

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date:	February 9, 2016	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution authorizing an Amended and Restated Agreement of Lease with the Department of Military Affairs Armory Board, State of Florida (Armory) for the continued use of approximately 18 acres of land located at 3193 Gun Club Road, West Palm Beach; and

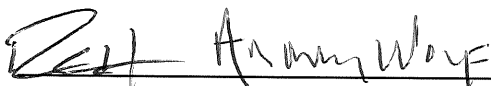

B) approve the Amended and Restated Agreement of Lease.

Summary: On December 20, 1977, the Board approved a Lease Agreement (R-77-1448) with the Armory for approximately 18.77 acres of land located at 3193 Gun Club Road, West Palm Beach, for the construction and operation of an Armory Building. The existing lease expires in approximately thirteen (13) years on December 31, 2028. The Armory is seeking federal funding to renovate the Armory Building and add additional parking. Funding is conditional upon the Armory securing site control for a minimum of twenty-five (25) years. The Armory has requested and Staff supports a term of twenty-six (26) years from the effective date of this Amended and Restated Agreement of Lease with a rental rate of \$1.00 per year. This Amended and Restated Agreement of Lease terminates and replaces the existing lease agreement, amends Exhibit "A" to reduce the premises to 18 acres, updates the lease to include various standard County provisions, includes airspace height restrictions, the right to flight, and Airport operation protections. Should the property fail to be used as an active military organization for twelve (12) consecutive or twenty-four (24) cumulative months, the Amended and Restated Agreement of Lease will terminate and all the property shall revert to the County. PREM will continue to have administrative responsibility for this lease. **(PREM) District 2 (HJF)**

Background and Justification: The existing Lease Agreement allows the Armory use of approximately 18.77 acres of land for \$0/year. The Armory constructed and operates a multipurpose building, with administrative offices on the second floor, maintenance buildings and on-site exterior storage for vehicles and other military equipment supporting the Florida National Guard Transportation Companies. Due to the land necessary for the right-of-way and realignment of Gun Club Road from Kirk Road to Congress Avenue, the leased premises was reduced from approximately 18.77 acres to approximately 18 acres. This Amended and Restated Agreement of Lease terminates and replaces the existing lease, addresses updated County requirements and extends the current term by thirteen (13) years to permit the Armory to qualify for funding to renovate the building and add parking spaces. A Disclosure of Beneficial Interests is not required.

Attachments:

1. Location Map
2. Resolution
3. Amended and Restated Agreement of Lease
4. Armory Request letter dated October 6, 2015

Recommended By:		1/22/16	
	Department Director	Date	
Approved By:		2/3/16	
	County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>	<u>(\$1.00)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No

Budget Account No: Fund 0001 Dept 410 Unit 5250 Object
Program

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

Fixed Asset Number: n/a

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Sherry Bm
OFMB ^{HP} ^{1/27} ^(X) ^{1/27}

Dr. J. Jacobson 2/11/16
Contract Development and Control

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

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

TWP 43

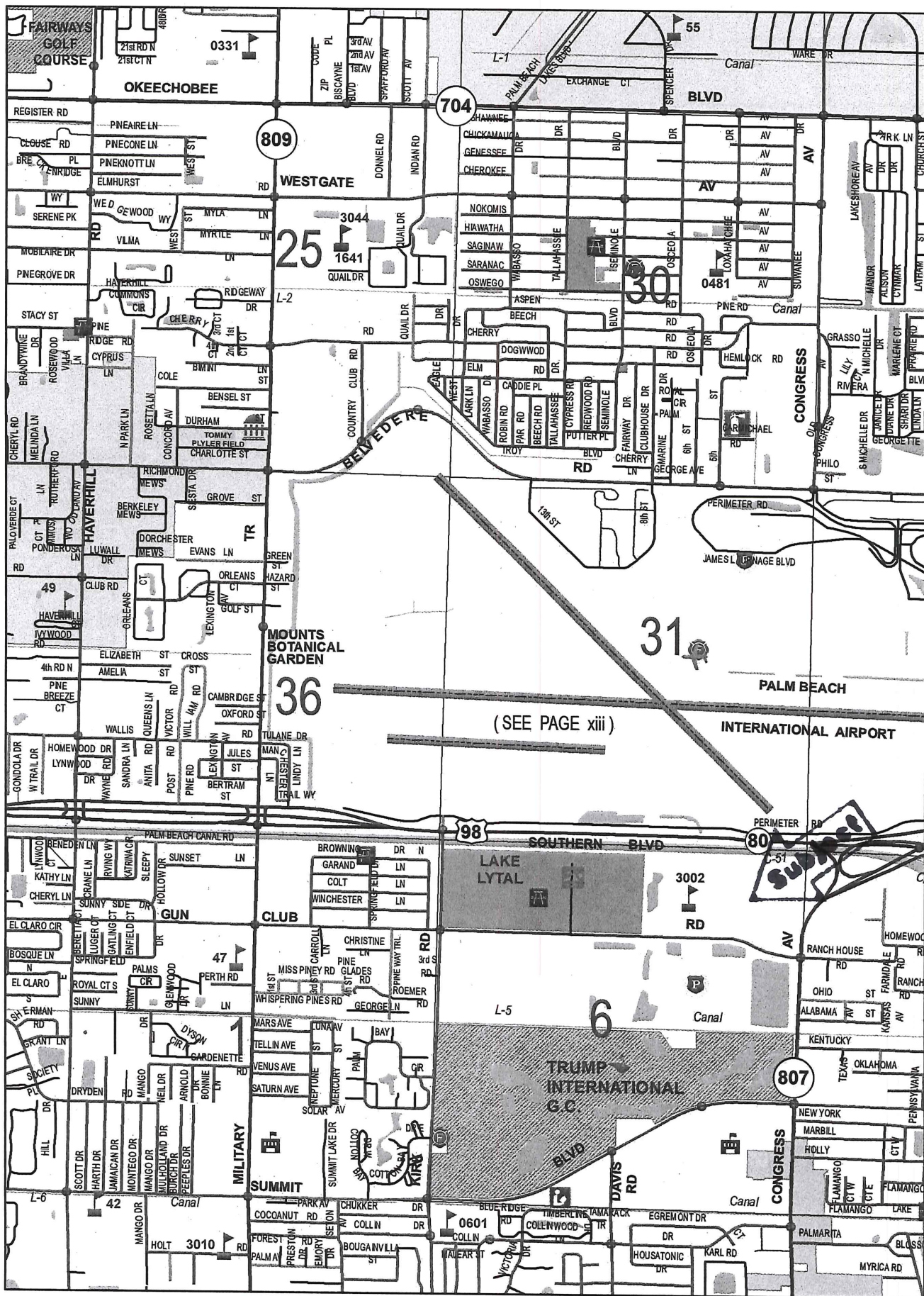
TWP 43

TWP 44

19

20

21



RNG 42

See pg 80

RNG 43

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LOCATION MAP

Attachment 1

1 of 1



RESOLUTION NO. 20 ____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY TO DEPARTMENT OF MILITARY AFFAIRS ARMORY BOARD, STATE OF FLORIDA, PURSUANT TO FLORIDA STATUTE SECTION 125.38; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Department of Military Affairs Armory Board, State of Florida, on behalf of the State of Florida (“Armory”), 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 Armory for use by Armory for proper military uses consistent with training requirements of the Florida Army National Guard; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that 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 Armory, pursuant to the Amended and Restated Agreement of Lease attached hereto as Exhibit “A” and incorporated herein by reference, for a term of Twenty-Six years and an annual rental of One Dollar and no cents (\$1.00), 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 _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Mary Lou Berger, Mayor
Commissioner Hal R. Valeche, Vice Mayor
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla A. Taylor

The Mayor thereupon declared the resolution duly passed and adopted this ____ day of _____, 20__.

