

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

Meeting Date: March 14, 2023 **Consent** **Regular**
 Ordinance **Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to approve: a Lease Agreement with the City of Delray Beach for three parcels of County-owned property, totaling approximately 3.03 acres, located on S. Ocean Boulevard in Delray Beach for use as a public park for an initial term of twenty (20) years at an annual rate of \$10.

Summary: The City of Delray Beach (City) owns approximately 3.69 acres of beachfront property located at 1605 S. Ocean Boulevard which is known as Atlantic Dunes Park (Park). Palm Beach County purchased two parcels of land located across from the Park totaling approximately 1.82 acres in 1972 and another 1.21 acre adjacent parcel in 1976 for public park purposes. The City has been maintaining and operating the Park since 1977, including the County-owned parcels. However, neither the County nor the City have been able to locate an agreement memorializing the terms and conditions. In order to formalize the agreement, the proposed Lease Agreement (Lease) is being presented to the Board of County Commissioners for consideration. The Lease provides for an initial term of twenty (20) years with two (2) additional twenty (20) year renewal terms. The annual rent for this Lease Agreement is ten dollars (\$10). The City will continue to provide all management and maintenance necessary to operate Atlantic Dunes Park. Parks & Recreation will continue to have administrative responsibility for this Lease. **(Property & Real Estate Management) District 4 (HJF)**

Background and Justification: Atlantic Dunes Park is a 6.63 acre municipal beachfront park that is operated and maintained by the City of Delray Beach. The City has managed the Park since opening to the public in 1977. The Park has been and shall remain open to all residents of Palm Beach County regardless of residency and is open daily from sunrise to sunset. The Park consists of a guarded swimming areas, restroom, beach crossover, group picnic shelter, 121 parking spaces and associated infrastructure. Metered parking is available for \$1.25 per hour on a first come, first serve basis. This Lease formalizes the agreement between the County and the City.

Attachments:

- 1. Location Map
- 2. Budget Availability Statement
- 3. Lease Agreement

Recommended By: *[Signature]* *2/13/23*
Department Director **Date**

Approved By: *Paul for* *3/2/23*
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2023 | 2024 | 2025 | 2026 | 2027 |
|--|---------------|---------------|---------------|---------------|---------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | (\$10) | (\$10) | (\$10) | (\$10) | (\$10) |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>(\$10)</u> | <u>(\$10)</u> | <u>(\$10)</u> | <u>(\$10)</u> | <u>(\$10)</u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget: Yes No _____

Does this item include the use of federal funds? Yes _____ No

Budget Account No: Fund 0001 Dept 580 Unit 5110 Revenue Source 4902
 Program _____

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

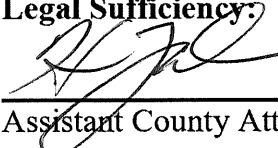
Fixed Asset Number _____

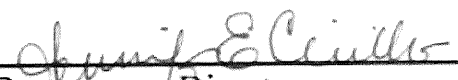
C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

| | |
|--|---|
| <p><u></u> 2/17/23 OFMB <u>JA 2/17</u> <u>ESW</u> 2-17-23</p> | <p><u></u> 2/24/23 Contract Development and Control fmb 2/22/23</p> |
|--|---|

B. Legal Sufficiency:
 3/1/23
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



LOCATION MAP



Attachment #2
Budget Availability Statement (1 page)

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: January 30, 2023

REQUESTED BY: Della M. Lowery
Real Estate Specialist./PREM

PHONE: 233-0239
FAX: 233-0210

PROJECT TITLE: Atlantic Dunes Park

PROJECT NO.:

| Fiscal Years | 2023 | 2024 | 2025 | 2026 | 2027 |
|--|-------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> | <u>\$10</u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

*** By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.*

BUDGET ACCOUNT NUMBER

FUND: 0001 DEPT: 580 UNIT: 5110 REVENUE SOURCE: 4902 SUB RSC: _____

IS ITEM INCLUDED IN CURRENT BUDGET: YES _____ NO _____

IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)

