

THIRD MODIFICATION TO LEASE

This Third Modification to Lease ("Third Modification") is executed this _____ of May, 2021 (the "Effective Date"), by and between the Board of County Commissioners of Indian River County, Florida ("Lessor") and Environmental Learning Center, Inc. ("Lessee").

WHEREAS, Lessor and the Pelican Island Audubon Society, Inc. entered into a lease dated, March 6, 1987, for a portion of Wabasso Island for the development of an environmental learning center (the "Lease"); and

WHEREAS, that Lease was assigned to the Environmental Learning Center, Inc.; and

WHEREAS, on July 2, 1991, the Lease was modified in order to include language concerning the public access to the environmental learning center; and

WHEREAS, the Lease was modified again on February 7, 2006, in order to add lands to the Lease; and

WHEREAS, Lessee wishes to apply for a grant from the Florida Inland Navigational District ("FIND") for the replacement of the 30 year old public dock with a new public environmental education dock in the same location and footprint (the "Dock Project"); and

WHEREAS, Lessee is willing to provide the necessary monetary match, up to \$100,000, for the Dock Project; and

WHEREAS, Lessor, on behalf of Lessee as owner of the property, agrees to act as the applicant for the application to FIND for the Dock Project,

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.
2. **FIND Application.** Lessor agrees to be the applicant for the FIND application for the Dock Project. If the FIND grant is not approved or is approved, but insufficient for the Dock Project, the Parties will be released from their responsibilities under this Third Modification.
3. **Permits.** Lessee shall be responsible for paying for and obtaining any and all necessary permits for the Dock Project. Lessee must obtain the necessary permits for the Dock Project by September 30, 2021.
4. **Engineering Plans.** Lessee shall be responsible for paying for and providing Lessor with the 100% plans and specifications for the Dock Project by September 30, 2021. Lessee

shall also be responsible for paying for an engineer to provide bidding assistance, including but not limited to, attending and participating in any and all pre-bid meetings and for providing responses to any and all technical questions and requests submitted through Lessor from potential bidders for clarification or information during the bid process to the Lessor, who will prepare and issue addenda to provide answers to those questions. Engineer and Lessee will not provide answers to any questions regarding the bid other than to Lessor.

5. **Bid Process.** If awarded a FIND grant sufficient to fund the Dock Project, Lessor will undertake a bid process consistent with the requirements set forth in the Indian River County Purchasing Manual. Lessor has the sole discretion to determine the lowest, responsive and responsible bidder. If the lowest, responsive and responsible bid is greater than the combination of the FIND grant and the Lessee contribution, the parties will not proceed with the Dock Project unless the parties mutually agree to do so. Lessee, including but not limited to, its board members, staff and engineer, shall not discuss the Dock Project with any prospective bidder or their agent.
6. **Funding.** Within 10 days of the Lessor's acceptance of the FIND grant, Lessee shall pay Lessor \$100,000, which will be used as the match for the Dock Project, plus \$10,000, which will be used for contingencies during the construction of the Dock Project. Once the Dock Project is completed, Lessor will seek reimbursement from FIND for Lessor's contribution of the project. If final amount of the Dock Project is greater than \$200,000, Lessee shall pay difference to Lessor within 30 days of notice of the final amount of the Dock Project. If final amount of project is less than \$200,000, Lessor will reimburse Lessee any remaining amount of funds left after Lessor has been reimbursed in full. Lessor retains the right to cancel the Dock Project due to cost increases that occur during the construction of the Dock Project, in the event Lessee does not pay for such cost increases, and Lessee shall be responsible for funding any costs incurred by Lessor.
7. **Indemnification.** Lessee shall defend, hold harmless and indemnify Indian River County, its commissioners, officers, employees, and agents, for any losses in the event that FIND denies or fails to reimburse Lessor for all or a portion of the Dock Project.
8. **Construction.** Lessor agrees to complete the Dock Project by the end of the grant period as identified in the FIND grant agreement. Any non-performance within this time period, caused by or resulting from an event of Force Majeure (as defined below) shall not constitute a violation or event of default. For the purposes of this Agreement, the term "Force Majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, explosions, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, tropical storms, floods, tornadoes,

restraints of governments, civil disturbances, unavoidable breakage of machinery or equipment, enactment of applicable laws prohibiting performance, and other such causes not within the reasonable control of the party claiming the occurrence of an event of Force Majeure.

9. **Quarterly Reports.** Lessee shall assist Lessor with information necessary to complete quarterly reports submitted to FIND, including timelines, milestones completed and any other required information.

10. All other provisions of the Lease and the prior modifications shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have executed this instrument this ___ day of May, 2021.

LESSOR
INDIAN RIVER COUNTY, FLORIDA

By: _____
Joseph E. Flescher, Chairman
Board of County Commissioners

Approved by BCC _____

Attest: Jeffrey R. Smith, Clerk of Circuit Court
and Comptroller

By: _____
Deputy Clerk

Approved as to Form and Legal Sufficiency

Dylan Reingold, County Attorney

Jason E. Brown, County Administrator

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this ____ day of May, 2021 by **Joseph E. Flescher, Chairman of the Board of County Commissioners of Indian River County, a political subdivision of the State of Florida**, who executed on behalf of and with the authority of said Board, and who is personally known or produced identification in the form of _____.

NOTARY PUBLIC

printed name:
Commission No.:
Commission expiration:

NOTARIAL SEAL:

LESSEE

ENVIRONMENTAL LEARNING CENTER, INC.

Signed in the presence of the following witnesses:

sign: _____
print name: _____

By: _____
Barbara Ford
Chief Executive Officer

sign: _____
print name: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this ____ day of May, 2021 by **Barbara Ford, Chief Executive Officer of ENVIRONMENTAL LEARNING CENTER, INC.**, a Florida not-for-profit corporation, who executed on behalf of the corporation, and who is personally known or produced identification in the form of _____.

NOTARY PUBLIC

printed name:
Commission No.:
Commission expiration:

NOTARIAL SEAL: