

Memorandum



Date: May 4, 2010
To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners
From: George M. Burgess
County Manager

Agenda Item No. 8(F)(1)(E)

Subject: Lease Agreement with Town of Bay Harbor Islands
For Property Located at 1165 95 Street, Bay Harbor Islands
To be utilized as a Fire Rescue Station
Property # 2227-00-00

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the execution of a Lease Agreement with the Town of Bay Harbor Islands for property located at 1165 95 Street, Bay Harbor Islands, to be utilized by Miami-Dade Fire Rescue for the operation of Station Number 76. The attached Lease Agreement has been prepared by the General Services Administration at the request of the Miami-Dade Fire Rescue Department (MDFR).

PROPERTY: 1165 95 Street, Bay Harbor Islands

COMMISSION DISTRICT: 4

COMMISSION DISTRICTS IMPACTED: 4

OWNER: Town of Bay Harbor Islands

COMPANY PRINCIPAL: Ronald J. Wasson, Town Manager

OWNER'S TRACK RECORD: The County has no record of negative performance issues with the Town of Bay Harbor Islands.

USE: MDFR has redesigned the Town of Bay Harbor Islands parking garage in order to develop a 7,525 square foot two-bay fire rescue station, including access to the adjacent alley and a total of 10 parking spaces.

BACKGROUND: As a result of the unavailability and high cost of land in the Bay Harbor Islands area, MDFR agreed to use a portion of the proposed Bay Harbor Islands parking garage for the establishment of the Bay Harbor Islands Fire Rescue Station. On July 21, 2009, the Board of County Commissioners passed Resolution No. R-1029-09 approving an Interlocal Agreement between the County and the Town of Bay Harbor Islands. Said Interlocal Agreement authorizes the County to pay up to \$30,500 to redesign the parking garage in order to accommodate the station and states that the County will enter into a lease agreement with the Town after construction of the parking garage is completed.

The parking garage has been completed as well as the design of the fire rescue station. It should be noted that the Interlocal Agreement states that the station will be approximately 7,200 square feet, however, the final design of the station resulted in the need for 7,525 square feet, which is the standard size of a two-bay station.

JUSTIFICATION:

The development of the station will provide essential fire and emergency service to Bay Harbor Islands, Bal Harbour Island, Surfside, and Indian Creek. The location of the proposed station is adequate and will enhance emergency response time to the aforementioned municipalities and the surrounding communities. Presently, the Haulover station, located at 10500 Collins Avenue, which is two miles away from this site, provides service to these areas.

The proposed station is necessary to accommodate the present and future population growth of the area. During the past few years, Bay Harbor Islands has approved a series of residential and commercial developments which is anticipated to increase the number of fire and medical alarms. Presently, the area has a high volume of emergency incidents, which are expected to increase upon completion of the developments.

MDFR modified the design of the parking garage to accommodate a two-bay fire rescue station capable of housing two emergency response vehicles along with related amenities. The design of the proposed station is acceptable to the Town. The station will not generate or result in excessive noise, traffic, or cause undue burden on public facilities, and has been designed in a manner to minimize the visual impact on the surrounding area.

LEASE TERM:

Thirty years with two additional thirty-year renewal option periods.

EFFECTIVE DATES:

Commencing upon the passage of the resolution by the Board of County Commissioners approving the Lease Agreement and issuance of a Certificate of Occupancy and terminating thirty years thereafter.

RENTAL RATE:

The annual rent for the first and second year of the initial term shall be \$120,400.00 per year, which is equal to \$16.00 per square foot on an annual basis. The rental rate for the third through the thirtieth year of the initial lease term shall be increased by one percent (1%) each year.

FINANCIAL IMPACT:

The total financial impact to the Miami-Dade Fire Rescue Department for the first lease year is estimated to be \$961,958.00, which is comprised of the following:

First Year Occupancy Cost:

<u>Total Dollars</u>		<u>PSF</u>
<u>Annual Base Rent</u>	\$ 120,400.00	\$ 16.00
<u>Operating Expenses</u>		
Electric	\$ 4,887.00	
Water	\$ 775.00	
Trash	\$ 750.00	
<u>Indirect Expense:</u>		
Lease Management Fee (4%)	\$ 4,816.00	
<u>One-time Expense:</u>		
Total Build-Out Costs	\$ 830,330.00	
Total Cost, first year:	\$ 961,958.00	

LEASE CONDITIONS:

The County is responsible for the build-out, operation and maintenance of the fire station and all utilities and communication services equipment, roof, HVAC system, trash disposal, and janitorial and custodial services. The County shall maintain all systems servicing the fire station such as plumbing and electrical lines, fixtures and all exterior structural components of the station.