- Ad Valorem (source/type: _____)
- Non-Ad Valorem (source/type: _____)
- Grant (source/type: _____)
- Park Improvement Fund (source/type: _____)
- General Fund Operating Budget Federal/Davis Bacon
- _____ _____ _____

Department: Parks & Recreation Department

BAS APPROVED BY: 

DATE: 1/30/2023

ENCUMBRANCE NUMBER: _____

Attachment #3
Lease Agreement (2 @ 16 pages)

PALM BEACH COUNTY

LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

and

THE CITY OF DELRAY BEACH

A MUNICIPAL CORPORATION ORGANIZED AND EXISTING

UNDER THE LAWS OF THE STATE OF FLORIDA

(City)

**LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF DELRAY BEACH FOR
THE LEASE OF OCEANFRONT PARK PROPERTY**

THIS LEASE AGREEMENT ("Lease") is made and entered into _____ by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County," and THE CITY OF DELRAY BEACH, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "City."

WHEREAS, the County is the owner in fee simple of three parcels totaling approximately 3.03 acres of land located at 1605 S. Ocean Blvd., Delray Beach, Florida 33483, as more specifically described in Exhibit "A" (Oceanfront Park Property), attached hereto; and

WHEREAS, the County and City desire to enter into a Lease Agreement to facilitate public access to the municipal beach ("Atlantic Dunes Park") for park purposes for the use and benefit of all residents of Palm Beach County; and

WHEREAS, the City has been operating this Oceanfront Park Property since February 14, 1977, and the Oceanfront Park Property has been incorporated into Atlantic Dunes Park; and

WHEREAS, Atlantic Dunes Park shall be open to and benefit all residents of Palm Beach County regardless of residency; and

WHEREAS, Section 163.01, Florida Statutes, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, both parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Lease Agreement.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties hereto agree as follows:

**ARTICLE I
BASIC LEASE PROVISIONS**

Section 1.01 Oceanfront Park Property.

In consideration of the payment of rents, covenants, and agreements hereafter reserved and contained on the part of the City to be observed and performed, the County demises and leases to the City, and the City rents from the County the Oceanfront Park Property.

Section 1.02 Term. This Lease shall be effective upon the Effective Date, as defined hereinafter. The Lease shall extend for a period of twenty (20) years ("Initial Term") thereafter, 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 Option to Renew.

Provided the City is not then in default of any term, covenant, condition, or payment of Rent under this Lease, the City may extend this Lease for two (2) additional consecutive twenty (20) year terms ("Renewal Terms") under the same terms and conditions of this Lease and commencing upon the expiration of the initial Term of this Lease or any extension thereof. The City shall exercise such option to renew if at all, by written notice to the County received by the County no later than one hundred eighty (180) days prior to the expiration of the then current Term of this Lease. Failure of the City to duly and timely exercise its option to renew the Term of this Lease shall be deemed a waiver of the City's right to such option.

ARTICLE II
RENT

Section 2.01 Annual Rent.

The City shall pay the County an annual net rent of Ten Dollars and no/100 (\$10.00) (the "Annual Rent"), the first of which shall be payable without notice within thirty (30) days of the Effective Date and thereafter on each subsequent anniversary hereof. 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.

This Lease shall be what is commonly referred to as "triple net" to the County, it being understood by the parties that the County shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the Oceanfront Park Property, including, without limitation, those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

Section 2.02 Assessments and Personal Property Taxes.

The City shall pay all sales, use, or rent taxes assessed by any governmental authority against the Oceanfront Park Property, Annual Rent and/or Additional Rent, if any, even if such tax intended to be imposed against the County. The City 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 that may be levied by any governmental authority against the Oceanfront Park Property, the City's leasehold interest in the Oceanfront Park Property, the City's Alterations or personal property located on the Oceanfront Park Property.

Section 2.03 Additional Rent.

