term of this Lease may be modified or extended with the mutual consent of the parties.

**ARTICLE II  
RENT**

**Section 2.01 Annual Rent.**

Tenant shall pay County an annual net Rent of Ten and No/00 (\$10.00) Dollars per year (the "Annual Rent"), payable without notice on the Commencement Date and each subsequent anniversary thereof. Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402. This Lease shall be what is commonly referred to as "triple net" to County, it being understood by the parties that County shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the Premises, including without limitation those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

**Section 2.02 Sales, Use and Rent, Taxes, Assessments, Ad valorem, Real and Personal Property Taxes.**

Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Tenant's leasehold interest in the Premises, Tenant's Alterations or personal property located on the Premises.



**Section 2.03 Additional Rent.**

Any and all sums of money or charges required to be paid by Tenant under this Lease other than Annual Rent shall be considered "Additional Rent," whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to Annual Rent.

**Section 2.04 Unpaid Fees, Holdover.**

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the Board of County Commissioners [currently set at one and one-half percent (1½ %) per month] shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire period of such holdover, double rental, as provided for in Chapter 83.06, Florida Statutes.

**Section 2.05 Accord and Satisfaction.**

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Lease or under the law.

**ARTICLE III  
CONDITION OF LEASED PREMISES, ALTERATIONS**

**Section 3.01 Acceptance of Premises by Tenant.**

Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition, as of the Commencement Date of this Lease, together with all defects, latent or patent, if any and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements located therein, or the suitability of the Premises or any improvements for Tenant's intended use of the Premises. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Lease. Tenant agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Tenant as specified in Section 4.01 of this Lease.

**Section 3.02 Construction of Project.**

Tenant shall be solely responsible for any and all improvements, repairs alterations or other work necessary to render the Premises suitable for Tenant's intended use. Tenant shall design and construct such improvements at Tenant's sole cost and expense, in accordance with the requirements of this Lease and in full compliance with applicable building codes and zoning regulations. All of Tenant's construction and improvements shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion.

**Section 3.03 Alterations.**

Tenant shall not make any improvements, additions, modifications or alterations to the Premises costing in excess of \$5,000 (hereinafter collectively referred to as "Alterations"), without the prior written consent of County in each instance. Tenant shall submit detailed plans and specifications for all such Alterations to County for County's written approval prior to commencing work on same. Tenant agrees and acknowledges

that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Tenant, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Lease and the Interlocal. All work done by Tenant shall be done in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with the approved plans and specifications therefor. Upon giving its approval for any work or Alterations, County may specify whether the Alteration is to be removed by Tenant, at Tenant's sole cost and expense, upon the termination or expiration of this Lease.

#### **Section 3.04 Construction Bonds.**

Tenant shall ensure that all improvements are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Tenant's Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Tenant of its obligations arising hereunder.

#### **Section 3.05 Contractor Requirements.**

Tenant shall also require contractors to furnish for the benefit of County a payment and performance bond to County equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. Tenant shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements approved hereunder, in such amount as County reasonable determines to be necessary.

#### **Section 3.06 No Liens.**

Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida stating that County's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Tenant's Premises or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said 10 day period, County may do so and thereafter charge Tenant, and Tenant shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien

### **ARTICLE IV CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT**

#### **Section 4.01 Use of Premises.**

Tenant shall use and occupy the Premises solely and exclusively for Delray Beach Playhouse Inc. and its related activities. Tenant shall not use, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of County, which consent may be granted or withheld in County's sole discretion.

#### **Section 4.02 Waste or Nuisance.**

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect

County's fee interest in the Premises or which results in an unsightly condition. All refuse is to be removed from the Premises at Tenant's sole cost and expense and Tenant will keep such refuse in proper fireproof containers on the interior of the Premises until removed. Tenant will keep the access to the Premises, the parking areas and other contiguous areas to the Premises free and clear of obstruction. Tenant, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

#### **Section 4.03 Governmental Regulations.**

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or Tenant's use of the Premises, or the Premises generally. Tenant shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

#### **Section 4.04 Non-Discrimination.**

Tenant shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring on the Premises or under this Agreement. Tenant warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

#### **Section 4.05 Surrender of Premises.**

Upon termination or expiration of this Lease, Tenant, at its sole cost and expense, if so directed by County, shall remove Tenant's personal property, removable fixtures, equipment and Alterations from the Premises and shall surrender the Premises to the County in the same condition the Premises were in as of the Commencement Date of this Lease, reasonable wear and tear excepted. Upon surrender of the Premises, title to any and all remaining improvements, Alterations or property within the Premises shall vest in County.

