

SECOND AMENDMENT TO THE LEASE AGREEMENT BETWEEN BROWARD COUNTY AND THE  
SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS OF BROWARD COUNTY, INC.

This Second Amendment to the Lease Agreement ("Second Amendment") between Broward County and The Society for the Prevention of Cruelty to Animals of Broward County, Inc., is made and entered into by and between Broward County, a political subdivision of the state of Florida ("County" or "Lessor"), and South Florida Wildlife Center, Inc., a Florida not-for-profit corporation, formerly known as The Society for the Prevention of Cruelty to Animals of Broward County, Inc. ("Lessee") (collectively, the "Parties").

RECITALS

A. The Parties entered into that certain Lease Agreement between Broward County and The Society for the Prevention of Cruelty to Animals of Broward County, Inc., dated August 3, 2000 (the "Original Agreement"), for the lease of vacant land for use as an animal shelter, animal hospital, animal adoption center, and related uses.

B. The Parties entered into a First Amendment to the Original Agreement, dated June 23, 2009 (the "First Amendment"), to extend the term of the lease and add additional requirements related to the Lessee's construction of an animal hospital and animal adoption center. The Original Agreement, as amended by the First Amendment, is hereinafter referred to as the "Agreement" or "Lease."

C. On December 27, 2010, Lessee changed its name from The Society for the Prevention of Cruelty to Animals of Broward County, Inc., to South Florida Wildlife Center, Inc.

D. The Parties desire to further amend the Agreement to update the corporate name of Lessee, provide for milestones within which Lessee is to complete construction of a wildlife hospital and rehabilitation center, provide for an extension of the term of the Lease tied to completion of the milestones, provide for adjustments to the rental rate tied to the milestones, and update other terms and conditions of the Lease.

E. County has determined that this Second Amendment is in the County's best interest.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. The above recitals are true and correct and are incorporated herein as if set forth in full hereunder.

2. Amendments made to the Agreement by this Second Amendment are indicated by use of strikethroughs to indicate deletions (~~deletions~~) and highlighted underlining to indicate additions (additions), unless otherwise stated.
3. The title page and table of contents of the Agreement are hereby deleted.
4. Every reference in the Agreement, including in the title of the Agreement and the recitals as to the parties to the Agreement, to "The Society for the Prevention of Cruelty to Animals of Broward County, Inc." is hereby amended and replaced with "South Florida Wildlife Center, Inc.," and Lessor and Lessee are collectively referred to in the Agreement as the "Parties."
5. Articles 1 thru 5 of the Agreement are hereby amended, in part, to read as follows:

1. **PREMISES**

A. **DEFINED**

LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR on the terms and conditions hereinafter set forth the vacant land consisting of approximately 4.11 acres located at Port Everglades, in Broward County, Florida, together with all appurtenances, rights, privileges, and hereditaments thereto, as more particularly and described on Exhibit A, attached hereto and made a part hereof (the "Premises").

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2. **TERM**

The term of this Lease ("Lease Term") shall commence on the "Effective Date," defined as the day ~~which~~ that falls on the 1<sup>st</sup> of the month immediately following full execution of this Lease by LESSOR, and ending terminate on the ~~29<sup>th</sup>~~ 30<sup>th</sup> day of September, 2040, unless terminated sooner as provided herein. ~~The parties hereby agree that the Lease Agreement between The Society for the Prevention of Cruelty to Animals of Broward County, Inc. and the Port Everglades Authority dated October 9, 1970, and all amendments thereto, shall immediately terminate pursuant to the provisions of Section 27 herein.~~

~~The lease extension is being granted in order for the LESSEE to begin to fundraise for the construction of a hospital, adoption center and other auxiliary facilities. The lease extension will only be effective upon completion of the facility. In the event that the new hospital construction is not completed prior to September 29, 2020, the lease extension agreement will be null and void and the lease will terminate on September, 29, 2020, which is the existing lease termination date at the time of this amendment.~~

If Milestone 3, as defined in Article 3, is completed within six (6) years after the Commencement Date, the Lease Term will be automatically extended for an additional fourteen (14) year period through September 30, 2054. "Commencement Date," as used herein, is defined as the date the Second Amendment to this Lease is completely executed by the Parties.

### 3. RENTAL RENT PAYMENTS AND SECURITY DEPOSIT

A. Pursuant to Chapter 32, Section 32.6(d)(c) of the Broward County Administrative Code, LESSOR has agreed to the rental rate of Two Hundred Dollars (\$200.00) per lease year, as the use of the Premises as an animal shelter, animal a wildlife hospital and adoption rehabilitation center serves a public purpose, which lawfully could be discharged by LESSOR. Said rent shall be is due and payable on or before the 1st day of October, 2000, and each and October 1st thereafter during the Lease Term hereof.

~~Payment of fair market value rental fee for the period of the lease extension.~~

~~One Hundred Eighty (180) days before the existing lease termination date of September 29, 2020, LESSOR will authorize a new appraisal of the land in order to set fair market value rental fees for the period of the lease extension. The services that the LESSEE provides to the Broward County and the LESSEE's nonprofit 501(c)(3) status will be considerations when establishing the rental rate.~~

B. Notwithstanding the foregoing, the rental rate established in Section 3.A. will be adjusted as hereinafter provided in the event that the milestones set forth below are not timely completed by LESSEE for the construction of a wildlife hospital and rehabilitation center:

1) Milestone 1 – Submittal of ninety-percent (90%) completed design and construction documents, and a construction schedule: must be completed within one (1) year after the Commencement Date. If not timely completed, the rental rate will be automatically adjusted to Eight Thousand One Hundred Dollars (\$8,100.00) per lease year, with any pro rata partial year payment immediately due and payable, and continuing until Milestones 2 and 3 are completed, with the adjusted rental rate subject to further adjustment under Milestone 2. In the event Milestone 1 is not completed within two (2) years after the Commencement Date, LESSOR shall have the right to terminate this Lease by giving one hundred eighty (180) calendar days written notice thereof to LESSEE.

2) Milestone 2 – Obtain all required construction permits and commence construction: must be completed within one (1) year after the deadline for completion of Milestone 1. If not timely completed, the rental rate will be automatically adjusted to Twelve Thousand Two Hundred Dollars (\$12,200.00) per lease year until Milestone 3 is completed, with any pro rata

partial year payment immediately due and payable, with the adjusted rental rate subject to further adjustment under Milestone 3. In the event Milestone 2 is not completed within three (3) years after the Commencement Date, LESSOR shall have the right to terminate this Lease by giving one hundred eighty (180) calendar days written notice thereof to LESSEE.

3) Milestone 3 – Obtain Final Certificate of Occupancy: must be completed within five (5) years after the Commencement Date. If not timely completed, the rental rate will be automatically adjusted to Sixteen Thousand Three Hundred Dollars (\$16,300.00) per lease year, with any pro rata partial year payment immediately due and payable, until Milestone 3 is completed. In the event Milestone 3 is not completed within six (6) years after the Commencement Date, LESSOR shall have the right to terminate this Lease by giving one hundred eighty (180) calendar days written notice thereof to LESSEE.

4) Unless notice of termination has been sent by LESSOR, upon completion of Milestone 3, the rental rate will be adjusted to Two Hundred Dollars (\$200.00) per lease year commencing on October 1<sup>st</sup> following completion of Milestone 3.

C. Due to the charitable and humanitarian use and public purpose for which the Premises are to be used by LESSEE, a security deposit from LESSEE is not required.

#### 4. INTEREST AND LATE RENT FEE AND FINANCE CHARGES

Interest and late charges shall accrue on all delinquent rent and other amounts due hereunder as is provided for in LESSOR's rules, regulations and ordinances, including if LESSEE fails to make any rent payment to LESSOR under the terms of this Lease within fifteen (15) calendar days after its due date, LESSEE shall pay LESSOR, in addition to the amount otherwise due, a late fee equal to ten percent (10%) of such overdue amount. Finance charges shall accrue on all delinquent rent amounts as is provided for in LESSOR's published Port Everglades Tariff No. 1112, amendments thereto and reissues thereof, provided such assessments shall be are applied uniformly to all customers of LESSOR similarly situated.

No acceptance by LESSOR of rent, fees, charges, or other payments in whole or in part for any period or periods after a default by LESSEE of any of the terms, covenants, and conditions hereof shall be deemed a waiver of any right on the part of LESSOR to terminate this Lease. Any and all amounts due and payable under this Section article shall will be considered additional rent due and payable to LESSOR.

#### 5. PLACE OF PAYMENTS



All rent payments and other payments and fees required to be made by LESSEE to LESSOR under this Lease shall be made payable to: BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS, and shall be delivered to: Broward County Port Everglades Department, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be substituted therefor.

6. Articles 6 and 7 of the Agreement are hereby amended to read as follows:

6. TAXES

A. Nothing herein shall prevent LESSEE from challenging any assessment or any tax to the same extent and in the same manner as may any other property owner or resident of Broward County.

~~For each Lease Year hereunder~~ Throughout the Lease Term, LESSEE agrees to pay, ~~as rent,~~ as required herein, all taxes, including, but not limited to, taxes levied and assessed upon the Premises, including, but not limited to, all ad valorem taxes on the improvements thereon and LESSEE's leasehold, together with all special assessments of any kind levied and assessed against the leasehold property and improvements Premises, including, but not limited to, the improvements thereon, together with sales tax. Further, LESSEE agrees to pay, ~~as rent,~~ when due and before the same becomes delinquent, all personal property taxes ~~which that~~ that may be levied and assessed against all LESSEE's tangible personal property situated on the Premises and subject to taxation, or against LESSEE's intangible personal property subject to taxation in Broward County, Florida. ~~Additionally, LESSEE also agrees to pay, as rent,~~ all sales or use taxes ~~which that~~ that might hereafter be lawfully assessed or imposed arising out of ~~the execution of this Lease~~ LESSEE's operations of the Premises and the improvements. Notwithstanding any provision of this Lease to the contrary, NO obligation, which accrued but has not been satisfied under any prior agreements between the ~~parties,~~ shall terminate or be considered canceled upon the execution of this Lease. Rather, such obligation shall continue as if it had accrued under this Lease until the obligation is satisfied. ~~"Lease year"~~ shall be defined as the ~~twelve (12) month period following the commencement of this Lease and each twelve (12) month period thereafter.~~

B. ~~1) For all taxes since January 1, 1995, the obligation for which accrued under any prior agreements between the parties and/or under this Lease, LESSOR, in its sole discretion, may require LESSEE to make payment for those amounts, plus sales tax, into an escrow account as designated by LESSOR until final resolution of the Broward County v. Markham case. Any interest which accrues on the amount held in escrow shall be credited against any remaining indebtedness of LESSEE to LESSOR as a result of the taxes.~~

~~2) If upon final resolution of the Broward County v. Markham case, LESSOR is found NOT to be liable for any taxes as a result of LESSEE's use of the Premises~~

~~under any prior agreements between the parties and/or under this Lease, LESSOR shall refund to LESSEE the total amount which LESSEE has paid into escrow, plus interest, if any, which may have accrued.~~

~~3) In the event LESSOR does not prevail on the issue of immunity in the Broward County v. Markham case, LESSOR shall use all amounts held in escrow, including interest, if any, to satisfy the tax bills issued and applicable sales tax.~~

~~4) In the event LESSOR does not prevail on the issue of immunity in the Broward County v. Markham case, and LESSOR has not required LESSEE to escrow or the amount remaining in escrow is insufficient to cover the obligation(s), then LESSEE shall pay to LESSOR all amounts as set forth in the tax bills issued, including applicable interest and sales tax, within sixty (60) calendar days after written demand therefor is made.~~

~~5) If, upon final resolution of the Broward County v. Markham case, the amounts paid by LESSEE as set forth in this Section are insufficient to satisfy the ultimate tax liability of LESSOR due to LESSEE's use of the premises, then LESSEE shall pay all such shortfalls, plus sales tax, within fifteen (15) calendar days after written demand therefor is made. If the amounts paid by LESSEE as set forth above are greater than the ultimate tax liability of LESSOR due to LESSEE's use of the Premises, then LESSOR shall refund the excess amount to LESSEE within sixty (60) calendar days of final resolution of the Broward County v. Markham case.~~

~~C. After final resolution of the Broward County v. Markham case, LESSEE agrees to pay, as rent, on or before November 1st of each year (or such other date as may subsequently be set by LESSOR), all taxes levied and assessed upon the Premises, all improvements thereon, together with all special assessments of any kind levied and assessed against the leasehold property and improvements thereon for such calendar year, together with sales tax; provided, however, that such amount to be paid will be pro-rated based on the actual days in which this Lease is effective in the event said Lease is effective for less than an entire calendar year.~~

~~B. In addition, LESSEE agrees to shall pay, as rent, to LESSOR at least not less than thirty (30) calendar days prior to expiration date of the Lease Term or immediately upon the effective termination date of this Lease, a the pro rata amount of the tax obligation, together with sales tax, for the calendar year in which such the expiration or termination of this Lease occurs ("Exit Year"), ~~provided that the tax obligation for such year has not been paid in accordance with the foregoing paragraph.~~ In the event the actual tax obligation for the Exit Year has not yet been determined, then the amount due to LESSOR shall be estimated based on the tax obligation levied and assessed against the Premises and the improvements thereon for the prior calendar year. Thereafter, if the estimated amount paid by LESSEE based on the prior year's obligation is less than the actual tax obligation for the Exit Year, then LESSEE shall pay the shortfall to LESSOR within fifteen (15) calendar days after written demand therefor is made. If the estimated~~

amount paid by LESSEE based on the prior year's obligation is greater than the actual tax obligation for the Exit Year ~~is greater than that paid by LESSEE as required in this Section,~~ then LESSOR shall refund such amount to LESSEE within sixty (60) calendar days after written demand therefor is made.

~~D. C.~~ The provisions of this ~~Section~~ article shall survive the termination or expiration of this Lease.

## 7. USE; COMPLIANCE WITH LAWS; FAILURE TO COMPLY

### A. USE

The Premises shall be used by LESSEE solely as a not-for-profit ~~animal shelter,~~ animal wildlife hospital, and animal adoption rehabilitation center, and related uses, providing wildlife care services to the community, and for no other use or purpose, whatsoever without the prior written consent of the Port Everglades Department of Broward County ~~and its duly authorized representatives,~~ by and through its Chief Executive/Port Director (the "Port Department"). ~~A default under this clause would automatically revert the land and facility to the LESSOR.~~

Under no circumstances shall LESSEE lease allow or permit others to use the Premises, or any portion thereof, for any of the following: (i) any use not specifically authorized herein; or (ii) any unlawful or illegal business use and/or purpose; or (iii) any use that is a public nuisance; or (iv) any use as may make void or voidable insurance coverages then in force and effect with respect to the Premises and improvements thereon; or (v) in competition with any business conducted by LESSOR, including the storage of cargo thereon for other parties thereon.

LESSEE shall conduct its operations in an orderly and commercially reasonable manner considering the nature of such operations. LESSEE shall not unreasonably annoy, disturb (whether via vibrations, noise, or otherwise), endanger, or be offensive to others ~~at Port Everglades.~~ LESSEE shall commit no waste or injury on or about the Premises and shall not do or permit to be done anything which that may result in the creation, or commission, or maintenance of such waste or injury on or about the Premises. LESSEE shall use and maintain the Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise, or otherwise, and LESSEE shall not keep or store any explosives on the Premises.

Should LESSEE fail to comply with the provisions of this ~~Section,~~ then ~~LESSOR~~ Port Department shall provide LESSEE with written notice of such use violation, ~~and the opportunity to correct and~~ LESSEE shall cure same within a reasonable time period not exceeding thirty (30) calendar days ~~of the sending of the notice~~ after the date written notice is sent to LESSEE. Should LESSEE require additional time to cure, written notice of a request to extend the time to cure shall be sent to LESSOR before the expiration of the

thirty (30) calendar day period. LESSOR shall grant such additional time as is reasonable under the circumstances. ~~If the use violation is not cured within the thirty (30) calendar day time period or extension thereof, then LESSOR shall have the right to (i) stop all operations on the Premises until the cause(s) or use violations are eliminated to LESSOR's satisfaction, and/or (ii) terminate this Lease.~~

**B. COMPLIANCE WITH LAWS**

LESSEE, in the its use, and occupation of, or and for its alteration, construction, and management activities of on the Premises ~~and in the use of property or facilities and services at Port Everglades,~~ shall, at its sole expense, comply with and be governed by all laws, ordinances, rules, regulations, and directives of the all federal, state, county, and municipal governmental units or agencies having jurisdiction over the Premises and the business activities being conducted thereon, including, but not limited to: the Americans with Disabilities Act of 1990 ("ADA"), as may be amended; Chapter 119, Florida Statutes, Florida Public Records Act, as applicable; and LESSOR's published Tariff No. ~~1-12,~~ amendments thereto and reissues thereof as applicable. Within fifteen (15) calendar days after receipt by either party of a notice of ~~non-compliance~~ noncompliance, or of a regulatory investigation or enforcement action relating to such ~~non-compliance~~ noncompliance, the receiving party shall advise the other party in writing and provide copies of same. Once such notice is received, LESSOR shall have, in addition to all rights provided by law and by the provisions herein, the right to terminate this Lease and/or require LESSEE, at its sole expense, to make any repairs, alterations, and additions to the Premises and take all corrective measures as may be necessary to bring same into compliance.

Should LESSEE fail to comply with the provisions of this section, then Port Department shall provide LESSEE with written notice of such compliance violation and LESSEE shall cure same within a reasonable time period not exceeding thirty (30) calendar days after the date written notice is sent to LESSEE. Should LESSEE require additional time to cure, written notice of a request to extend the time to cure shall be sent to LESSOR before the expiration of the thirty (30) calendar day period. LESSOR shall grant such additional time as is reasonable under the circumstances.

7. Article 8 of the Agreement is hereby deleted in its entirety and replaced by the following:

**8. [Intentionally Left Blank.]**

8. Articles 9 and 10 of the Agreement are hereby amended to read as follows:

**9. LESSEE'S OBLIGATIONS**

LESSEE shall, at its sole cost and expense:

1) A. Observe and obey, and require its employees, guests, invitees, and those doing business with it, to observe and obey such reasonable rules and regulations of Broward County (including amendments and supplements thereto) governing the conduct and operations of LESSEE and others on the Premises as may from time to time be promulgated.

2) B. Pay all license and permit fees and charges for the conduct of any business on the Premises before such amounts become delinquent.

~~3) C. Not cause or permit any welding or burning on the Premises until all required permits have been obtained from LESSOR and the United States Coast Guard.~~

4) C. Not overload any paved area on the Premises and shall repair any paved area damaged by such overloading.

5) D. Provide LESSOR with immediate notice of any and all spills, leaks, or discharges of any size whatsoever of Pollutants (as defined in Section 22.A. hereof) arising from its operations on the Premises ~~or in Port Everglades~~, and further provide LESSOR with not less than one (1) business day prior notice of all curative measures, remediation efforts, and/or monitoring activities to be ~~effected~~ implemented.

6) E. As required by law, provide the relevant appropriate regulatory authorities with notice of all spills, leaks, or discharges of Pollutants on the Premises ~~or in Port Everglades~~, and have maintain an updated environmental contingency plan in effect for such discharges for the Premises, a copy of which must be provided to LESSOR upon request.

7) F. Provide LESSOR the right to inspect and copy all records and documents relating in any way to the Premises and all activities thereon, including, but not limited to, writings regarding environmental issues, remediation efforts, etc. (such as manifests evidencing proper transportation and disposal of Pollutants, site assessments, sampling and test results, etc.).

8) G. Install and maintain, at its sole expense, shrubbery or screening around the Premises as may be reasonably required by LESSOR to mitigate ~~the potentially any~~ unattractive appearance of the Premises. Such shrubbery or screening type work which installation shall occur must be completed within thirty (30) calendar days after written demand therefor is sent to LESSEE.

#### 10. ASSIGNMENT; SUBLETTING; SUBORDINATION

LESSEE shall not (i) sublet the Premises or any part thereof, or (ii) permit any transfer, assignment, pledge, or encumbrance of any sublease, or (iii) transfer, assign, pledge, or otherwise encumber or subordinate this Lease or any rights or obligations

hereunder, or (iv) allow same to be assigned by operation of law or otherwise (any such action being called an "Assignment") without the prior written consent of LESSOR, which consent may not be unreasonably withheld. LESSOR may condition such approval upon additional terms and conditions as LESSOR, in its sole discretion, may impose.

No Assignment shall be binding on LESSOR unless and until such Assignee has entered into a written agreement with LESSOR containing a covenant of assumption of all liabilities and obligations hereunder.

Any Assignment entered into without LESSOR's prior written consent as required in this article shall have no validity and shall be null and void and without legal effect.

9. Articles 11 and 12 of the Agreement are hereby amended, in part, to read as follows:

**11. ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS**

**A. GENERAL**

LESSEE shall not design, develop, or construct, nor make any alterations, modifications, ~~or replacements, or improvements~~ to the Premises without the prior written consent of the Port Department. ~~In the event any improvement is made without the Port Department's approval then, upon notice in writing so to do, LESSEE shall remove the same, or at the Port Department's option, cause the same to be removed to said Department's satisfaction. In the case of any failure on the part of LESSEE to comply with such notice, the Port Department may effect the removal or change and LESSEE shall pay the cost thereof to LESSOR within fifteen (15) calendar days after written demand therefor is sent.~~

**B. TITLE TO IMPROVEMENTS AND FIXTURES; REMOVAL**

All fixtures, structures, facilities, pavements, and other permanent improvements, and any additions and alterations made to the Premises (including those that are nailed, bolted, stapled, or otherwise affixed to the Premises) by LESSEE, or at LESSEE's direction, shall be and remain LESSEE's property until the termination of this Lease (whether by expiration of the Lease Term or otherwise), at which time said improvements shall, at LESSOR's option, either (i) become LESSOR's property and shall be surrendered with and remain on the Premises, free and clear of all liens, encumbrances, and security interests, or (ii) be removed by LESSEE, at LESSEE's expense, at the Port Department's direction.

**C. LIENS**

LESSEE shall not do or permit to be done anything ~~which~~ that shall result in the imposition of any liens, claims, or encumbrances on the Premises. If any lien or notice of lien shall be filed against the Premises or improvements thereon, LESSEE shall cause the



same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) calendar days after notice of the filing thereof. LESSEE shall not be deemed to be COUNTY's LESSOR's agent so as to confer upon any contractor or subcontractor providing labor and/or materials to the Premises, a mechanic's lien upon COUNTY's LESSOR's estate under the provisions of Chapter 713, Florida Statutes, as amended from time to time.

The provisions of this subsection shall will not apply to any leasehold mortgage to which LESSOR has consented as provided in this Lease, or any purchase money security interest in any movable trade fixtures installed at the Premises. LESSEE shall not create or permit any lien on any fixtures affixed to the Premises without obtaining, in each instance, the prior written approval of COUNTY LESSOR excluding, however, any purchase money security interest in any movable trade fixtures of the LESSEE installed at the Premises.

Unless COUNTY LESSOR, through its Board of County Commissioners, provides otherwise in writing, all of LESSEE's assets which are brought onto the Premises and used in connection with its business conducted on the Premises, shall be subject to COUNTY's LESSOR's landlord's lien on such assets.

#### D. LESSEE'S IMPROVEMENTS

LESSOR acknowledges and approves those existing improvements currently located on the Premises and more particularly described as:

1. One (1) hospital consisting of 2,855 square feet
2. One prefab administration building - 24 feet x 60 feet
3. One (1) barn - 22 feet x 48 feet + enclosed paddock 22 feet x 48 feet
4. One (1) multipurpose concrete building - 17 feet x 44 feet
5. One (1) multipurpose wood/wire structure - 17 feet x 44 feet

plus associated paving, landscaping, fencing, and signage. LESSEE, at its sole expense, shall construct ~~an adoption~~ a wildlife hospital and rehabilitation center (approximately 2,850 square feet) on the Premises, similar in size and scope to the conceptual site plan (plan sheet SP-1, dated 7/11/18), a reduced-size copy attached hereto and incorporated herein as Exhibit C. LESSEE shall obtain all necessary governmental permits as legally required for such construction on the Premises.

LESSEE shall be solely responsible for all costs and expenses relating to (i) LESSEE's improvements, including, but not limited to, the design, permitting, and construction thereof; and (ii) all other improvements necessary to LESSEE's use of the Premises, including, but not limited to, improvements mandated by any governmental authority having jurisdiction over the Premises.

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F. CONSTRUCTION REQUIREMENTS

~~(i)1) The parties hereto as of the date this Agreement is executed by COUNTY contemplate the need or requirement for LESSEE to commence construction of improvements on the Premises. All construction shall must be performed in such a manner as to provide that LESSEE's ~~improvements~~ shall: (i) be safe and free from any hazards, and (ii) comply with all terms and provisions of this Agreement~~Lease~~.~~

LESSEE shall submit all of its proposed design and construction documents at the fifty percent (50%) completion level, and again at the ninety percent (90%) completion level. Prior to LESSEE applying for permits, LESSOR will require LESSEE shall submit a benchmarked short-term, interim, and long-term goal achievement timetable and a complete construction schedule. Each submittal shall be made to Port Department for its review and approval prior to LESSEE's commencement of any construction work. Port Department's scope of review shall be to ensure the design and construction documents are consistent with the conceptual site plan and permitted use under this Lease, and does not constitute review for compliance with applicable building and other codes. Compliance of the design and construction documents with applicable building and other codes is the sole responsibility of LESSEE. Port Department's approval shall not be unreasonably withheld. Goals, timetables, and schedules will be mutually agreed upon and include LESSOR's review and approval of:

- a. ~~\_\_\_\_\_ New hospital design standards~~
- b. ~~\_\_\_\_\_ Details relative to fundraising~~
- c. ~~\_\_\_\_\_ Permit applications~~
- d. ~~\_\_\_\_\_ Timeframe established for construction completion~~
- e. ~~\_\_\_\_\_ Projected property management plans~~
- f. ~~\_\_\_\_\_ Proposed future staffing~~

All improvements constructed by LESSEE, its agents, or contractors, including but not limited to, the plans and specifications relating to same, shall must conform to all applicable state, federal, county and local statutes, ordinances, building codes, fire codes, and rules and regulations; provided, however, that consent by the Port Director Department to any plans, specifications, or designs shall will not constitute a representation or warranty as to such conformity, and the responsibility therefore shall at all times remain with LESSEE. Any additions, alterations, ~~or modifications~~, or improvements to the Premises shall must be in conformity and consistent with the Americans with Disabilities Act of 1990, as may be amended from time to time.

(ii) Upon COUNTY's Port Director's Department's or his designee's review and consent to approval of LESSEE's ninety percent (90%) completed plans, specifications and construction schedules, LESSEE shall, following its receipt of the written authorization to proceed from the Port Director Department or his designee, immediately begin application for applicable permits to allow construction and installation of its improvements to the Premises. LESSEE shall coordinate and install all such improvements in accordance with all permitting agency requirements, as well as Florida, Power & Light Company requirements. LESSEE and its architect/engineer and contractor agree to shall meet with COUNTY's Port Director's Department's representatives at Port Everglades in periodically scheduled meetings to assess the current status of completion of the improvements to the Premises undertaken by LESSEE as provided herein.

#### G. IMPROVEMENTS COMPLETED

Within sixty (60) calendar days after the final completion date of any improvements to the Premises, LESSEE shall provide to Port Everglades Department at LESSEE's sole expense: (i) a complete set of "as-built" plans and specifications for all improvements; (ii) a certificate or acknowledgment of completion from all permit agencies reflecting that LESSEE's improvements are complete and all permits are closed out; and (iii) a certified statement from the construction contractor(s) and architect/engineer stating that the improvements are free and clear of all liens, claims, or encumbrances by any suppliers, subcontractors, or laborers.

#### H. CONSTRUCTION PERFORMANCE AND PAYMENT BONDS

LESSEE shall furnish to COUNTY Port Department within seven (7) calendar days of after its receipt of the Notice to Proceed written authorization to proceed from the Port Director Department, the following:

##### a. 1) Performance Bond and Payment Bond (Surety):

(1)(a) A performance bond and a payment bond in a form acceptable to the COUNTY LESSOR's County Attorney's Office and LESSOR's Port Everglades Department Risk Manager.

(2)(b) The Bonds shall be in the an amount of equal to one hundred percent (100%) of the total construction amount costs, guaranteeing to COUNTY LESSOR, the completion and performance of the construction work and development of the Premises, as well as full payment of all suppliers, vendors, contractors, laborers, or subcontractors employed by LESSEE. Such Bonds Each bond shall must be with a Surety company which that is qualified pursuant to the COUNTY's LESSOR's surety standards for Surety's on COUNTY for construction projects as follows:

~~(a)~~ Qualifications of Surety:

i) A separate performance bond and payment bond must be executed by a ~~§~~surety company of recognized standing, authorized to do business in the state of Florida as a ~~§~~surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

~~ii) In addition to the above minimum qualifications, the Surety company must meet at least one of the following additional qualifications:~~

~~iii) iii) The §surety company shall hold a current Certificate of Authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 C.F.R. Section 223.10, Section 223.114). Further, the §surety company shall provide COUNTY LESSOR with evidence satisfactory to COUNTY LESSOR, that such excess risk has been protected in an acceptable manner.~~

~~iv) iii) The §surety company shall have at least the following minimum ratings in the latest revision of A.M. Best's Insurance Report Company Rating Guide:~~

<u>Size</u> <u>Amount of Bond</u>	<u>Policy Holder's</u> <u>Ratings</u>	<u>Financial Size</u> <u>Category</u>
500,001 to 1,000,000	B+ <u>A, A-</u>	Class I
1,000,001 to 2,000,000	B+ <u>A, A-</u>	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

~~(c) Such The Bonds shall continue in effect for one (1) year after the date of final completion and acceptance of the construction work~~

by LESSEE with liability equal to one hundred percent (100%) of the total construction pricecost, or an additional bond shall be conditioned that LESSEE will, upon notification by COUNTY LESSOR, correct any defective or faulty work or materials which that appear within one (1) year after the date of final completion of the construction work.

- OR -

b-2) Performance and Payment Guaranty:

In lieu of a performance bond and a payment bond, LESSEE may furnish an alternate form of security performance and payment guaranty, which may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security performance and payment guaranty shall be for the same purpose and shall be subject to the same conditions as those applicable above, shall be subject to the prior approval of LESSOR's County Attorney's Office and LESSOR's Port Everglades Department Risk Manager, and shall be held by COUNTY LESSOR for one (1) year after the date of final completion and acceptance of the construction work by LESSEE.

~~It is understood and agreed that LESSEE shall be responsible for all costs and expenses relating to (i) LESSEE's improvements, including but not limited to the design, permitting and construction thereof, and (ii) all other improvements necessary to LESSEE's use of the Premises, including but not limited to improvements mandated by any governmental authority having jurisdiction over the Premises.~~

I. COUNTY'S LESSOR'S REPAIR OBLIGATIONS

None required.

J. MORTGAGE ON LEASEHOLD

No leasehold mortgage shall be binding upon LESSOR, if obtained by LESSEE without the prior written consent of Port Department. No leasehold mortgage shall extend to or be a lien or encumbrance upon LESSOR's fee simple interest in the Premises or any appurtenant rights thereto that have not been granted to LESSEE under this Lease, and no leasehold mortgage shall extend beyond the Lease Term. LESSEE shall provide LESSOR with a copy of each leasehold mortgage within ten (10) calendar days after closing of the loan giving rise to the mortgage. LESSOR will accept performance or payment by the holder of any leasehold mortgage to which LESSOR has consented, of any term or condition of this Lease required to be made by LESSEE, with the same force and effect as though performed by LESSEE, if at the time of such performance or payment, LESSOR shall be furnished with evidence satisfactory to LESSOR, of the interest in the Premises claimed



by the person or entity tendering such performance or payment. The holder of such leasehold mortgage shall have ten (10) additional calendar days after the date on which LESSOR may otherwise terminate this Lease for default by LESSEE to cure any default in the payment of rent or other additional sums required to be paid under this Lease and fourteen (14) additional calendar days after the date on which LESSOR may otherwise terminate this Lease for default by LESSEE to cure any other nonmonetary default hereunder. In no event shall an approved leasehold mortgagee sell, assign, transfer, convey, or otherwise dispose of its interest in this Lease to a third party without the prior written consent of Port Department, subject to the provisions of Article 10 of this Lease.

When giving notice to LESSEE with respect to any default under the provisions of this Lease, LESSOR shall also send a copy of such notice to the approved leasehold mortgagee, which copy shall be sent by LESSOR by certified mail, return receipt requested, or any other method of delivery that can be confirmed and verified, to the leasehold mortgagee at the address set forth in the approved leasehold mortgage. It is both LESSEE's and the approved leasehold mortgagee's responsibility to ensure that LESSOR has their correct and current mailing address.

LESSEE shall promptly notify the approved leasehold mortgagee in writing of such occurrence and shall state in the written notice what action has been or will be taken by LESSEE to cure the default. LESSEE shall also promptly provide Port Department with a copy of the written notice provided to the approved leasehold mortgagee.

Port Department shall, from time to time and upon reasonable written request, provide a leasehold mortgagee and LESSEE with an estoppel certificate stating whether LESSEE is in default hereunder, whether this Lease is in full force and effect, and whether this Lease has been modified or amended.

## 12. MAINTENANCE, MANAGEMENT, AND REPAIR OF PREMISES AND IMPROVEMENTS

### A. LESSEE'S RESPONSIBILITY

LESSEE hereby accepts the Premises in its present condition and agrees to maintain the Premises in the same condition as exists at the beginning of the Lease Term except for reasonable wear and tear. LESSEE shall throughout the Lease Term assume the entire responsibility and pay for all costs and expenses required for the management of the wildlife hospital and rehabilitation center, and related infrastructure, including, but not limited to, all personnel, labor, and equipment costs. shall Further, LESSEE hereby relieves LESSOR from all responsibility and liability for all repair and maintenance requirements whatsoever on for the Premises (which shall include, without limitation and all improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural, or otherwise. LESSEE shall be required to keep the Premises



and improvements in good, tenantable, and useable condition throughout the Lease Term, and ~~w~~Without limiting the generality thereof, LESSEE shall:

1) Maintain the Premises and all improvements in a safe and neat manner, free from garbage, debris, or other unsightly or unsanitary waste matter (whether solid or liquid). ~~Any of such~~ All garbage, debris, or other waste matter as may be temporarily stored in the open, shall be kept in suitable garbage and waste receptacles. LESSEE shall use ~~extreme~~ reasonable care when effecting removal of all such waste matter and shall comply with all applicable laws, ordinances, rules, regulations, and procedures of all applicable governmental authorities in so doing.

2) Maintain the Premises and all improvements in a clean, orderly, and safe condition ~~so as to avoid injury to persons and property and make all necessary repairs thereto. The term "repairs" shall include, but not be limited to, all replacements, renewals, alterations, additions, and betterments deemed necessary. All repairs made by LESSEE shall be at least equal in quality and class to the original work.~~

3) Repair any damage to the paving or other surface of the Premises, including storage and parking areas, caused by settlement, overloading, or any oil, gasoline, grease, lubricants, or other liquids or substances having a corrosive or detrimental effect thereon, or removal of trade fixtures and other property.

4) Provide, and maintain, repair, and replace all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by any applicable federal, state, and local laws, rules, orders, ordinances, resolutions, or and regulations of any applicable governmental authority.

5) Repair all damage to the Premises and all improvements, (including, but not limited to, any all exterior walls, roofing components, fencing, gates, lighting, interior walls, restrooms, plumbing systems, electrical systems, air-conditioning and heating systems, fire and smoke detection alarms, security alarms, sewer and storm water infrastructure, etc., or pavement) within thirty (30) calendar days which is the result of any act, omission, negligence or misconduct on the part of LESSEE, its employees, agents, contractors or invitees of the date of the damage.

In the event LESSEE fails in any material respect to (i) to commence so to maintain, clean, repair, replace, rebuild or paint curative measures within a period of thirty (30) calendar days (except seven (7) calendar days for maintenance items) after notice from LESSOR Port Department to do so is given; or (ii) to continue diligently prosecute the curative measures to completion in a diligent manner the maintenance, repair,

~~replacement, rebuilding or painting of the Premises required to be maintained, repaired, replaced, rebuilt or painted under the terms of this Lease, then the Port Department may, at its option, and in addition to any other remedies which that may be available to it, maintain, repair, replace, rebuild or paint, in accordance with the provisions of this Lease, all or any part of the Premises included in the said notice and the cost thereof commence curative measures and the total costs of the curative measures shall be deemed rent payable by LESSEE to LESSOR within fifteen (15) calendar days after written demand therefor is sent to LESSEE.~~

B. LESSOR'S RESPONSIBILITY

LESSOR, at its sole expense, shall maintain and repair all underground utilities which now or may be subsequently located at the Premises; provided, however, that for repairs necessitated by any act, omission, negligence, or misconduct on the part of LESSEE, its customers, employees, agents, contractors, or invitees, or guests, LESSEE, at LESSOR's option, shall make all such repairs or reimburse LESSOR within fifteen (15) calendar days after written demand therefor is sent to LESSEE.

10. Articles 13 thru 17 of the Agreement are hereby amended to read as follows:

13. INGRESS AND EGRESS

LESSEE, its customers, invitees, licensees, agents, guests, contractors, suppliers of material, and furnishers of services, shall have the right of ingress and egress via appropriate public ways to be used in common with others having rights of passage within Port Everglades the Premises, provided that LESSOR may, from time to time, substitute other suitable means (considering LESSEE's business operations) of ingress and egress so long as an alternate adequate means of ingress and egress is available ~~and does not unreasonably interfere with LESSEE's use of the premises.~~

~~LESSOR may at any time temporarily or permanently close or consent to or request the closing of any such roadway and or other area at Port Everglades presently or hereafter used as such, so long as an alternate adequate means of ingress and egress is made available to the Premises (considering LESSEE's business operations). LESSEE hereby releases and discharges LESSOR, its successors and assigns, of and from any and all claims, demands or causes of action which LESSEE may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway or other area used as such, whether within or outside Port Everglades, provided that LESSOR makes available to the Premises an adequate means of ingress and egress (considering LESSEE's business operations).~~

14. SIGNAGE

A. PRIOR CONSENT

LESSEE will not place, suffer to be placed, or maintain on the Premises or on the exterior of the improvements, any sign, awning, canopy, or advertising matter without prior written consent of the Port Department, which consent shall not be unreasonably withheld. If such consent is granted by the Port Department, LESSEE shall maintain at its sole costs and expense such item(s) in good condition at all times.

B. REMOVAL OF SIGNS

Upon the expiration or termination of this Lease, LESSEE shall remove, obliterate, or paint out, as the Port Department may direct, any and all signs placed on the Premises or on the exterior of the improvements and, in connection therewith, shall restore the portion of the Premises and improvements affected by such signs to the same condition as ~~the same~~ existed prior to the placing ~~thereon~~ of such signs. In the event of a failure on the part of LESSEE to so remove, obliterate, or paint out each and every sign and to so restore the Premises and the improvements as applicable, ~~the Port Department may, at its option, and in addition to any other remedies that may be available to it,~~ perform the necessary work, ~~deduct the costs thereof from the security deposit, and LESSEE shall pay the shortfall, if any, and the total costs of the necessary work shall be deemed rent payable by LESSEE to LESSOR~~ within fifteen (15) calendar days after written demand therefor is sent to LESSEE.

15. PARKING

~~LESSEE's use of parking spaces(s) in Port Everglades shall be subject to and in accordance with LESSOR's traffic and parking regulations set forth in Section 23-29, et seq., Broward County Code, and Port Tariff No. 11. LESSEE shall be responsible for providing adequate parking facilities on the Premises to include, but not be limited to, its employees, operators, and invitees, in accordance with all applicable federal, state, and local governmental rules and regulations.~~

16. UTILITIES

A. GENERALLY

~~LESSOR shall provide only such utilities and other services as are presently provided to the Premises. LESSOR shall is not be obligated to perform or furnish any other utilities or other services in connection with the Premises and improvements thereon, or obligated to perform any services required of it hereunder at any time while LESSEE is remains in default hereunder after the period to cure such default has expired. No failure, delay, or interruption in supplying the supply of electric, gas, water, communication services or other utilities services by third party utility service providers shall be construed as an eviction of LESSEE, or a grounds for any abatement of rental or claim by~~

~~LESSEE payments and all other payments and fees required to be made hereunder by LESSEE to LESSOR or claims by LESSEE against LESSOR for damages.~~

**B. ARRANGEMENTS AND CHARGES**

~~LESSEE shall make arrangements directly with the appropriate utility company provider for electric and gas services to the Premises, if necessary, and shall pay said company such utility providers directly for all service charges, including applicable Florida sales tax, associated with electricity provided to the Premises when due.~~

~~Additionally, LESSEE shall make arrangements directly with the utility company or governmental entity responsible for providing water services to the Premises, if necessary, and shall pay said company same directly for all service charges, including storm water utility fees, if any, and applicable Florida sales tax, associated with water provided to the Premises when due. LESSEE shall make arrangements directly with utility companies providing communications infrastructure and services to the Premises and shall pay same directly for all charges, including applicable Florida sales tax, when due.~~

**17. SECURITY**

~~LESSEE, at its sole cost and expense, shall be responsible for security on the Premises and shall take whatever legal precautions are necessary to protect the Premises, and all persons and property thereon. In addition, LESSEE and LESSOR acknowledge that security measures at Port Everglades will be increased and that such efforts will likely impact the Premises. In this regard, LESSEE agrees to cooperate with LESSOR's efforts to increase security and agrees to comply with all security rules and regulations (whether imposed by the United States Custom Service, the United States Coast Guard, or LESSOR). LESSEE, at its sole cost, shall be responsible for complying with all security related measures that impact the Premises, LESSEE and/or its employees, representatives and guests.~~

11. Articles 18 and 19 of the Agreement are hereby amended, in part, to read as follows:

**18. RIGHT TO ENTER TO INSPECT, REPAIR AND EXHIBIT**

...

**B. REPAIR**

~~Without limiting the generality of the foregoing, LESSOR, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to~~

~~make such repairs, replacements or alterations thereto as may, in the opinion of LESSOR, be deemed necessary or advisable and from time to time to construct or install over, in or under the Premises such systems or parts thereof and in connection with such maintenance to use the Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction LESSOR shall not unreasonably interfere with the actual use and occupancy of the Premises by LESSEE.~~

G. B. REMOVAL OF OBSTRUCTIONS

In the event that any personal property of LESSEE, including its customers, employees, contractors, invitees, and guests, shall obstructs the access of LESSOR, its officers, employees, agents, or contractors, to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system the Premises. LESSEE shall move such property, as directed by LESSOR Port Department, in order that access may be had to the system or part thereof for its inspection, maintenance, or repair, and if LESSEE shall fail to so remove such property after direction from LESSOR Port Department to do so, LESSOR Port Department may move it and LESSEE hereby agrees to pay the LESSOR's costs of such moving upon demand.

D. C. NO EVICTION CONSTRUED

The exercise of any or all of the foregoing rights by LESSOR or others shall not be, nor be construed to be, an eviction of LESSEE nor be made the or grounds for any abatement of rental nor any claim or demand rent payments or any other payments and fees required to be made by LESSEE to LESSOR or claims or demands by LESSEE against LESSOR for damages, consequential or otherwise.

19. SURRENDER AND ACCEPTANCE; REMOVAL OF PROPERTY

A. SURRENDER

LESSEE covenants and agrees to promptly yield, and peaceably deliver, and surrender to LESSOR possession of the Premises (including, subject to LESSOR's option under Section 13.B of this Lease, the improvements located thereon) to LESSOR in good condition, excepting reasonable wear and tear, on the date of cessation of the Letting this Lease, whether such cessation be by termination, expiration, or otherwise.

B. ACCEPTANCE OF SURRENDER

No agreement of surrender or to accept a surrender of this Lease prior to the end of the Lease Term shall be valid unless and until the same shall have has been reduced to writing and signed by the duly authorized representatives of LESSOR and ~~of~~ LESSEE in a

document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of LESSOR shall be deemed an acceptance of a surrender of the Letting of this Lease.

### C. REMOVAL OF PROPERTY

LESSEE shall have the right at any time during the Lease Term to remove its inventories and other personal property from the Premises. If LESSEE shall fail to remove its personal property same by the termination or expiration date of this Lease or as otherwise required herein, then ~~LESSEE shall be considered to be holding over under Section 28 hereof, and after fourteen (14) calendar days following said termination or expiration, at LESSOR's option~~ such property shall be deemed to have been abandoned by LESSEE and may be disposed of by LESSOR in accordance with Florida law. In such event, LESSOR shall pursue its legal options, including, but not limited to: (i) title to same such movable fixtures, equipment, and inventories shall vest in LESSOR, at no cost to LESSOR; or (ii) LESSOR may remove such property and inventories to a public warehouse for deposit; or (iii) LESSOR may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by LESSEE to LESSOR, with any balance remaining to be paid to LESSEE. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, LESSEE shall pay such excess to LESSOR within fifteen (15) calendar days after written demand therefor is sent to LESSEE. The provisions of this Section article shall survive the termination or expiration of this Lease.

12. Article 20 of the Agreement is hereby amended to read as follows:

### 20. INDEMNITY

LESSEE shall, at all times hereafter, indemnify, hold harmless, and, at the option of the Broward County Attorney, defend or pay for an attorney selected by LESSEE, and ~~consented to by the Broward County Attorney as provided for herein~~ to defend LESSOR, its officers, agents, servants, and employees from and against any and all claims, demands, fines, penalties, causes of action, losses, liabilities, and expenditures of any kind, including, without limitation, reasonable attorneys' fees, court costs, and expenses, caused by resulting from or in any manner arising out of an intentional or negligent act or omission of LESSEE, its officers, employees, agents, servants, tenants, invitees, or contractors ~~or officers, or accruing, resulting from, or related to the Premises or the subject matter of this Lease,~~ including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries, sickness, or damages sustained by any death of person(s) or damage to property. LESSOR shall have the right to consent to the selection of indemnification counsel, which consent shall not be unreasonably withheld. LESSOR shall be required to object to any indemnification counsel, selected by LESSEE, within three (3) business days from the date of notification



~~of suit. Failure to timely respond by LESSOR shall constitute a waiver of its right to object. In the event LESSOR shall reasonably object to the indemnification counsel selected by LESSEE, LESSEE and LESSOR will negotiate in good faith to select an indemnification counsel acceptable to LESSOR, LESSEE and LESSEE's insurance carrier. LESSOR and LESSEE shall have the right to provide input and recommendations to indemnification counsel on any matter relating to the litigation, including any proposed settlement. LESSOR agrees to provide LESSEE with prompt notice of any claims, demands or cause of action and will cooperate with LESSEE as indemnification counsel may reasonably request. The provisions of this section article shall survive the expiration or earlier termination of this Lease. To the extent considered necessary by the Port Department and the Broward County Attorney, any sums due LESSEE under this Lease may be retained by LESSOR until all of LESSOR's claims for indemnification pursuant to this Lease have been settled or otherwise resolved, and any amount sums withheld by LESSOR will shall not be subject to payment of interest by LESSOR. LESSEE further agrees that this indemnification provision shall be made, to the extent permitted by law, a part of all its design and construction contracts, subleases, and maintenance and service provider contracts.~~

13. Article 21 of the Agreement is hereby amended to read as follows:

**21. INSURANCE**

LESSEE shall provide at its own expense and keep in continuous force and effect commercial general liability insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence for personal injuries and property damage, and business automobile liability insurance for all vehicles in LESSEE's name (including owned/leased, non-owned, and hired vehicles) with a minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Policy, without restrictive endorsements, as filed by the Insurance Services Office. In addition, LESSEE shall provide, at its own expense, Workers' Compensation Insurance to comply with Chapter 440, Florida Statutes, and Employers' Liability Coverage in the amount of Five Hundred Thousand Dollars (\$500,000.00) each accident. The aforesaid minimum limits of insurance shall be reviewed from time to time by LESSOR and may be adjusted if LESSOR determines that such adjustments are necessary to protect LESSOR's interest.

Unless prohibited by the applicable policy, LESSEE waives any rights to subrogation that any of LESSEE's insurer may acquire against LESSOR, and agrees to obtain same in an endorsement of LESSEE's insurance policies. LESSEE shall be solely responsible for and shall pay any deductible applicable to any claim against LESSOR.

The commercial general liability insurance policy shall, at LESSEE's sole expense, be written so as to protect both LESSOR as an additional insured and LESSEE. LESSEE shall furnish LESSOR with insurance certificates to demonstrate the continuous coverage

required by this Section article, and LESSEE shall be responsible for assuring that such insurance certificates remain in force for the duration of the Lease Term. LESSEE shall provide evidence of the required coverages herein, by presentation of certificates or other evidence of insurance prior to the execution of this Lease.

LESSEE shall deliver to LESSOR certificates of insurance for renewal or expiring policies at least thirty (30) calendar days in advance of any renewal, expiration, or anniversary date. The insurance shall be written by companies authorized to do business in the state of Florida and having agents upon whom service of process may be made in the state of Florida or by insurers known to do business in the state. The insurance policies shall be endorsed to provide LESSOR with thirty (30) calendar days' notice of cancellation.

Right to Revise or Reject: LESSOR's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements hereunder during the Lease Term hereof, including, but not limited to, deductibles, limits, types of coverages, and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the LESSEE's use of the Premises or its operations affecting the applicability of coverage. Additionally, LESSOR's Risk Management Division reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein.

When such policies or certificates have been delivered by LESSEE to LESSOR as aforesaid and at any time or times thereafter, LESSOR may notify LESSEE in writing that, in the opinion of LESSOR, the insurance represented thereby does not conform to the provisions of this Section article either because of the amount or because of the insurance company or for any other reason, and LESSEE shall have fifteen (15) calendar days in which to cure any such defect. Compliance with the foregoing requirements shall not relieve LESSEE of its liability and obligations under any other provision of this Lease.

Damage to Premises: If all or any portion of the Premises, including the improvements located thereon, is at any time destroyed or damaged in whole or in part as a result of fire or any other casualty, then LESSEE shall, at its expense, which may include payment out of the insurance proceeds available therefor, diligently repair, reconstruct, and restore the Premises, including the improvements located thereon, to the condition set forth in Article 24 of this Lease. The Parties specifically agree that LESSEE's obligation is not limited to the extent of insurance coverage placed by LESSEE, and LESSEE is required to diligently repair, reconstruct, and restore the Premises, including the improvements located thereon, to the condition in which such existed prior to the damage or destruction even if insurance proceeds are not sufficient to cover the cost of "Casualty Restoration" as hereinafter defined in Article 24 of this Lease. Port Department shall have the right to review and approve LESSEE's final construction plans for repair and restoration of the Premises and improvements. The review shall be completed within twenty-one (21) calendar days after receipt of the final construction

plans. Port Department's approval of the final construction plans shall not be unreasonably withheld.

14. Articles 22 thru 24 of the Agreement are hereby amended, in part, to read as follows:

**22. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL**

A. LESSEE acknowledges and agrees that LESSOR makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or in the Premises or any of the improvements thereon in violation of any federal, state, or local law, rule, or regulation or in violation of any order or directive of any federal, state, or local court or entity with jurisdiction of such matter. "Pollutants" refers to and includes all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations and all derivatives or by-products thereof: pollution, contaminants, hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants, waste petroleum-based substances or materials, or such other pollutants, contaminants, substances, materials, and wastes as are or may become regulated under applicable local, state, or federal laws or regulations. LESSEE acknowledges, represents, and warrants to LESSOR that it has made sufficient inspection of the Premises and the any improvements thereon to satisfy itself as to the presence or absence of any such Pollutants.

B. The discharge or release of any Pollutants on the Premises or in Port Everglades in violation of any federal, state, or local law, rule, or regulation, or ordinances or in violation of an order or directive of any federal, state, or local court or entity, is strictly prohibited. Any such discharge by LESSEE, its agents, guests, sublessees, or invitees or any of their officers, employees, contractors, subcontractors, invitees, or agents, whether committed prior to or subsequent to the date of execution of this Lease, shall be, at LESSEE's expense, and upon LESSOR's demand, immediately contained, removed, and abated to the satisfaction of LESSOR and any court or regulatory entity having jurisdiction of over the discharge or release. If LESSEE does not take action immediately to have such Pollutants contained, removed, and abated in accordance with all federal, state, and local laws, rules, regulations, and ordinances, LESSOR may undertake the necessary removal, containment, and/or abatement of the discharge or release; however, any such action by LESSOR shall not relieve LESSEE of its obligations under this or any other provision of this Lease or as imposed by law. No action taken by either LESSEE or LESSOR to contain or remove Pollutants, or to abate a discharge or release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its the discharge or release.

C. If LESSOR arranges for the containment, removal, or abatement of any Pollutants in Port Everglades that were caused, permitted, or allowed by LESSEE, its agents, employees, guests, sublessees, or invitees or any of their officers, employees,

~~contractors, subcontractors, invitees, or agents, the costs of such~~ the contaminant removal, or abatement incurred by LESSOR shall be paid by LESSEE to LESSOR immediately upon LESSOR's written demand, with interest as is provided for under LESSOR's rules, regulations, and ordinances, including its published Tariff No. ~~1112~~, amendments thereto and reissues thereof.

D. LESSEE shall not be liable for the discharge of any Pollutants caused by the negligence or willful misconduct of the LESSOR. LESSEE must permit reasonable, continued access by LESSOR, its agents, employees, and contractors to containment areas for any assessments and remediation required of LESSOR. Nothing herein shall relieve LESSEE of its general duty to cooperate with LESSOR in ascertaining the source, and, containing, removing, and abating any Pollutants at the Premises. LESSOR, its agents, employees, and contractors, ~~and agents,~~ shall have the right at all times to enter the Premises for the purposes of the foregoing activities and/or conducting such environmental inspections, audits, testing, or sampling as it deems appropriate. In addition, LESSEE hereby agrees that upon any Assignment of this Lease ~~and or~~ at any time during the Lease Term, LESSOR shall have the right to have a "Phase I" audit environmental site assessment of the Premises conducted at LESSEE's expense, and if such "Phase I" audit environmental site assessment indicates that further testing and/or studies should be conducted, to include, but not be limited to, Phase II and Phase III environmental site assessments with soil samples and water samples, then LESSOR shall have the right to have such further testing and studies conducted at LESSEE's expense. LESSEE shall reimburse LESSOR for the cost of such testing and studies within fifteen (15) calendar days after written demand therefor is sent to LESSEE.

E. In the event LESSOR shall arrange for the containment, removal, abatement, or remediation of Pollutants on the Premises that are not LESSEE's responsibility to correct, and if LESSOR's remediation activities prevent LESSEE from using the Premises for its intended purposes, then from the date that the use of any portion of the Premises for its intended purposes is precluded and until said portion again becomes available for LESSEE's use, the rent payments shall be abated based on the rent rate applicable to that pro rata portion of the Premises so taken. In no event shall will LESSEE be entitled to any amount on account of lost profits, lost rentals, or other for damages, whether such damages are direct, indirect, or consequential damages as a result of LESSOR's containment, removal, abatement, or remediation activities on the Premises.

F. The provisions of this ~~Section~~ article shall survive the expiration or termination of this Lease.

## **23. DEFAULT AND TERMINATION**

### **A. TERMINATION AFTER NOTICE FAILURE TO CURE DEFAULT BY LESSEE**

If any one or more of the following Triggering Events defined in Section B. below ~~of this Section~~ occurs, or at any time thereafter during the continuance of such event, same shall be an event of default under this Lease and LESSOR may, at its sole option, terminate the rights of LESSEE hereunder by giving thirty (30) calendar days written notice thereof, which termination shall be effective upon the date specified in such notice, and/or LESSOR may exercise any and all other remedies available to LESSOR hereunder or at law or in equity.

In the event of any termination by LESSOR, LESSEE shall have no further rights under this Lease and shall cease forthwith all operations upon the Premises, and LESSOR, its agents, employees, and representatives, shall have the right to enter the Premises and remove all property therefrom, and to accelerate and declare immediately due and payable all unpaid rents amounts due and other sums required to be paid under this Lease. In addition, LESSEE shall be liable for all damages incurred by LESSOR in connection with LESSEE's default or the termination of this Lease upon such a default, including without limitation, all direct damages, such as collection costs and reasonable attorney's fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by LESSOR of any right of termination shall be without prejudice to any other such rights and remedies. No remedy herein confirmed or reserved to LESSOR is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative.

#### B. TRIGGERING EVENTS

Any of the following events shall constitute a Triggering Event of Default ("Triggering Event"):

1) LESSEE shall voluntarily abandon, deserts, or vacates the Premises or ceases to operate and manage the Premises as provided herein for a period of thirty (30) consecutive calendar days; or

2) Any use violation under Section 7.A of this Lease that is not cured by LESSEE within the time period provided therein; or

3) Any compliance violation under Section 7.B of this Lease that is not cured by LESSEE within the time period provided therein; or

2) 4) Any lien, claim, or other encumbrance, which is filed against the Premises that is not permitted by this Lease, is not removed or if LESSOR is not adequately secured by bond or otherwise, bonded as required by Section 11.C. of this Lease within thirty (30) calendar days after LESSEE has received following the date written notice thereof is given to LESSEE; or



~~3) 5)~~ LESSEE shall fail to pay the rent within when due to LESSOR and continues in its failure to pay rent for a period of fifteen (15) calendar days following the date on which any payments are due to LESSOR; or

~~4) 6)~~ LESSEE shall fail to make any other payment required hereunder when due to LESSOR and shall continue in its failure to make any such other payments required hereunder, for a period of fifteen (15) calendar days after demand for payment is sent following the date written notice to cure nonpayment is given to LESSEE; or

~~5) 7)~~ LESSEE shall take any action described by Section Article 10 hereof of this Lease without the prior written consent of LESSOR; or

~~6) 8)~~ The discovery of any material misrepresentation of fact or fraudulent statement made to LESSOR by LESSEE in connection with any lease application or forms submitted to LESSOR in connection with the this Lease or the Premises, following notice by LESSOR and a failure by LESSEE to explain the matter to LESSOR's satisfaction within thirty (30) calendar days that is not waived by LESSOR. LESSEE will be allowed thirty (30) calendar days following the date written notice is given to LESSEE to explain the matter and provide LESSOR with the information needed to make a waiver determination, which determination shall be in LESSOR's sole discretion; or

~~7) 9)~~ LESSEE shall fail to keep, perform, and observe each and every any promise, covenant, and term set forth in this Lease on its part to be kept, performed or observed within and such failure continues for a period of thirty (30) calendar days after written notice of default is sent (except where fulfillment of its obligation requires activity over a greater period of time and LESSEE shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after notice is sent and continues such performance without interruption) given by LESSOR or, in the case of an obligation that cannot be cured with due diligence and good faith within thirty (30) calendar days, if LESSEE fails to proceed promptly and with due diligence and good faith to begin to cure the default within thirty (30) calendar days after written notice by LESSOR, or having begun to cure the default in a timely manner, LESSEE thereafter fails to diligently prosecute the cure to completion; or

~~8) 10)~~ If LESSEE or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of LESSEE is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (i) is considered to be a pPublic eEntity eCrime as defined by Chapter- 287, Florida Statutes, as amended, or (ii) is customarily considered to be a "white collar crime" or theft-



related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; or (iii) involves an act of moral turpitude meaning, conduct or acts that tend to ~~degrade principals or owners in society or bring them into public hatred, contempt, scorn or ridicule, or that tends to~~ shock, insult, or offend the community, or ridicule public morals or decency, or harm the image of LESSOR by virtue of its association with LESSEE; or (iv) results in a felony conviction; provided however, that LESSOR shall not be able to trigger termination under this subsection if the offending person(s) resigns or is terminated by LESSEE and is removed from the Premises within thirty (30) days after written notice from LESSOR of such offending person(s) conviction or entry of plea or nolo contendere.

~~D. C.~~ NO WAIVER

...

~~E. D.~~ CONDEMNATION

If all or substantially all of the Premises are taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, this Lease shall terminate on the Date of Taking and rental and other payments and fees payable by LESSEE hereunder ~~shall~~ will be apportioned and paid ~~on~~ as of the Date of Taking.

~~E.~~ TERMINATION FOR CONVENIENCE BY LESSEE

LESSEE may, at its option, terminate this Lease for convenience by giving one hundred eighty (180) calendar days written notice thereof to LESSOR, which termination shall be effective upon the date specified in such notice, and surrender possession in accordance with Section 19.A of this Lease, free and clear of all liens and encumbrances. LESSEE shall continue to pay rent, including any adjustments to the rental rate that may apply pursuant to Section 3.B of this Lease, and make any other payments required hereunder.

~~24.~~ DAMAGE BY CASUALTY, DESTRUCTION, AND RESTORATION

~~A.~~ NOTICE TO LESSOR

If the Premises, including improvement located thereon, are damaged or destroyed in whole or in any material part by fire or other casualty not caused by an act attributable to LESSEE, and thereby become untenable, LESSOR may repair within ninety (90) calendar days. LESSEE shall notify LESSOR of same as soon as reasonably possible after LESSEE's discovery of same. If the Premises are not repaired within ninety (90) calendar days and remain untenable, either party may cancel this Lease and rent shall be charged only to the date the Premises became untenable.

~~It is expressly agreed and understood that LESSOR shall will not be liable for any damage or injury by water, which may be sustained by LESSEE or any other person, or for any other damage or injury resulting from carelessness, negligence or improper conduct on the part of any other party in Port Everglades or from breakage, leakage, or obstruction of water, sewer, or soil pipes, or other leakage in or about the Premises.~~

B. CASUALTY RESTORATION

1) Obligation to Restore. If all or any portion of the Premises, including the improvements thereon, is damaged or destroyed by fire or other casualty, in any material part, ordinary or extraordinary, foreseen or unforeseen, whether prior to or after completion of the construction of any improvements, LESSEE shall reconstruct, repair, and restore the Premises, including the improvements thereon, to the condition as such existed immediately before such fire or other casualty ("Casualty Restoration"), and all amounts received from property insurance policies shall be used solely for Casualty Restoration. For purposes of clarity, the Parties specifically agree that LESSEE's obligation for Casualty Restoration is not limited to the extent of such insurance coverage, and LESSEE is required to diligently repair the Premises and improvements thereon even if insurance proceeds are not sufficient to cover the cost of Casualty Restoration.

2) Termination for Damage. Notwithstanding anything to the contrary herein, if fire or other casualty occurs in the last five (5) years of the Lease Term, and all or any portion of the Premises, including the improvements located thereon, is destroyed or damaged in whole or in part as a result of fire or other casualty, LESSEE may elect to terminate this Lease, remove the improvements to the Premises at its sole cost and expense, and surrender possession of the Premises, free and clear of all liens and encumbrances, to LESSOR.

3) Commencement of Construction Work. Subject to unavoidable delays, LESSEE shall commence with Casualty Restoration work within ninety (90) calendar days after LESSEE's receipt of all required permits. LESSEE shall apply for all required permits within thirty (30) calendar days after the date of the fire or other casualty, and LESSEE shall diligently pursue the completion of the Casualty Restoration work.

4) Paydown of Mortgages Prohibited. No mortgagee (recognized or otherwise) shall have the right to apply any insurance proceeds paid in connection with any damage or destruction to the Premises including the improvements thereon toward payment of the sum secured by its mortgage.

15. Article 25 of the Agreement is hereby amended to read as follows:

**25. NOTICES**

Any notices required by this Lease or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States Mail ~~in the continental United States~~, postage prepaid, or by hand ~~delivery~~ or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand ~~delivery~~ or overnight courier shall be deemed ~~to have been given upon receipt~~ effective and served as of the date of delivery. Either party shall have the right, by giving written notice to the other, to change the address ~~as at~~ which its notice(s) are to be received mailed or delivered. Until any such change is made, notice(s) to LESSOR shall be mailed or delivered as follows:

Broward County, Port Everglades Department  
ATTN: Director of Business Administration  
1850 Eller Drive, Suite 603  
Fort Lauderdale, Florida 33316

With a copy to:  
County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, Florida 33301

Until any such change is made, notice(s) to LESSEE shall be mailed or delivered as follows:

~~The Society for the Prevention of Cruelty to Animals~~  
South Florida Wildlife Center, Inc.  
3200 SW 4<sup>th</sup> Avenue  
Fort Lauderdale, Florida 33315

With a copy to:

~~Brinkley, McNerney, Morgan, Solomon & Tatum, LLP~~  
~~Attention: W. Michael Brinkley, Esquire~~  
~~200 E. Las Olas Boulevard, Suite 1800~~  
~~Fort Lauderdale, Florida 33301~~  
The Humane Society of the United States  
ATTN: Chief Financial Officer  
1255 23<sup>rd</sup> Street NW  
Suite 450  
Washington, DC 20037

16. Articles 26 and 28 of the Agreement are hereby amended to read as follows:

**26. INSOLVENCY**

If LESSEE becomes insolvent or bankruptcy proceedings are begun by or against LESSEE, and within thirty (30) days thereof LESSEE fails to secure a discharge thereof, or if LESSEE should make an assignment for the benefit of creditors before the end of the Lease Term hereof, LESSOR is hereby authorized, at its option, to forthwith cancel this Lease as for a default. LESSOR may elect to accept rent and other required payments and fees from the receiver, trustee, or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting LESSOR's rights under this Lease, but no receiver, trustee, or other judicial officer shall have any right, title, or interest in the Premises. The provisions of this article will be subject to the rights of any approved leasehold mortgage holder.

**28. TENANCY AFTER LEASE TERM EXPIRES**

It is agreed and understood that any holding over of by LESSEE after the expiration or early termination of this Lease shall not renew and extend same but and LESSEE shall operate and be construed as a tenancy from month to month at sufferance, and LESSEE agrees to pay to LESSOR the annual rent and all other charges required to be paid hereunder during any such holdover period. LESSOR, at its option, may impose a higher rent amount during any holdover period as permitted by Florida law. LESSEE shall be liable to LESSOR for all loss or damage on account of any such holding over against LESSOR's will after the expiration or early termination of this Lease, whether such loss or damage may be contemplated at the execution of this Lease or not. It is expressly agreed that acceptance of the foregoing payments by LESSOR in the event that LESSEE fails or refuses to surrender possession shall not operate or give LESSEE any right to remain in possession nor shall it constitute a waiver by LESSOR of its right to immediate possession or constitute an extension or renewal of this Lease.

17. Articles 29 and 30 of the Agreement are hereby amended to read as follows:

**29. NON-NONLIABILITY OF INDIVIDUALS**

No commissioner, director, officer, agent, or employee of LESSOR or LESSEE shall be charged personally or held contractually liable by or to the other party under any term or provisions of this Lease or of any supplement, modification, or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution of this Lease.

**30. COOPERATION WITH LESSOR AMONG THE PARTIES**

A. LESSEE acknowledges that LESSOR is, or may be, subject to Development Orders issued pursuant to Chapter 280, Florida Statutes (collectively, "Development Orders"). LESSOR, from time to time, will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its 1994 Fort Lauderdale-Hollywood International Airport Master Plan ("Master Plan") and FAR Part 150 Update ("Part 150 Update"), and the implementation of such plans in connection with Airport projects, which may include the following: (1) amendment of existing development agreements and Orders; (2) Preliminary Development Agreements from the Department of Community Affairs with the State of Florida and other agencies; (3) land use and zoning amendments; (4) preparation of environmental assessments and environmental impact statements; (5) such environmental permitting as may be required by federal, state, County, or local regulations; and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and the Part 150 Update Airport projects.

LESSEE agrees to cooperate with LESSOR in connection with LESSOR's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, LESSEE covenants and agrees (i) to support the LESSOR's efforts to obtain the Regulatory Approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by LESSOR in order to assist LESSOR in obtaining the Regulatory Approvals, provided that LESSEE shall not be required to bear any expense in connection therewith and LESSEE shall not be deemed an agent of the LESSOR.

B. LESSOR agrees to cooperate, in its capacity as landlord, with LESSEE as may be reasonably required, in order to assist LESSEE in its design and construction obligations provided herein. LESSOR, in providing such cooperation, shall not be required to bear any expenses.

18. Article 31, MISCELLANEOUS, of the Agreement is hereby amended, in part, to read as follows:

31. MISCELLANEOUS

...

D. AMENDMENTS

No modifications, amendment, or alteration in the terms or conditions contained herein in this Lease shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by the duly authorized representatives of LESSOR and LESSEE.

...

G. CAPTIONS, HEADINGS, AND TERMS

The article, section, and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provision hereof. Terms such as "herein," "hereof," "hereunder," "hereinabove," "hereinbelow," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, ~~or section, or article~~ where they appear, unless the context otherwise requires. Whenever reference is made to a §section or article of this Lease, such reference is to the §section or article as a whole, including all of the sections, subsections, and subparagraphs of such §section or article, unless the reference is made to a particular section, subsection, or subparagraph of such §section or article. Captions and article and §section headings used in this Lease are for the convenience of reference of the parties and shall not be deemed to define, limit, or in any way affect the meaning of any provisions of this Lease. Any reference to "days" means calendar days, unless otherwise expressly stated.

...

J. SEVERABILITY

~~If one or more clauses, sections, or provisions of this Lease shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of this Lease shall not be affected thereby. If, however, the clause determined to be invalid materially affects the performance of the parties, or materially impacts the parties' expectations or positions with respect to the Lease, the parties agree to modify the Lease in accordance with Section 31 (D) herein so as to, as near as possible, place the parties in the same position they were in prior to the ruling, viz-a-viz, their intent, performance expectations, and economic position. In the event a portion of this Lease is found by a court of competent jurisdiction to be unenforceable, that part shall be deemed severed from this Lease and the balance of this Lease shall remain in full force and effect unless LESSOR or LESSEE elects to terminate this Lease. An election to terminate this Lease based upon this provision shall be made within seven (7) days after the finding by the court becomes final.~~

...

L. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if LESSEE is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event LESSEE ~~does will~~ designate the Secretary of State, state of a local agent in Broward County, Florida, acceptable to LESSOR, as its agent for the purpose of service of process in any court action between it and with LESSOR arising out of or based upon this Lease, and the service shall be made as



provided by the laws of the state of Florida for service upon a ~~non~~-nonresident, who has designated the ~~Secretary of State~~ a local agent as his ~~its~~ agent for service of process. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, LESSEE may be personally served with such process out of this State by certified mailing to LESSEE at the address set forth herein. Any such service out of Florida ~~this State~~ shall constitute valid service upon LESSEE as of the date of mailing. It is further expressly agreed that LESSEE is amenable to and hereby agrees to the process so served, submits to the jurisdiction of Florida courts, and waives any and all objections and protests thereto.

...  
P. APPLICABLE LAW, JURISDICTION, AND VENUE; WAIVER OF JURY TRIAL

This Agreement Lease shall be interpreted and construed in accordance with and governed by the laws of the sState of Florida. All Parties agree and accept that jurisdiction of Any controversies or legal problems arising out of this Agreement Lease, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of exclusively in the state courts of the Seventeenth Judicial Circuit of in Broward County, Florida, the and venue situs, and shall be governed by the laws of the state of Florida for litigation arising out of this Lease shall be exclusively in such state courts, forsaking any other jurisdiction that either party may claim by virtue of its residency or other jurisdictional device. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation. BY ENTERING INTO THIS LEASE, LESSEE AND LESSOR HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS LEASE. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS LEASE AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

Q. UNCONTROLLABLE FORCES

Neither LESSOR nor LESSEE shall be considered to be in default of this Lease if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the ~~non~~-nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which ~~that~~ results in the prevention or delay of performance by a party of its obligations under this Lease and which ~~that~~ is beyond the reasonable control of the ~~non~~-nonperforming party. It includes, but is not limited to, fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Any delay caused by an

Uncontrollable Force shall not be recognized unless LESSEE shall notify LESSOR in writing within ten (10) calendar days after the Uncontrollable Force event. Neither economic impracticability nor inability of LESSEE to perform in whole or in part for economic reasons shall constitute an Uncontrollable Force event.

R. NON-NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

(a) 1) LESSEE shall not unlawfully discriminate against any person in its operations, ~~and activities, or expenditure of funds~~ in fulfilling its obligations under this Lease. LESSEE shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA, including Titles I and II of the ADA regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, LESSEE shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

(b) 2) LESSEE shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Chapter 16½, Broward County Code of Ordinances, as may be amended, ~~Chapter 16½~~) in performing any services pursuant to this Lease.

S. PUBLIC ENTITY CRIMES

LESSEE represents that the execution of this Lease will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County LESSOR; may not submit a bid on a contract with County LESSOR for the construction or repair of a public building or public work; may not submit bids on leases of real property to County LESSOR; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County LESSOR; and may not transact any business with County LESSOR in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section ~~shall~~ will result in termination of this Lease in accordance with Article 23 of this Lease and recovery of all monies paid hereto to LESSEE, and may result in debarment from County's LESSOR's competitive procurement activities.

T. PRIOR AGREEMENTS

~~This document incorporates and includes~~ This Lease represents the final and complete understanding of the Parties and supersedes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein in this Lease and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof of this Lease shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 31.D. above.

U. THIRD PARTY BENEFICIARIES

~~Neither LESSOR nor LESSEE intend to directly or substantially benefit a third party by this Lease. Therefore, the Parties agree to acknowledge that there are no third-party beneficiaries to this Lease and that no third party shall be entitled to assert a right or claim against either of them based upon this Lease. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Lease.~~

X. AUDIT RIGHT AND RETENTION OF RECORDS

~~LESSOR shall have the right to audit the books, records, and accounts of LESSEE that are related to this Project Lease. LESSEE shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project this Lease and performance under this Lease. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, LESSEE shall make same available in written form at no cost to County.~~

~~LESSEE shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit by LESSOR, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement Lease for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of at least three (3) years after expiration or termination of this Agreement Lease or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any representative of LESSOR (including any outside representative engaged by LESSOR). LESSEE hereby grants LESSOR the right to conduct such audit or review at LESSEE's place of business, if deemed~~

~~appropriate by LESSOR, with seventy-two (72) hours' advance notice. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by LESSOR to be applicable to LESSEE's records, LESSEE shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by LESSEE.~~

~~Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for LESSOR's disallowance and recovery of any payment upon such entry. LESSEE shall comply with all the provisions of Section 1-11 (bb) of the Broward County Administrative Code requiring LESSEE to provide LESSOR an annual audited financial statement to be performed in accordance with generally accepted auditing standards by an independent certified public accountant licensed in the state of Florida.~~

Y. PARENT GUARANTEE AND INDEMNITY

~~THE HUMANE SOCIETY OF THE UNITED STATES INC., a Delaware corporation (the "GUARANTOR"), by and through the AGREEMENT BETWEEN BROWARD COUNTY AND THE HUMANE SOCIETY OF THE UNITED STATES FOR PARENT GUARANTEE AND INDEMNITY, which is attached hereto as Exhibit "B", guarantees to LESSOR, its successors and assigns, full performance and observance of all the covenants, conditions, and agreements herein provided to be performed by LESSEE, its successors and assigns, and expressly agrees that the obligations of the GUARANTOR hereunder shall not be terminated, affected, or impaired by reason of the assertion by LESSOR against LESSEE of any of the rights or remedies reserved to LESSOR pursuant to the provisions of this Agreement Lease or by reason of the waiver or failure of the LESSOR to enforce any of the terms hereof or by reason of the granting of any indulgence or extension of the time to LESSEE, all of which may be given or done without notice to GUARANTOR.~~

19. All references to "the parties" in Article 31, Sections A, B, I, K, N, and O of the Agreement are hereby amended to read "the Parties."

20. Article 31, MISCELLANEOUS, is hereby amended to add the following new sections to read as follows:

Z. PRIORITY OF PROVISIONS

~~If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Lease and any provision of Articles 1 through 31 of this Lease, the provisions contained in Articles 1 through 31 shall prevail and be given effect.~~

AA. SOVEREIGN IMMUNITY

Except to the extent sovereign immunity may be deemed to be waived by entering into this Lease, nothing herein is intended to serve as a waiver of sovereign immunity by LESSOR nor shall anything included herein be construed as consent by LESSOR to be sued by third parties in any matter arising out of this Lease. LESSOR is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

BB. USE OF COUNTY LOGO

LESSEE shall not use LESSOR's name, logo, or otherwise refer to this Lease in any marketing or publicity materials without the prior written consent of Port Department.

21. Exhibit C is attached hereto and incorporated into and made a part of the Agreement.
22. Preparation of this Second Amendment has been a joint effort of County and Lessee, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
23. Except as expressly modified herein, all other terms and conditions of the Agreement remain in full force and effect.
24. This Second Amendment shall be effective upon complete execution by the Parties.
25. This Second Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, will constitute one and the same document.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties have made and executed this Second Amendment to the Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_ day of \_\_\_\_\_, and South Florida Wildlife Center, Inc., signing by and through its President, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Port Everglades Department  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Telecopier: (954) 468-3690

By [Signature] 5/3/19  
Al A DiCalvo (Date)  
Assistant County Attorney

By [Signature] 5/3/19  
Russell J. Morrison (Date)  
Senior Assistant County Attorney

AAD  
SPCA-SFWC 2nd Amend\_v9Final-2019-0430  
4/17/19, 4/30/19



SECOND AMENDMENT TO THE LEASE AGREEMENT BETWEEN BROWARD COUNTY AND THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS OF BROWARD COUNTY, INC.

Lessee

ATTEST:

SOUTH FLORIDA WILDLIFE CENTER, INC.

\_\_\_\_\_  
Secretary

By   
\_\_\_\_\_  
President or Vice-President

\_\_\_\_\_  
(Print/Type Name)

Joffrey J Arciniaco, President  
\_\_\_\_\_  
(Print Name and Title)

(Seal)

2nd day of May, 2019.

OR

WITNESSES:

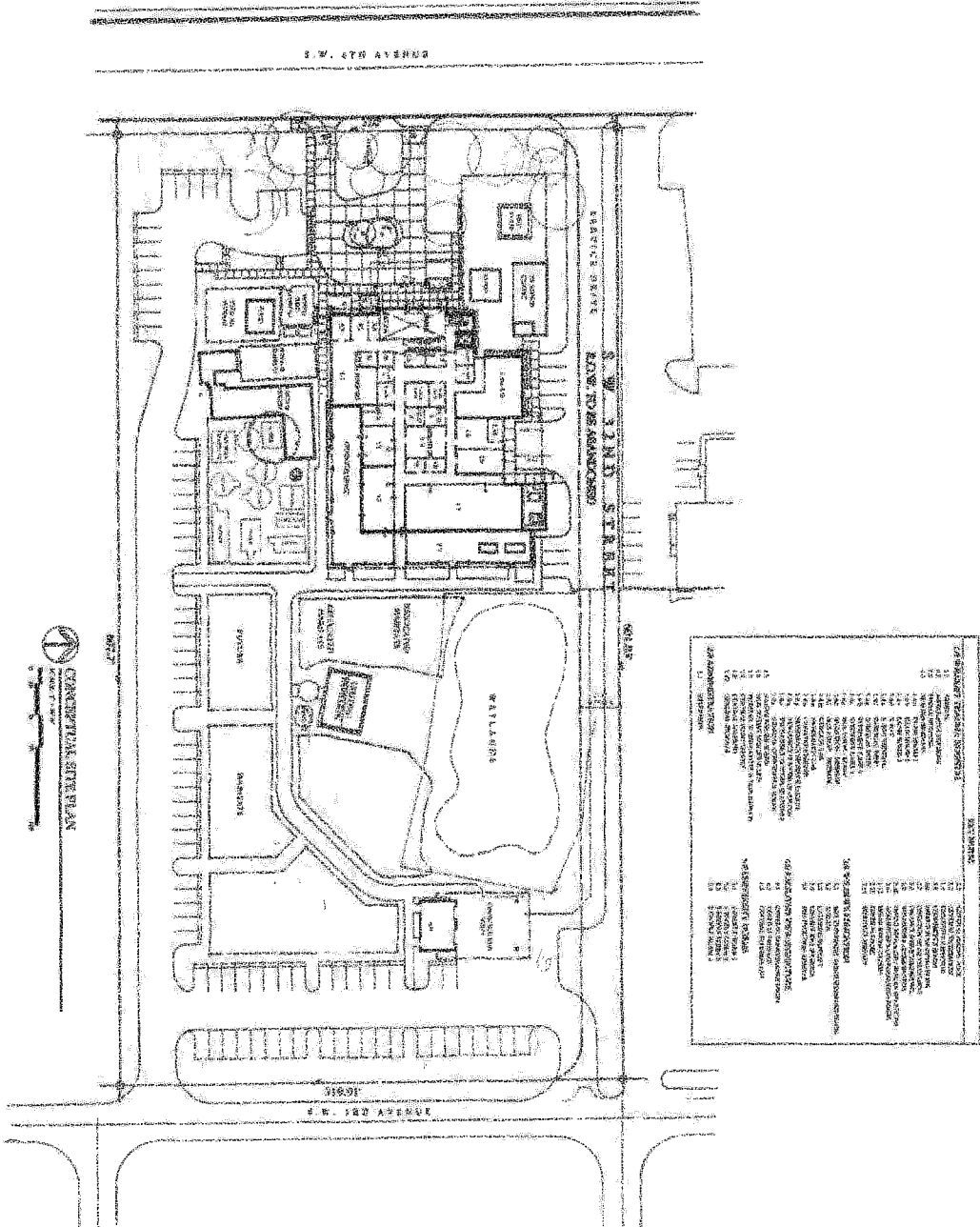
  
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Debra Parsons-Dicke  
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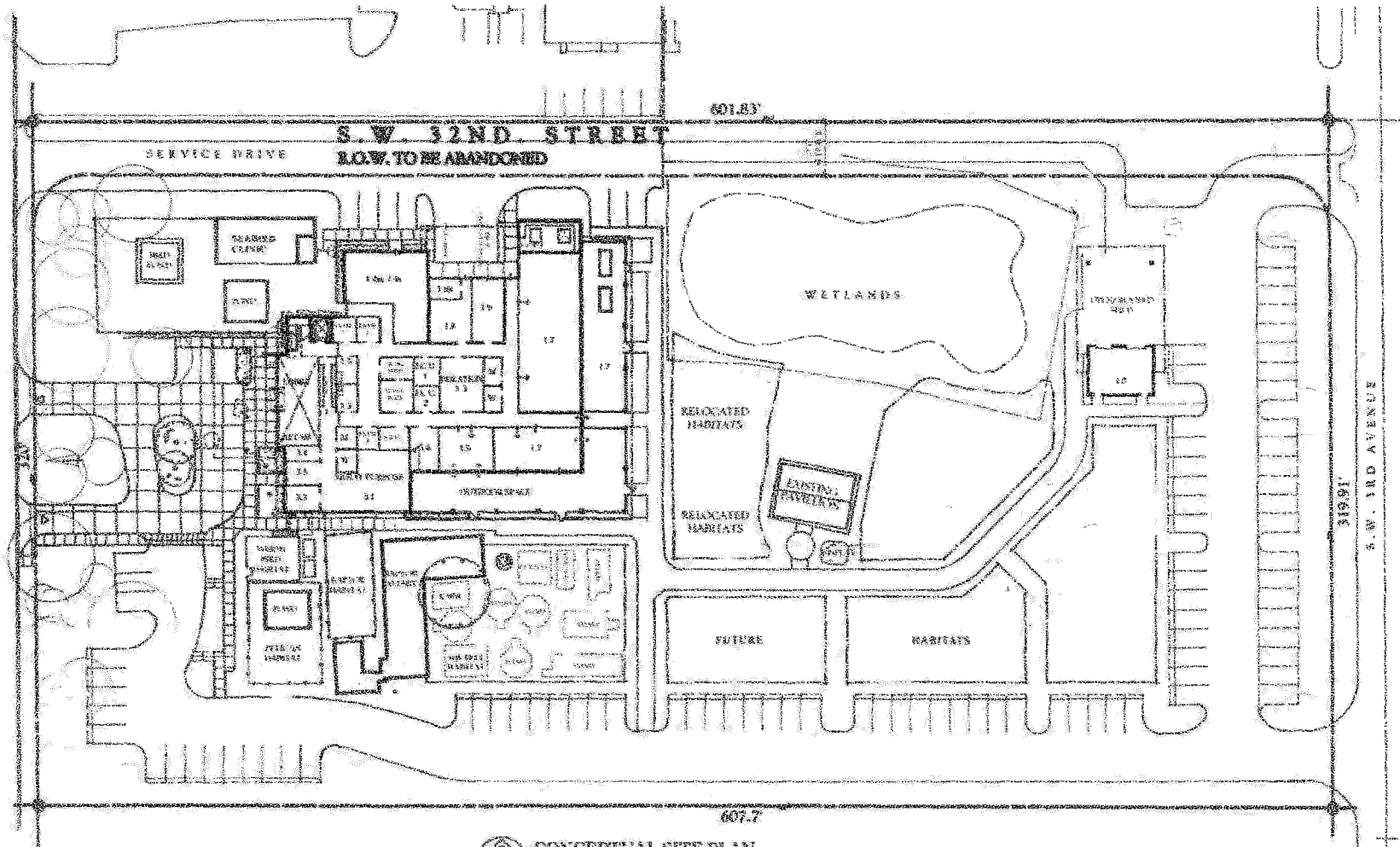
  
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Deborah Millman  
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DATE: 11/11/11  
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NO.	DESCRIPTION	DATE
1	PRELIMINARY	11/11/11
2	REVISED	11/11/11
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100	REVISED	11/11/11



 **CONCEPTUAL SITE PLAN**  
SCALE 1" = 60'  


**SOUTH FLORIDA WILDLIFE CENTER**  
3200 SW 4TH AVE, FORT LAUDERDALE

 **Vander Ploeg and Associates, Inc.**  
Architects and planners  
400 South State Street, Suite 200  
Fort Lauderdale, Florida 33432  
(954) 368-1400

Project # 16036

KEY NOTES	
<b>1.0 WILDLIFE TRAUMA HOSPITAL</b>	
1.1	ARRIVAL
1.2	AMBULANCE DOCKING
1.3	TRIAGE HOLDING
1.4	TRAUMA HOSPITAL
1.4.a	EXAM ROOM 1
1.4.b	EXAM ROOM 2
1.4.c	EXAM ROOM 3
1.4.d	X-RAY
1.4.e	X-RAY VIEWING
1.4.f	SURGICAL PREP
1.4.g	SURGICAL SUITE
1.4.h	INTENSIVE CARE 1
1.4.i	INTENSIVE CARE 2
1.4.j	ISOLATION - LARGE
1.4.k	ISOLATION - MEDIUM
1.4.l	ISOLATION - MEDIUM
1.4.m	GENERAL LAB
1.4.n	PATHOLOGY LAB
1.4.o	CADAVER FREEZER
1.4.p	PHARMACY STORAGE LOCKER
1.4.q	VET OFFICE (3 WORK STATIONS)
1.4.r	TECH OFFICE (3 WORK STATIONS)
1.4.s	GENERAL CONFERENCE ROOM
1.5	NATIVE SPECIES WARD
1.6	NON-NATIVE SPECIES WARD
1.7	NURSERY WARD (NATIVE & NON NATIVE)
1.8	CENTRAL FOOD SERVICE
1.9	CENTRAL LAUNDRY
1.10	GENERAL STORAGE
<b>2.0 ADMINISTRATION</b>	
2.1	RECEPTION
2.2	GENERAL ADMIN. POOL
2.3	GENERAL WORKROOM
2.4	EXECUTIVE DIRECTOR
2.5	CONFERENCE ROOM
2.6	DIRECTOR OF OPERATIONS
2.7	DIRECTOR OF DEVELOPMENT
2.8	FINANCE AND BOOKKEEPING
2.9	VOLUNTEER COORDINATOR
2.10	OFFICE MANAGER / HUMAN RELATIONS
2.11	VOLUNTEER'S COORDINATION ROOM
2.12	BREAK ROOM/ PANTRY
2.13	GENERAL STORE
2.14	RESOURCE LIBRARY
<b>3.0 WILDLIFE EDUCATION</b>	
3.1	MULTI-PURPOSE AUDITORIUM (100 SEATS)
3.2	TOILETS
3.3	CATERING SUPPORT
3.4	CHAIR/TABLE STORAGE
3.5	PRE-FUNCTION ARRIVAL
<b>4.0 FACILITIES INFRASTRUCTURE</b>	
4.1	GENERAL MAINTENANCE SHOPS
4.2	GENERAL STORAGE
4.3	CENTRAL POWERPLANT
<b>5.0 UNIVERSITY DORMS</b>	
5.1	2-PEOPLE DORM 1
5.2	2-PEOPLE DORM 2
5.3	2-PEOPLE DORM 3
5.4	2-PEOPLE DORM 4