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

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: 
Assistant County Attorney

By: 
Department Director

EXHIBIT “A”

AMENDED AND RESTATED AGREEMENT OF LEASE

AMENDED AND RESTATED LEASE AGREEMENT

between

PALM BEACH COUNTY

a political subdivision of the

State of Florida

by and through its

Board of County Commissioners

(County)

and

DEPARTMENT OF MILITARY AFFAIRS ARMORY BOARD,

STATE OF FLORIDA

(Tenant)

AMENDED AND RESTATED AGREEMENT OF LEASE

THIS AMENDED AND RESTATED AGREEMENT OF LEASE made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and **DEPARTMENT OF MILITARY AFFAIRS ARMORY BOARD, STATE OF FLORIDA**, on behalf of the State of Florida, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, County and Tenant entered into a certain Lease Agreement dated December 20, 1977 (R-77-1448) for the lease of approximately 18.77 acres of land located at 3193 Gun Club Road, West Palm Beach, for the purpose of constructing the Armory Building, which lease expires December 31, 2028; and

WHEREAS, Tenant is seeking federal funding to renovate the Armory Building and add additional parking; however, said funding is conditional upon Tenant securing site control for a Twenty-Five (25) year period; and

WHEREAS, County wishes to incorporate into the lease certain language required by County; and

WHEREAS, the parties desire to modify the premises and amend Exhibit "A" accordingly; and

WHEREAS, County and Tenant agree to terminate and replace Lease Agreement R-77-1448 with this Amended and Restated Agreement of Lease ("Lease").

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 approximately 18 acres of land legally described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

Section 1.02 Length of Term.

The term of this Lease shall commence upon the Effective Date and shall extend for a period of Twenty-Six (26) 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.

Section 1.03 Precedence of Restated Lease.

This Lease terminates and replaces all provisions of the Lease Agreement R-77-1448 dated December 20, 1977. Notwithstanding such termination, Tenant shall remain liable for any obligations and liabilities, known or unknown, arising under such Lease Agreement existing as of the Effective Date hereof.

ARTICLE II RENT

Section 2.01 Annual Rent.

Tenant shall pay County an annual rent of One Dollar (\$1.00) (the "Annual Rent"), payable without notice on the Effective Date and each subsequent anniversary thereof. Annual 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.

Section 2.02 Assessments 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.

ARTICLE III CONDITION OF LEASED PREMISES

Section 3.01 Acceptance of Premises by Tenant.

Tenant has been in possession of the Premises since 1977. Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located thereon, if any, or the suitability thereof for Tenant's intended use thereof. 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 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 proper military uses consistent with training requirements of the Florida Army National Guard. Tenant shall not use, permit, or suffer the use of the Premises for any other 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 its use of the Premises, or the Premises generally.

Tenant 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. 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 49, CFR Part 21 – Effectuation of Title VI 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,

familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the Premises or conducted pursuant to this Lease. 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.

Tenant has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, has acknowledged through a signed statement provided to County that Tenant will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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 improvements from the Premises and shall surrender the Premises to the County in good condition and repair. Upon surrender of the Premises, title to any and all remaining improvements upon the Premises shall vest in County. Should County determine that it does not desire the improvements made to the Premises by the Tenant, the County may require the Tenant to remove or demolish the improvements at Tenant's expense.

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 is responsible for all personal injury and property damage attributable to the negligent acts or omissions of Tenant and the officers, employees and agents thereof 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. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto as under Federal Law or provided in section 768.28 Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

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 improvements currently existing or constructed hereinafter on or about the Premises, in good condition and repair, at Tenant's sole cost and expense.

ARTICLE VI UTILITIES

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises 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

Without waiving the right to sovereign immunity as provided by Section 768.28 Florida Statutes, Tenant acknowledges and represents that Tenant is an entity of the Federal Government and as such is self-insured under Federal Law for all liability of its employees and agents.

ARTICLE VIII INDEMNIFICATION

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by either party as provided under Federal law or in section 768.28 Florida Statutes, as amended from time to time, or any other law providing limitations on claims. This section shall survive the 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.

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. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of Lease. 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 unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event Tenant shall be entitled to a reasonable period under the circumstances; or (iii) Tenant's vacating or abandoning the Premises. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by Tenant, and 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 thirty (30) 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

This Lease 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.