#### **Section 4.06 Hazardous Substance.**

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Tenant shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Tenant or any third party, shall be reported to County immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Tenant, or Tenant's agents, licensees, invitees, subcontractors or employees.

Tenant hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgements, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials upon the Premises or violation of this provision. Tenant's responsibility hereunder shall continue and apply to any violation hereof, whether the same

is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to alter or diminish any statutory or common law liability of Tenant.

Tenant acknowledges that County would not have entered into this lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Lease.

## **ARTICLE V REPAIRS AND MAINTENANCE OF PREMISES**

### **Section 5.01 Responsibility of County and Tenant.**

County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. Tenant shall keep and maintain all portions of the Premises, and all Alterations or improvements currently existing or constructed hereinafter on or about the Premises, in good condition and repair, at Tenant's sole cost and expense.

### **Section 5.02 County's Right to Inspect.**

County or County's agents shall have the right, upon reasonable prior notice to Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises and the improvements located thereon. Any such entrance into the Premises shall be conducted by County in a manner calculated to minimize interference with or disruption of Tenant's operations within the Premises.

## **ARTICLE VI UTILITIES**

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises, including, without limitation, construction and connection charges and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, water, sewer, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises. In no event shall County be liable for an interruption or failure in the supply of any such utility to the Premises.

## **ARTICLE VII INSURANCE**

Unless otherwise specified in this Lease, Tenant shall agree, at its sole expense, to maintain in full force and effect at all times during the life of this Lease or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Tenant shall agree the requirements contained herein as well as County's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify the liabilities and obligations assumed under this Lease.

### **Section 7.01 Commercial General Liability.**

Tenant shall agree to maintain Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Fire Legal liability with a limit not less than \$100,000. Medical Payments (when available) with a limit not less than \$5,000. Tenant agrees this coverage shall be provided on a primary basis.

### **Section 7.02 Business Auto Liability.**

Tenant shall agree to maintain Business Automobile Liability with limits of liability not less than \$500,000 Each Occurrence for owned, non-owned and hired automobiles. In the event Tenant has no owned automobiles, the requirement shall be to maintain only Hired & Non-Owned Auto Liability. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Liability. Tenant shall agree this coverage shall be provided on a primary basis.

**Section 7.03 Workers' Compensation & Employers Liability.**

Tenant shall agree to maintain Workers' Compensation & Employers Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts. Tenant shall agree this coverage shall be provided on a primary basis.

**Section 7.04 Property, Wind, & Flood Insurance.**

Tenant shall agree to maintain: (1) property insurance in an amount not less than 100% of the total replacement cost of any alterations, betterments and improvements to the property, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 25% of the property insurance limit. (2) Flood insurance, regardless of the flood zone, in an amount not less than 100% of the total replacement cost of the building, betterments, or improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises; or the maximum amount available from the National Flood Insurance Program, whichever is less. (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than 100% of the total replacement cost of the building, betterments or improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises; or the maximum amount available under the Florida Windstorm Underwriting Association. Tenant shall agree these coverages shall be provided on a primary basis.

**Section 7.05 Additional Insured Endorsement.**

Tenant shall agree to endorse the County as an Additional Insured on each liability insurance policy required to be maintained by Tenant, except for Worker's Compensation and Business Auto Liability. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, shall provide a standard Additional Insured endorsement offered by the insurer. Tenant shall agree the Additional Insured endorsements provide coverage on a primary basis. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Parks and Recreation Department, 2700 6<sup>th</sup> Avenue South, Lake Worth, Fl, 33461

**Section 7.06 Loss Payee Endorsement.**

Tenant shall agree to endorse the County as a Loss Payee on the Property, Flood, and Windstorm Insurance policies. Tenant shall agree the Loss Payee endorsement provides coverage on a primary basis. The Loss Payee endorsement shall read "Palm Beach County Board of County Commissioners, c/o Parks and Recreation Department, 2700 6<sup>th</sup> Avenue South, Lake Worth, Fl, 33461

**Section 7.07 Certificate of Insurance.**

Tenant shall agree to provide the County with a certificate of insurance evidencing limits, coverages and endorsements required herein. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage cancels or non-renews during the life of this Lease, Tenant shall agree to furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Tenant fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Tenant shall agree to pay as Additional Rent, upon demand of County, all premiums and expenses incurred by County.

**Section 7.08 Waiver of Subrogation.**

The Tenant shall agree by way of entering this Lease in writing to a Waiver of Subrogation for each required policy providing coverage during the life of this Lease. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, then Tenant shall agree to notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Tenant enter into such an agreement on a pre-loss basis.

**Section 7.09 Premiums and Proceeds.**

Tenant shall agree not to keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, limitation, of the property, flood, or wind insurance policies. Tenant shall agree to be responsible for all premiums, including increases, for property, flood, or wind insurance policies. Tenant shall agree all property, flood or windstorm insurance proceeds as a result of a loss shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including those made by or on behalf of Tenant, so to ensure a replacement cost settlement or avoid policy cancellation.

**Section 7.10 Deductibles, Coinsurance, & Self-Insured Retention.**

Tenant shall agree to be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

**Section 7.11 Right to Review, Reject or Adjust Insurance.**

Tenant shall agree, notwithstanding the foregoing, the County's Risk Management Department, reserves the right, but not the obligation, to review, adjust, reject or accept insurance policies, limits, coverages, or endorsements throughout the life of this Lease. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or by way of illegal operation. The County shall provide Tenant written notice of such action, and Tenant shall agree to cure or comply with such action within thirty (30) days receipt thereof.

**Section 7.12 No Representation of Coverage Adequacy.**

The limits, coverages or endorsements identified herein primarily transfer risk and minimize liability for the County, and Tenant shall agree in no way shall such requirements be relied upon when assessing the extent or determining appropriate types or limits of coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

**Section 7.13 Insurance for Special Events and Outside Persons/Groups**

Excluding County or its affiliates, when Tenant permits or schedules the use of the Premises for a special event or outside persons/groups, Tenant shall agree to require the special event or outside person/group to maintain Commercial General Liability, as described in Section 7.01, with limits of liability not less than \$1,000,000. The County and Tenant shall be required to be named as Additional Insured, as described in Section 7.05. Tenant shall agree to obtain and, when requested by the County, furnish copies of certificates of insurance evidencing coverage for the special event or outside person/group.

**ARTICLE VIII  
INDEMNIFICATION**

Tenant shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Lease for any personal injury, loss of life and/or damage to property sustained in or about the Premises by reason or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees, invitees, any subtenant and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim. In the event County shall be made a party to any litigation commenced against the Tenant or by the Tenant against any third party, then Tenant shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Tenant recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this agreement without Tenant's agreement to indemnify County and further acknowledges the receipt of good and value separate consideration in support hereof. This provision shall survive expiration or termination of this Lease.

**ARTICLE IX  
DESTRUCTION OF PREMISES**

**Section 9.01 Damage or Destruction by Fire, War or Act of God.**

In the event the Premises shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, Tenant shall restore the Premises to the same or better condition than that which existed prior to such casualty. Tenant shall commence such restoration within a reasonable time after such casualty but in no event later than one hundred and eighty (180) days of such casualty. Tenant shall thereafter diligently pursue such restoration to completion.

**ARTICLE X  
ASSIGNMENT AND SUBLETTING**

**Section 10.01 Consent Required.**

Except as otherwise provided herein regarding concessions and/or licenses, Tenant may not assign, mortgage, pledge or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of County, which may be granted or withheld at County's absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE XI  
DEFAULT**

**Section 11.01 Default by Tenant.**

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Tenant's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease on Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after notice from County; (iii) Tenant's vacating or abandoning the Premises; or (iv) Tenant's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including without limitation, the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than three (3) days after the date notice is received by Tenant, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the three (3) day period and the County is so notified, this Lease will continue.

**Section 11.02 Default by County.**

County shall not be in default unless County fails to perform obligations required of County within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XII  
ANNUAL BUDGETARY FUNDING/CANCELLATION**

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Lease to the contrary, County may cancel this Lease for any reason upon three (3) months prior written notice to Tenant.

**ARTICLE XIII  
QUIET ENJOYMENT**

Upon payment by the Tenant of the Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XIV  
MISCELLANEOUS**

**Section 14.01 Entire Agreement.**

This Lease and any Exhibits attached thereto, constitute all agreements, conditions and understandings between County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon County or Tenant unless reduced to writing and signed by them.

**Section 14.02 Notices.**

All notices, consents, approvals and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designed the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Property and Real Estate Management Division  
Attn: Director  
3323 Belvedere Road, Building 503  
West Palm Beach, FL 33406-1548

with copies to:

Parks and Recreation Department  
Attn: Director  
2700 6<sup>th</sup> Avenue South  
Lake Worth, Florida 33461

Palm Beach County  
Attn: County Attorney  
301 N. Olive Ave, Suite 601  
West Palm Beach, Fl. 33401

(b) If to the Tenant at:

Delray Beach Playhouse, Inc.  
Attn: President  
950 NW 9 Street  
Delray Beach, Florida 33444

Either party hereto may change the address for service of notices required or permitted hereunder upon ten (10) days prior written notice.



**Section 14.03 Severability.**

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 14.04 Broker's Commission.**

Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

**Section 14.05 Recording.**

Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of County, which may be granted or withheld at County's sole discretion.

**Section 14.06 Waiver of Jury Trial.**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LEASE.

**Section 14.07 Governing Law and Venue.**

This Lease shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

**Section 14.08 Radon.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

**Section 14.09 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 14.10 Waiver, Accord and Satisfaction.**

The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Tenant.

**Section 14.11 Non-exclusivity of Remedies.**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 14.12 Construction.**

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

**Section 14.13 Incorporation by References.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

**Section 14.14 Survival.**

Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

**Section 14.15 Effective Date of Agreement.**

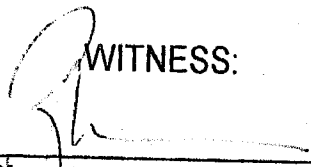
This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

TENANT:

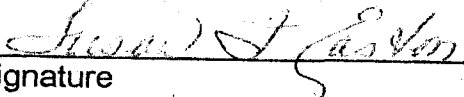
DELRAY BEACH PLAYHOUSE, INC.

WITNESS:  


Signature

RON NYHAN

Printed Name



Signature

Susan T. Easton

Printed Name

BY: Catherine Meade

NAME: Catherine Meade

TITLE: President Board of Governors



R2003 0291

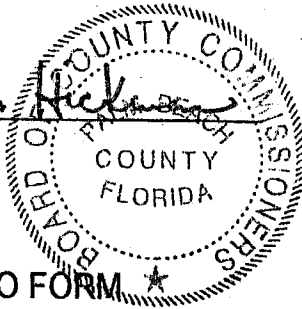
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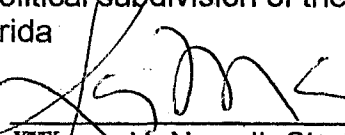
COUNTY:

DOROTHY H. WILKEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA  
a political subdivision of the State of  
Florida

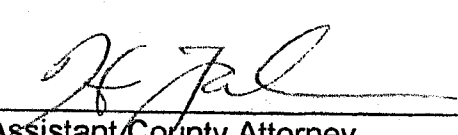
BY: Linda C. Hickman  
Deputy Clerk



BY:  FEB 25 2003  
~~Warren H. Newell, Chairman~~  
Karen T. Marcus, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

