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MARSHA EWING MARTIN COUNTY DEPUTY CLERK S Phoenix

**RESTRICTIVE COVENANT**

(Grantee owns building, leases land.)

THIS RESTRICTIVE COVENANT is hereby entered into this 10<sup>th</sup> day of July, 2012, by **Martin County**, hereinafter referred to as "the Land Owner"; **Historical Society of Martin County**, hereinafter referred to as "the Grantee;" and the State of Florida, Department of State, Division of Cultural Affairs, hereinafter referred to as the "Division".

WHEREAS, the Land Owner is the fee simple title holder of the land located at **825 NE Ocean Boulevard, Stuart, Florida 34996**. A legal description of the subject property is attached as Exhibit A and is made a part of this covenant.

WHEREAS, the Grantee is the lessee of the land for **99 years**, but owns or will own the building(s) used or to be used as a cultural facility. "Facility" refers herein to the building(s) and associated land to be used as the "cultural facility," as defined herein.

WHEREAS, the Grantee has been approved to receive a Cultural Facilities Grant in the amount of **\$500,000**, to be administered by the Division and used only for the acquisition, renovation, and construction of the cultural facility as required by Section 265.701(1), Florida Statutes.

WHEREAS, the Division has authority under Section 265.701(4), Florida Statutes, to require the recordation of this restrictive covenant to ensure that the facility will be used as cultural facility, as defined herein, for at least ten (10) years following execution of the grant award agreement.

NOW THEREFORE, in partial consideration for the Cultural Facilities Grant and in accordance with Section 265.701(4), Florida Statutes, the Parties agree to the following:

1.) This restrictive covenant shall run with the title to the facility and the associated land, shall encumber them, and shall be binding upon the Grantee, the Land Owner, and their successors in interest for the period of (10) ten years following execution of the grant award agreement.

2.) The grant award shall only be expended for:

**Project Title: The New Elliott Museum (13-9029)**

3.) For the required duration of this covenant, the Parties agree that the Grantee shall own all improvements to the facility and to the associated land, funded in whole or in part by grant funds

4.) The Division has the right to inspect the facility and the associated land at all reasonable times to determine whether the conditions of the agreement and this covenant are being complied with.

5.) The facility shall be maintained as a "cultural facility," defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the cultural disciplines, such as: music, dance, theatre, creative writing, literature, painting, sculpture, folks arts, photography, crafts, media arts, and historical and science museums."

6.) This restrictive covenant will be violated if the Grantee, the Land Owner, or their successors in interest do not use or cease to use the facility as a cultural facility, as defined herein, within ten (10) years following execution of the grant award agreement as required by Section 265.701(4), Florida Statutes. If the Grantee violates this restrictive covenant, it shall repay the grant funds to the Division pursuant to the amortization schedule set forth below:

- a. If the violation occurs within five (5) years following the execution of the grant award agreement, 100% of the grant amount;
- b. If the violation occurs more than five (5) but less than six (6) years following execution of the grant award agreement, 80% of the grant amount;
- c. If the violation occurs more than six (6) but less than seven (7) years following execution of the grant award agreement, 65% of the grant amount;
- d. If the violation occurs more than seven (7) but less than eight (8) years following execution of the grant award agreement, 50% of the grant amount;
- e. If the violation occurs more than eight (8) but less than nine (9) years following execution of the grant award agreement, 35% of the grant amount; and
- f. If the violation occurs more than nine (9) but less than ten (10) years following execution of the grant award agreement, 20% of the grant amount.

7.) Any amount due from the Grantee as a result of a violation of this restrictive covenant shall be due in full within 90 days of the violation, or some other period of time as agreed upon by the Parties.

8.) If the entire amount due under the paragraph (6) is not repaid by the Grantee within the time allotted, the Parties agree that the Division may obtain a stipulated judgment against the Grantee for the amount due plus interest at the current legal rate, and record it in the public records of the county where the property is located. The Parties further agree that such a judgment shall be a stipulated judgment by virtue of full execution of this restrictive covenant; that it shall not require further approval of the Grantee or the Land Owner to obtain; and that no trial or hearing shall be necessary to make such a stipulated judgment legally effective. Such a stipulated judgment, when recorded, shall be considered a valid lien upon the Grantee's interest in the facility and the leased land, including improvements to the facility and the land, funded in whole or in part by grant funds.

9.) As a condition to receipt of grant funds, the Grantee shall:

- a. Record this covenant in the public records with the Clerk of the Circuit Court of **Martin** County, Florida;
- b. Pay all fees associated with its recording; and
- c. Provide certified copy of the recorded covenant to the Division and to the Land Owner.

10.) The Parties agree that the Division shall incur no tax liability as a result of this covenant.

IN WITNESS WHEREOF, the Grantee and the Land Owner hereby affirm that they have read this restrictive covenant; that they understand and agree to its terms; and that they hereby affix their signatures accordingly.

**WITNESSES:**

**PARTIES:**

[Handwritten Signature]  
GRANTEE SIGNATURE & TITLE

HISTORICAL SOCIETY OF MARTIN COUNTY  
GRANTEE NAME (print)

[Handwritten Signature]  
First Witness Signature

[Handwritten Signature]  
First Witness Name (print)

[Handwritten Signature]  
Second Witness Signature

Marissa Corbo  
Second Witness Name (print)

2400 SE. Federal Hwy, Suite 220  
GRANTEE ADDRESS

Stuart, FL 34994  
City State Zip

The State of Florida  
County of Martin

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

Debra Duvall personally  
(Name)

appeared as Chairman for Historical Society of Martin County  
(Position) (Name of Qualifying Entity)

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

Executed and sealed by me at Stuart, Florida

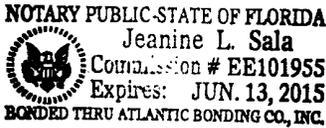
on July 13, 2012

*Jeanine L. Sala*

Notary Public in and for

The State of Florida

My commission expires: June 13, 2015



[SEAL]

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS (LANDOWNER)

*Edward V. Ciampi*

Edward V. Ciampi, Chairman

ATTEST:

*Marsha Ewing*

Marsha Ewing, Clerk

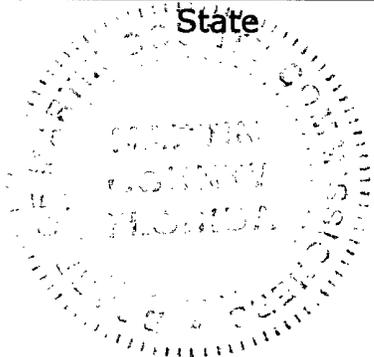
APPROVED AS TO FORM & CORRECTNESS:

*Stephen Fry*

Stephen Fry, County Attorney

2401 SE Monterey Road  
LAND OWNER ADDRESS

Stuart, FL 34996  
City State Zip



The State of Florida  
County of Martin

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

Edward V. Ciampi personally  
(Name)

appeared as Chairman for Martin County Board of County  
(Position) (Name of Qualifying Entity)

Commissioners

known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced \_\_\_\_\_

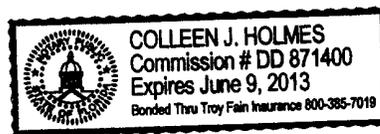
Executed and sealed by me at Stuart, Florida on July 12, 2012

Colleen J. Holmes  
Notary Public in and for

The State of \_\_\_\_\_

[SEAL]

My commission expires: \_\_\_\_\_



For the Division of Cultural Affairs:

S → S → director

Name

Title

R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, Florida 32399

Patricia Warren

First Witness Signature

PATRICIA WARREN

First Witness Name (Print)

Michelle Proctor

Second Witness Signature

Michelle Proctor

Second Witness Name (print)

The State of Florida County of Leon

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that

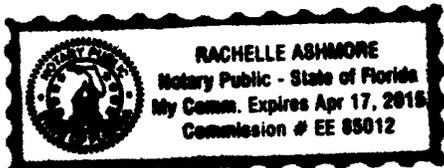
Sandy Shaughnessy personally  
(Name)

appeared as Director for the Florida Department of State, Division of  
(Position)

Cultural Affairs known to me to be or proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Type of Identification Produced personally known

Executed and sealed by me at Tallahassee, Florida on 7/19/12



[SEAL]

Rachelle Ashmore  
Notary Public in and for

The State of Florida

My commission expires: 4/17/15

**LEASE BETWEEN  
MARTIN COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA  
AND  
HISTORICAL SOCIETY OF MARTIN COUNTY, INC.**

**THIS LEASE** is made and entered into this 21 day of August, 2008, between **MARTIN COUNTY**, a political subdivision of the State of Florida, having its principal office at 2401 SE Monterey Road, Stuart, Florida 34996, (hereinafter referred to as the "County" or "Lessor"), and, **HISTORICAL SOCIETY OF MARTIN COUNTY, INC.**, f/k/a **MARTIN COUNTY HISTORICAL SOCIETY**, a not-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 825 N.E. Ocean Blvd., Stuart, Florida, 34996-1696 (hereinafter referred to as the "Lessee") as follows:

**WITNESSETH:**

**WHEREAS**, the Lessor and Lessee have heretofore, on November 24, 1959, entered into a Lease (the "Current Lease") covering certain property (the "Leased Premises") in Martin County, Florida, upon which the Lessee has and is operating a museum, and

**WHEREAS**, the Current Lease was amended by a certain Amendment to Lease dated July 24, 1979, which increased the size of the Premises and obtained Lessor's approval to increase the size of the museum; and

**WHEREAS**, the Current Lease was further amended by a certain Second Amendment to Lease dated September 23, 1980, that changed the size of the Leased Premises by removing a portion of the land then subject to the Lease, which portion of land was needed for construction of the fire station that is currently located South of the Elliott Museum; and

**WHEREAS**, the Lessee now desires to demolish the existing improvements on the Leased Premises and build a new museum building and related improvements thereon, and has requested that County, as Lessor, amend the Current Lease by terminating the Current Lease and replacing it with a new Lease, extending the term of the Lease, adding additional property to the Leased Premises, and approving the new building and improvements to the Premises as proposed by Lessee; and

**WHEREAS**, the County is authorized pursuant to Section 125.38, Florida Statutes, to lease real property owned by the County to not for profit organizations organized for the purposes of promoting community interest and welfare; and

**WHEREAS**, the County has determined that the proposed improvements and use as a museum have been and are compatible with the primary purposes and use of the site; and

**WHEREAS**, the County has found that the Leased Premises as described herein are required for such use and are not currently needed for County purposes; and

**WHEREAS**, the County and Lessee desire to replace the Current Lease with a new lease (the "Lease").

**NOW THEREFORE**, in consideration of the foregoing and in further consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Description of Leased Premises.** The Leased Premises is legally described in Exhibit "A", attached hereto and incorporated herein, which description describes the land hereinafter referred to as the Leased Premises

Accepted Pursuant to Resolution

No. 08-8.15

on 8-21-2008

2. **Use of Leased Premises.** The use the Leased Premises is for a museum and for all related purposes, specifically including, but not limited to, ancillary activities such as administrative offices, a museum gift shop, workshops, café/restaurant, meeting rooms, and short term rental of meeting rooms and exhibit halls for meetings, parties and other social and business functions related to the use by the Lessee.

3. **Term.** The term of this Lease is Ninety-Nine (99) years from the date of approval of this Lease by the Martin County Board of County Commissioners. The actual Commencement and Termination Date once determined shall be memorialized by written and recorded Memorandum of Lease.

4. **Demolition and Proposed Improvements.** Lessee intends to remove the existing improvements from the Leased Premises and construct a new museum building and related facilities thereon (hereinafter "new improvements"). "Related facilities" shall include, without limitation, curbcuts, driveways, parking areas, utilities, landscaping, exterior lighting, irrigation and signage. As a material inducement to the County to enter into this Lease, the Lessee agrees as follows:

A. Lessee agrees, at its sole cost and expense, to remove the existing improvements from the Leased Premises and construct the new improvements on the Leased Premises in accordance with the Development Schedule setting forth in detail the development milestones and dates of completion thereof attached as Exhibit "B", as well as the Design Development Stage Architectural and Engineering Designs, Plans and Specifications attached hereto as Exhibit "C". The development milestones, dates of completion and the designs, plans and specifications are all subject to extension with Lessor's prior consent for good cause shown.

B. To the extent asbestos or other hazardous substances are present in, on or about the Leased Premises, then the Lessee shall properly remove and dispose of such asbestos or hazardous substance at Lessee's sole cost and expense and shall indemnify and hold County harmless from any liability or damage incurred by Lessee or the County in connection with the presence of asbestos or other hazardous materials existing on the Leased Premises. As used herein, the term "Hazardous Material" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; and, (b) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder.

C. All new improvements and future alterations, installations, and additions thereto placed or constructed on the Leased Premises are subject to the prior written approval by the County, and shall be constructed, installed and maintained at the expense of Lessee and without cost to the County. All new improvements and future alterations, installations, and additions thereto (except only sign panels and movable trade fixtures) shall become, when made, part of the Leased Premises, and shall be owned and exclusively controlled by Lessee during the term of the Lease. Upon expiration, termination, revocation or surrender of this Lease, County shall become owner of all improvements then located on the Leased Premises without further action by either party. At the end of the term of this Lease, Lessee shall deliver the Leased Premises, including all improvements then located thereon, to County in good repair and condition, reasonable wear and tear arising from Lessee's Permitted Use excepted.

D. Prior to commencement of any demolition on the Leased Premises, Lessee shall submit to the County written certification by both its Treasurer and Accountant that the Lessee has funds dedicated for redevelopment of the Leased Premises or commitments for such funds of no less than one-hundred percent (100%) of the cost for planned demolition and new construction of the Elliott Museum and related improvements. Such certification shall specify the amount of cash, invested funds, signed pledge commitments and approved grants from state, federal or private sources as well as any loans or other financing agreements. The number of years within which any signed pledge or grant is payable shall also be specified. The County shall review such certification and documentation within ninety (90)

days from the date of prospective lessee's submission of this final financial certification. The County shall have the right to request additional information concerning the certification.

E. All plans and specifications for such new improvements and future alterations, installations, and additions thereto shall be submitted in writing to the County with a request for approval by County as Lessor. County agrees that its approval of Lessee's plans shall not be unreasonably withheld.

F. It shall be Lessee's sole responsibility to obtain all necessary governmental approvals for the proposed facility, including, but not limited to all necessary Martin County development approvals and permits and agency approvals and permits. Nothing contained in paragraph 4 hereof or elsewhere herein shall be deemed to waive or imply waiver of any County regulation or fee applicable to the review, renovation or development of the proposed facility by Lessee. Nothing herein shall be deemed to make the County a co-applicant with the Lessee for any governmental approval, including County approval. It is expressly understood, and agreed by Lessee, that County shall not be liable to Lessee for any expense or damage incurred by Lessee resulting from the failure of County or other governmental entity to approve any or all necessary governmental approvals or permits required for the proposed facility.

G. Lessee shall obtain a performance bond prior to commencement of construction, alteration or demolition of any improvement. Such performance bond shall ensure the proper and timely completion of all Lessee's obligations as outlined in Exhibit "B" hereto and shall be issued by a provider approved by the County, in an amount equal to One Hundred and Twenty Five Percent (125%) of the total cost of completion of such work with County named as an additional payee in the event Lessee fails to fully perform all the work outlined in Exhibit "C" in a timely manner and in accordance with the Development Schedule set forth in Exhibit "B".

H. Lessee agrees to coordinate its demolition and construction projects with the County's Parks and Recreation Department so as to not adversely affect ingress and egress to/from Stuart Beach Park.

**4.1 County Improvements on and off Leased Premises and offsite Lessee improvements for the benefit of the Leased Premises.**

- A. The County hereby reserves the right to maintain in place, use and have access to, for repairs and maintenance, certain improvements located on the Leased Premises, including but not limited to: 1) a portion of the existing driveway that runs from Martin County Fire Station #14 and NE Ocean Boulevard; 2) the sewage lift station facility located generally in the southwest corner of the Leased Premises, and 3) a small portion of the Fire Station #14 building that encroaches over the southerly boundary of the Leased Premises. The County shall be solely responsible for the maintenance and repair of the said improvements for so long as they exist on the Leased Premises. Lessee shall have no right to remove or alter said improvements without the express written consent of the County being obtained in advance. Lessee shall have no right to prohibit or limit access by the County to said improvements.
- B. Lessee shall have the right and obligation to construct in accordance with Exhibits "B" and "C", and maintain in good condition throughout the Lease term, the following improvements to be located partially on the Leased Premises and partially off the Leased Premises on the County land to the south of the Leased Premises: 1) Dry Retention Pond #1; 2) The "Stabilized Fire Service Access" road running between Fire Station #14 and the Leased Premises; 3) the "Drainage Easement" located to southerly of the southwest corner of the Leased Premises, and 4) the concrete pad that is planned to support the electric transformers for Fire Station #14 and the Leased Premises. In no event shall the activities of Lessee in furtherance of its rights and obligations under this Article 4.1 interfere with the operations of Fire Station #14 including but not limited to the continuous vehicular access to and from Fire Station #14.

- C. Lessee shall relocate at its expense the propane tanks serving Fire Station #14 to the location and in accordance with Exhibits "B" and "C". If new tanks and related facilities are required to complete this relocation, then the cost thereof shall be borne by Lessee. Upon completion of the said relocation and acceptance thereof by the County, Lessee shall have no further obligation to maintain and repair said propane tanks.
- D. Lessee shall be responsible for the relocation of and the cost of the relocation of the electric service lines and related equipment serving both Fire Station #14 and the new improvements on the Leased Premises. Said service lines shall be relocated to the area identified as the "Proposed FPL Easement" as shown on Exhibits "B" and "C" along the southerly boundary line of the Leased premises. The County agrees the grant to FPL an easement for said service lines related equipment in form and substance acceptable to the County. At no time shall electric service to Fire Station #14 be disrupted as a result of said relocation.

5. **Leased Premises Maintenance and Repairs.**

A. The Lessee shall be solely responsible for the cost of installation, connection and usage of all utilities, including, but not limited to, water services, electricity, telephone, cable, solid waste, fiber optics, and sewerage services to the Leased Premises during construction and throughout the term of this Lease. Lessee shall be solely responsible for the cost and installation of separate meters for all metered utilities on the Leased Premises.

B. Throughout the entire term of the Lease, Lessee shall be responsible for, and shall maintain and make all repairs and replacements of every kind with respect to, the improvements located Leased Premises to keep the Leased Premises in first class condition and repair, including but not limited to, structural and nonstructural elements, interior and exterior, roofs, building systems, security and fire protection systems, landscaping, paving, utility systems and facilities (to the point of connection with public utility lines), décor, and furnishings, fixtures and equipment, and do all repairs and/alterations required by any laws, ordinances or requirements of public authorities.

C. Lessee shall keep the interior and exterior of the buildings, landscaped areas, parking lots and driveways on the Leased Premises in a clean, first class condition, all at the cost of Lessee.

D. The County shall have no responsibility for maintenance, repairs, replacements, and cleaning of the Leased Premises.

6. **Insurance, Indemnification and Damage by Casualty.**

A. Lessee shall procure and maintain in force at its expense during the term of this Lease, public liability all risk insurance adequate to protect the County against liability for any and all damage claims in a minimum amount of One Million Dollars (\$1 million) per claim for bodily injury and property damage and an aggregate amount of Three Million Dollars (\$3 million). A certificate of insurance evidencing such insurance and listing the County as an additional named insured shall be provided to the County prior to utilization of the property and will be provided annually with payment of rent. Such policy shall be non-cancelable with respect to County except upon thirty (30) days written notice to County. Throughout the term of the Lease, but not more often than once every five years, County shall have the right, but not the obligation, to require Lessee to increase the liability insurance minimums required by this paragraph to amounts that are then reasonable to cover the insured risks.

B. Lessee agrees to take out and maintain, during the term of this Lease, applicable worker's compensation insurance for all its employees employed in connection with the business operated under this Lease. Such insurance shall fully comply with the Workers Compensation Law, Chapter 440, Florida Statutes. The workers compensation insurance policy required by this Lease shall also include Employers Liability. Lessee shall provide proof of worker's compensation insurance as required by law, if

applicable.

C. In recognition of the significant costs associated with procuring "all risk" hazard insurance for the replacement value of the improvements on the Leased Premises, Lessee shall only be required to obtain such insurance in an amount sufficient to provide for demolition and clearance of the Subject Property. The County shall be named as an additional insured party and any claims shall be made jointly payable to the Lessee and the County. Any policy under this section also shall be non-cancelable as to the County, except upon thirty (30) days written notice.

D. Builders Risk Insurance. Lessee shall require that Lessee's construction general contractor ("GC") shall purchase and maintain property insurance (Builders Risk) upon the work under GC's contract with Lessee at the site consistent with the requirements set forth above in Section 6.C. Any deductible maintained on such insurance shall be the responsibility of the GC. This insurance shall include the interests of the County, Lessee, the GC and subcontractors in the work and shall ensure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including theft, vandalism and malicious mischief. Similar coverage will be obtained by the GC for portions of the Work in transit. The County shall be named an additional insured under the insurance required by this paragraph.

E. Removal of Debris. If the Leases Premises or any part thereof shall be damaged by fire, the elements, or other casualty, the Lessee shall promptly remove all debris resulting from such damage from the Leased Premises, and Lessee shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of persons entering upon the Premises. To the extent, if any, that such measures are covered by any insurance obtained by Lessee, the proceeds thereof shall be made available to the Lessee for such purpose. If the Lessee shall fail to promptly comply with the provisions hereof, then the County may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition, and the Lessee shall be responsible for any costs expended by the County in connection therewith and the proceeds of any insurance covering the Premises shall be adjusted with and paid to the County.

F. Damage to or Destruction of the Premises. If the Leased Premises or any part thereof shall be destroyed or so damaged by fire, the elements, or other casualty as to render the Leased Premises untenable or unusable, then:

(1) The Lessee shall have an option to make the necessary repairs or replacements for the restoration thereof in accordance with the plans and specifications as the same existed prior to such damage or destruction, provided that the Lessee within forty-five (45) calendar days after the occurrence of such damage or destruction notifies the County in writing that it elects to exercise its option to make the necessary repairs or replacements. If the Lessee elects to make such repairs or replacements it shall commence such repair or replacement within six (6) months from the date of such destruction. If the Leased Premises has been completely destroyed, Lessee shall commence construction within one (1) year from the date of such destruction. Lessor in its sole discretion may grant extensions to the above time periods upon request from Lessee. Provided, however, in no event shall museum operations be discontinued for more than two (2) years.

(2) If the Lessee fails to notify the County in writing of its intention to make the necessary repairs or replacements within the forty-five (45) day period provided in subparagraph (1) of this subsection (F), or Lessee does not elect to make such repairs and replacements, then this Lease shall terminate upon the earlier of: (i) the expiration of seventy-five (75) calendar days from the occurrence of such destruction or damage or (ii) the date established by written notice by the County to the Lessee; and in any such event, the proceeds of insurance applicable to the damage or destruction shall be distributed to the County for the costs of debris removal and removal of damaged improvements.

G. County shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Lessee or its agents, or by any person who may at any

time be using, occupying or visiting the Leased Premises, or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of Lessee or of any occupant, subtenant, visitor or user of any portion of the Leased Premises.

H. Lessee shall indemnify County against all claims, liabilities, loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee hereby waives all claims against County for damages to the buildings and improvements that are now on or hereinafter placed or built on the premises and to the property of Lessee in, on or about the Leased Premises, and for injuries to persons or property in or about the premises, from any cause arising at any time. Lessee agrees to hold harmless County from and against any and all claims, lawsuits, judgments, or similar causes of action, for any injuries to persons or property arising out of the activities conducted by the Lessee on the property described herein. Further, Lessee agrees to defend County against any and all such claims and suits as described above at the Lessee's sole cost and expense with no cost and expense to be incurred by the County.

7. **Taxes.** Lessee will be required to pay all taxes lawfully levied against the Leased Premises, including but not limited to personal property taxes, during the term of the Lease herein granted, if any.

8. **Laws, Ordinances, Regulations.** Lessee agrees to abide by all applicable local, state and federal laws, ordinances and regulations and to cooperate with the County Parks Department as to the joint use of the entrance road to Stuart Beach Park and to abide by reasonable regulations and agreements as to the parking areas located or to be located along the entrance road located outside of the Leased Premises.

9. **Inspection by County.** The County and its agents, upon reasonable written notice, may make periodic inspections of the Leased Premises to determine whether Lessee is operating in compliance with the terms and conditions of this Lease. The Lessee shall be required to make any and all reasonable changes required by the County which are necessary to ensure compliance with the terms and conditions of this Lease and/or any applicable law(s) or regulation(s).

10. **Prohibition on Assignment and Encumbrances.**

A. Lessee shall not assign this Lease or sublet the Leased Premises to any other party without the prior express written approval of County. Any attempt to assign this Lease or sublet the premises without the prior express written approval of County will constitute an automatic termination of this Lease. This covenant shall be binding on the successors in interest of Lessee.

B. Lessee shall not mortgage, pledge, or encumber this Lease, in whole or in part, or the leasehold estate granted under this Lease, to any other person, firm or entity without the consent of Lessor, which may be withheld in the Lessor's sole discretion. Any attempted mortgage, pledge, or encumbrance of this Lease, or the leasehold estate granted under this Lease without Lessor's consent, shall be void and may, at the sole option of the County, be deemed an event of default under this Lease. This covenant shall be binding on the successors in interest of Lessee.

C. Lessee shall not pledge the County's credit or make it a Guarantor payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Lessee warrants and represents that it has no obligation or indebtedness which would impair its ability to fulfill the terms of this Lease.

D. In the event a leasehold mortgage is approved by the County, Lessor and Lessee agree that upon the occurrence of an event of default under any such Leasehold Mortgage, any successor Lessee by virtue of foreclosure or assignment in lieu of foreclosure must: (a) affirmatively agree to comply with all terms and provisions of this Lease; and, (b) (i) be a not-for-profit organization, and within 360 days, qualify as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 or any

equivalent provision of any successor law, or (ii) otherwise be acceptable to Lessor in its sole discretion. In addition to all other remedies available to Lessor in the event of Lessee's default in the Lease, in the event of a foreclosure on any leasehold mortgage granted by Lessee (with Lessor's consent) on the premises and the resulting operation of the museum by a successor Lessee, this Lease may be terminated by Lessor upon filing of bankruptcy proceedings or abandonment of operations of the facilities by any successor lessee.

E. In the event a leasehold mortgage is approved by the County, Lessor agrees that upon the occurrence of an event of default or event which, with the passage of time or the giving of notice, or both, would be an event of default under the Lease, Lessor shall not terminate the Lease unless it shall have provided the Leasehold Mortgagee with written notice of such event and shall have afforded the Leasehold Mortgagee with at least 60 days in which to commence steps to cure such default, which steps shall be diligently prosecuted to completion, provided that the Leasehold Mortgagee shall have, within 14 days after receipt by it of written notice of such event from Lessor, notified Lessor in writing of its election to accept the occurrence of the event of default or to exercise its right to cure hereunder.

**11. Nondiscrimination.** Lessee for itself, and its permitted successors in interest, as a part of the consideration for this Lease, does hereby covenant and agree that:

A. No person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the services offered in or at the Leased Premises on the basis of age, sex, physical handicap or other disability, race, color, national origin, religion or ancestry; and

B. Lessee shall not discriminate against any employee or applicant for employment in connection with the Leased Premises and the leasehold estate granted hereunder with respect to hiring, tenure, terms, conditions or privileges or employment, or any matter directly or indirectly related to employment on the basis of age, sex, physical handicap or other disability, race, color, religion, national origin or ancestry.

C. Lessee agrees that its facilities and programs shall, from time to time, and at all times, comply with the Americans with Disabilities Act ("ADA"). Prior to occupancy, the Lessee shall provide the County with an ADA compliance plan in conformance with ADA requirements, and shall cause the Leased Premises to at all times comply with all ADA requirements that may be in effect from time to time.

**12. Termination.**

A. The County shall have the right to terminate this Lease upon the occurrence of any of the following, hereinafter referred to as "Event of Default".

1. Institution of proceedings in voluntary bankruptcy by the Lessee.
2. Institution of proceedings in involuntary bankruptcy against the Lessee if such proceedings continue for a period of ninety (90) days and are not dismissed.
3. Assignment of this Lease for the benefit of creditors.
4. Abandonment by Lessee of the Leased Premises or discontinuation of museum operations at the Leased Premises for more than thirty (30) days, except during the period of repair and reconstruction contemplated in Section 6 of the Lease, or during periods of natural disaster.
5. Dissolution, whether voluntary or involuntary, of Lessee's not for profit corporation.

6. Default, non-performance or other non-compliance with any covenant, requirement or other provision of any nature whatsoever under this Lease, subject to the notice and cure provisions herein.

B. Upon the occurrence of an Event of Default, the County shall send a written notice to Lessee, in the manner set forth in Article 17 of this Lease, setting forth the Event of Default in specific detail and the date this Lease shall terminate in the event Lessee does not cure the default.

C. Within thirty (30) days following receipt of a default notice, Lessee shall have cured the default to the reasonable satisfaction of the County or, if such default cannot be reasonably cured within said thirty (30) days then Lessee shall have made reasonable efforts toward a cure.

D. In the event Lessee fails to cure the Event of Default within thirty (30) days, or such other reasonable period contemplated under this Lease, this Lease shall be deemed to be terminated with no further action by the County. In no event, however, shall such termination relieve Lessee of its obligation to pay any and all remaining rent due and owing to the County for the period up to and including the date of termination or to provide any and all remaining reports to the County for such period.

13. **Integration.** The drafting, execution, and delivery of this Lease by the parties has been induced by no representations, statements, warranties or agreements other than those expressed in the Lease as amended hereby. This Lease contains the entire agreement between the parties and there are no further or other agreements or understandings written or oral in effect between the parties relating to its subject matter unless expressly referred to it. The Lease cannot be changed or modified except by written instrument executed by all parties hereto. The Lease and the terms and conditions thereto apply to and are binding upon the heirs, legal representatives, successors and assigns of both parties. Upon execution of this Lease by both parties, the Current Lease and all amendments thereto shall be null and void.

14. **Severability.** If any term of the Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of the Lease shall be valid and enforceable to the fullest extent permitted by law.

15. **Attorney's Fees.** Should either party bring suit to enforce any of the terms of the Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.

16. **Notices.** All notices required under this Lease shall be hand delivered, or sent by certified mail return receipt requested, to the following:

If to County:                   Martin County Administrative Offices  
2401 SE Monterey Road  
Stuart, Florida 34996  
Attn: Real Property Manager

With Copy to:                 Martin County Administrative Offices  
2401 SE Monterey Road  
Stuart, Florida 34996  
Attn: County Attorney

If to Lessee:                   Historical Society of Martin County, Inc.  
The Elliott Museum  
825 N.E. Ocean Blvd.  
Stuart, Florida 34996-1696  
Attn: President

In the event of hand delivery, the sending party shall obtain a dated receipt signed by the receiving party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ATTEST

*Marsha Ewing*  
MARSHA EWING, CLERK

Lessor:

BOARD OF COUNTY COMMISSIONERS  
OF MARTIN COUNTY, FLORIDA

By: *Doug Smith*  
DOUG SMITH, CHAIR

Date: 2/9/08

APPROVED AS TO FORM  
AND CORRECTNESS

*Stephen Fry*  
STEPHEN FRY, COUNTY ATTORNEY

Lessee:

HISTORICAL SOCIETY OF MARTIN  
COUNTY, INC., A Florida Non-Profit  
corporation,

By: *Robin Hicks Connors*  
ROBIN HICKS-CONNORS, PRESIDENT

Date: 01/07/09



*Kate Richter*  
Witness  
KATE RICHTER  
Print or Type Name

*Marya Coronato*  
Witness  
MARYA CORONATO  
Print or Type Name

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 7 day of January, 2009, by Robin Hick-Connors, President of Historical Society of Martin County, Inc., a Florida Non-Profit Corporation, on behalf of the corporation. She is personally known to me or has produced a driver's license as identification.

NOTARY SEAL

*Marya Coronato*  
Notary Public  
**MARYA CORONATO**  
Print name of notary  
My commission expires: 4/25/12



EXHIBIT "A"

Legal Description of the Leased Premises.

TO BE ATTACHED

**SKETCH TO ACCOMPANY DESCRIPTION  
SECTION 31, TOWNSHIP 37 SOUTH,  
RANGE 42 EAST, MARTIN COUNTY, FLORIDA**

**LEGAL DESCRIPTION: ELLIOTT MUSEUM**

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 31, TOWNSHIP 37 SOUTH, RANGE 42 EAST, MARTIN COUNTY, FLORIDA, (AS SHOWN ON F.D.O.T. RIGHT-OF-WAY MAP SECTION 89040-2102); THENCE SOUTH 00°31'51" WEST ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 207.47 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF MACARTHUR BOULEVARD, AS SHOWN ON SAID F.D.O.T. RIGHT-OF-WAY MAP SECTION 89040-2102, AND THE POINT OF BEGINNING; THENCE SOUTH 28°26'49" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 265.71 FEET; THENCE SOUTH 27°21'24" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 68.68 FEET; THENCE NORTH 89°14'54" WEST, A DISTANCE OF 617.52 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, AS RECORDED IN DEED BOOK 88, PAGE 624 AS SHOWN ON F.D.O.T. RIGHT-OF-WAY MAP SECTION 89040-2102, SAID POINT BEING ON A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1485.69 FEET AND WHOSE RADIUS POINT BEARS NORTH 63°57'23" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16°12'04", A DISTANCE OF 420.10 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MACARTHUR BOULEVARD; THENCE SOUTH 89°14'54" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 271.75 FEET TO THE INTERSECTION WITH SAID WESTERLY RIGHT-OF-WAY LINE OF MACARTHUR BOULEVARD; THENCE SOUTH 28°24'18" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 123.12 FEET TO AN INTERSECTION WITH THE EAST LINE OF GOVERNMENT LOT 4 AND THE POINT OF BEGINNING.

CONTAINING 3.99 ACRES, MORE OR LESS.

**CREECH**  
**ENGINEERS, INC.**

CIVILIZATION ENGINEERED  
2000 N.E. JENSEN BEACH BLVD., JENSEN BEACH, FLORIDA 34957 (772) 283-1413  
OFFICES ALSO IN JUPITER, MELBOURNE AND TALLAHASSEE FL.

BOARD OF PROFESSIONAL ENGINEERS, CERTIFICATE OF AUTHORIZATION NUMBER 5139  
PROFESSIONAL SURVEYORS AND MAPPERS, AMENDED CERTIFICATE NO. LB-0006705

**ELLIOTT MUSEUM  
LEGAL DESCRIPTION**

**MARTIN COUNTY**

**FLORIDA**

PROJECT NO. 28017.01

DATE: JULY 24, 2008

CADD FILE: 28017-01LEGAL

SCALE: N/A

SHEET 1 OF 1

**EXHIBIT “B”**

“Development Schedule” (labeled “Milestone Schedule”) setting forth in detail the development milestones and dates of completion thereof.

**TO BE ATTACHED**

# THE ELLIOT MUSEUM

APRIL 17, 2008

REVISED - 5/22/08

## Milestone Schedule

All Professionals shall meet with the Building Committee at a minimum of once per month during the duration of the project. This Exhibit will be attached and utilized in all contracts as it relates to the design and construction of the new Elliott Museum. Because Schematic and Conceptual work has been completed, this Milestone Schedule starts at the Design Development Phase.

### Martin County Site Plan Approval Process

1. Martin County Site Plan Submittal	October 8, 2007
2. Review Martin County Site Plan Comments	December 13, 2007
3. Resubmittal with Comment Reply	April 4, 2008
4. Site Plan Approval (Estimate)	August 4, 2008

### Architecture/Engineering/Exhibits and Construction

1. GEA 70% Design Development	January 9, 2008 Completed
2. GEA Design Development Commences	January 9, 2008 Completed
3. SDG Exhibit Schematic Design Commences	January 9, 2008
4. SDG Content Script Development Commences	January 9, 2008
5. BCC DD Budget Update	January 9, 2008
6. Owner Approve 70% DD	January 14, 2008 Completed
7. SDG Graphic Development Commences	February 7, 2008 Completed
8. GEA 100% Design Development Presentation	February 7, 2008 Completed
9. BCC Design Development Budget Presentation	February 7, 2008 Completed
10. SDG Exhibit Design Update Presentation	February 7, 2008 Completed
11. Owner Approve 100% DD	April 4, 2008 Completed
12. SDG 50% Design-Intent CDs Commences	March 7, 2008
13. GEA 50% Construction Documents	June 16, 2008
14. GEA 100% Garage Documents	June 16, 2008
15. BCC Finalizes Garage and Site GMP	June 27, 2008
16. SDG Graphic Production Commences	June 16, 2008
17. Owner Approves Garage and Site GMP/Issues Notice to Proceed	July 24, 2008
18. BCC and GEA Submit Garage for Permit (7/02/08) Permit Received	September 2, 2008
19. BCC Commence Garage and Site Construction (Phase I)	September 2, 2008
20. GEA 95% Construction Docs	September 2, 2008
21. GEA and BCC Submit for Building Permit	September 2, 2008
22. BCC Finalizes Building GMP and Exhibit Allowance	October 1, 2008
23. Owner Begins Move Out	November 3, 2008
24. Owner Approves Building GMP with Exhibit Allowance	October 22, 2008
25. TCO Received for Garage	November 21, 2008
26. Owner Completes Move Out	December 1, 2008
27. BCC Begins Building Demo and Remainder of Site Work (Phase I)	December 1, 2008
28. Receive Building Permit by	December 19, 2008
29. GEA Provides 100% CD Documents (Incorporating Comments and VE)	December 19, 2008
30. BCC Begins Phase II (Building)	January 19, 2009
31. SDG Content Script Development Completion	December 19, 2008
32. SDG Exhibit Fabrication Supervision Commences	February 9, 2009
33. SDG 50% Design-Intent CDs Completion	April 6, 2009
34. SDG Graphic Development Completion	April 6, 2009
35. SDG 100% Design-Intent CDs Commences	April 6, 2009
36. SDG 100% Design-Intent CDs Completion	August 24, 2009
37. SDG Graphic Production/Prepress Completion	November 2, 2009
38. BCC Substantial Completion (Phase I and Phase II)	December 7, 2009
39. BCC Final Completion (Phase I and Phase II)	February 11, 2010
40. SDG Exhibit Fabrication Supervision Completion (Phase III)	February 11, 2010
41. BCC Phase III Construction (Exhibit Installation)	February 11, 2010
42. BCC Phase III Substantial Completion	April 12, 2010
43. Owner Commences Move In	April 12, 2010
44. BCC Final Completion Phase III (Punch)	May 10, 2010
45. Soft Opening & Training (1 Month)	June 11, 2010
46. Opening Ceremony	June 12, 2010

## EXHIBIT "C"

"Design Development Stage Architectural and Engineering Designs, Plans and Specifications."

Attached hereto are:

1. A copy of the Index of Drawings that lists all pages of construction plans for "The New Elliott Museum, Martin County, Florida 10-16-08", described as "100% Permit Documents", signed and sealed by John Curren, AIA, on 10-16-08. This Index of Drawings describes the construction plans described therein, which are too large to be attached to this document. The said entire original construction plans are incorporated into this document by this reference, and are permanently electronically stored with Martin County Commission Records in the Documentum System under /Commission Records/BOCC/2008/08-21-2008/Elliott Museum.
2. A copy of the Title Page and Table of Contents of construction specifications entitled "The New Elliott Museum, Stuart, Florida, 100% Construction Documents Specifications, 10-16-08, signed and sealed by John Curren, AIA, on 10-16-08. This Table of Contents describes the construction specifications described therein, which are too large to be attached to this document. The said entire original Construction Documents Specifications are incorporated into this document by this reference, and are permanently electronically stored with Martin County Commission Records in the Documentum System under /Commission Records/BOCC/2008/08-21-2008/Elliott Museum.

MARTIN COUNTY  
FLORIDA  
10-16-08

100% PERMIT DOCUMENTS

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# The New Elliott Museum Stuart Florida

## 100% Construction Documents Specifications

October 16, 2008

**Architects:**

Gould Evans Associates  
Prime Contact  
5405 West Cypress Street, #112  
Tampa Florida  
**813-288-0729**

**Civil Engineer:**

Creech Engineers  
(772) 283-1413

**Landscape Architect:**

Collective Design, Inc.  
(772) 223-5000

**MEP Engineer:**

Hahn Engineering  
813.831.8599

**Structural Engineer:**

Master Consulting Engineers  
(813) 287-3600

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