ARTICLE XIII QUIET ENJOYMENT

Upon payment by the Tenant of the Rent, Additional 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), telecopied, faxed or emailed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier, fax or email if transmitted before 5 P.M. on a business day and on the next business day if transmitted after 5 P.M. or on a non-business day, 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 designate the following 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
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

with a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone: 561-355-2225
Fax: 561-355-4398

(b) If to the Tenant at:

State of Florida, Department of Military Affairs
Office of the Adjutant General
St. Francis Barracks
P.O. Box 1008
St. Augustine, Florida 32085-1008
Telephone: _____
Fax: _____
Email: _____

With a copy to:

Telephone: _____
Fax: _____
Email: _____

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

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 the laws of the State of Florida. Any legal action necessary to enforce the Lease will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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, 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 14.08 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.

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 Lease 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 Lease 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 is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

Section 14.13 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease 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 No Third Party Beneficiary.

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of the County and/or Tenant.

Section 14.16 Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

Section 14.17 Effective Date of Lease.

This Lease 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.

Section 14.18 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

Section 14.19 Headings.

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 14.20 Condemnation.

If the Premises, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, by any governmental entity other than County, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Tenant's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Premises, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Premises temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Premises improvements or otherwise perform any work upon same as a result of any such taking.

Section 14.21 Reversion.

Should the State of Florida or the United States fail to maintain an active military organization in Palm Beach County on the Premises for twelve (12) consecutive months, or twenty-four (24) cumulative months, the terms, conditions and provisions of this Lease will by the happening of either of the said conditions be terminated, and the Premises shall and will revert to the exclusive control of the County, except in the case of a war or other National or State emergency wherein the National Guard may be called into active duty at a place other than in the Palm Beach County, then this reversion clause will not be applicable.

Section 14.22 Height Restriction.

The height of all temporary and permanent structures, objects of natural growth and other obstructions ("Obstructions") on the Premises, including, but not limited to, lightning poles, flag poles, signage, promotional displays and cranes and other similar equipment, shall be limited to such height so as to comply with 14 CFR Part 77, as now

or hereafter amended. All Obstructions to be constructed or installed on the Premises shall be reviewed by the FAA prior to construction or installation. In no event shall any Obstructions be constructed or installed on the Premises which are determined by the FAA to be an airspace obstruction or to pose a potential threat to air navigation. All Obstructions shall be consistent with the Palm Beach County Airport Zoning Ordinance (as codified in Article 16 of the Palm Beach County Unified Land Development Code), as now or hereafter amended.

Section 14.23 Right of Flight.

County hereby reserves unto itself and its successors and assigns, for the use and benefit of the public, the right of flight for: (a) the passage of aircraft in, through, and across the airspace above the surface of the Premises, together with the right of the aircraft to make noise and exhaust emissions, light, vibrations, radio, television and other electromagnetic emissions and other effects as may be necessary for or incidental to the operation of aircraft; (b) navigation of or flight in said airspace; and (c) aircraft landing on, taking off from or operating at the Palm Beach County International Airport ("Airport"). Tenant on behalf of itself, its sublessees, successors and assigns, hereby waives, releases and forever discharges County and its elected officials, officers, employees, agents, attorneys, consultants, representatives, successors and assigns from all claims, demands, judgments, orders, awards, liabilities, costs, attorney's fees, causes of action, administrative proceedings and lawsuits of every kind, nature or description, whether known or unknown, fixed or contingent, which County or any person claiming through or under it ever had, now has or hereafter may acquire, upon or by reason of the exercise of the rights reserved herein. It is further agreed that County shall have no obligation whatsoever, now or at any time in the future, to avoid or mitigate damages arising as a result of the exercise of the rights reserved herein or the operation of the Airport.

Section 14.24 Operation of Airport.

Tenant expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute a hazard to air navigation.

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

ATTEST:

TENANT:
DEPARTMENT OF MILITARY
AFFAIRS ARMORY BOARD, State of
Florida

By: _____

By: _____
VALERIA GONZALEZ-KERR
Brigadier General, Line
Florida National Guard
State Quartermaster

Signed and delivered
in the presence of:

Witness Signature

SEAL

Print Witness Name

Witness Signature

Print Witness Name

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Mary Lou Berger, Mayor

Signed and delivered
in the presence of:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Department Director

EXHIBIT “A”

THE “PREMISES”

PART OF TRACT 2, BLOCK 1, SECTION 6, PLAT NO. 1, PALM BEACH PLANTATIONS (MODEL LAND COMPANY), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 20 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS THE NORTHERLY 130 FEET THEREOF FOR RIGHT-OF-WAY OF THE WEST PALM BEACH CANAL (AS SHOWN ON THE CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT DRAWING NO. DM-34 DATED 1972) ALSO, LESS THE SOUTHERLY 40 FEET FOR RIGHT-OF-WAY FOR GUN CLUB ROAD AS SHOWN ON SAID DRAWINGS.

