

Meeting Date
September 20, 2016



AGENDA	
Section	Consent
Item No.	II.A.5

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	FIVE-YEAR LEASE AGREEMENT: BAREFOOT BAY RECREATION DISTRICT (Annual Cost \$12,893.40) (District 3)
DEPT/OFFICE:	Utility Services Department

Requested Action:

It is requested that the Board of County Commissioners execute a five-year lease agreement with the Barefoot Bay Recreation District for office space used by the Utility Services Department for water billing and customer service in Barefoot Bay, grant permission for County Manager or designee to sign for a one-year extension at the end of the initial five-year lease.

Summary Explanation & Background:

The Utility Services Department operates and administers the Barefoot Bay Water and Sewer District under the provisions of an Interlocal Agreement between the Board of County Commissioners and the Barefoot Bay Water and Sewer District.

The Barefoot Bay Recreation District owns a building at 931 Barefoot Blvd. Since 2000, the County Utility Services Department has leased one-half of the building as the billing and customer service office for the Barefoot Bay Water and Sewer District. No alternate locations are available in the immediate Barefoot Bay area. This location provides convenient customer service access for Barefoot Bay's 5,200 water and sewer customers.

By securing a five-year lease, and paying annually, the new lease provides for an annual decrease of approximately \$2,400 per year from the previous lease.

Fiscal Impact: The annual lease amount is currently budgeted in the Barefoot Bay Water and Sewer District budget. Fund 4250, Cost Center 365460, GL Account 5440001.

Contact: Jim Helmer, Utility Services Director, 321-633-2091, [Jim.helmer@brevardfl.gov](mailto:Jim.helmer@brevardfl.gov)

Clerk to the Board Instructions: Please call Utility Services to pick-up two originals after execution. Rose Lyons 633-2091 (Retain 1 copy for Clerk's Records).

Exhibits Attached: Five Year Lease Agreement with Barefoot Bay Recreation District

Contract /Agreement (If attached): Reviewed by County Attorney    Yes     No     PR

County Manager	Assistant County Manager, Frank Abbate	Department Director / Extension
Stockton Whitten	Assistant County Manager, Venetta Valdengo	 Jim Helmer, Utility Services Director / x52091



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

September 21, 2016

MEMORANDUM

TO: Jim Helmer, Utility Services Director

RE: Item II.A.5., Five-Year Lease Agreement with Barefoot Bay Recreation District for Office Space Used by the Utility Services Department for Billing and Customer Service in Barefoot Bay

The Board of County Commissioners, in regular session on September 20, 2016, executed the five-year Lease Agreement with the Barefoot Bay Recreation District for office space used by the Utility Services Department, for water billing and customer service in Barefoot Bay; and authorized the County Manager, or his designee, to sign for a one-year extension at the end of the initial five-year lease. Enclosed are two fully-executed Lease Agreements for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

✓ Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration  
County Manager  
Finance  
Budget

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into this 20 day of Sept. 20 2016, by and between BAREFOOT BAY RECREATION DISTRICT, a mobile home park recreation district organized and existing under the provisions of Section 418.30, et seq., Florida Statutes, and Brevard County Ordinance No. 84-05, (hereinafter referred to as "Lessor") and Brevard County hereinafter referred to as "Lessee").

### WITNESSETH:

That Lessor, for and in consideration of the rents hereinafter to be paid by Lessee and the covenants herein to be made and kept by Lessee, hereby demises and leases unto Lessee that certain premises located in Brevard County, Florida, to wit:

Bldg. 3, Suite 2 located at  
931 Barefoot Blvd.  
Barefoot Bay, FL 32976

1. **Term.**

(a) The term of this Lease shall be for a period of 5 years commencing on October 1, 2016 and ending on September 30, 2021.

(b) Provided that the Lessee is not in default of any provisions of this lease, Lessee and Lessor may agree to renew or extend said lease for one (1) additional five (5) year period upon the same terms, covenants and conditions as set forth herein, except that Lessor, at its option, may increase the base rent by as much as five percent (5%) per renewal period. In no event shall base rent increase more than five percent (5%) in any renewal period. Lessee and Lessor shall agree to renew by giving written notice of intent to renew to each other not less than sixty (60) days prior to the expiration of the initial term hereof.

2. **Rent.**

(a) The total rent payable by Lessee to Lessor during the term of this Lease shall be \$55,926.50, payable in five (5) equal annual installments of \$11,185.30, with annual CPI increases. At the time rental payments are made, Lessee agrees to pay to Lessor all applicable Florida and local sales and use taxes that arise because of payment of rent, Common Area Maintenance (CAM) charges to Lessor. The Lessee also agrees to pay, at the time rental payments are made their proportionate share of CAM charges in the amount of \$142.34 per month, (\$1,708.10 annually). Said CAM charges may be increased from time to time pursuant to Paragraph 9(b) of this Agreement. Commencing from the commencement date of this Agreement, Tenant agrees to pay to the Landlord throughout the term of this Lease its proportionate share of all property taxes which may be levied against the property by any taxing authority including all applicable assessments, without any allowance for any discount.

Each monthly installment of rent, real estate taxes and CAM charges shall be payable in advance on the first day of each and every month during the term of the Lease without deduction, offset, prior notice or demand. If any of said payments are not received within five (5) days of the date due, Lessee shall pay Lessor a Twenty Five and 00/100 Dollars, (\$25.00), late fee. If the lease term commences on a date that is not the first day of the month, or if the lease termination date is not the last day of the month, a prorated monthly installment shall be paid at the then current rate for the fractional month during which the Lease commences and/or terminates.

(b) All rental installments, together with any other payments required to be made by Lessee to Lessor hereunder, shall be payable with United States currency at the office of Lessor located at 625 Barefoot Boulevard, Barefoot Bay, Florida, 32976 or at such other location as may be hereafter specified by Lessor to Lessee.

3. **Past Due Rent.** All past due rent, including any other payment required to be made by Lessee to Lessor, and any other amount which Lessor has advanced in order to cure Lessee's default hereunder, shall bear interest at the rate of eighteen percent (18%) per annum from the date due, or that date of payment, as the case may be, until repaid. Any amounts advanced by Lessor pursuant to the terms and provisions of this Lease, shall be repaid to Lessor by Lessee within ten (10) days after written demand therefore.

4. **Security for Payment of Rents.** Lessee hereby pledges with and assigns unto Lessor all of the furniture, fixtures, goods and chattels of said Lessee which may be brought or put on the leased premises, and which are presently on said premises, as security for the payment of the rents herein reserved, and agrees that Lessor's lien for the payment of said rent may be enforced by distress, foreclosure or otherwise at the option of Lessor.

5. **Security Deposit; Key Deposit:**

This section intentionally left blank

6. **Taxes.**

This section intentionally left blank

7. **Alterations and Additions.** Lessee shall not make or allow to be made any alterations or physical additions or improvements in or to the leased premises without first obtaining the written consent of Lessor. Any alterations, physical additions or improvements to the leased premises made by Lessee shall at once become the property of lessor and shall be surrendered to Lessor upon the termination of this Lease; provided, however, this clause shall not apply to movable equipment or furniture owned by Lessee which may be removed by Lessee at the end of the term of this lease if Lessee is not then in default and if such equipment and furniture is not then subject to any other rights, liens and interests of Lessor. If required by Lessor, such alterations, additions or improvements shall be removed by Lessee upon the expiration or sooner termination of the term of this Lease and Lessee shall repair damage to the

premises caused by such removal, all at Lessee's cost and expense. Lessee shall submit to Lessor plans and specifications for all alterations and additions at the time Lessor's consent is sought.

8. **Maintenance and Repair.** Lessor agrees to repair and maintain in good condition the roof, roof drains, sewers, outside walls, foundations and structural portions of the leased premises. Lessee shall be responsible for all other repairs and maintenance necessary including, but not limited to, work on the storefront, show windows, windows, door locks and hardware, window glass, interior decoration and painting, plumbing, heating, air conditioning and electrical facilities. Lessee shall enter into an annual maintenance contract of the Air Conditioning unit, and provide a copy of the contract to the Lessor. Failure to do so will result in the lessee responsibility for replacement of the air-conditioning unit. Lessee shall do all things necessary to keep the leased premises (except the roof, roof drains, sewers, outside walls, foundations and structural portions of the leased premises, which shall be maintained by Lessor), including the sidewalks and area adjacent to the leased premises, in a clean, neat and sanitary manner and in compliance with all laws, ordinances, rules and regulations of any public authority and in compliance with such rules and regulations that may be adopted from time to time by the Lessor that are applicable to all tenants in the Shopping Center of which the leased premises is apart. Lessee shall also be solely responsible for all repairs required as a result of the negligent or intentional acts or omissions of Lessee or Lessee's guests or invitees.

9. **Services.**

(a) Lessee shall during the term hereof pay prior to delinquency all charges for all electrical, water, sewer, garbage and telephone service to the leased premises and shall hold Lessor harmless from any liability there from.

(b) Lessor shall provide for maintenance and repair of parking and common areas of the Shopping Center. Except as specifically provided for herein, Lessor shall not be obligated to provide any services to Lessee. In addition, Landlord does not warrant that any such services provided to Lessee will be free from interruption due to causes beyond Lessor's control. In the event of an interruption of such services or delay in the restoration of such services, the same shall not be deemed an eviction or disturbance of Lessee's use and possession of the leased premises or rendered Lessor liable to Lessee for damages by abatement of rent or otherwise, nor shall the same relieve Lessee from performance of Lessee's obligations under this Lease.

Lessee shall pay Lessor its proportionate share of the cost of repair and maintenance expenses of the parking and common areas of the Shopping Center, including, but not limited to cleaning, common area utilities and repairs, maintenance, and replacement of sidewalks, landscaping, roofs, and painting and hurricane protection. Said proportionate share shall be based on the square footage of building which is occupied when repairs are made. At the start of the lease, in order to insure that the parking area and common areas are properly maintained, Lessee shall pay Lessor \$142.34 a month, in advance, along with the proportionate property tax and required rental payments. In the event that the monthly CAM payment does not satisfy the cost of said maintenance, Lessee shall pay Lessor his proportionate share of excess within ten (10) days of receipt of the statement which evidences such excess payment. If Lessee

  
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fails to make said payment within ten (10) days of receipt of said statement, Lessee shall pay Lessor a Twenty Five Dollar (\$25.00) late fee for every month said payment is not made. In the event Lessee does not pay said common area maintenance expense for two consecutive months, Lessor, at its option, may terminate said lease and take all remedies permitted by Paragraph 21 herein.

10. **Parking.** No part of any parking area adjoining the leased premises is leased hereunder. Lessor agrees that a parking areas shall be available to and used by, customers of Lessee along with customers of other tenants of other portions of the building of which the leased premises form a part, and subtenants and concessionaires thereof. Said parking area shall not be used by Lessee, subtenant, or concessionaire, except with the written consent of Lessor, in which event said Lessee, subtenant, concessionaire or employee shall park their automobiles in such place or places as shall be designated by Lessor. Lessor shall have the right to at any time, and from time to time, to establish rules and regulations for the operation of said parking area. Lessee further agrees that upon written notice from Lessor, Lessee shall provide Lessor a list of the automobile license number assigned to Lessee's car and all employees or agents.

11. **Use.**

(a) **Use.** The leased premises shall be used and occupied by Lessee as **Utility Billing and Administrative Office** and for no other purpose without the prior written consent of Lessor.

(b) **Suitability.** Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the leased premises or with respect to the suitability of the leased premises for the conduct of Lessee's business, nor has Lessor agreed to undertake any modification, alteration or improvement to the leased premises except as provided in this Lease. The taking of possession of the leased premises by Lessee shall conclusively establish that the leased premises were at such time in satisfactory condition.

(c) **Lessee's Acceptance.** Lessee accepts the leased premises in the condition they are in on the date this Lease commences or Lessor grants occupancy, which ever occurs first. Lessee hereby acknowledges that it has received the leased premises in a thoroughly good and tenantable order, safe condition and repair of which the execution of this Lease, and Lessee's taking of possession hereunder shall be conclusive evidence.

(d) **Zoning and Occupational License.** Lessee shall be solely responsible to determine that the purpose for which he/she/it intends to use the leased premises is allowed under the current zoning and occupational license rules and regulations. Lessor makes no representations as to the permissible uses under the applicable zoning and occupational license rules and regulations.

(e) **Uses Prohibited.** Lessee hereby agrees that:

(i) Lessee shall not do or permit anything to be done in or about the leased premises nor bring to keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the leased premises or the real property of which the premises are a part or of any of its contents (unless Lessee shall pay any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering said premises or real property or any part thereof or any of its contents, nor shall Lessee sell or permit to be sold in or about said premises any articles which may be prohibited by a standard form policy of fire insurance.

(ii) Lessee shall not do or permit anything to be done in or about the leased premises which will in any way obstruct or interfere with the rights of other tenants or occupants of adjacent property or injure or annoy them or use or allow the leased premises to be used for any unlawful or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance in, on or about the leased premises. Lessee shall not commit or suffer to be committed any waste in or upon the leased premises.

(iii) Lessee shall not use the leased premises to permit anything to be done in or about the leased premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated.

(iv) Lessee shall not leave the leased premises unoccupied or vacant. Throughout the term of this lease, the Lessee shall conduct and carry on in the leased premises the type of business for which the leased premises are leased.

(v) Lessee is prohibited from conducting business from 10:00 p.m to 7:00 a.m., unless the Lessor consents in writing. Twenty four hour operations are strictly prohibited.

12. **Insurance.**

(a) **Public Liability.** Lessee shall, at Lessee's sole cost and expense, but for the mutual benefit of Lessor and Lessee, maintain throughout the term of this Lease general public liability insurance against claims for personal injury, death or property damage occurring in, or about the leased premises, and in, on , or about the sidewalks directly adjacent to the leased premises and such other areas as Lessee, Lessee's officers, agents, employees, contractors and invitees shall have the right to use pursuant to this Lease. Such insurance shall have a minimum coverage of \$500,000.00 for single occurrence and \$1,000,000.00 for more than one occurrence.

(b) **Fire and Extended Coverage.** Lessor shall take out and keep in force during the term of this Lease, at Lessor's expense, fire and extended coverage insurance on the building within which the leased premises are located, exclusive of Lessee's fixtures, personal property and equipment, in an amount determined by Lessor.

(c) **Miscellaneous.** The insurance policy or policies required hereunder of Lessee shall be written in companies licensed to do business in Florida, selected by Lessee, subject to

  
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the approval of such companies by Lessor. Lessee shall, prior to opening for business in the leased premises, furnish from the insurance companies certificates of coverage evidencing the existence and amounts of such insurance. All such policies of insurance shall be issued in the name of Lessor and Lessee and for the mutual and joint benefit and protection of the parties hereto, but in no event shall such policies limit Lessee's liability. All such policies shall be primary, not contributory with and not in excess of the coverage which Lessor may carry. All such policies shall contain a clause or endorsement to the effect that they may not be terminated or materially amended except after fifteen (15) days written notice thereof to Lessor. Lessee shall have the right to provide such coverage pursuant to blanket policies obtained by Lessee provided such blanket policies expressly afford the coverage required by this Lease. The failure of Lessee to obtain the insurance policy or policies required hereunder shall constitute a default under the terms of this Lease. If Lessee does not take out such insurance or keep the same in full force and effect, Lessor may, but shall be under no duty to, acquire the necessary insurance and pay the premium therefore and Lessee shall repay to Lessor the amounts so paid promptly after demand. Lessor's purchasing of said insurance shall not affect Lessor's remedies for Lessee's default.

(d) **Non-Waiver of Sovereign Immunity.** Regardless of the level or type of coverage obtained for the benefit of Lessor as described herein, Lessor does not intend that any provision of this Agreement shall in any way constitute a waiver of any defense or limit of sovereign immunity to which Lessor may be entitled pursuant to Section 768.28, F.S., or as otherwise provided by law.

13. **Assignment.** Lessee covenants and agrees not to assign, transfer, mortgage, pledge or hypothecate the leasehold or to sublet the leased premises or any part thereof without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion. Any transfer of this Lease from Lessee by merger, consolidation or liquidation shall constitute an assignment for the purposes of this Lease. No consent by Lessor to any assignment or subletting by Lessee shall relieve Lessee of any obligation to be performed by Lessee under this Lease, whether occurring before or after such consent, assignment or subletting.

14. **Indemnification.** Lessee shall indemnify, defend and save harmless said Lessor from and against any and all claims, suits, actions, damages or causes of action arising during the term of this Lease for any personal injury, loss of life, or damage to property sustained in or about the leased premises by reason or as a result of Lessee's occupancy thereof and from and against any orders, judgments or decrees which may be entered thereon and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim or in the investigation thereof.

15. **Subordination.** It is agreed by Lessee that this Lease shall be subject and subordinate to any mortgage, deed of trust, or other liens now on the premises or which may hereafter be made on account of any proposed loan to be placed on said premises by Lessor to the full extent of all debts and charges secured thereby; and to any renewals, extensions and modifications of all or any part thereof which Lessor may hereafter, at any time, elect to place on said premises, and Lessee agrees upon request to hereafter executed any paper or papers which

  
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counsel for Lessor may deem necessary to accomplish that end. That in default of Lessee's doing so, Lessor is hereby empowered to execute such paper or papers, in the name of Lessee, and as the act and deed of said Lessee, and this authority is declared to be coupled with an interest and not revocable.

16. **Liens.** Lessee shall keep the leased premises, and the property in which the leased premises are located, free from any liens arising out of any work performed, materials furnished or any obligations incurred by Lessee, it being expressly acknowledged that the leasehold interest hereby leased shall not be subject to any such liens.

17. **Entry By Lessor.** Lessor reserves and shall at any and all times have the right to enter the leased premises to inspect the same, to submit said premises to prospective purchasers or Lessees, to post notices of non-responsibility and "For Lease" signs and to alter, improve or repair the leased premises and any portion of the building without abatement of rent and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of work to be performed, always providing that the business of Lessee shall not be interfered with unreasonably. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the leased premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Lessor shall at all times have and retain a key with which to unlock all of the doors in, upon and about the leased premises, excluding Lessee's vaults and safes, and Lessor shall have the right to use any and all means which Lessor May deem proper to open doors in an emergency, in order to obtain entry to the leased premises, and any entry to the leased premises obtained by Lessor by any of said means or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the leased premises or an eviction of Lessee from the leased premises or any portion thereof.

18. **Casualty Damage.** In the event the leased premises are destroyed or so damaged by fire or other casualty during the term of this Lease so that they become untenable, then Lessor shall have the right to render said premises tenantable by making the necessary repairs within ninety (90) days after the date of written notification by Lessee to Lessor of the destruction or damage and if said premises are not rendered tenable within said time, it shall be optional with either party to cancel this Lease and, in the event of such cancellation, the rent shall be paid only to the date of such written notification of the fire or casualty. If the leased premises should only be partially damaged by fire or other casualty and Lessor chooses to repair said premises and the damage or destruction was not caused or contributed to by act or negligence of the Lessee, its agents, employees, invitees or those for whom the Lessee is responsible, the rent payable under this lease during the period for which part of the premises is uninhabitable shall be adjusted downward, proportionate with the share of the total space which is uninhabitable.

19. **Condemnation:**

(a) If the whole of the leased premises or such portion thereof as will made the leased premises unsuitable for the purpose herein leased is condemned for any public use or purpose by any legally constituted authority, then in either of such events, the Lease shall

terminate as of the date when possession is taken by such public authority and rental shall be payable by Lessee only to such date.

(b) If any part of the leased premises shall be condemned and taken without causing a termination pursuant to the above paragraph, then Lessor at its option shall have the right to either terminate the Lease upon written notice within sixty (60) days after said taking, or to continue the term of the said Lease, in which event the rental shall be equitably reduced in proportion to the space so taken (but not for parking space so taken), and Lessor shall, at its own cost and expense, restore the remaining portion of the leased premises to the extent necessary to render it reasonably suitable for the purposes for which it was leased, and make all repairs to the building in which the premises are relocated to the extent necessary to constitute the building a complete architectural unit.

(c) All compensation awarded or paid upon such a total or partial taking of the leased premises shall belong to and be the property of Lessor without any participation by Lessee, and Lessee hereby assigns to Lessor any award made to Lessee, provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, or depreciation to, damage to, or costs of removal of, or for the value of, stock, trade, fixtures, furniture, and other personal property belonging to Lessee, provided that no such claim shall diminish or otherwise adversely affect Lessor's aware.

20. **Default.** Each of the following events shall be a default hereunder by Lessee and a breach of this Lease:

(a) If Lessee shall fail to pay to Lessor any rent or sales or use tax thereon, or any other payment required to be made by Lessee, as and when the same shall become due and payable and such failure to pay shall continue for ten (10) days after the same became due and payable;

(b) If Lessee or any successor or assignee of Lessee, while in possession, shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the Bankruptcy Act of any State, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall take an assignment for the benefit of creditors, or, if Lessee be a corporation, shall be dissolved, voluntarily or involuntarily;

(c) If involuntary proceedings under any such bankruptcy law or insolvency act, or for the dissolution of a corporation shall be instituted against Lessee or such successors or assignee, or if a receiver or trustee shall be appointed of all or substantially all of the property of Lessee or such successor or assignee;

(d) If Lessee shall fail to perform or breach any of the conditions on Lessee's part to be performed and if such nonperformance or breach shall continue for a period of ten (10) days after notice thereof by Lessor to Lessee, or if such performance cannot be reasonably had within

  
Lessor's initial

such ten (10) day period and Lessee shall not in good faith have commenced such performance within such ten (10) day period and shall not diligently proceed therewith to completion;

(e) If Lessee shall vacate or abandon the leased premises for a period of ten (10) days or more;

(f) If this Lease or the interest of Lessee hereunder shall be transferred or assigned in a manner other than herein permitted;

(g) If Lessee fails to take possession of the leased premises on the term commencement date or within seven (7) days after notice that the leased premises are available for occupancy, if the term commencement date is not fixed herein, and if such occupancy date shall not be deferred in writing by Lessor; or

(h) If Lessee fails to pay the monthly common area maintenance fee for two consecutive months.

21. **Lessor's Default Options.** In the event of the occurrence of any default specified hereunder, Lessor may, at any time thereafter, without limiting Lessor in the exercise of any right or remedy at law or in equity which Lessor may have by reason of such default or breach:

(a) Terminate this Lease, resume possession of the leased premises for its own account, and recover immediately from Lessee the entire rent for the balance of the lease term.

(b) Resume possession and re-lease or rent the leased premises for the remainder of the term for the account of Lessee, and recover from Lessee, at the end of the term or at the time each payment of rent comes due under this Lease or Lessor may choose, the difference between the rent specified in the Lease and the rent received on the re-leasing or renting.

(c) In any event, Lessor shall also recover all expenses incurred by reason of the breach, including, but not limited to, reasonable attorney's fees and court costs, and the costs of re-renting and making required alterations to the leased premises.

22. **Condition of Leased Premises upon Termination or Expiration:** Lessee shall, upon the expiration or termination of this lease, quit and surrender the leased premises, broom clean, in good condition and repair, reasonable wear and tear excepted, together with all keys and combinations to locks, safes and vaults and improvements, alterations, additions, fixtures, and equipment at any time made or installed in, upon or to the interior or exterior of the leased premises (except personal property and other unattached movable trade fixtures put in at Lessee's expense), all of which shall be the property of the Lessor without any claim by Lessee therefore, but the surrender of such property to Lessor shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the demised premises, Lessee shall remove all Lessee's said personal property and unattached movable trade fixtures and, at Lessor's option, Lessee shall also remove any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Lessee in, upon or to the interior or exterior of the

leased premises, and Lessee further agrees to repair any damage caused thereby. If Lessee fails to remove any of Lessee's personal property and trade fixtures, said property shall, at the option of the Lessor, either be deemed abandoned and become the exclusive property of Lessor, or Lessor shall have the right to remove and store said property, at the expense of the Lessee, without further notice to or demand upon Lessee and hold Lessee responsible for any and all charges and expenses incurred by Lessor therefore. If leased premises are not surrendered as and when aforesaid, Lessee shall indemnify Lessor against all loss or liability resulting from the delay by Lessee in so surrendering the same, including without limitation, any claims made by any succeeding occupant founded on such delay. Lessee's obligation under this provision shall survive the expiration or sooner termination of this lease.

23. **Signs.** Lessee shall have the right to erect one sign of the front of the leased premises. Lessee shall obtain Lessor's written consent prior to the erection or painting of any sign at the leased premises, which consent may be withheld in Lessor's sole discretion. Lessors discretion shall be based on the size, nature, exact location, design, style, wording thereof and illumination of the proposed sign. Lessor reserves the right to use the exterior wall and roof of the leased premises, except as otherwise provided herein. Lessee shall not inscribe, paint or affix any signs, lights, advertisements, notices, placards, marquees or awnings on the exterior of the leased premises, including but not limited to the windows, doors, stairs, hallways or vestibules, without first receiving the written consent of the Lessor. No overhanging roof or projecting sign, placard, marquee or other advertisement and no paper or cardboard signs on or in the windows, doors or exterior of the leased premises, and no sidewalk racks or other display or vending machines shall be permitted. Lessee shall, upon receiving a written request from the Lessor, remove any notice, sign, light, advertisement, placard, marquee, awning, sidewalk rack or other display or vending machine which Lessee has placed or permitted to be placed in, on or about the leased premises which, in the opinion of the Lessor, is objectionable, offensive or not in good taste, and if the tenant shall fail to do so, Lessor may re-enter the leased premises and remove same at expense of Lessee.

24. **Inability to Perform.** If parties hereto are delayed or prevented from performing any of its obligations under this Lease by reason of strikes, lock-outs, labor troubles, inability to produce materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of like nature which is not the fault of the party delayed in performing the work or doing the acts required under the terms of this lease, then performance of such act shall be executed for the period of such delay or such prevention and the period for performance of such act shall be excused for the period of such delay or such prevention and the period for performance of said act shall be deemed added to the time herein provided for the performance of any such obligation.

25. **Estoppel Certificate:**

(a) Lessee shall at any time upon not less than ten (10) days prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is modified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date

  
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to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the leased premises.

(b) Lessee's failure to deliver to deliver such statement within such time shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance.

26. **Transfer of Lessor's Interest:** In the event of a sale or conveyance by Lessor of Lessor's interest in the leased premises or in any building of which the leased premises may be a part other than a transfer for security purposes only, Lessor shall be relieved from, after the date specified in any such notice of transfer, all obligations and liabilities accruing thereafter on the part of Lessor, provided that any funds in the hands of Lessor at the time of transfer in which Lessee has an interest shall be delivered to the successor of Lessor. This Lease shall not be affected by any such sale and Lessee agrees to attorn to the purchaser or assignee.

27. **Captions; Attachments; Defined Terms:**

(a) The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

(b) Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

(c) The words "Lessor" and "Lessee," as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Lessor or Lessee, the obligations hereunder imposed upon Lessor or Lessee shall be joint and several; as to a Lessee which consists of husband and wife, the obligations shall extend individually to their sole and separate property as well as community and joint property. The term "Lessor" shall mean only the owner or owners at the time in question of the fee title or a Lessee's interest in a ground lease of the leased premises. The obligations contained in this Lease to be performed by Lessor shall be binding on Lessor's successors and assigns only during their respective periods of ownership.

28. **Entire Agreement:** This instrument, along with any exhibits and attachments hereto, constitutes the entire agreement between Lessor and Lessee relative to the leased premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Lessor and Lessee. Lessor and Lessee hereby agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the leased premises are merged in or revoked by this Agreement.

  
Lessor's initial

\_\_\_\_\_  
Lessee's Initial

29. **Severability:** If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

30. **Cost of Suit:**

(a) If Lessee or Lessor shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Lessor for the recovery of rent or possession of the leased premises, the losing party shall pay the successful party a reasonable sum for attorney's fees and costs which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

(b) Should Lessor, without fault on Lessor's part, be made a party to any litigation instituted by Lessee or by any third party against Lessee, or by or against any person holding under or using the leased premises by license of Lessee, or for the foreclosure of any lien for labor or material furnished to or for Lessee or any such other person or otherwise arising out of or resulting from any act or transaction of Lessee or of any such person, Lessee covenants to save and hold Lessor harmless from any judgment rendered against Lessor or the leased premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Lessor in or in connection with such litigation.

31. **Time; Joint and Several Liability:** Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the leased premises to Lessee. All the terms, covenants and conditions contained in this Lease to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or in equity.

32. **Binding Effect; Choice of Law:** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to Section 13, all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Florida and venue shall be in Brevard County, Florida.

33. **Waiver:** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any proceeding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Lessor of any performance by Lessee after the time the same shall have become due shall not constitute a waiver by Lessor of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Lessor in writing.

  
Lessor's initial

34. **Surrender of Premises:** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as merger; and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to Lessor of any or all such subleases or subtenancies.

35. **Holding Over:** If Lessee remains in possession of the leased premises after the Lease expires or terminates for any reason and without the execution of a new Lease, Lessee will be deemed to be occupying the leased premises as a Lessee from month to month at the sufferance of Lessor. Lessee will be subject to all of the provisions of this Lease, except that the fixed rent will be at a monthly rate equal to twice the amount of a single monthly installment of fixed rent at the rate in effect for the last month of the term of this Lease. Additionally, Lessee shall also be responsible for any and all other consequential and actual damages incurred by Lessor for Lessee's failure to surrender the premises as required. The provision does not give Lessee any right to hold over at the expiration of the term of this Lease, and shall not be deemed to be a renewal of the Lease term, either by operation of law or otherwise.

36. **Abandoned Property:** BY SIGNING THIS LEASE, LESSEE AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY THE FLORIDA STATUTES, LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF LESSEE'S PERSONAL PROPERTY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Signed, sealed and delivered  
in the presence of:

Witness:

Lori M. Kenney  
Printed Name: Lori M. Kenney

→ SUSAN Cuddie  
Printed Name: Susan Cuddie

BAREFOOT BAY RECREATION  
DISTRICT  
AS LESSOR

By: Joseph H. Kosky  
Printed Name: JOSEPH KIOSKEY  
As its: Chairman

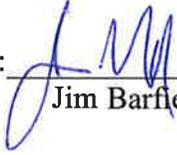
Date: Sept 8, 2016

Signed, sealed and delivered

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

ATTEST:

As Lessee:



Jim Barfield, Chairman

By:



Scott Ellis, Clerk

Date: September 20, 2016

As approved by the Board on: September 20, 2016