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

Section 2.04 Unpaid Fees, Holdover.

In the event the City fails to make timely payment of any rent, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate of one and one-half percent (1½ percent per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, the County shall not be prevented from terminating this Lease for default in the payment of rent, fees, charges, and payments due to the County pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event the City shall holdover, refuse, or fail to relinquish possession of the Oceanfront Park Property at the expiration or termination of this Lease, the City shall be liable to the County for any and all damages, and in addition thereto, the City shall also be strictly liable to pay to the County during the entire period of such holdover, double the actual fair market rental value of the Oceanfront Park Property.

Section 2.05 Accord and Satisfaction.

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

ARTICLE III
CONDITION OF LEASED OCEANFRONT PARK PROPERTY, DESIGN, AND CONSTRUCTION

Section 3.01 Acceptance of the Oceanfront Park Property by the City.

The City currently occupies the Oceanfront Park Property and has previously inspected and accepted 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. The City further acknowledges that the County has made no representations or warranties of any nature whatsoever regarding the Oceanfront Park Property, including, without limitation, the physical condition of the Oceanfront Park Property, any improvements or equipment located thereon, if any, or the suitability thereof for the City's intended use thereof. No repair work, alterations, or remodeling of the Oceanfront Park Property is required to be done by the County as a condition of this Lease. The City agrees to perform any and all work at its own cost and expense that is necessary to fully equip and maintain the Oceanfront Park Property for the lawful use of the Oceanfront Park Property by the City as specified in Section 4.01 of this Lease.

Section 3.02 Alterations.

The City shall not make any improvements, additions, modifications or alterations costing in excess of \$150,000 (hereinafter collectively referred to as "Alterations") without the prior written consent from the County, which consent will not be unreasonably withheld. The City shall submit detailed plans and specifications for all such Alterations to the County for the County's written approval prior to commencing work on same. The City agrees and acknowledges that all work performed to the Oceanfront Park Property, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of the City, and not for the benefit of the County, such work being nevertheless subject to each and every provision of this Lease. All work done by the City shall be done in a good and workmanlike manner and shall be diligently pursued to completion in accordance with the approved plans and specifications therefor.

Section 3.03 Construction Payments.

The City shall ensure that all improvements are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 3.04 Contractor Bond Requirements.

For Alterations costing in excess of \$150,000, the City shall require contractors to furnish for the benefit of the City a payment and performance bond to the City equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. The City shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form, in such amounts and in such manner as the City may reasonably require.

Section 3.05 No Liens.

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

**ARTICLE IV
CONDUCT OF BUSINESS AND USE OF OCEANFRONT PARK PROPERTY BY CITY**

Section 4.01 Use of the Oceanfront Park Property.

The City shall continue to use and occupy the Oceanfront Park Property solely and exclusively as a public park as specified in this Lease. The City shall not use, permit, or suffer the use of the Oceanfront Park Property for any other purpose whatsoever without the prior written consent of the County, which consent may be granted or withheld in the County's sole discretion.

The City shall provide supervision and strictly enforce all rules, regulations, and safety procedures established by the City, the requirements of this Lease, and in general, good standards and practices for the safe and orderly use of the Oceanfront Park Property. At all times the Oceanfront Park Property is in use by the City or its invitees, such use shall be under the control and supervision of the City and such supervision shall be conducted by a supervisor authorized by the City. The City shall not use the Oceanfront Park Property or allow the Oceanfront Park Property to be used for any commercial purpose that is not ancillary to the recreational use of the property or unauthorized purpose, or by any other groups, foundations, or persons not authorized by the City. The City shall not commit or permit any reckless or dangerous conduct on the Oceanfront Park Property at any time.

The City shall be in full control of the operation of the Oceanfront Park Property, and shall set and establish the times of operation and the rules and regulations for use by the public. The City shall ensure that all access areas to the Oceanfront Park Property are locked and secured outside of normal operating hours. The County shall have no control or responsibility with regard to the use of the Oceanfront Park Property, except as is otherwise set out in this Lease.

The City agrees that the Oceanfront Park Property shall be used only and exclusively for lawful purposes, and the City will not use, or suffer anyone to use, the Oceanfront Park Property, for any purpose in violation of the laws of the United States, the State of Florida, or the ordinances and regulations of Palm Beach County or any governmental entity having jurisdiction over the Oceanfront Park Property.

Section 4.02 Program and User Fees.

The Oceanfront Park Property shall be open to the public and the City shall provide programs and facility access to all residents of Palm Beach County on a first come first serve basis regardless of residency, with no preference given to Delray Beach residents.

Section 4.03 Waste or Nuisance.

The City shall not commit or suffer to be committed any waste upon the Oceanfront Park Property, commit or permit the maintenance or commission of any nuisance or other act or thing that may result in damage or depreciation of value of the Oceanfront Park Property, or that may affect the County's fee interest in the Oceanfront Park Property, or that results in an unsightly condition. All refuse is to be removed from the Oceanfront Park Property at the City's sole cost and expense, and the City will keep such refuse in proper containers on the interior of the Oceanfront Park Property until removed. The City will keep the access to the Oceanfront Park Property, the parking areas, and other contiguous areas to the Oceanfront Park Property free and clear of obstruction. The City, at its sole cost and expense, will keep the Oceanfront Park Property free of rodents, vermin, and other pests.

Section 4.04 Governmental Regulations.

The City shall, at the City'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 that may hereafter be in force, pertaining to the City or its use of the Oceanfront Park Property or the Oceanfront Park Property generally.

The parties acknowledge and agree that the County is entering into this Lease in its proprietary capacity as the owner of the Oceanfront Park Property and that nothing contained herein shall be construed to constitute any form of approval by the County in its governmental capacity or limit or alter the County's obligation to comply with all applicable governmental regulations.

The City shall not use the Oceanfront Park Property in a manner, which causes the County to be in violation of any current or future local, state, or Federal permits, rules, regulations, deed restrictions or covenants applicable to the Oceanfront Park Property. The County shall have the right to require any modifications to the City's use of the Oceanfront Park Property if the County in its reasonable discretion determines such use violates any current or future local, state, or Federal permits, rules, regulations, deed restrictions or covenants applicable to the Oceanfront Park Property. In the event the required modification is determined by the City to be not financially feasible in the City's sole discretion, the City shall have the right to terminate this Lease upon the City's 45-day written notification to the County. In the event that the City has not terminated this Lease and fails to timely make such modifications or changes, the County shall have the right to enter upon the Oceanfront Park Property and make such modifications or changes at the City's expense as the County in its sole discretion determines are necessary to meet such compliance. The City shall promptly pay to the County upon demand, as Additional Rent, all costs incurred by the County in connection with such modifications.

Section 4.05 Non-Discrimination.

Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Lease. Failure to meet this requirement shall be considered default of this Lease.

Section 4.06 Surrender of the Oceanfront Park Property.

Upon termination or expiration of this Lease, the City, at its sole cost and expense, shall remove the City's personal property and shall surrender the Oceanfront Park Property to the County. Upon surrender of the Oceanfront Park Property, title to any and all remaining improvements, alterations, and structures within the Oceanfront Park Property shall vest in the County.

Section 4.07 Hazardous Substance.

The City shall not use, maintain, store, or dispose of any contaminants, including, but not limited to, Hazardous Materials or toxic substances, chemicals, or other agents on the Oceanfront Park Property, or any adjacent land, in any manner not permitted by Environmental Laws. Furthermore, the City shall not cause or permit the Disposal of Hazardous Materials upon the Oceanfront Park Property or upon adjacent lands and shall operate and occupy the Oceanfront Park Property 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, and 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 discharge, release, spill, or disposal of a Hazardous Material, whether by the City or any third party, shall be reported to the County immediately upon the knowledge thereof by the City. The City shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or discovered upon the Oceanfront Park Property or emanating from the Oceanfront Park Property onto adjacent lands that occurs as a result of the use and occupancy of the Oceanfront Park Property by the City, or the City's agents, licensees, invitees, subcontractors, or employees.

To the extent permitted by law and subject to the limitations of Fla. Stat. 768.28, the City hereby agrees to indemnify, defend, and hold harmless the County from and against any and all claims, suits, judgments, loss, damage, fines, or liability that may be incurred by the County, including reasonable attorney's fees and cost that may arise from the use or disposal of Hazardous Material upon the Oceanfront Park Property. The City's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. This provision shall survive expiration or termination of this Lease.

Section 4.08 Land and Water Conservation Fund Grant

In 1973 Palm Beach County was awarded a National Park Service Land and Water Conservation Fund (LWCF) grant to acquire 1.75 acres of the Oceanfront Park Property. The parties acknowledge that a portion of the Oceanfront Park Property is subject to Land and Water Conservation Fund grant restrictions. The parties covenant and agree that all development, maintenance and use activities conducted by County and Tenant shall be consistent with

LWCF Grant Agreement. A Notice of Limitation of Use was recorded in Palm Beach County Public Records Book 5031, Pages 199 to 202, requiring the property be used for public outdoor recreation in perpetuity.

Section 4.09 Park Rules and Special Events.

The City shall be entitled to grant short-term licenses reserving the Park's picnic facilities for user groups. Any such special event license shall incorporate the terms of this Lease by reference. The City shall be entitled to retain the proceeds generated by such licenses. Such licenses shall not release the City from any of its obligations under this Lease. Further, the City shall be obligated to ensure that such licensees comply with the terms of this Lease and all applicable federal, state, and county laws, rules, regulations, and ordinances.

**ARTICLE V
REPAIRS AND MAINTENANCE OF OCEANFRONT PARK PROPERTY**

Section 5.01 Responsibility of the County and City.

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

Section 5.02 County's Right to Inspect.

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

**ARTICLE VI
UTILITIES**

The City shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Oceanfront Park Property, 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 Oceanfront Park Property. In no event shall the County be liable for an interruption or failure in the supply of any such utility to the Oceanfront Park Property.

**ARTICLE VII
INSURANCE**

The City is a municipal corporation of the State of Florida subject to the limitations of Florida Statutes 768.28 as amended. City shall maintain a fiscally prudent liability program with regard to its obligations under this Lease, and provide evidence of coverage to the County, at the County's request. The City shall notify the County within thirty (30) days of any change in its insurance status. Nothing herein shall serve as a waiver of sovereign immunity.

Should the City contract with a third-party to perform any service related to this Lease, County shall require the third-party to provide the following minimum insurance:

- a. Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence. Such policy shall be endorsed to include County and City as Additional Insureds.
- b. Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence. Such policy shall be endorsed to include County and City as Additional Insureds.
- c. Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability.

When requested, the City shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

**ARTICLE VIII
INDEMNIFICATION**

Each party shall be liable for its own actions and negligence and to the extent permitted by law, the City shall indemnify, defend, and hold harmless the County against any actions, claims or damages arising out of the City's negligent, willful, or intentional acts or omissions in connection with this Lease. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute agreement by the City to indemnify the County for County's negligent, willful, or intentional acts or omissions. This Article shall survive the expiration or earlier termination of this Lease.

**ARTICLE IX
DESTRUCTION OF OCEANFRONT PARK PROPERTY**

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

In the event the Oceanfront Park Property shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, the City shall restore the Oceanfront Park Property to the same or better condition than that which existed prior to such casualty. The City 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, unless it is commercially unreasonable and/or practicably impossible to do so, in which case, the County shall agree to a reasonable extension of time to commence restoration. The City shall thereafter diligently pursue such restoration to completion.

**ARTICLE X
ASSIGNMENT AND SUBLETTING**

Section 10.01 Consent Required.

The City may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Oceanfront Park Property nor grant any easements affecting the Oceanfront Park Property without prior written consent of the County, which may be granted or withheld at the County's sole and 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 this 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. This section does not impact the City's right to grant short-term licenses as provided under Section 4.09 above.

**ARTICLE XI
DEFAULT**

Section 11.01 Default by the City.

The occurrence of any one or more of the following shall constitute an Event of Default by the City under this Lease: (i) the City's failure to pay any sum due hereunder within thirty (30) days after the same shall become due; (ii) the City's use of the Oceanfront Park Property for a purpose other than that allowed under this Lease; (iii) the City's failure to perform or observe any of the agreements, covenants, or conditions contained in this Lease on the City's part to be performed or observed if such failure continues for more than thirty (30) days after notice from the County, unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event the City shall be entitled to a reasonable period under the circumstances; (iv) the City's vacating or abandoning the Oceanfront Park Property; or (v) the City's leasehold estate being taken by execution, attachment, or process of law or being subjected to any bankruptcy proceeding; (vi) failure to maintain the Oceanfront Park Property in accordance with acceptable maintenance procedures with normal wear and tear excepted. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, the County shall have the right to give the City notice that the County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by the City, 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; provided, however, if the nature of the City's obligations are such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon such termination, the County shall be entitled to pursue such damages as are available to the County pursuant to this Lease or the laws of the State of Florida. In the event City fails or refuses to perform any term, covenant, or condition of this Lease for which a specific remedy is not set forth in this Lease, County shall, in addition to any other remedies provided at law or in equity, have the right of specific performance and injunctive relief. Specific performance will only be required pursuant to this section if there is an annual budgetary funding and appropriation by City for such purpose.

Section 11.02 Default by the County.

The County shall not be in default unless the County fails to perform obligations required of the County within a reasonable time, but in no event later than thirty (30) days after written notice by the City to the County, specifying wherein the County has failed to perform such obligations; provided, however, that if the nature of the County's obligations is such that more than thirty (30) days are required for performance, then the County shall not be in default if the 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 the County and City hereunder are subject to and contingent upon annual budgetary funding and appropriations by their respective legislative bodies.

**ARTICLE XIII
QUIET ENJOYMENT**

Upon payment by the City of the Rent, Additional Rent, and other charges herein provided, and upon the observance and performance of all the covenants, terms, and conditions on the City's part to be observed and performed, the City shall peaceably and quietly hold and enjoy the Oceanfront Park Property for the Term hereby demised without hindrance or interruption by the 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 the County and City concerning the Oceanfront Park Property. 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 the County or the City, unless reduced to writing and signed by both parties.

Section 14.02 Notices.

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). 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. 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, Florida 33411-5605
Telephone: (561) 233-0217
Fax: (561) 233-0210

with a copy to:

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

and a copy to:

Palm Beach County Parks and Recreation Department
Attention: Director
2700 6th Avenue South
Lake Worth, Florida 33461
Telephone: (561) 966-6614
Fax: (561) 963-6734

(b) If to the City at:

City of Delray Beach
Attn: City Manager
100 NW 1st Avenue
Delray Beach, Florida 33444
Telephone: (561) 243-7010

with a copy to:

City of Delray Beach
Attn: City Attorney
200 NW 1st Avenue
Delray Beach, Florida 33444
Telephone: (561) 243-7090

and a copy to:

City of Delray Beach
Attn: Parks and Recreation Director
50 NW 1st Avenue
Delray Beach, Florida 33444
561-243-7250

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.

The County and City both represent and warrant that neither has dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease

Section 14.05 Recording.

The City shall not record this Lease or any memorandum or short form thereof without the written consent and joinder of the County, which may be granted or withheld at the 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 this Lease will be held in a state court of competent jurisdiction located in Palm Beach County, Florida.

Section 14.08 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 14.09 Waiver.

The waiver by either Party of any default of any term, condition, or covenant herein contained shall not constitute a waiver of such term, condition, or covenant for any subsequent default of the same or any other term, condition, or covenant herein contained.

Section 14.10 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 14.11 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 14.12 Incorporation by Reference.

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

Section 14.13 Survival.

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

Section 14.14 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 City.

Section 14.15 Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General is authorized with the power to review past, present, and

proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

Section 14.16 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 ("Effective Date").

Section 14.17 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, City 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 14.18 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 14.19 Condemnation.

If the Oceanfront Park Property, or any part thereof, or any improvements thereto, shall be taken, appropriated, or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, the County shall be entitled to that portion of the award relating to the County's reversionary interest in the fee simple estate. The City shall be entitled to that portion of the award relating to the City's leasehold estate, which includes any and all improvements made to the Oceanfront Park Property by the City, including depreciation deducted from the award total, if the City is not in default of this Lease Agreement. Notwithstanding the foregoing, the City shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, and business damages. In the event of a total taking of the Oceanfront Park Property, the rent shall be prorated, and this Lease shall terminate upon the date title vests in the condemning authority. Notwithstanding such termination, the City 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 pro rata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time the City is unable to use the portion of the Oceanfront Park Property temporarily taken. After such period, Rent shall be restored to the Rent that would have been then due without regard to such taking. The County shall have no obligation to restore the Oceanfront Park Property improvements or otherwise perform any work upon same as a result of any such taking.

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

ATTEST:

Joseph Abruzzo, Clerk of the Circuit Court
and Comptroller

By: _____
Deputy Clerk

COUNTY:

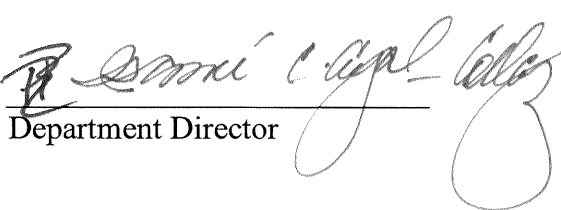
PALM BEACH COUNTY, a political
Subdivision of the State of Florida

By: _____
Gregg Weiss, Mayor

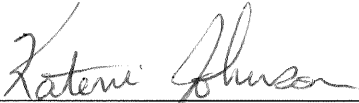
**APPROVED AS TO
LEGAL SUFFICIENCY**

By: 
Chief Assistant County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**


By: 
Department Director

ATTEST:

By: 
Katerri Johnson, City Clerk

CITY:

DELRAY BEACH, a municipal corporation of
the State of Florida

By: 
Shelly Petrolia, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

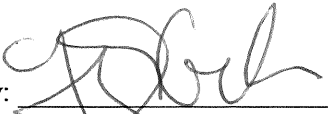
By: 
Lynn Gelin, City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LEASED PREMISES

Beach Parcel 12-43-46-21-00-004-0090 (Deed 02060/0471)

All that part of the South 100 feet of the North 4,780 feet of Section 21, Township 46 South, Range 43 East, which part is bounded on the West by the easterly boundary line of the right-of-way of State Road A1A, and on the East of the Waters of the Atlantic Ocean, together with all littoral rights on the Atlantic Ocean thereunto belonging or in any wise appertaining; situate, lying and being in Palm Beach County, Florida.

Southern Parking Lot 12-43-46-21-15-000-0010 (Deed 02062/0268)

Lots 1 and 2, DELRAY BEACH SHORES, according to the Plat thereof, recorded in Plat Book 23, Page 167 of the Public Records of Palm Beach County, Florida

Northern Parking Lot 12-43-46-21-15-000-0200 (Deed 02623/1820)

Lot 20 and 21, DELRAY BEACH SHORES SUBDIVISION, Palm Beach County, as recorded in Plat 23, page 167, public records of Palm Beach County, Florida



Atlantic Dunes Park
Lease Agreement

This is a legal document. It contains information about the lease agreement for Atlantic Dunes Park. It is intended for informational purposes only and does not constitute an offer or a contract. For more information, please contact the City of Del Mar.