CONTAINING 18.0 ACRES MORE OR LESS.

AMENDED AND RESTATED LEASE AGREEMENT

between

PALM BEACH COUNTY

a political subdivision of the

State of Florida

by and through its

Board of County Commissioners

(County)

and

DEPARTMENT OF MILITARY AFFAIRS ARMORY BOARD,

STATE OF FLORIDA

(Tenant)

AMENDED AND RESTATED AGREEMENT OF LEASE

THIS AMENDED AND RESTATED AGREEMENT OF LEASE made and entered into _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County" and **DEPARTMENT OF MILITARY AFFAIRS ARMORY BOARD, STATE OF FLORIDA**, on behalf of the State of Florida, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, County and Tenant entered into a certain Lease Agreement dated December 20, 1977 (R-77-1448) for the lease of approximately 18.77 acres of land located at 3193 Gun Club Road, West Palm Beach, for the purpose of constructing the Armory Building, which lease expires December 31, 2028; and

WHEREAS, Tenant is seeking federal funding to renovate the Armory Building and add additional parking; however, said funding is conditional upon Tenant securing site control for a Twenty-Five (25) year period; and

WHEREAS, County wishes to incorporate into the lease certain language required by County; and

WHEREAS, the parties desire to modify the premises and amend Exhibit "A" accordingly; and

WHEREAS, County and Tenant agree to terminate and replace Lease Agreement R-77-1448 with this Amended and Restated Agreement of Lease ("Lease").

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 approximately 18 acres of land legally described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

Section 1.02 Length of Term.

The term of this Lease shall commence upon the Effective Date and shall extend for a period of Twenty-Six (26) 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.

Section 1.03 Precedence of Restated Lease.

This Lease terminates and replaces all provisions of the Lease Agreement R-77-1448 dated December 20, 1977. Notwithstanding such termination, Tenant shall remain liable for any obligations and liabilities, known or unknown, arising under such Lease Agreement existing as of the Effective Date hereof.

ARTICLE II RENT

Section 2.01 Annual Rent.

Tenant shall pay County an annual rent of One Dollar (\$1.00) (the "Annual Rent"), payable without notice on the Effective Date and each subsequent anniversary thereof. Annual 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.

Section 2.02 Assessments 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.

ARTICLE III CONDITION OF LEASED PREMISES

Section 3.01 Acceptance of Premises by Tenant.

Tenant has been in possession of the Premises since 1977. Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located thereon, if any, or the suitability thereof for Tenant's intended use thereof. 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 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 proper military uses consistent with training requirements of the Florida Army National Guard. Tenant shall not use, permit, or suffer the use of the Premises for any other 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 its use of the Premises, or the Premises generally.

Tenant 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. 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 49, CFR Part 21 – Effectuation of Title VI 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,

familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the Premises or conducted pursuant to this Lease. 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.

Tenant has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, has acknowledged through a signed statement provided to County that Tenant will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

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 improvements from the Premises and shall surrender the Premises to the County in good condition and repair. Upon surrender of the Premises, title to any and all remaining improvements upon the Premises shall vest in County. Should County determine that it does not desire the improvements made to the Premises by the Tenant, the County may require the Tenant to remove or demolish the improvements at Tenant's expense.

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 is responsible for all personal injury and property damage attributable to the negligent acts or omissions of Tenant and the officers, employees and agents thereof 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. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto as under Federal Law or provided in section 768.28 Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

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 improvements currently existing or constructed hereinafter on or about the Premises, in good condition and repair, at Tenant's sole cost and expense.

**ARTICLE VI
UTILITIES**

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises 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**

Without waiving the right to sovereign immunity as provided by Section 768.28 Florida Statutes, Tenant acknowledges and represents that Tenant is an entity of the Federal Government and as such is self-insured under Federal Law for all liability of its employees and agents.

**ARTICLE VIII
INDEMNIFICATION**

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by either party as provided under Federal law or in section 768.28 Florida Statutes, as amended from time to time, or any other law providing limitations on claims. This section shall survive the 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 then 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.

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. Any attempted assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of Lease. 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 unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event Tenant shall be entitled to a reasonable period under the circumstances; or (iii) Tenant's vacating or abandoning the Premises. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to give Tenant notice that County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by Tenant, and 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 thirty (30) 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

This Lease 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.

ARTICLE XIII QUIET ENJOYMENT

Upon payment by the Tenant of the Rent, Additional 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), telecopied, faxed or emailed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier, fax or email if transmitted before 5 P.M. on a business day and on the next business day if transmitted after 5 P.M. or on a non-business day, 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 designate the following 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
Attention: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

with a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone: 561-355-2225
Fax: 561-355-4398

- (b) If to the Tenant at:

State of Florida, Department of Military Affairs
Office of the Adjutant General
St. Francis Barracks
P.O. Box 1008
St. Augustine, Florida 32085-1008
Telephone: 904-823-0201
Fax: 904-857-8533
Email: _____

With a copy to:

Construction & Facility
Management Office
2305 SR 207 St. Augustine, FL 32086
Telephone: 904-823-0251
Fax: 904-823-0189
Email: _____

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

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 the laws of the State of Florida. Any legal action necessary to enforce the Lease will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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, 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 14.08 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.

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 Lease 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 Lease 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 is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

Section 14.13 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease 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 No Third Party Beneficiary.

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of the County and/or Tenant.

Section 14.16 Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

Section 14.17 Effective Date of Lease.

This Lease 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.

Section 14.18 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

Section 14.19 Headings.

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 14.20 Condemnation.

If the Premises, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, by any governmental entity other than County, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Tenant's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Tenant. Tenant hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Premises, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Tenant is unable to use the portion of the Premises temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Premises improvements or otherwise perform any work upon same as a result of any such taking.

Section 14.21 Reversion.

Should the State of Florida or the United States fail to maintain an active military organization in Palm Beach County on the Premises for twelve (12) consecutive months, or twenty-four (24) cumulative months, the terms, conditions and provisions of this Lease will by the happening of either of the said conditions be terminated, and the Premises shall and will revert to the exclusive control of the County, except in the case of a war or other National or State emergency wherein the National Guard may be called into active duty at a place other than in the Palm Beach County, then this reversion clause will not be applicable.

Section 14.22 Height Restriction.

The height of all temporary and permanent structures, objects of natural growth and other obstructions ("Obstructions") on the Premises, including, but not limited to, lightning poles, flag poles, signage, promotional displays and cranes and other similar equipment, shall be limited to such height so as to comply with 14 CFR Part 77, as now

or hereafter amended. All Obstructions to be constructed or installed on the Premises shall be reviewed by the FAA prior to construction or installation. In no event shall any Obstructions be constructed or installed on the Premises which are determined by the FAA to be an airspace obstruction or to pose a potential threat to air navigation. All Obstructions shall be consistent with the Palm Beach County Airport Zoning Ordinance (as codified in Article 16 of the Palm Beach County Unified Land Development Code), as now or hereafter amended.

Section 14.23 Right of Flight.

County hereby reserves unto itself and its successors and assigns, for the use and benefit of the public, the right of flight for: (a) the passage of aircraft in, through, and across the airspace above the surface of the Premises, together with the right of the aircraft to make noise and exhaust emissions, light, vibrations, radio, television and other electromagnetic emissions and other effects as may be necessary for or incidental to the operation of aircraft; (b) navigation of or flight in said airspace; and (c) aircraft landing on, taking off from or operating at the Palm Beach County International Airport ("Airport"). Tenant on behalf of itself, its sublessees, successors and assigns, hereby waives, releases and forever discharges County and its elected officials, officers, employees, agents, attorneys, consultants, representatives, successors and assigns from all claims, demands, judgments, orders, awards, liabilities, costs, attorney's fees, causes of action, administrative proceedings and lawsuits of every kind, nature or description, whether known or unknown, fixed or contingent, which County or any person claiming through or under it ever had, now has or hereafter may acquire, upon or by reason of the exercise of the rights reserved herein. It is further agreed that County shall have no obligation whatsoever, now or at any time in the future, to avoid or mitigate damages arising as a result of the exercise of the rights reserved herein or the operation of the Airport.

Section 14.24 Operation of Airport.

Tenant expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute a hazard to air navigation.

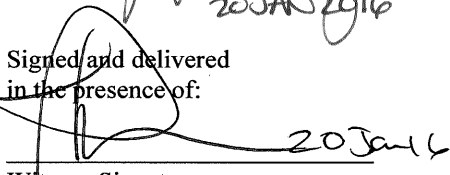
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IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

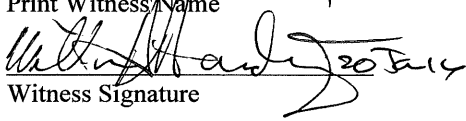
ATTEST:

By: 
20 JAN 2016

Signed and delivered
in the presence of:

 20 Jan 16
Witness Signature

Ruby T. Riley
Print Witness Name

 20 Jan 16
Witness Signature

William H. Harding
Print Witness Name

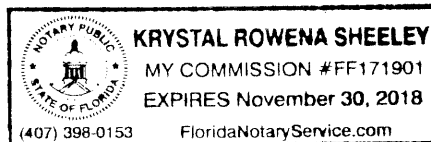
TENANT:

DEPARTMENT OF MILITARY
AFFAIRS ARMORY BOARD, State of
Florida

By:  20 Jan 16

VALERIA GONZALEZ-KERR
Brigadier General, Line
Florida National Guard
State Quartermaster

SEAL



ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____

Deputy Clerk

Signed and delivered
in the presence of:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

COUNTY:

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

By: _____

Mary Lou Berger, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 

County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: 

Department Director

G:\PREM\PM\In Lease\Armed Forces Reserve Ctr\Restated Agmt 2016\Restated Lease.hf app 01-14-2016.docx

EXHIBIT "A"

THE "PREMISES"

PART OF TRACT 2, BLOCK 1, SECTION 6, PLAT NO. 1, PALM BEACH PLANTATIONS (MODEL LAND COMPANY), ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 20 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS THE NORTHERLY 130 FEET THEREOF FOR RIGHT-OF-WAY OF THE WEST PALM BEACH CANAL (AS SHOWN ON THE CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT DRAWING NO. DM-34 DATED 1972) ALSO, LESS THE SOUTHERLY 40 FEET FOR RIGHT-OF-WAY FOR GUN CLUB ROAD AS SHOWN ON SAID DRAWINGS.

CONTAINING 18.0 ACRES MORE OR LESS.



STATE OF FLORIDA
Department of Military Affairs
Office of the Adjutant General

St. Francis Barracks, P.O. Box 1008
St. Augustine, Florida 32085-1008

6 October 2015

Mr. Ross Hering
Director of Property and Real Estate
Palm Beach County
2633 Vista Parkway
West Palm Beach, FL 33411

Mr. Hering,

Palm Beach County currently has a long term lease with the Department of Military Affairs (DMA) Armory Board, State of Florida for property located at 3193 Gun Club Road, West Palm Beach, FL 33406.

The contract for the West Palm Beach (WPB) Calloway National Guard Reserve Center began 1 January 1978 for a fifty (50) year term. The facility is used for support of training requirements of the Reserves and the Florida Army National Guard. The Department of Military Affairs is requesting federal funding to do improvements to the facilities at WPB. Basically, renovating the building to bring it up to code and adding additional parking to support Florida National Guard Transportation Companies located at that site.

In order to receive the federal funding, the lease has to have at least twenty-five (25) years remaining. Since the current lease only has thirteen (13) years remaining, I am requesting a modification to extend the current lease and add an additional fifty (50) years. If your office can provide the necessary paperwork, I will sign and return so you can submit as an action item for your next Board of County Commissioners meeting.

If you have any questions or require further information contact John Connor, Purchasing Director, DMA at (904)823-0241 or email john.d.connor2.nfg@mail.mil

Sincerely,

Valeria Gonzalez-Kerr
Colonel, Logistics
Florida National Guard
State Quartermaster