CANCELLATION PROVISIONS:

The County may cancel at any time by giving Landlord 180 day's prior written notice.

FUNDING SOURCE:

Fire District. This item has been budgeted in the Fire District Operating Budget.

COMMENTS:

The build-out costs for this facility are estimated to be \$830,330.00 and have been budgeted with Impact Fees. The build-out phase of the project will commence following approval of the Lease Agreement with completion of construction in the current year.

MONITOR:

Jane Marie Hundertmark, Real Estate Officer

DELEGATED AUTHORITY:

Authorizes the County Mayor or County Mayor's designee to execute the lease agreement, exercise the cancellation provision and the two additional thirty-year renewal option periods.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 4, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)(E)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 8(F)(1)(E)

Veto _____

5-4-10

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT AT 1165 95 STREET, BAY HARBOR ISLANDS WITH THE TOWN OF BAY HARBOR ISLANDS, A PUBLIC BODY CORPORATE AND POLITIC OF THE STATE OF FLORIDA, FOR PREMISES TO BE UTILIZED BY THE MIAMI-DADE FIRE RESCUE DEPARTMENT FOR FIRE RESCUE STATION NUMBER 76; WITH TOTAL FISCAL IMPACT TO MIAMI-DADE COUNTY NOT TO EXCEED \$22,508,388.00 FOR THE INITIAL THIRTY YEAR TERM AND TWO THIRTY YEAR RENEWAL OPTION PERIODS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Lease Agreement between Town of Bay Harbor Islands, a public body corporate and politic of the State of Florida, for premises to be utilized by the Miami-Dade Fire Rescue Department for a Fire Rescue Station Number 76, with a total fiscal impact to Miami-Dade County not to exceed \$22,508,388.00 for the term of the lease including two thirty year renewal option periods, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's designee to exercise any and all other rights conferred therein.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of May, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve



LEASE AGREEMENT

THIS AGREEMENT made on the _____ day of _____, 2010 by and between the TOWN OF BAY HARBOR ISLANDS, a Florida municipal organization, hereinafter called the "LANDLORD," and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "TENANT,"

WITNESSETH:

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the Demised Premises described as follows:

A improved space containing approximately 7,525 square feet of the building space located at 1165 95 Street, Bay Harbor Islands, Florida 33181 including access to the adjacent alley and parking for approximately 10 vehicles.

TO HAVE AND TO HOLD unto the said TENANT for a term of thirty (30) years, commencing upon the passage of the resolution of the Miami-Dade Board of County Commissioners (the "Board") approving this Lease Agreement and issuance of a Certificate of Occupancy, (the "Commencement Date") and terminating thirty (30) years thereafter. The annual base rent for the Demised Premises shall be One Hundred Twenty Thousand Four Hundred and 00/100 Dollars (\$120,400.00), for the first and second lease year, payable in twenty four equal monthly installments of Ten Thousand Thirty Three and 33/100 Dollars (\$10,033.33), payable in advance on the first day of every month at Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida 33154 or at such other place and to such other person as LANDLORD may from time to time designate in writing, as set forth herein. The rental rate for the third through the thirtieth (30th) year of the initial lease term and any subsequent renewal option periods shall be increased each year by one percent (1%). The October monthly installment rental payment for each year will be processed by the County after the close of the County's fiscal year, for each calendar year.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

ARTICLE I
USE OF DEMISED PREMISES

The area of the Demised Premises shall be used by TENANT for the construction, operation and maintenance of the Miami-Dade Fire Rescue Station servicing the community and for the performance of work incidental thereto, which will necessarily entail services performed for the general public. TENANT shall, at its own costs and expense, be responsible for complying with all applicable laws and obtaining all required documentation, including but not limited to a Certificate of Use and/or Certificate of Occupancy, all zoning and other approvals required to use the Demised Premises for the purposes intended in accordance with the Lease Agreement.

The Interlocal Agreement between the Town of Bay Harbor Islands and Miami-Dade County to redesign and construct the West Bay Harbor & 95th Street Parking Garage in order to accommodate a Fire Rescue Station is attached in Exhibit "A", as is deemed to have been fully and satisfactorily completed.

ARTICLE II
CONDITION OF DEMISED PREMISES

LANDLORD hereby covenants it is the fee simple owner of the Demised Premises, free and clear of any mortgage or other lien and that the LANDLORD shall not mortgage nor suffer a lien to be attached to said Demised Premises during the entire term, including renewals of this Lease Agreement. TENANT hereby accepts the Demised Premises in an "as is" condition.

ARTICLE III
UTILITIES

TENANT, during the term hereof, shall timely pay all charges for all utilities such as water, waste disposal, and electricity used by TENANT. TENANT hereby acknowledges that LANDLORD shall not be required to furnish any types of these services to TENANT during the lease term. Interruptions, delays or failure of TENANT to receive or procure any of the foregoing services or utilities shall not be chargeable to LANDLORD under any circumstances, except where the interruption, delay or failure is caused by the LANDLORD.

ARTICLE IV
MAINTENANCE

TENANT shall, at all times, maintain the Demised Premises in good order and repair and in clean condition, at its own cost and expense during the term of the Lease Agreement. TENANT shall also provide and pay for when due, all costs incurred in TENANT'S use and occupancy of the Demised Premises, including but not limited to operating, cleaning, equipping, protecting and lighting the Demised Premises. TENANT acknowledges and agrees that LANDLORD shall not be required to conduct any maintenance, repairs, improvements, replacements or restoration to the Demised Premises during the Lease term. TENANT shall maintain, repair and replace as necessary the interior and exterior structure and systems servicing the facility such as plumbing and electrical fixtures, electrical lines and equipment; air-conditioning and heating equipment; fire equipment, including inspections as required by applicable fire codes, all exterior structural components of the facility including, but not limited to the roof, walls, windows, doors, frames, foundation, exterior grounds, parking lot and landscape. Exterior maintenance shall include, without limitation, the landscaping, cutting, pruning and similar maintenance of all foliage; routine and non-routine maintenance of parking areas, exterior areas (including cleaning, painting, striping, paving and repairs) shall be performed by the TENANT, at its sole cost and expense. In the event that TENANT fails to perform repairs and maintenance as aforesaid LANDLORD shall have the right, but not the obligation following written notice to TENANT (except in the case of emergency) to perform such repairs and maintenance and TENANT shall reimburse LANDLORD for the reasonable costs and expenses thereof within sixty (60) days after written demand thereof.

ARTICLE V
ALTERATIONS BY TENANT

TENANT may make any alterations, additions, or improvements in or to the Demised Premises, subject to LANDLORD'S prior written approval which shall not be unreasonably withheld. All immovable additions, fixtures, or improvements installed by TENANT within the Demised Premises

shall remain LANDLORD'S property upon the expiration of the Lease Agreement or any renewal or cancellation thereof. Subject to the above, any removable partitions or equipment installed by TENANT within the Demised Premises, as well as personal property, shall remain TENANT'S property and may be removed by TENANT at any time. All improvements must be completed at TENANT'S own expense in accordance with all applicable Federal, State and Local laws ("laws").

ARTICLE VI
DESTRUCTION OF DEMISED PREMISES

In the event the erected Demised Premises or any portion thereof should be destroyed or so damaged by fire, windstorm, or other casualty, either party may cancel this Lease Agreement for its convenience by the giving of written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation. If neither party shall exercise the foregoing right of cancellation, TENANT shall cause the building and Demised Premises to be repaired and placed in good condition with due diligence so that the condition of the building and Demised Premises equals to similar condition when erected; time being of the essence. If said Demised Premises sustained irreparable damages, TENANT shall be responsible for the removal of all debris from the building, parking lot and landscaped areas.

ARTICLE VII
NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the Demised Premises above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct of LANDLORD, LANDLORD'S agents or employees.