BY:   
Assistant County Attorney

BY:   
Department Director

## LISTS OF EXHIBITS

### Description

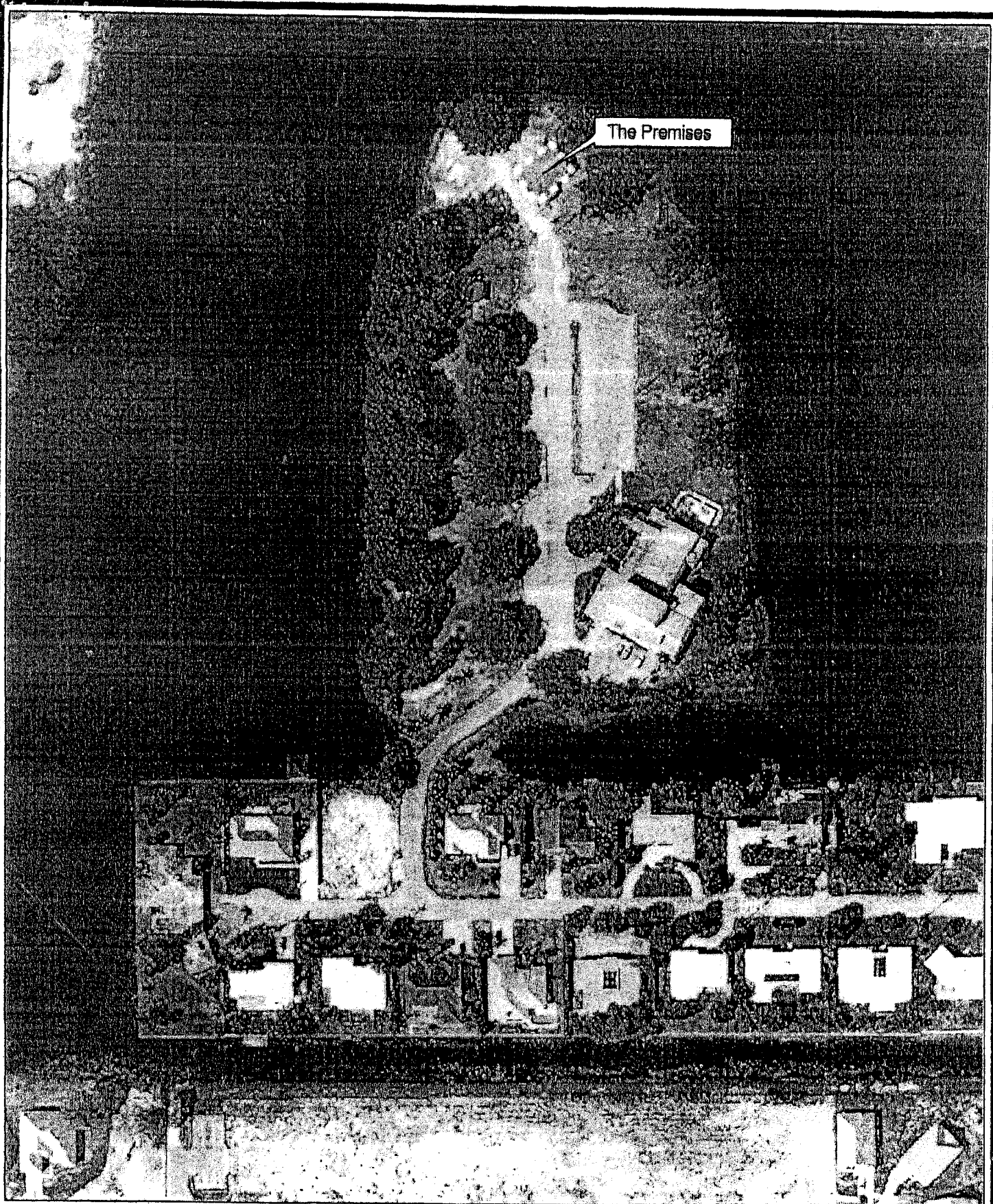
### Exhibits

The Premises

Exhibit "A"

Location Map

Exhibit "B"



The Premises



PALM BEACH COUNTY  
PARKS AND RECREATION DEPARTMENT

## EXHIBIT "A"

This map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The County makes no warranties, expressed or implied, as to the use of this map. There are no implied warranties of merchantability or fitness for a particular purpose. The owner of this map acknowledges and accepts the limitations of the map, including the fact that the data coverages are dynamic and in a constant state of maintenance, correction and update.

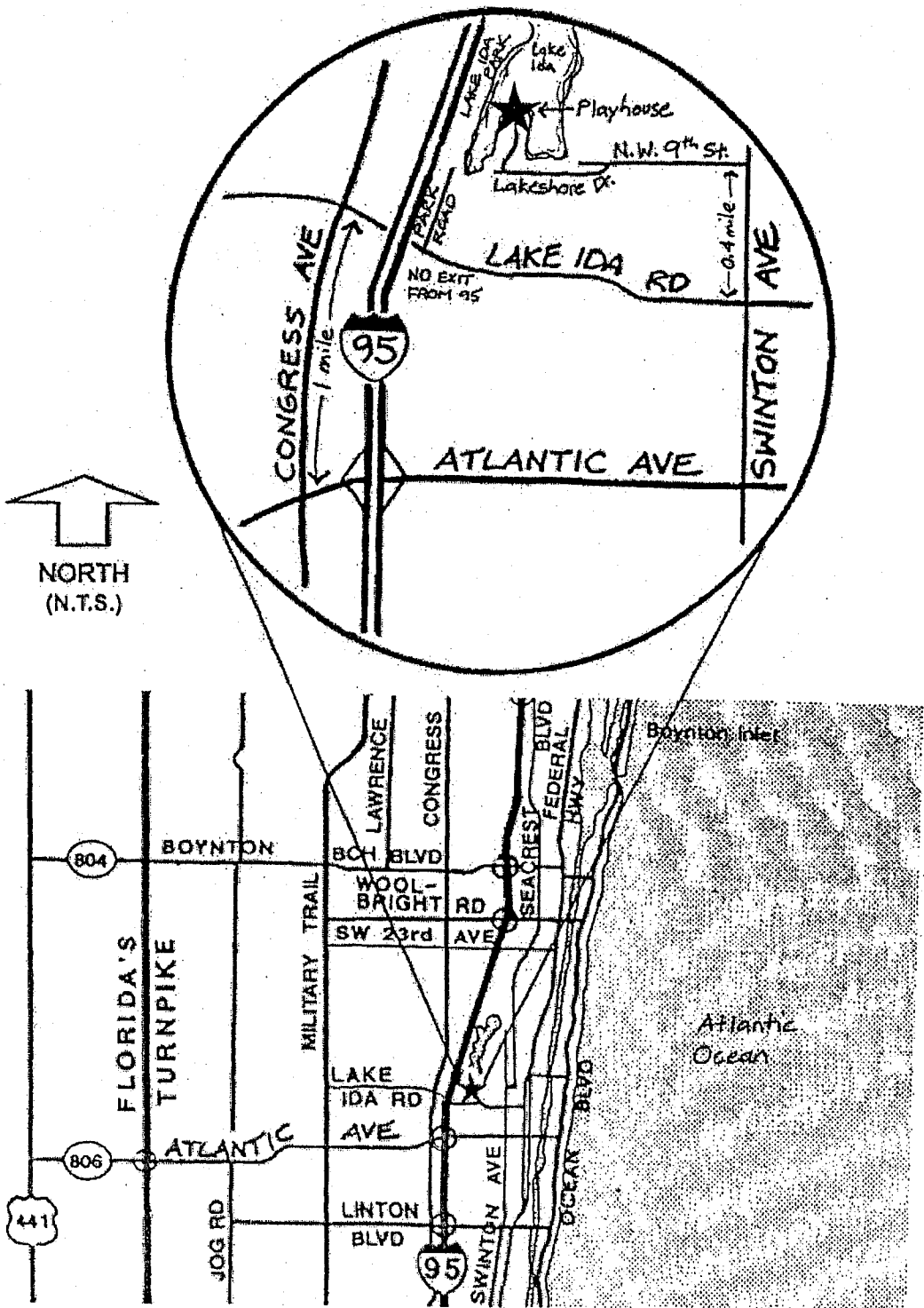
Source:  
Palm Beach County GIS Coordinator  
Palm Beach County Parks and Recreation  
Image Date: 1/20/07

Map Date: May 20, 2007  
Created By: S. Hamilton  
File: Japova Location.ppt



SCALE: 1" = 160'

EXHIBIT "B"





Dennis Eshleman, Director  
Palm Beach County, Department of Parks and Recreation  
2700 6<sup>th</sup> Ave S  
Lake Worth, FL 33461

April 10, 2002

Dear Mr. Eshleman:

Thank you for meeting with us at Lake Ida Park. As discussed, we are including some background information about Children's theater programming and the Delray Beach Playhouse. Furthermore, we wish to reiterate our request to lease the building known as the Jaycees Clubhouse for 3-5 years or so while the new Children's Theater addition to our facility is being built.

We are very proud of our commitment to children's theater training and performances. Last year we provided:

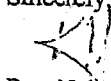
- 1) 6,200 hours of classroom training at our Young Actor's Workshops for over 150 children from September to May. (Approximately 20-25% of the training was done at the Jaycees Clubhouse).
- 2) 22 performances of Locomotion (a character building production) to over 4,300 children during the school year.
- 3) 15 performances of "Fun Zone" to over 1,400 children during the summer recess.
- 4) 22 performances of our holiday musical "Mr. Scrooge" (over 20 children in the cast).

Last summers productions of Bang Bang You're Dead addressed the sensitive issue of the consequences of youth violence based on the tragedy in Columbine, CO. It was presented *at no charge* to over 2,400 local children in 12 different performances.

We are currently preparing a capital campaign to raise \$1.2 million for the construction of a dedicated children's theater facility to adjoin our existing theater. At your suggestion, we are also investigating the potential for a summer camp in theater arts for children to begin in the Summer of 2003. We look forward to your help, and potential participation, in developing this program.

Attached are some of the materials used in the above programs. We look forward to your early response.

Sincerely,

  
Ron Nyhan, President

  
Tony Allerton, Immediate Past President

950 NW 9th Street Delray Beach, FL 33444

Tel (561) 272-1281 Fax (561) 272-5884

[www.delraybeachplayhouse.com](http://www.delraybeachplayhouse.com)

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/19/02

PRODUCER: **Harvey L Brown Agency Inc.**  
P. O. Box 897  
Delray Beach FL 33447  
561-276-0369 / Fax 561-278-9946

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED  
**Delray Beach Playhouse Inc**  
950 NW 9 St  
Delray Beach FL 33444

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <b>Travelers Property Casualty</b>	
INSURER B: <b>Zenith Insurance Company</b>	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	I660-860X8685-TIA02	06/12/02	06/12/03	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000								
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	I660-860X8685-TIA02	06/12/02	06/12/03	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
A		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	ISMCP4114W822IND02	06/12/02	06/12/03	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$ \$								
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	Z8360989909	06/12/02	06/12/03	<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 100,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 100,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 500,000</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$ 100,000	E.L. DISEASE - EA EMPLOYEE	\$ 100,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$ 100,000													
E.L. DISEASE - EA EMPLOYEE	\$ 100,000													
E.L. DISEASE - POLICY LIMIT	\$ 500,000													
		OTHER												

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

950 NW 9 St Delray Beach FL 33444  
 901 NW 9 St Delray Beach FL 33444  
 Certificate Holder is additional insured on general liability policy

## CERTIFICATE HOLDER

## CANCELLATION \*10 day notice non-payment

Palm Beach County  
 2700 6 Avenue South  
 Lake Worth FL 33461

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30\* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Harvey L Brown*



# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
9/12/07

**PRODUCER**  
Harvey L. Brown Agency Inc.  
64 NE 9th Avenue  
Delray Beach FL 33483  
561-276-0369 / Fax 561-278-9946

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Delray Beach Playhouse, Inc  
950 NW 9th St  
Delray Beach, FL 33444

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	The Phoenix Insurance Company	
INSURER B:	Zenith Insurance Company	
INSURER C:	The Travelers Indemnity Company	
INSURER D:		
INSURER E:		

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PC <input type="checkbox"/> LOC	I660860X8685PHX07	6/12/07	6/12/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (PER OCCURRENCE) \$ 100,000 MED EXP (ANY ONE PERSON) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMODITY \$ 2,000,000
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	I660860X8685PHX07	6/12/07	6/12/08	COMBINED SINGLE LIMIT (PER ACCIDENT) \$ 1,000,000 BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ AUTO ONLY - BA ACCIDENT \$ OTHER THAN BA ACC ADD \$
<b>UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE \$ <input type="checkbox"/> RETENTION \$	ISFCUP7021Y416IND07	6/12/07	6/12/08	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? IF YES, DESCRIBE WITH SPECIAL PROVISIONS BELOW OTHER	Z836098914	1/01/07	1/01/08	[203/10/07] [10/1/08] EL EACH ACCIDENT \$ 100,000 EL DISEASE - BA EMPLOYEE \$ 100,000 EL DISEASE - POLICY LIMIT \$ 500,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Additional insured: Palm Beach County Board of County Commissioners, Dept of Parks and Recreation, 2700 6th Avenue South, Lake Worth, FL 33461

**CERTIFICATE HOLDER**  
 Palm Beach County Board of County Commissioners  
 Dept of Parks and Recreation  
 2700 6th Avenue South  
 Lake Worth, FL 33461

**CANCELLATION**  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND ON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE