

**LEASE AGREEMENT**

THIS IS A LEASE AGREEMENT, entered into on \_\_\_\_\_, 2013, between:

NORTH BROWARD HOSPITAL DISTRICT,  
a Special Taxing District of the State of Florida,  
hereinafter referred to as "Lessor,"

and

CITY OF FORT LAUDERDALE, a  
Florida municipal corporation, hereinafter  
referred to as "Lessee".

Pursuant to motion adopted at its meeting of \_\_\_\_\_, 2013, the City Commission of City authorized the proper City officials to enter into this Lease Agreement.

In consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **Premises.** Lessor hereby leases to Lessee the premises described on Exhibit "A," attached to and made a part of this Lease Agreement (hereinafter, the "Premises").

2. **Purpose.** The Premises shall be used by Lessee solely as a public park and playground.

3. **Term.** The term of the Lease Agreement shall be extended for an additional ten (10) years, commencing November 1, 2013 and ending October 31, 2023. Notwithstanding the foregoing, either party may terminate this Lease Agreement at any time and for any reason by providing the other party with at least ninety (90) days prior written notice of its election to terminate.

4. **Maintenance.** During the term of this Lease Agreement, LESSEE shall maintain at its sole cost the entire Premises, including but not limited to any and all playground equipment and other improvements located at the Premises (e.g., the turf, grounds, concrete work, and hard surface areas within the fenced area of the Premises), in a safe condition and shall remedy at its sole cost any dangerous conditions of which it has knowledge.

LESSEE shall contribute \$100,000 toward playground equipment improvements in the apparatus area, and in-kind services in connection with the improvements of such playground equipment.

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5. Security. During the term of this Lease Agreement, Lessee, at its sole cost, shall (a) provide adequate and appropriate security to the Premises; (b) provide a chain link fence around the perimeter of the Premises, with a gate that shall be locked and unlocked by Lessee's park ranger on a daily basis to prevent access to the Premises during evening hours; and (c) post hours of operation and applicable park rules with respect to the Premises. Lessee shall be solely responsible for maintaining the chain link fence referenced in item (b) herein.

6. Insurance. Each party is self-insured for public liability. Lessee shall self-insure or maintain property insurance covering damage to Premises and the improvements thereat due to theft, casualty or vandalism.

7. Indemnification. To the extent permitted by law, the parties agree to indemnify and hold harmless each other for all costs, losses and expenses, including, but not limited to, damages to persons or property, and including, but not limited to, judgments and attorney's fees, arising out of and in connection with each party's own negligence under this Lease Agreement. Included in this indemnification, is the assumption and defense of itself and the other party in connection with any suit or cause of action, and such defense shall be at no cost or expense whatsoever to the other party. Nothing in the foregoing is intended to waive the sovereign immunity of the parties, per 768.28, Florida Statutes.

8. Utilities. Lessee shall pay at its sole cost and expense the cost of all utilities provided to or for the benefit of the Premises, including all connecting fees and deposits, if any.

9. Construction of Improvements.

(a) Lessee shall not make or cause to be made any improvements to the Premises unless it first receives the written permission thereto from Lessor. All improvements by Lessee to the Premises shall be made solely at Lessee's cost and expense and shall be performed in a good workmanlike manner in accordance with sound construction practices. Lessee shall keep the Premises and said improvements free and clear of liens for labor and material and shall hold Lessor harmless from any responsibility in respect thereto. Lessee agrees to bond off or otherwise have discharged any mechanic's liens filed on the Premises within twenty (20) days of its notice thereof.

(b) Lessee shall have the sole responsibility, at its sole cost and expense, to secure all necessary local, County, State and Federal permits prior to making any improvements to the Premises.

10. Ownership of Improvements. Ownership of playground equipment that is located at the Premises and was purchased by Lessee or donated to Lessee shall remain with Lessee and shall be removed by Lessee at its sole expense upon termination of this Lease Agreement. Ownership of all other improvements on the Premises shall remain with the Lessor during the term of this Lease Agreement and upon the termination thereof.

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11. Rent. Rent shall be \$1.00 per year, payable in advance on the anniversary date of the term.

12. Licenses and Permits. Lessee shall pay for all licenses, permits, and fees necessary for Lessee to use and occupy the Premises in accordance with this Lease.

13. Conformity to Law. Lessee shall comply with all laws, ordinances, regulations, and orders of all governmental entities pertaining to the Premises and Lessee's improvements and operations thereon. Lessee covenants and agrees that there will be no discrimination as to race, color, creed or national origin in the use of the Premises.

14. Default.

(a) If Lessee abandons or vacates the Premises prior to the expiration of the term hereof, Lessor shall have the right to re-enter the Premises without further notice to Lessee and such act of abandonment shall be considered an immediate material breach of this Lease Agreement by Lessee.

(b) If Lessee fails to pay any amount required hereunder within ten (10) days after receipt by Lessee of written notice of such failure or fails to perform any other covenant, condition, agreement or provision contained herein within twenty (20) days after receipt by Lessee of written notice of such failure, such act shall be considered a material breach of this Lease Agreement by Lessee.

(c) Upon the occurrence and continuance of a material breach of this Lease Agreement by Lessee, Lessor may, at its option and without any obligation to do so, elect to terminate and cancel this Lease Agreement or pursue any other remedy now or hereafter available under the laws or judicial decisions of the state in which the Premises are situated.

(d) In any action to enforce the provisions of this Lease Agreement, the prevailing party shall be entitled to all costs and attorney's fees from the other party. Each party's liability for costs and attorney's fees, however, shall not alter or waive such party's sovereign immunity, or extend such party's liability, beyond the limits established in Section 768.28, Florida Statutes, as amended.

15. Bankruptcy or Insolvency. If Lessee is adjudicated a bankrupt or makes an assignment for the benefit of creditors, or if the leasehold interest is sold under a legal order, or judgment, Lessor shall have the right to immediately terminate this Lease Agreement and re-enter the Premises without notice or demand.

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16. Assignment. Lessee shall have no right to assign its interest in this Lease Agreement or sublease all or any portion of the Premises except with the prior written consent of the Lessor which consent may be granted or withheld in Lessor's sole discretion.

17. As-is Condition. The Premises are being made available in "as-is" condition. Lessee acknowledges that it has had the opportunity to inspect the Premises and accepts them in their condition existing at the commencement of the term.

18. Notice. Notice shall be given to the other party by U.S. Mail, certified return receipt requested, at the following addresses:

Lessee: City Manager  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

Lessor: Chief Executive Officer/President  
North Broward Hospital District  
303 S.E. 17<sup>th</sup> Street  
Fort Lauderdale, FL 33316

Copy to: General Counsel  
North Broward Hospital District  
303 S.E. 17<sup>th</sup> Street  
Fort Lauderdale, FL 33316

19. Integration. This Lease Agreement represents the entire and integrated agreement between the Lessor and the Lessee and supersedes all prior negotiations, representations or agreements, either written or oral. This Lease Agreement may be amended only by written instrument signed by both the Lessor and the Lessee.

20. Governing Law. This Lease Agreement shall be governed by the laws of the State of Florida.

21. Venue. The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida, and that all litigation between them in the federal courts shall take place in the United States District Court for the Southern District of Florida. This Lease Agreement shall be governed by and construed in accordance with the laws of the state of Florida.

22. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

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23. Sovereign Immunity. Notwithstanding any contrary provision hereof, the parties hereto acknowledge that Lessee, as a special taxing district to the State of Florida, enjoys the benefits of sovereign immunity, and nothing contained herein shall be construed as a waiver or limitation of such sovereign immunity. All terms and provisions in this Lease Agreement or any disagreement or dispute concerning it, shall be construed or resolved so as to ensure Lessee of the limitation of liability provided to state subdivisions in '768.28, Florida Statutes, as may be amended from time to time.

24. No Waiver. No delay in exercising or omission of the right to exercise any right or power by either party shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Lease Agreement by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

25. Separability. Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to either party by this Lease Agreement or by law or equity are cumulative, and the exercise of any such right or remedy by either party shall not impair such party's right to exercise any other right or remedy available to such party under this Lease Agreement or by law or equity.

[Signatures on following page]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals to this LEASE AGREEMENT, the day and year written below.

WITNESSES:

NORTH BROWARD HOSPITAL DISTRICT, a Special Taxing District of the State of Florida, d/b/a BROWARD HEALTH

\_\_\_\_\_

By \_\_\_\_\_  
Frank Nask, President/CEO

\_\_\_\_\_  
[Witness type or print name]

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

\_\_\_\_\_

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2013, by Frank Nask, as President and CEO of NORTH BROWARD HOSPITAL DISTRICT, a Special Taxing District of the State of Florida, d/b/a BROWARD HEALTH, on behalf of the District. He is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed  
Or Stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Commission Number

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WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_

By \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_  
Lee R. Feldman, City Manager

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

Approved as to form:

\_\_\_\_\_  
Robert B. Dunckel, Assistant City Attorney

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STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_,  
2013, by JOHN P. "JACK" SEILER, Mayor of the CITY OF FORT LAUDERDALE, a  
municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_,  
2013, by LEE R. FELDMAN, City Manager of the CITY OF FORT LAUDERDALE, a  
municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

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PLAYGROUND\IMPERIALPOINTPLAYGROUND10.03.13.DOC

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EXHIBIT "A"

THE WEST 148.50 FEET AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF PARCEL "A", "IMPERIAL POINT MEDICAL CENTER NORTH", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 133, PAGE 44, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; LESS AND EXCEPT THE SOUTH 26.50 FEET THEREOF, AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID PARCEL "A".

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, CONTAINING 50,409 SQUARE FEET, 1.1572 ACRES, MORE OR LESS.