


**MEMORANDUM**

**TO:** Mayor England  
Vice Mayor Kostka  
Commissioner George  
Commissioner Samora  
Commissioner Rumrell

**FROM:** Max Royle, City Manager 

**DATE:** September 1, 2020

**SUBJECT:** Use of City Property Adjacent to Mizell Road Retention Pond: Review of Agreement with the St. Johns County Beekeepers Association, Inc., for Beehives; and Review of Agreement with Ark Wildlife Rescue and Rehabilitation, Inc., for a Facility to Care for Injured and Orphaned Wildlife

**INTRODUCTION**

The City owns 25 acres west of Mizell Road. Fifteen of the 25 acres is the retention pond and master pump station. The pond was dug in stages over several years starting in 1998. The 25-acre site is shown on the attached aerial photo (page 1).

On the pond's west side is a facility for the care and rehabilitation of injured birds that is operated by an organization formerly known as Noah's Ark, which was headed by Ms. Karen Lynch. At its March 5, 2005, meeting, the City Commission approved a 10-year lease to allow Noah's Ark to use a small section of land for its facility. As that lease has expired, Ms. Lynch is requesting a new one for her renamed organization: Ark Wildlife Rescue and Rehabilitation.

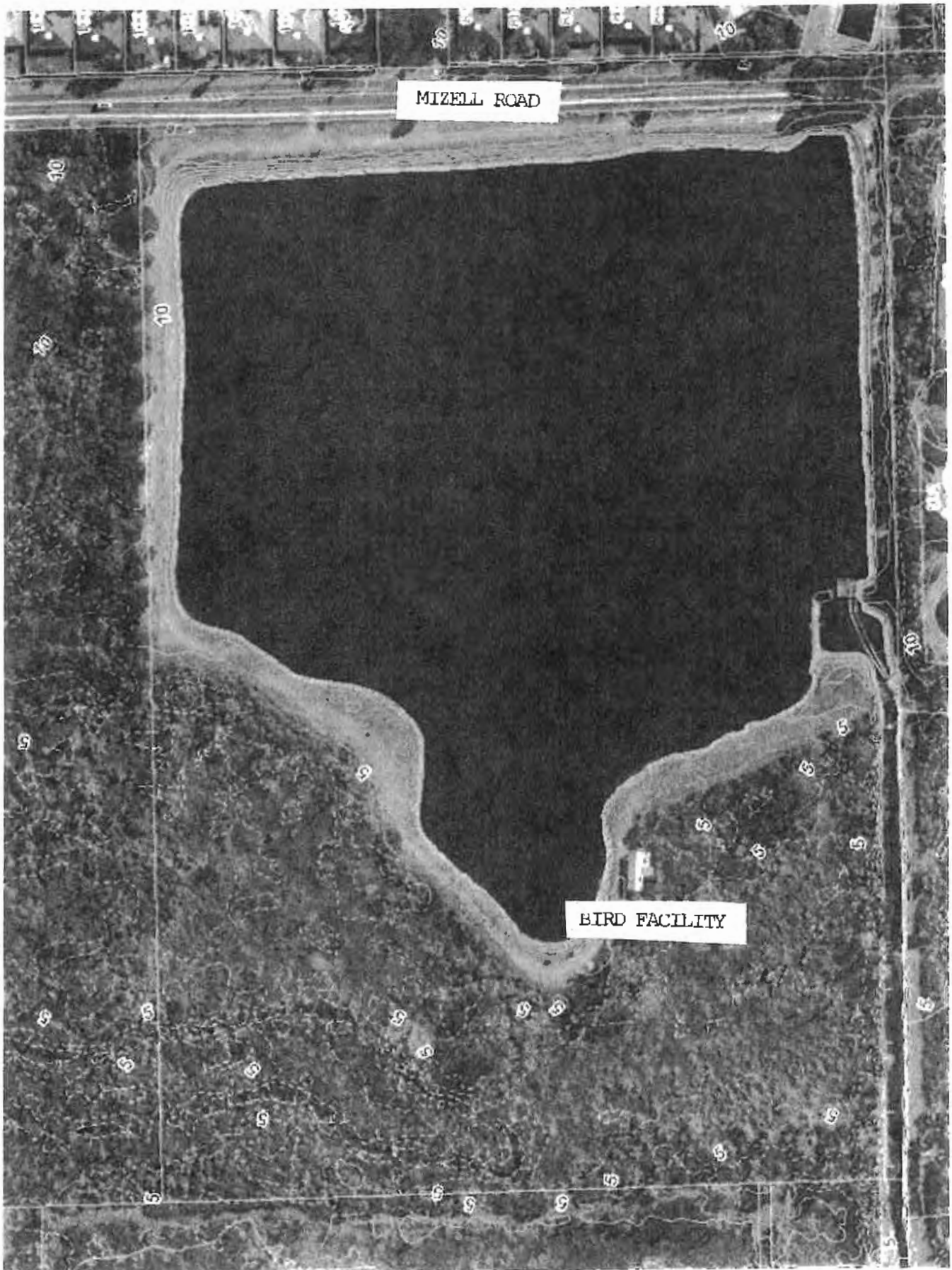
At your August 3, 2020, meeting, the topic of the leases was presented to you. As Ms. Lynch was unable to attend your meeting, you discussed with Ms. Diane Spoden her request to lease a small area on the pond's west side for a small number (four to six) of beehives. The minutes of your discussion with Ms. Spoden are attached as pages 2-3.

The two lease agreements, including two emails from Ms. Spoden, are attached as pages 4-15. The agreements were prepared by the City Attorney. Ms. Spoden and Ms. Lynch will be at your September 14<sup>th</sup> meeting,

**ACTION REQUESTED**

It is that you discuss each lease, first with Ms. Spoden and then with Ms. Lynch. You can then decide whether to approve each by a separate motion and vote for each.

EAST



WEST

7. Use of City Property Adjacent to Mizell Road Retention Pond: Review of Requests to Lease Parts for Injured Bird Recovering Facility and for Honeybee Hives (Presenter: Max Royle, City Manager)

Mayor England introduced Item 7 and asked City Manager Royle to give a staff report.

City Manager Royle advised Diane Spoden is here to request a lease of a portion of Mizell Road to help an Eagle Scout with a project for honeybee hives. Ms. Spoden would manage the beehives, which would be in a very small area that would be away from the public. He advised that Ms. Spoden is a Master Beekeeper and is managing similar beehive groupings of over 30 hives.

Mayor England opened the Public Comments section. The following addressed the Commission:

Diane Spoden, 7424 A1A S, St. Augustine, FL, advised that a young lady requested to help the beekeepers as an Eagle Scout project. She already built five beautiful beehives and where the lease would limit public access. She explained that it is healthy to manage bees rather than allow feral bees to come onto the property. She would not comprise the bird facility that is located there and would like to locate the bees on the opposite side of the bird facility. She commented that the birds and the bees are compatible, and she would mow the yards next to the bees so staff would not have to worry about the bees.

Mayor England asked if the Ark knows that the bees would be coming.

Ms. Spoden advised not that she was aware of.

Mayor England asked Ms. Spoden to notify the Ark.

Ed Slavin, P.O. Box 3084, St. Augustine, FL, advised that he is in support the lease.

Mayor England closed the Public Comments section and asked for any further Commission comments.

Commissioner George commented that it was a great idea to support the beehives.

Commissioner Rumrell agreed and said it would be a great opportunity for the City.

Vice Mayor Kostka asked where the beehives will be located.

Public Works Director Tredik advised that he does not have the final location but asked that when they are located to consider where staff is doing berm work on Mizell pond.

Vice Mayor Kostka thought it was a great idea.

Commissioner Samora agreed.

City Manager Royle advised that City Attorney Taylor would have to draft a contract on the terms and what is allowed and not allowed. He could bring the contract back under Consent Agenda at the next Commission meeting.

Mayor England made a motion.

**Motion:** to approve that we approve going forward with the lease for the beehives and that our City Attorneys work on the agreement to come back next month along with an agreement

with the Ark and that both parties are aware of their existence on the property. **Moved by** Mayor England, **Seconded by** Commissioner Samora.

Roll Call was as followed:

Commissioner Rumrell	Yes
Commissioner Samora	Yes
Commissioner George	Yes
Mayor England	Yes
Vice Mayor Kostka	Yes

**Motion passes unanimously.**

## Max Royle

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**From:** Diane Spoden <dianesbees@gmail.com>  
**Sent:** Wednesday, June 17, 2020 2:35 PM  
**To:** Max Royle  
**Subject:** Mizell road property location for bee hives

To City manager, Max Royle

Dear Max,

This letter is to request permission to house a small number (4-6) of honey bee hives inside the fenced property surrounding the lake off Mizell road, St Augustine Beach.

As you may be aware our honey bee population is in decline and faces challenges from many quarters. Bees are a critical part of our food chain and are necessary for plant pollination. In an effort to maintain healthy populations we are looking for sites to locate hives that are fenced, away from public access and also accessible for management. The Mizell road property is ideal from these and a number of perspectives.

The equipment for this location has been a project built and funded by the Scouts BSA troop 9101 G from the Riverbend district for St Johns County Beekeepers. The hives will be in a very small grouping and be managed by myself, a UF Master Beekeeper and Program Director for St Johns County Beekeepers and member of the Crescent Beach Ladies Beekeeping Collective

I currently manage six similar groupings comprising of over 30 hives.

I hope the city of St. Augustine Beach will see the benefit of this worthwhile, cost free and highly beneficial project and in doing so join many other cities around the country by becoming a "bee friendly" city.

It would be my pleasure to meet with you, the commissioners and head of Public works to discuss and answer any questions. I look forward to hearing from you soon

Kindest regards,

Diane Spoden

## Max Royle

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**From:** Diane Spoden <dianesbees@gmail.com>  
**Sent:** Thursday, July 30, 2020 11:26 AM  
**To:** Max Royle; Comm England; Comm Kostka; Comm Samora; comdrunrell@cityofsab.org; Comm George  
**Subject:** Use of City property adjacent to Mizell road pond - Honey bee hives

This letter is to request permission to house a small number of honey bee hives inside the fenced property surrounding the pond off Mizell road, St Augustine Beach.

Eagle Scout Jessica Parker of troop 9101 G decided to help the environment as part of her Eagle Scout project. She has funded and assembled beehives for 5 colonies and contacted me as a UF Master Beekeeper, Program director for St Johns County Beekeepers and founding member of the Crescent Beach Ladies Beekeeping Collective to assist. I have volunteered to donate the bees and manage the hives.

We are seeking a location for them and the Mizell pond property is ideal as it is away from public access yet accessible for management. The hives will be in a very small grouping and managed by myself. The hives and their management will in no way interfere with the bird rehabilitation facility and will be located an appropriate distance away from it on the other side of the pond

As you may be aware our honey bee population is in decline and faces challenges from many quarters. Bees are a critical part of our food chain and are necessary for plant pollination. It is our request that the city of St. Augustine Beach will see the benefit of this worthwhile, cost free and highly beneficial project and in doing so join many other cities around the country by becoming a "bee friendly" city.

I will be at the next Commision meeting on August 3rd to discuss and answer any questions. I hope I have your support for this worthwhile Eagle Scout Project.

Kindest regards,

Diane Spoden

## LEASE

**THIS LEASE** agreement made and entered into this \_\_\_\_ day of September 2020, by and between the City of St. Augustine Beach, a Florida municipal corporation, (the "City") and the St Johns County Beekeepers Association, Inc., a Florida non-profit corporation. (the "Tenant"). whose address is St. Johns County Agricultural Extension Center, 3125 Agricultural Center Drive, Saint Augustine, Florida 32092.

## **WITNESSETH**

That for and in consideration of the mutual covenants herein after contained, the parties mutually agree as follows:

- 1. Recitals.** The following recitals are true and constitute a material inducement to the City to enter into this Lease Agreement:
  - a. The City is the owner in fee simple absolute of certain property located adjacent to the City's Master Drainage Pond, as more particularly indicated on the map attached hereto and made a part hereof. The City is agreeable to leasing a portion of that property to the Tenant to enable it to provide beekeeping.
  - b. The City does not have any immediate need for the land to be used for beekeeping, the Tenant has warranted their use will not conflict with the other City uses of this land and the surrounding land, and the City is agreeable to entering into a lease of the land necessary or the facility as more particularly indicated on the attached map together with an easement for access to the property, upon the terms and conditions of this Lease Agreement.
  - c. The City maintains flower gardens in this area and it is in the interest of the public health, safety and welfare that arrangements be promote pollination and the health of local bee species and the Tenant is willing to provide beekeeping services to the City in consideration of this Lease.
- 2. Consideration.** The Tenant agrees that during the term of this lease, it will provide beekeeping services and it will maintain all appropriate licenses for such services as may be required by the State of Florida. The Tenant further agrees that it understands that the property to be leased is within St. Johns County and outside the incorporated limits of the City. The City makes no representation as to the zoning or the appropriateness of the property for the proposed use. Tenant will perform its own due diligence and will make application at its own cost and expense for such zoning changes, if any, required for its operations.
- 3. Term of Lease.** The term of the lease shall be for ten (10) years unless sooner terminated by the City Commission as herein provided. The City Commission, in the event that the lands leased to the Tenant shall be required for another public use, in its sole discretion, upon sixty (60) day notice elect to terminate this Lease. The Lease shall also be terminated without notice in the event of the filing of a petition for bankruptcy by the Tenant or the Tenant's filing of an assignment for the benefit of creditor. It is understood that upon application the Association

shall have the right to renew this lease for one additional term of ten (10) years upon the same terms and conditions. Upon termination of this Lease, whether by expiration of the term hereof or early termination as above provided, the Tenant shall in a good and workmanlike manner, remove any of its improvements from the land. In the event that the Tenant shall fail or refuse to remove such improvements, the City may cause such improvements to be removed and may recover from the Tenant the cost of such demolition.

4. **Insurance.** The League of Cities was questioned and they decided that no additional insurance was required for this Agreement.
5. **No Waiver of Sovereign Immunity and Limitation on City's Damages.** Nothing in this Lease Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Section 768.28, Florida Statutes, nor shall anything in the Agreement be construed as increasing the limits of the sovereign immunity of the City as provided in Section 768.28, Florida Statutes. The City's liability under this Agreement shall be solely and exclusively limited to the amount to be paid to City by Tenant and Tenant shall have no other remedy at law or in equity for any breach of contract or other action related to the matters herein.
6. **Indemnity.** Tenant agrees to indemnify and save City harmless from any liability, claim or demand by any third party resulting from or arising out of the Tenant's actions under this Agreement or its use or occupancy of the City's Property that is the subject of this Agreement. The indemnity provisions of this section shall survive the termination of this Agreement.
7. **Waste and Damage.** Tenant agrees to neither permit or commit waste or damage to the City's Property, facilities, equipment, furnishings, structures, and space that are the subject of this Agreement and further agrees to comply with all applicable federal, state, county, and city laws and rules and regulations, including payment of all applicable taxes and compliance with all laws and regulations pertaining to its operations. Upon termination of this Agreement by lapse of time or otherwise, Tenant agrees that its right to use the facilities, structures and space which are the subject of this Agreement shall be terminated and that Tenant shall leave same in at least as good a condition as received, reasonable wear and tear excepted.
8. **Hazards and Chemicals.** Tenant represents and warrants that no Hazardous Materials will be generated, stored, disposed of, or are present on or within any part of the City's Property. Hazardous chemicals do not include ordinary household cleaning supplies. Tenant shall indemnify, defend, protect and hold City harmless from and against any and all claims, costs, fines, judgments, liability, actions, causes of action, liens, and expenses; including, without limitation, penalties and reasonable attorney's fees, incurred or suffered by or asserted against City, arising out of or in any way relating to any one or more of the following which are not caused by Tenant: (a) the presence of any Hazardous Materials in, on, or under the city's Property; (b) any past, present or threatened release of Hazardous Materials in, on, under or from the City's Property; and (c) any activity by Tenant in connection with any actual, proposed or threatened use, treatment, storage, existence, disposition or other release, production, manufacturing, management, abatement, removal, handling, transfer or other means in connection with the City's Property.



- 9. Maintenance, Utilities and Trash Collection.** The Tenant shall be responsible for the maintenance and cleaning of the City's Property. The Tenant acknowledges the property is not connected to electric, water or sewer and that Landlord is not providing access to these services. Tenant shall be responsible for regular cleaning of the City's Property and shall maintain the City's Property in a clean and safe condition.
- 10. Notice to Third Parties.** Tenant shall notify each of its contractors, subcontractors, suppliers, vendors, invitees, guests and others that Tenant acts on its own account and not for the City and that the City assumes no responsibility for the payment or protection thereof.
- 11. Assignment and Subletting of Lease.** This lease is non-assignable. The demised premises shall be used solely for beekeeping. The demised premises shall be not be used for any commercial purposes or for any purpose primarily for the benefit of private individuals. Tenant's unique composition is the sole reason for City procuring this Agreement. Tenant shall not sublet the property.
- 12. Tenant Improvements.** Tenant shall not make any improvements, alterations, or modifications to the property without the approval of City.
- 13. Recording of this Instrument.** This instrument shall not be recorded. Recordation of this lease by the Tenant or by anyone acting on its behalf shall act as an automatic termination of this lease.
- 14. Binding Effect.** The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to only the parties to this Agreement. This Agreement is made for the sole benefit and protection of the parties no other persons shall have any right of action hereunder.
- 15. Applicable Law: Jurisdiction of Venue.** This Agreement, and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in state court in St. Johns County, Florida. The parties waive trial by jury. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms, and restrictions that must be satisfied to complete the development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms, and restrictions.
- 16. Joint Preparation.** Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 17. Exhibits.** All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.

- 18. Captions or Paragraph Headings.** captions and paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend, or limit the scope of intent of this Agreement, nor the intent of any provision hereof.
- 19. Counterparts.** This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.
- 20. Effective Date.** This Agreement shall become effective as of the date signed by all parties.
- 21. Amendment.** This Agreement may only be amended by written instrument
- 22. No Discrimination.** Tenant shall operate in a fair and reasonable manner and shall not discriminate against any person on the basis of race, color, religion, sex, familial status, national origin, handicap, sexual orientation, gender identity or expression, or any other reason prohibited by law.
- 23. Other Regulations.** Tenant is also required to fully comply with all federal, state, and local laws pertaining to their use of the Garage.
- 24. Severability.** If any provision of this Agreement or the application of this Agreement to any entity or circumstances becomes invalid or unenforceable to any extent, then the remainder of this Agreement or the application of such provisions to such other entity or circumstance will not be affected by such invalidity or unenforceability and will be enforced to the greatest extent permitted by law.
- 25. Waiver.** No consent or waiver, expressed or implied, by any Party to or of any breach or default by the other Party in the performance by such other Party of the obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement. Failure on the part of a Party to complain of any act or failure to act of the other Party or to declare such other Party in default, irrespective of how long such failure continues, will not constitute a waiver by such Party of its rights under this Agreement.
- 26. Notices.** All notices, demands, requests and other communications required or permitted under this Agreement (a "Notice") must be in writing and will be deemed to have been duly given (a) upon the date of the Notice if delivered personally, or (b) by facsimile or electronic mail provided that a duplicate copy is promptly mailed by U.S. Mail, certified, return receipt requested, or (c) upon the date following the date of the Notice if delivered by overnight courier which provides a receipt, such as Federal Express. In each case the Notice must have adequate postage prepaid, addressed to the appropriate Party and marked to a particular individual's attention as provided in this Section. The Notice will be effective upon being so deposited, but the time period in which a response to any Notice must be given or any action taken with respect to the Notice will commence to run from the date of receipt of the Notice by the addressee as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service or air courier service to deliver because of a changed address of which no Notice was given will be deemed to be the receipt of the Notice sent as of the Business Day following deposit. If either Party to this Agreement

changes their address, that Party must notify the other Party of such change by Notice delivered in accordance with this Section. Any person acquiring any interest in the Property will be entitled to receive copies of Notices upon giving Notice to the other Party of its name and address and the nature of its interest. The initial addresses of the Parties will be as set forth below:

**For the City:** City Manager  
City of St. Augustine Beach  
2200 A1A South  
St. Augustine Beach, Florida 32080

**For Tenant:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have hereunto caused these presents to be executed, this the day and year first above written.

**ST JOHNS COUNTY BEEKEEPERS  
ASSOCIATION, INC.**

BY: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**CITY OF ST. AUGUSTINE BEACH**

ATTEST: \_\_\_\_\_

City Manager

BY: \_\_\_\_\_

Mayor-Commissioner

## LEASE

**THIS LEASE** agreement made and entered into this \_\_\_\_ day of September 2020, by and between the City of St. Augustine Beach, a Florida municipal corporation, (the "City") and The Ark Wildlife Rescuc & Rehabilitation, Inc., a Florida non-profit corporation. (the "Tenant"). whose address is 1458 Murray Drive, Jacksonville, Florida 32205.

## **WITNESSETH**

That for and in consideration of the mutual covenants herein after contained, the parties mutually agree as follows:

- 1. Recitals.** The following recitals are true and constitute a material inducement to the City to enter into this Lease Agreement:
  - a. The City is the owner in fee simple absolute of certain property located adjacent to the City's Master Drainage Pond, as more particularly indicated on the map attached and made a part of this Lease Agreement. The City is agreeable to leasing a portion of that property to the Tenant to enable it to provide a rehabilitation facility for injured and orphaned wildlife.
  - b. The City does not have any immediate need for the land to be used for a rehabilitation facility, the Tenant has warranted their use will not conflict with the other City uses of this land and the surrounding land, and the City is agreeable to entering into a lease of the land necessary or the facility as more particularly indicated on the attached map together with an easement for access to the property, upon the terms and conditions of this Lease Agreement.
  - c. The City has been designated as a bird sanctuary and it is in the interest of the public health, safety and welfare that arrangements be made for injured and orphaned birds and other wildlife and the Tenant is willing to provide rehabilitation services to the City in consideration of this Lease.
- 2. Consideration.** The Tenant agrees that during the term of this lease, it will provide rehabilitation services and it will maintain all appropriate licenses for such services as may be required by the State of Florida. The Tenant further agrees that it understands that the property to be leased is within St. Johns County and outside the incorporated limits of the City. The City makes no representation as to the zoning or the appropriateness of the property for the proposed use. Tenant will perform its own due diligence and will make application at its own cost and expense for such zoning changes, if any, required for its operations.
- 3. Term of Lease.** The term of the lease shall be for ten (10) years unless sooner terminated by the City Commission as herein provided. The City Commission, in the event that the lands leased to the Tenant shall be required for another public use, in its sole discretion, upon sixty (60) day notice elect to terminate this Lease. The Lease shall also be terminated without notice in the event of the filing of a petition for bankruptcy by the Tenant or the Tenant's filing of an assignment for the benefit of creditor. It is understood that upon application the Association

shall have the right to renew this lease for one additional term of ten (10) years upon the same terms and conditions. Upon termination of this Lease, whether by expiration of the term hereof or early termination as above provided, the Tenant shall in a good and workmanlike manner, remove any of its improvements from the land. In the event that the Tenant shall fail or refuse to remove such improvements, the City may cause such improvements to be removed and may recover from the Tenant the cost of such demolition.

4. **Insurance.** For so long as this Lease shall remain in full force and effect, the Tenant shall maintain a general liability policy, naming the City as an additional insured, such policy to be in form, content, and amount satisfactory to the City. Certificates of such insurance shall be filed with the City Manager at such intervals as the City Manager shall prescribe.
5. **No Waiver of Sovereign Immunity and Limitation on City's Damages.** Nothing in this Lease Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Section 768.28, Florida Statutes, nor shall anything in the Agreement be construed as increasing the limits of the sovereign immunity of the City as provided in Section 768.28, Florida Statutes. The City's liability under this Agreement shall be solely and exclusively limited to the amount to be paid to City by Tenant and Tenant shall have no other remedy at law or in equity for any breach of contract or other action related to the matters herein.
6. **Indemnity.** Tenant agrees to indemnify and save City harmless from any liability, claim or demand by any third party resulting from or arising out of the Tenant's actions under this Agreement or its use or occupancy of the City's Property that is the subject of this Agreement. The indemnity provisions of this section shall survive the termination of this Agreement.
7. **Waste and Damage.** Tenant agrees to neither permit or commit waste or damage to the City's Property, facilities, equipment, furnishings, structures, and space that are the subject of this Agreement and further agrees to comply with all applicable federal, state, county, and city laws and rules and regulations, including payment of all applicable taxes and compliance with all laws and regulations pertaining to its operations. Upon termination of this Agreement by lapse of time or otherwise, Tenant agrees that its right to use the facilities, structures and space which are the subject of this Agreement shall be terminated and that Tenant shall leave same in at least as good a condition as received, reasonable wear and tear excepted.
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manufacturing, management, abatement, removal, handling, transfer or other means in connection with the City's Property.

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- 10. Notice to Third Parties.** Tenant shall notify each of its contractors, subcontractors, suppliers, vendors, invitees, guests and others that Tenant acts on its own account and not for the City and that the City assumes no responsibility for the payment or protection thereof.
- 11. Assignment and Subletting of Lease.** This lease is non-assignable. The demised premises shall be used solely for wildlife rehabilitation. The demised premises shall be not be used for any commercial purposes or for any purpose primarily for the benefit of private individuals. Tenant's unique composition is the sole reason for City procuring this Agreement. Tenant shall not sublet the property.
- 12. Tenant Improvements.** Tenant shall not make any improvements, alterations, or modifications to the property without the approval of City.
- 13. Recording of this Instrument.** This instrument shall not be recorded. Recordation of this lease by the Tenant or by anyone acting on its behalf shall act as an automatic termination of this lease.
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- 15. Applicable Law: Jurisdiction of Venue.** This Agreement, and the rights and obligations of the parties hereto as they may appear herein, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in state court in St. Johns County, Florida. The parties waive trial by jury. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms, and restrictions that must be satisfied to complete the development contemplated by this Agreement shall not relieve any party, or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms, and restrictions.
- 16. Joint Preparation.** Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 17. Exhibits.** All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.

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- 19. Counterparts.** This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.
- 20. Effective Date.** This Agreement shall become effective as of the date signed by all parties.
- 21. Amendment.** This Agreement may only be amended by written instrument
- 22. No Discrimination.** Tenant shall operate in a fair and reasonable manner and shall not discriminate against any person on the basis of race, color, religion, sex, familial status, national origin, handicap, sexual orientation, gender identity or expression, or any other reason prohibited by law.
- 23. Other Regulations.** Tenant is also required to fully comply with all federal, state, and local laws pertaining to their use of the Garage.
- 24. Severability.** If any provision of this Agreement or the application of this Agreement to any entity or circumstances becomes invalid or unenforceable to any extent, then the remainder of this Agreement or the application of such provisions to such other entity or circumstance will not be affected by such invalidity or unenforceability and will be enforced to the greatest extent permitted by law.
- 25. Waiver.** No consent or waiver, expressed or implied, by any Party to or of any breach or default by the other Party in the performance by such other Party of the obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement. Failure on the part of a Party to complain of any act or failure to act of the other Party or to declare such other Party in default, irrespective of how long such failure continues, will not constitute a waiver by such Party of its rights under this Agreement.
- 26. Notices.** All notices, demands, requests and other communications required or permitted under this Agreement (a "Notice") must be in writing and will be deemed to have been duly given (a) upon the date of the Notice if delivered personally, or (b) by facsimile or electronic mail provided that a duplicate copy is promptly mailed by U.S. Mail, certified, return receipt requested, or (c) upon the date following the date of the Notice if delivered by overnight courier which provides a receipt, such as Federal Express. In each case the Notice must have adequate postage prepaid, addressed to the appropriate Party and marked to a particular individual's attention as provided in this Section. The Notice will be effective upon being so deposited, but the time period in which a response to any Notice must be given or any action taken with respect to the Notice will commence to run from the date of receipt of the Notice by the addressee as evidenced by the return receipt. Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service or air courier service to deliver because of a changed address of which no Notice was given will be deemed to be the receipt of the Notice sent as of the Business Day following deposit. If either Party to this Agreement

changes their address, that Party must notify the other Party of such change by Notice delivered in accordance with this Section. Any person acquiring any interest in the Property will be entitled to receive copies of Notices upon giving Notice to the other Party of its name and address and the nature of its interest. The initial addresses of the Parties will be as set forth below:

**For the City:** City Manager  
City of St. Augustine Beach  
2200 A1A South  
St. Augustine Beach, Florida 32080

**For Tenant:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have hereunto caused these presents to be executed, this the day and year first above written.

**THE ARK WILDLIFE RESCUE &  
REHABILITATION, INC.**  
  
BY: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**CITY OF ST. AUGUSTINE BEACH**  
  
BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
  
City Manager

Mayor-Commissioner