

Agenda Item # **3.M.1.**

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 15, 2009

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 approve: a month-to-month lease agreement with resident caretaker, Steven Ryan, at Morikami Park.

Summary: Palm Beach County owns various park sites throughout the County that have facilities for employees who reside on the premises as a condition of their employment. These caretakers maintain and repair the property on which they reside and are on-call 24 hours per day. The Agreement shall remain in full force and effect until terminated as provided in Section 18 of the Agreement. District 4 (AH)

Background and Justification: The Parks and Recreation Department has residences at various parks wherein Department employees reside within the park in exchange for providing various services to the Department that are over and above their normal, day-to-day responsibilities. Examples of these duties may include but are not limited to the following: opening and closing the park in accordance with an approved schedule, performing emergency repair work to facilities, and reporting any suspected illegal activities within the park to the Sheriff's Office for immediate response. The caretaker arranges and pays for all utilities.

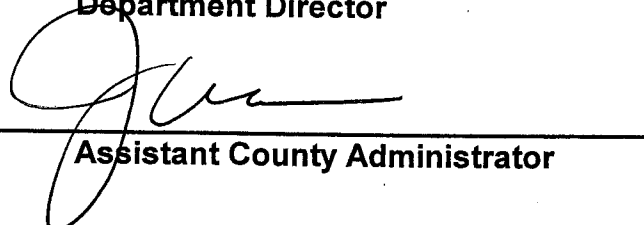
Attachment: Lease Agreement

Recommended by:


Department Director

8/24/09
Date

Approved by:


Assistant County Administrator

9/4/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
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>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</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>
NET FISCAL IMPACT	<u>-0-</u> <i>see below</i>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE POSITIONS (Cumulative) 0

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:

C. Departmental Fiscal Review: chopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

* *NO Fiscal ^{additional} impact associated with this item*

 M. J. [Signature] 9/26/09
 OFMB *or* 8/31/09 *or* 8/26/09 *or* CN 8/28/09

 [Signature] 9/13/09
 Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

 Anne Helgard 9/4/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

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

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this _____ day of _____, 2009, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as >>LESSOR, and Steven Ryan, hereinafter referred to as LESSEE.

W I T N E S S E T H:

WHEREAS, LESSOR owns various park sites throughout the County that have facilities for live-in employees to provide on-site supervision; and

WHEREAS, those employees who reside in said facilities do so as a condition of their employment with the LESSOR; and

WHEREAS, LESSOR desires that LESSEE, a full time County employee, provide said on-site supervision in consideration of this Lease.

NOW THEREFORE, in consideration of the covenants and representations set forth herein, LESSOR and LESSEE agree as follows:

1. The LESSOR hereby leases to LESSEE and the LESSEE accepts the following described premises, as more particularly depicted in Exhibit "A", (the "Premises"), to have and hold under the conditions set forth herein:

**Residential Structure at: Morikami Park
4000 Morikami Park Rd.
Delray Beach, FL 33446**

- 2. LESSEE agrees to provide, within the limits of his capability, security and supervision at the Park facility.
- 3. LESSOR covenants and agrees that performing the covenants herein contained, LESSEE shall peacefully and quietly have, hold, and enjoy the Premises for the agreed term.
- 4. The Premises shall be used and occupied by LESSEE exclusively as a private single-family residence, and no part hereof shall be used at any time during the term of this Lease by LESSEE for the purposes of carrying on any business, profession or trade of any kind, or for any purpose other than as a private single-family residence. LESSEE shall comply with all laws, ordinances, rules and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the Premises, and the sidewalks connected thereto, during the term of this Lease.

5. The Premises shall be occupied by Steven Ryan and no more than four (4) persons within the same family (not to exceed two (2) adults). Any changes in occupancy must be approved by the LESSOR.
6. LESSEE stipulates that he has examined the Premises, including the grounds, all buildings, and improvements, and that they are, at the time of this Lease, in good order, repair, and in a safe, clean and tenantable condition.
7. Without the prior written consent of LESSOR, LESSEE shall not assign this Lease or sublet or grant any license to use the Premises or any part hereof. A consent by LESSOR to an assignment, subletting, or license shall not be deemed to be a consent to any subsequent assignment, subletting, or license. An assignment, subletting, or license without the prior written consent of LESSOR, or an assignment or subletting by operational law, shall be void and shall, at LESSOR=s option, terminate this Lease.
8. LESSEE shall make no alterations to the buildings on the Premises or construct any buildings or make other improvements on the Premises without the prior written consent of LESSOR. All alterations, changes, and improvements built, constructed, or placed on the Premises by LESSEE, with the exception of fixtures removable without damage to the Premises and movable personal property shall, unless otherwise provided by written agreement between LESSOR and LESSEE, be the property of LESSOR and shall remain on the Premises at the expiration or sooner termination of this Lease.
9. If the Premises, or any part thereof, shall be damaged by fire or other casualty not due to LESSEE's negligence or willful act or that of his employee, family agent, or visitor, the Premises shall be promptly repaired by LESSOR. In the event of damage by fire or other casualty that renders the Premises not habitable, LESSOR may terminate this Lease without any further obligation on the LESSOR'S part.
10. LESSEE 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 LESSOR's fee interest in the Premises. LESSEE shall not use, maintain, store, or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals, or other agents on the Premises or any adjacent land in any manner not permitted by law. All refuse is to be removed from the

Premises at LESSEE's sole cost and expense. LESSEE shall not keep on the Premises any item of a dangerous, inflammable, or explosive character that might reasonably increase the danger of fire on the leased Premises or that might be considered hazardous by any responsible insurance company.

11. LESSEE shall be responsible for paying all utilities services required on the Premises.
12. LESSEE will, at his sole expense, keep and maintain the Premises and appurtenances in -good and sanitary condition and repair during the term of this Lease and any renewal thereof. In particular, LESSEE shall, where applicable, keep the fixtures in the house or on or about the Premises in good order and repair; keep the walls free from dirt and debris; and shall make all required repairs to the plumbing, range, heating apparatus, and electrical and gas fixtures whenever damage thereto shall have resulted from LESSEE=s misuse, waste, or neglect, or that of his employee, family, agent, or visitor. LESSEE agrees that no signs shall be placed or painting done on or about the Premises by LESSEE or at his direction without the prior written consent of LESSOR. LESSEE agrees not to dry clothes outside, allow storage, commercial or otherwise, of abandoned, unused vehicles, items of personal property, junk, debris or trash or do or allow to continue any situation inconsistent with a peaceful, orderly County park setting.
13. LESSEE may keep no animals on the Premises without the written consent of the Parks and Recreation Department Director.
14. LESSOR and his agent shall have the right at all reasonable times during the term of this Lease and any renewal thereof to enter the premises for the purpose of inspecting the Premises and all buildings and improvements thereof.
15. At the expiration of the term of this Lease, LESSEE shall surrender the Premises in as good a state and condition as it was at the commencement of this Lease, reasonable use and wear thereof and damages by elements excepted.
16. By virtue of establishing domicile, the LESSEE agrees to provide general supervision and security of the Park grounds both during his normal hours of employment by the LESSOR and during his off duty hours where he is present in the residence or in the Park area and shall immediately report any vandalism, rowdiness, illegal activities, or other Asuspicious conduct@ on the Park premises to law enforcement personnel and initiate any paperwork needed for recording purposes.

17. LESSEE shall provide within the limits of his capability, certain duties and responsibilities above and beyond the normal job requirements of his position as follows:
- (a) Open and close the Park in accordance with approved hours of operation, as necessary.
 - (b) Performance of emergency repair work to, or cleaning of facilities if such work is within the capabilities of the LESSEE.
 - (c) 24 hour call, 7 days a week, to address any issues that occur within Morikami Park
 - (d) Monitoring of Intrusion and Fire Alarms in all buildings on the property and direct contact with Supervisor of Operations, Resource Development Supervisor, Administrator, or Senior Curator.
 - (e) Security for after hours maintenance and/or Facility Rentals
18. Term of Agreement: This Lease shall commence when the last of the parties hereto executes same and shall remain in full force and effect on a month to month basis until terminated as provided in this section. This Lease shall terminate upon the occurrence of any of the following:
- (a) The LESSEE by way of promotion, demotion, or transfer, for any reason whatsoever, is assigned to other County duties not requiring a twenty-four (24) hour residence at said Park.
 - (b) The LESSEE voluntarily resigns from his position from Palm Beach County or is terminated or laid off from his position with Palm Beach County, regardless of the reasons underlying or the nature of such termination, resignation, or layoff.
 - (c) LESSEE voluntarily abandons the Premises.
 - (d) LESSEE fails to maintain the Premises in a healthy clean, and orderly, sanitary condition.
 - (e) LESSEE breaches any other condition of this Lease.
 - (f) Upon thirty (30) days prior written notice to LESSEE by the Director of Parks and Recreation. Upon the expiration of the thirty (30) day period, this Lease shall be terminated without any further obligation of the LESSOR whatsoever.

(g) Upon thirty (30) days written notice by the LESSEE of his intention to terminate this Lease.

19. LESSEE hereby releases LESSOR, from any and all liability, whether in contract or tort (including strict liability, negligence, and nuisance), for any loss, damage, or injury of any nature whatsoever sustained by LESSEE, its family members, guests, or invitees during the term of this Lease, including, but not limited to, loss, damage, or injury to the improvements or personal property of LESSEE, LESSEE's family members, guests, or invitees that might be located or stored on the Premises.
20. In the event LESSEE holds over after this Lease has been terminated in any manner, the LESSOR shall be entitled to collect from LESSEE double the fair market rental value of the Premise during the holdover period. All other terms and conditions during any holdover period shall be the same as herein provided.
21. BY SIGNING THIS LEASE, THE LESSOR AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE PREMISES DUE TO THE DEATH OF THE LESSOR, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE LESSEE'S PERSONAL PROPERTY.
22. LESSEE shall, to extent permitted by law, indemnify, defend, and save harmless LESSOR from and against any and all claims, suits, actions, damages, and/or causes of action arising as a result of or relating to this Lease or LESSEE's occupancy of the premises for any personal injury, loss of life, and/or damage to property sustained in or about the premises including, without limitation, by reason or as a result of the use and occupancy of the premises by LESSEE, its family members, guests, or invitees and from and against all costs, attorney fees, expenses, and liabilities incurred in and about the defense of any such claim. In the event LESSOR shall be made a party to any litigation commenced against LESSEE or by LESSEE against any third party, LESSEE shall protect and hold County harmless and pay all costs and attorney fees incurred by LESSOR in connection with such litigation, and any appeals thereof.

23. LESSEE shall, at his sole expense, maintain in full force and effect at all times during the life of this Lease, insurance coverages and limits (including endorsements), as described herein. LESSEE shall provide LESSOR with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as LESSOR's review and acceptance of insurance maintained by LESSEE are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease.

A) Commercial General Liability. LESSEE shall maintain Commercial General Liability at a limit of liability not less than \$300,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by LESSOR's Risk Management Department. LESSEE shall provide this coverage on a primary basis.

B) Automobile. LESSEE shall maintain, during the life of this Lease, comprehensive automobile liability insurance in the minimum amount of \$300,000 combined single limit bodily injury and property damage for claims arising from damages for bodily injury including wrongful death, as well as from claims for property damage which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles.

C) Additional Insured. LESSEE shall endorse the LESSOR as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. 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." LESSEE shall provide the Additional Insured endorsements coverage on a primary basis.

D) Waiver of Subrogation. LESSEE hereby waives any and all rights of Subrogation against the LESSOR, its officers, employees and agents for each required policy.

When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then LESSEE shall notify the 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 when a condition to the policy specifically prohibits such an endorsement, or voids coverage should LESSEE enter into such an agreement on a pre-loss basis.

E) Certificate(s) of Insurance. Prior to execution of this Lease by the LESSOR, LESSEE shall deliver to the LESSOR a Certificate(s) of coverage evidencing that all types and amounts of insurance coverages required by this Lease have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. Certificate holder's address shall read Palm Beach County, c/o Parks and Recreation Department, 2700 Sixth Avenue South, Lake Worth, FL 33461, Attention: Administrative Support Manager.

F) Right to Review. LESSOR, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Lease. LESSOR reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

24. LESSEE specifically authorizes LESSOR to deduct from LESSEE=s paycheck any outstanding bills or charges pertaining to upkeep and repair of the residence that are LESSEE's responsibility under this Lease.
25. In discharging the duties set forth in Paragraph 17 here and above, LESSEE shall be covered by worker=s compensation to the same extent as any other employees while in the scope of employment with LESSOR.
26. The interest of LESSOR in the Premises shall not be subject to liens for work performed by or on behalf of LESSEE. LESSEE shall notify every contractor performing work upon the Premises of the provision set forth in the preceding sentence. In the event that a construction lien is filed against the Premises in connection with any work performed by or on behalf of LESSEE, LESSEE shall satisfy such claim, or shall transfer same to

security, within ten (10) days from the date of filing. In the event LESSEE fails to satisfy or transfer such claim within said ten (10) day period, LESSOR may do so and thereafter charge LESSEE, and LESSEE shall promptly pay LESSOR in connection with the satisfaction or transfer of such claim, including attorneys' fees. Further, LESSEE agrees to indemnify, defend, and save LESSOR harmless from and against any damage or loss incurred by LESSOR as a result of any such construction lien.

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

28. Any consents, approvals, and permissions by LESSOR shall be effective and valid only if in writing and any notice by either party to the other shall be in writing and shall be deemed to be duly given only if mailed prepaid by certified mail return receipt requested, addressed:

(a) If to the LESSOR at:

Palm Beach County
Parks and Recreation Department.
2700 6th Avenue South
Lake Worth, FL 33461

(b) If to the LESSEE at:

Steven Ryan
Morikami Park
4000 Morikami Park Rd.
Delray Beach, FL 33446

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

29. 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.

30. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida.

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

ATTEST:
Sharon R. Bock, Clerk & Comptroller

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

By: _____
Deputy Clerk

By: _____
John F. Koons , Chairman

WITNESSES:

LESSEE:

By: Heather D. Grzybek
Heather D. Grzybek, Resource Dev. Sup

By: Steven Ryan
Steven Ryan, General Maint. Mechanic

By: Bonnie W. LeMay
Bonnie W. LeMay, Park Administrator

By: na

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

APPROVED AS TO TERMS AND CONDITIONS:

By: _____
County Attorney

By: Dennis Eshleman
Dennis Eshleman, Director
Parks & Recreation Department