ARTICLE VIII
ANTENNAS, CABLE AND SIGN INSTALLATIONS

TENANT may install antennas, cable lines, and/or satellite dishes as may be necessary for the

performance of its work. All installations will be in accordance with laws and regulations of the Federal, State, County, and the Town of Bay Harbor Islands Government. Exterior signs must be preapproved by LANDLORD in writing in accordance with the Town of Bay Harbor Islands and County ordinances and regulations. The cost of creating, erecting and installing the signs shall be paid by TENANT. TENANT shall remove all signs at termination of this Lease Agreement and any damage or unsightly condition caused to the Demised Premises because of or due to said signs shall be satisfactorily corrected by TENANT at its own cost and expense.

ARTICLE IX
LIABILITY FOR DAMAGE OR INJURY

TENANT shall not be liable for any damage or injury which may be sustained by any party or person on the Demised Premises other than the damage or injury caused solely by the negligence of TENANT, subject to all limitations of Florida Statutes, Section 768.28.

LANDLORD shall not be liable for any damage or injury which may be sustained by any party or person on the Demised Premises other than the damage or injury caused solely by the negligence of LANDLORD.

ARTICLE X
CONSTRUCTION

TENANT hereby agrees to design, construct, and operate on the land (a) a building consisting of a fire rescue facility; (b) a surface parking lot; and (c) such other improvements TENANT deems necessary and appropriate for the operation and maintenance of a fire rescue facility including, but not limited to, driveways, sidewalks, lighting, right of way and signage (collectively, the "facility").

TENANT shall be solely responsible for the cost associated with the design and construction of the facility. TENANT shall work with all reasonable diligence to complete design and construct the facility. Once commenced, construction of the facility shall not be ceased or unreasonably delayed except as otherwise permitted by this Lease Agreement.

TENANT shall require that its construction contractor obtain a performance and payment bond in a form required by Section 255.05, Florida Statutes, bonding at least one hundred percent (100%) of the cost of construction of the facility. TENANT agrees to follow all applicable competitive selection requirements for each architect, engineer and contractor entering into a contract with TENANT for the design and construction of the facility.

TENANT shall not allow any contractor to commence work on the design or construction of the facility until such architect, engineer, or contractor has provided TENANT with evidence of insurance coverage consistent with customary tenant requirements and also naming the Town of Bay Harbor Islands "LANDLORD" as additionally insured, including a payment and performance bond in the form prescribed by the TENANT, complying with Section 255.05, Florida Statutes, in at least the amount of one hundred percent (100%) for the cost of construction.

TENANT acknowledges that the facility is located adjacent to a school district and the downtown area and the exterior aesthetic design features of the facility are material matters to the LANDLORD and the Town of Bay Harbor Islands. TENANT agrees to coordinate exterior aesthetic design features of the facility with the LANDLORD so that such are consistent with the Town of Bay Harbor Islands to the extent reasonably feasible, provided that in no event shall this provision require TENANT to expend any funds in excess of the TENANT'S budgeted amount nor shall TENANT be required to take any action which would result in an delay of design or construction of the facility.

Prior to the commencement of any construction of the Facility, TENANT shall submit to the LANDLORD for its review and approval a conceptual plan showing the proposed Facility (the "Conceptual Plan"), which approval shall not be unreasonably withheld, delayed or conditioned. LANDLORD's approval of the Conceptual Plan shall be limited to the requirements and criteria set forth in this Lease such as the aesthetic design feature of the facility. Following approval of the Conceptual Plan

TENANT shall submit to the LANDLORD for review with the Conceptual Plan only, all plans and specifications for and through all phases of design and construction (e.g., schematic, design development, and construction) with respect to the facility. The approval by the LANDLORD of the Conceptual Plan and any plans specifications, site plans, designs or other documents submitted to the LANDLORD pursuant to the terms and conditions of this Agreement shall not constitute (a) a representation or warranty that such comply with all applicable laws, ordinances, rules, regulations and procedures of all applicable governmental authorities, and/or (b) the approval of the Town of Bay Harbor Islands, it being expressly understood that TENANT is subject to all applicable ordinances, rules, regulations and procedures of the Town of Bay Harbor Islands with respect to the design and construction of the facility.

TENANT may make permitted changes without the LANDLORD'S approval. A "permitted" change shall mean (i) a change which is required to be made to comply with applicable governmental requirements; (ii) a change which involves only substituting materials of comparable or better quality; (iii) a change required by the failure of the approved plans to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of the facility; and (iv) a change which is made to correct inconsistencies in various plans and specifications with prior written notification to LANDLORD.

ARTICLE XI
PEACEFUL POSSESSION

Subject to TENANT'S compliance with the Lease terms and the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the Demised Premises above described, without hindrance or molestation by LANDLORD.

ARTICLE XII
SURRENDER OF DEMISED PREMISES

TENANT agrees to surrender to LANDLORD at the end of the term of this Lease Agreement, or any extension thereof, said Demised Premises in as good condition as the Premises were the date

possession was given to TENANT in "Broom Clean" condition,. LANDLORD shall own the facility and/or any other improvement located on, under or above the land at the time of the expiration or earlier termination of this Lease Agreement and TENANT agrees to execute any documentation reasonably requested by LANDLORD to effectuate the foregoing including a County Deed.

ARTICLE XIII
INDEMNIFICATION AND HOLD HARMLESS

LANDLORD shall have no liability whatsoever for any property damage or personal injury resulting from TENANT'S use and occupancy of the Demised Premises or the exercise by TENANT of its rights and obligations under this Lease Agreement except in the event that such property damage or personal injury is caused by the negligence or willful misconduct of the LANDLORD.

TENANT does hereby agree to indemnify and hold harmless the LANDLORD to the extent and within the limitations of Section 768.28, Florida Statutes, as may be amended from time to time, from any and all personal injury or property damage claims, liabilities, losses or cause of action which may arise as a result of the sole negligence of the TENANT. However, TENANT will not indemnify the LANDLORD from any liability or claim arising out of the negligent performance or failure of performance of the LANDLORD, LANDLORD'S agents or employees, or third parties.

ARTICLE XIV
SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE XV
NON-DISTURBANCE

LANDLORD covenants that there are no ground or underlying leases, mortgages or other encumbrances on, against or covering the Demised Premises. During the term of this Lease

Agreement, including any renewal thereof, LANDLORD covenants and agrees it will not sell, convey nor transfer the Demised Premises to a third party, unless subject to this Lease Agreement.

ARTICLE XVI
OPTION TO RENEW

Provided this Lease Agreement is not otherwise in default, TENANT through its County Mayor or the County Mayor's designee, is hereby granted the option to extend this Lease Agreement for two (2) additional thirty-year renewal option periods upon the same terms and conditions, by giving LANDLORD notice in writing at least ninety (90) days prior to the expiration of this Lease Agreement or any extension thereof. Should TENANT neglect to exercise any extension option by the date specified above, TENANT's right to exercise shall not expire until thirty (30) business days after notice from LANDLORD of TENANT's failure to exercise the option.

ARTICLE XVII
CANCELLATION

TENANT, through its County Mayor or the County Mayor's designee, shall have the right to cancel this Lease Agreement at anytime by giving LANDLORD one hundred eighty days (180) days written notice prior to its effective date.

ARTICLE XVIII
SPECIAL CONDITION

(1) Governing Laws/Venue – This Lease Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Lease shall be in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

(2) Severability – If any provision of this Lease or the application thereof to either party of this Lease is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Lease which can be given effect without the invalid provision, and to this end, the provisions of this Lease are severable.

(3) Survival of Certain Provisions – From and after the expiration of this Lease, the parties shall continue to be bound by such provisions of this Lease as by their nature survive such event.

(4) Attorney's Fees and Costs – In connection with proceedings in any court related to, concerning of arising out of this Lease, the prevailing party shall be entitled to recover all reasonable attorney's fees and costs incurred at all tribunal levels.

(5) Binding Effect – The terms, conditions, and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors.

(6) No Waiver – There shall be no waiver of the rights of either party to demand performance of any of the provisions, terms and covenants of this Lease nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Lease with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

(7) Insurance – TENANT hereby represents and warrants that it shall self-insure for fire and extended coverage covering the TENANT'S owned contents only, bodily injury and property damage, worker's compensation insurance, and comprehensive automobile liability insurance.

(7.1) Builder's Risk Insurance – During construction of the Improvements and prior to the issuance of a certificate of occupancy or completion for the Improvements, County and/or its designee, at their own expense, shall maintain in effect builder's risk insurance for the Property in an amount of not less than one hundred percent (100%) of full replacement cost. Builder's risk insurance shall insure against all risks.

(7.2) Hazard Insurance – County shall provide the Town of Bay Harbor Islands with a copy of this insurance policy prior to the issuance of a certificate of occupancy or completion for the Improvement and add this property to its master property program.

(8) Setback requirements for the facility are based on the site being part of the Town of Bay Harbor Island's PUD standards.

ARTICLE XIX
NOTICES

It is understood and agreed between the parties hereto that written notice addressed and sent by either (a) certified or registered mail, return receipt requested, first class, postage prepaid, (b) and or hand delivery, (c) nationally recognized overnight carrier service and addressed as follows:

TENANT:

General Services Administration
Real Estate Development Division
111 1st Street, Suite 2460
Miami, Florida 33128

LANDLORD:

Ronald J. Wasson/Successor
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

shall constitute sufficient notice to TENANT, and written notice addressed to LANDLORD, and mailed or delivered to the address as stated above, shall constitute sufficient notice to LANDLORD to comply with the terms of this Lease Agreement. Notices provided herein in this paragraph shall include all notices required in this Lease Agreement or required by law.

ARTICLE XX
INSPECTIONS/HAZARDOUS MATERIALS AND
ENVIRONMENTAL POLLUTION

The LANDLORD shall provide a Letter of Current Enforcement Status of the Property by the Miami-Dade County Department of Environmental Resources Management (DERM) and conduct a review of the environmental site assessment as required or recommended by DERM to determine the existence and extent, if any, of hazardous materials or toxic substances and hazardous waste on the Property in violation of any laws, ordinances, rules or restrictions of any governmental authority having jurisdiction. The term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste, it shall also include solid waste or debris of any kind. Should such inspections show defects to the

Property, including the presence of hazardous material and/or excessive development cost, which TENANT is unable or unwilling to accept, TENANT may elect to terminate this lease Agreement by giving LANDLORD written notice prior to the expiration, whereupon both LANDLORD and TENANT shall be released from all further obligations hereunder, except those which expressly survive the termination hereof, unless LANDLORD in LANDLORD'S sole discretion elects in writing to remediate the environmental contamination to TENANT'S satisfaction. If LANDLORD is unwilling to remediate to TENANT'S satisfaction, TENANT may elect to proceed at TENANT'S option and deduct the cost from future rental payments, such option to be exercised in writing within fifteen (15) days of LANDLORD'S notice to TENANT that LANDLORD is unable or unwilling to remediate. If TENANT does not waive such remediation, this Lease Agreement shall terminate as above set forth.

If the Letter of Current Enforcement Status or subsequent testing confirms the presence of hazardous materials or toxic substances and hazardous waste on the Real Property not caused by TENANT, TENANT or LANDLORD may elect to terminate this Lease Agreement within fifteen (15) days of receipt of such Letter or testing reports by giving written notice to the other party, whereupon both TENANT and LANDLORD shall be released from all further obligations hereunder, except those which expressly survive the termination hereof.

If TENANT is the sole cause of the presence of hazardous materials or toxic substances or hazardous waste on the Real Property, TENANT shall have the sole responsibility of remediation.

Should TENANT and LANDLORD elect not to terminate this Lease Agreement, LANDLORD shall, at LANDLORD'S sole cost and expense, promptly and diligently commence and complete any and all assessments and clean ups and monitoring of the Real Property necessary to obtain full compliance with any and all applicable governmental restrictions.

ARTICLE XXI
WAIVER OF LANDLORD'S LIEN

LANDLORD, for itself and its successors and assigns, does hereby waive all rights to levy and/or distraint and all lien rights accrued and accruing as to all personal property, machinery, fixtures, and equipment, affixed or otherwise, now or hereafter belonging to or in the possession of TENANT. Further, TENANT may at its discretion remove from time to time all or part of its personal property, machinery, trade fixtures, and equipment.

ARTICLE XXII
FORCE MAJEURE

TENANT and LANDLORD shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by cause or causes beyond TENANT'S or LANDLORD'S control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of TENANT or LANDLORD

ARTICLE XXIII
LANDLORD'S DEFAULT

It shall constitute a default of this Lease Agreement by LANDLORD if, except as otherwise provided in this Lease Agreement, LANDLORD fails to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by LANDLORD, where such failure shall continue for a period of thirty (30) days after written notice thereof from TENANT to LANDLORD; provided, however, that if the nature of LANDLORD'S non-compliance is such that more than thirty (30) days are reasonably required for its cure, then LANDLORD shall not be deemed to be in default if LANDLORD commenced such cure within said thirty (30) day period and thereafter diligently

prosecutes such cure to completion. In the event of any such default by LANDLORD, which remains uncured beyond the cure period the TENANT may at any time terminate this Lease Agreement with seven (7) days written notice to LANDLORD or bring an action for damages, or injunctive relief (it being recognized that in such event TENANT is irreparably harmed for which there is no adequate remedy at law). No remedy of TENANT provided for in the Lease Agreement shall be considered to exclude or suspend any other remedy provided for herein, but the same shall be cumulative and in addition to TENANT's remedies at law or in equity.

ARTICLE XXIV
WAIVER

If, under the provisions hereof, LANDLORD or TENANT shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LANDLORD's or TENANT's rights hereunder, unless expressly stated in such settlement agreement. No waiver by LANDLORD or TENANT of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LANDLORD or TENANT of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by TENANT or receipt by LANDLORD of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LANDLORD be deemed an accord and satisfaction and LANDLORD may accept such check or payment without prejudice to or waiver of LANDLORD's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No reentry by LANDLORD and no acceptance by LANDLORD of keys from TENANT shall be considered an acceptance of a surrender of this Lease Agreement.

ARTICLE XXV
DEFAULT OF TENANT

If TENANT shall fail to perform any of the other conditions, covenants, or agreements herein made by TENANT, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to TENANT by LANDLORD, except for failure to pay rent, which shall have a fifteen (15) day period for cure after written notice thereof to TENANT by LANDLORD, and further, if TENANT, following written notice to LANDLORD that the failure cannot be cured within such (30) day period, shall commence and be diligently attempting to cure such failure to perform and other conditions, covenants, or agreements, the time to cure, but no longer than ninety (90) days under any circumstance, then LANDLORD may terminate this Lease Agreement and/ or proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, except for personal property of TENANT as may be applicable. All rights and remedies of LANDLORD under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LANDLORD under applicable law.

ARTICLE XXVI
GOVERNING LAW

This Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE XXVII
HOLDOVER

If TENANT, with LANDLORD's consent, remains in possession of the Demised Premises after expiration of the term and if LANDLORD and TENANT have not executed an express written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental equivalent to one hundred percent (100%) of the monthly rental in effect immediately prior to expiration

of such holding over period. All of the terms of the Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in force and effect on said month to month basis.

ARTICLE XXVIII
WRITTEN AGREEMENT

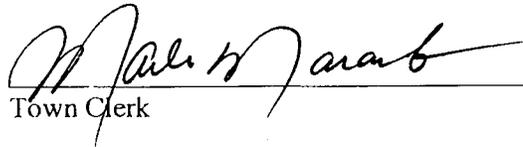
This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

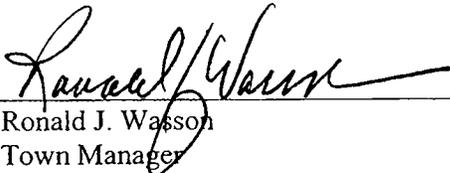
IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(OFFICIAL SEAL)

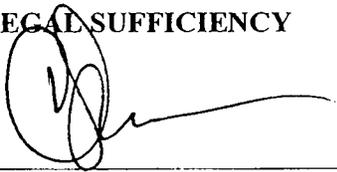
ATTEST:

TOWN OF BAY HARBOR ISLANDS


Town Clerk

By: 
Ronald J. Wasson
Town Manager
(LANDLORD)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


By: _____
Town Attorney

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY

By: _____
Deputy Clerk

By: _____
Carlos Alvarez
County Mayor
(TENANT)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney