

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| Capital Expenditures | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| Operating Costs | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| External Revenues | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| Program Income (County) | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| In-Kind Match (County) | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |
| NET FISCAL IMPACT | <u><u>-0-</u></u> | <u><u>-0-</u></u> | <u><u>-0-</u></u> | <u><u>-0-</u></u> | <u><u>-0-</u></u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

B. **Recommended Sources of Funds/Summary of Fiscal Impact:** There is no fiscal impact to this item. *NO FISCAL IMPACT. Item is to streamline existing activity.*

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development & Control Comments:

[Signature] 6-29-06
OFMB

[Signature] 6/29/06

[Signature] 6-28-06

[Signature] 6/30/06
Contract Dev. and Control

The proposed Standard License Agreement meets our review requirements.

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

The Application attached to this Agreement may be used to apply to conduct a recreational or educational activity at a Palm Beach County Senior Center. The Application must be submitted at least thirty (30) days prior to the proposed start date of the activity. Please submit a completed Application and signed Agreement to the Senior Center indicated on the Application.

LICENSE AGREEMENT FOR PALM BEACH COUNTY SENIOR CENTERS

This License Agreement is made and entered into _____, by and between the Board of County Commissioners of Palm Beach County, Florida, hereinafter referred to as "County" and _____, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee has applied to conduct a recreational or educational activity at a Palm Beach County Senior Center for a fee on the Application to Conduct Activity at a Palm Beach County Senior Center (the "Application"), attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, County is the owner and operator of the Senior Center; and

WHEREAS, County is willing to allow Licensee to use the area within the Senior Center (the "Premises") identified by Senior Services on Exhibit A for the purposes described on the Application and hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby permits Licensee to use the Premises, as hereinafter defined, upon the terms and conditions contained in this Agreement.

1. Premises

The Premises, for the purpose of this Agreement, is the Senior Center identified on the Application. The Application is hereby made a part of this Agreement. The Licensee accepts the Premises in its "as is" condition. The County is in no way representing that the Premises is suitable for the Licensee's use and Licensee hereby accepts all risk relating to the use of the Premises.

Licensee shall use the Premises solely and exclusively for the use listed on the Application; Licensee shall not use, permit or suffer the use of the Premises for any other purpose whatsoever. Licensee shall be entitled to use the Premises only on the days and times listed on the Application. Licensee shall make no improvements, alterations or additions to the Premises. The use of the Premises by Licensee shall not interfere with County's use or operation of the Premises.

Licensee shall immediately report to a County representative any condition or activity on the Premises which poses a risk to persons or property. If directed by the County, Licensee shall postpone its activity until the County notifies the Licensee that it is safe to resume the activity.

2. Length of Term and Commencement Date

The term of this Agreement shall be for the period of time listed on the Application unless terminated earlier pursuant to the provisions of this Agreement. This Agreement shall commence upon execution by both parties (the "Commencement Date").

3. Participation Fee

Palm Beach County Community Services Department, on behalf of County, shall collect all fees and charges from participants in the activity. The Participation Fee shall be the amount listed on the Application.

4. Licensee Fee

The County shall retain 20% of the Participation Fees paid by the participants as the License Fee. The remainder of the Participation Fees shall be released to the Licensee by the County.

5. Termination

The County may terminate this Agreement at any time upon notice to the Licensee. Upon Licensee's receipt of notice from County, this Agreement shall terminate and County shall be relieved of all further obligation hereunder accruing subsequent to the date of such termination. Licensee may terminate this Agreement upon written notice to the County.

6. Waste or Nuisance

Licensee shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises. Licensee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Licensee's activity, on the Premises or in any manner not permitted by law.

7. Governmental Regulations

Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Licensee or its use of the Premises, and shall faithfully observe in the use of the Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the Licensee's use of the Premises. Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section.

8. Non-Discrimination

Licensee assures and certifies that it shall comply with Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, martial status, sexual orientation or disability with respect to their use of the Premises.

9. Surrender of Premises

Upon termination of each use of the Premises by the Licensee, Licensee, at its sole cost and expense, shall remove all of its personal property from the Premises and shall surrender the Premises to the County in at least the same condition the Premises were in at the start of each period of use.

10. Maintenance and Repair

County shall conduct all maintenance or repairs to the Premises. In the event that Licensee damages the Premises, County shall complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

11. Indemnification of County

To the extent permitted by law, Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from and against any and all claims, actions, damages, liability and expense, including attorney fees and costs, whether at trial or appellate level or otherwise, in connection with loss of life, personal injury and/or damage to or destruction of property arising from or out of the occupancy or use by Licensee of the Premises or any part thereof, or any act, error or omission of Licensee, its agents, contractors, employees or invitees. In case County shall be made a party to any litigation commenced

against Licensee or by Licensee against any third party, then Licensee shall protect and hold County, its agents, officers, and employees harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. This section shall survive termination of this License Agreement. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

12. Insurance

A. For Non-Government Entities

Licensee shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability and Workers Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for Premises - Operations, Contractual and Product Liability, Independent Contractors, Contractual Liability and Personal Injury, and Broad Form Property Damage Liability coverages.

Except for Workers Compensation, all insurance policies shall name the County as Additional Insured. Such insurance shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of the County's Risk Management Department. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County at least fifteen (15) days prior to the Commencement Date, such Certificate indicating at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Licensee under this Lease. In the event that Licensee shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by Licensee under this Agreement, County shall have the right of injunction, or County may immediately terminate this Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, Licensee shall and does nevertheless indemnify, defend and hold County harmless from any loss or damage incurred or suffered by County from Licensee's failure to maintain such insurance.

In the event of loss or damage to the Premises, the Licensee shall look solely to any insurance in its favor without making any claim against the County, and the Licensee shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Licensee, for itself and its insurers, waives all such insured claims against the County.

B. For Government Entities

If the Licensee is a government entity, Licensee acknowledges and represents, without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, that Licensee is self-insured for general liability under Florida sovereign immunity statutes with coverage limits of \$100,000 per person and \$200,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

In the event that Licensee maintains third-party commercial general liability in lieu of exclusive reliance on self-insurance under Section 768.28, F.S., Licensee shall maintain said insurance policy at limits not less than \$500,000 each occurrence. Licensee shall add the County to the commercial general liability as an "additional insured" with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents, c/o Facilities Development & Operations Department. Licensee agrees that the additional insured endorsement shall provide coverage on a primary basis.

Licensee shall maintain or be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes Chapter 440.

When requested, Licensee shall provide a statement or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status which the County agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing insurance requirements shall not relieve Licensee of its liability and obligations under this License Agreement.

Licensee agrees that its self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the County.

13. Participant Legal Liability Waivers

Licensee shall secure Participant Legal Liability Waivers from all participants in its activity using the waiver attached as Exhibit B, attached hereto and incorporated herein. The waiver shall require the participant to indemnify and hold the County harmless from any risks associated with participation in Licensee's activity. To the extent that Licensee requires insurance coverage by participants in its activity, Licensee shall require the insurance policy to name the County as an additional insured party on a primary basis. Licensee shall provide the

County with a copy of the Participant Legal Liability Waiver for every participant in Licensee's activity prior to commencing the activity on the Premises.

14. Rules of Premises

Licensee shall strictly adhere to the Senior Center Rules, listed on the Application, at all times and acknowledges receipt of a copy of the Senior Center Rules with this License Agreement. Licensee also acknowledges that any violation of the Senior Center Rules may result in the suspension or termination of this License Agreement.

15. Subcontracting

The Licensee may not subcontract or assign any rights, responsibilities or obligations of this Agreement.

16. Entire Agreement

This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

17. Notices

Any consents, approvals and permissions by the County shall be effective and valid only if in writing and any notice by either party to the other shall be in writing and shall be deemed to be duly given only if mailed prepaid by certified mail return, receipt requested, addressed:

- (a) If to the County at:
FDO Business & Community Agreements Manager
3200 Belvedere Road, Bldg. 1169
West Palm Beach, FL 33406-1544

- (b) If to the Licensee at:

Licensee Name: _____

Licensee Address: _____

18. Severability

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

19. Waiver of Jury Trial

The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

20. Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

21. Recording

Licensee shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of County.

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESS:

LICENSEE:

By: _____
Signature

By: _____
Signature

Witness Name Typed or Printed

Licensee Name Typed or Printed

ATTEST:

PALM BEACH COUNTY, FLORIDA

By: _____
Witness

By: _____
Audrey Wolf, Director
Facilities Development & Operations

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

EXHIBIT B
PARTICIPANT LEGAL LIABILITY WAIVER

In consideration of being allowed to participate in the activity offered at the Palm Beach County Senior Center, I, _____, the undersigned acknowledge, appreciate and agree that:

1. I, for myself and on behalf of my heirs, assigns, personal representatives and next of kin, hereby release and hold harmless Palm Beach County, and their officers, officials, agents, employees, and participants, (collectively the "Releasees"), with respect to any and all injury, disability, death, loss or damage to person or property whether arising from the negligence of the releasees or otherwise.
2. I KNOWINGLY AND FREELY ASSUME ALL RISKS ASSOCIATED WITH PARTICIPATION IN THE PALM BEACH COUNTY SENIOR CENTER ACTIVITY, BOTH KNOWN AND UNKNOWN, EVEN IF THE RISK ARISES FROM THE NEGLIGENCE OF THE RELEASEES. I ASSUME FULL RESPONSIBILITY FOR MY PARTICIPATION.
3. I willingly agree to comply with the stated and customary terms and conditions for participation in the Palm Beach County Senior Center Activity. If, however, I observe any unusual, significant hazard during my presence or participation, I will remove myself from participation and bring the hazard to the attention of the nearest official immediately.

I HAVE READ THIS RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT FULLY AND UNDERSTAND ITS TERMS. I UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING THIS RELEASE AND SIGN IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT.

Signature of Participant

Date