Memorandum

From the Town of Juno Beach Planning and Zoning Department

To: Town Council; Joseph Lo Bello, Town Manager
From: Ruben Cruz, Director of Planning & Zoning
Date: November 2, 2016
Subject: Request for Site Plan Approval Extension

Background

During a regular meeting on January 13, 2015, the Town Council approved a Special Exception Approval for a Major Amendment to an Approved Site Plan for the Loggerhead Marinelife Center (LMC). The amendment was for a proposed expansion of 27,518 square feet. The proposed addition consisted of a two-story structure which will house multi-purpose rooms, a display room, an expansion to the existing gift shop on the first floor, administrative offices, classrooms, a lecture hall and an open terrace on the second floor. The applicant was seeking to expand its facility to the north in order to house additional educational/multi-purpose areas, to relocate some of the existing administrative services and to free up existing areas for additional research/turtle care areas. The LMC is located at Loggerhead Park between US 1 and Ocean Drive.

Discussion

The Town's Code of Ordinances, Chapter 34, Article II, Division 4, Section 34-119 (b) provides that: "Prior to the expiration of the two-year period, a one-year extension to commence development may be applied for with the town council. An extension may be granted upon a determination by the town council that the applicant has made a good faith effort to commence construction but has been prevented from doing so for reasons beyond the control of the applicant. The town council may, at the request of the applicant and in the exercise of its discretion, grant additional extension(s) pursuant to this paragraph when warranted by the totality of the circumstances."

The applicant is requesting a one-year extension to the approved site plan – which, if approved, will extend the expiration of the approved site plan to January 13, 2018. The applicant has been trying to move forward with as required by condition of the approved plan, and has been making continuous efforts to slowly move the project forward, but has been unable due to funding and getting approval of an eighteen month extension from Palm Beach County. Please see the attached letter of request from Jack Lighton, President & CEO of the LMC along with the Palm Beach County's approval of the Third Amendment to Agreement of Lease.

Staff Recommendation

Staff recommends that the Town Council approve the proposed site plan extension for the Loggerhead Marinelife Center.

LOGGERHEAD
MARINELIFE CENTER

14200 U.S. Highway One
Juno Beach, Florida 33408
561.627.8280 • Fx: 561.627.8305
www.marinelife.org

Board of Directors

Brian K. Waxman
Chair
Raymond E. Graziotto
Vice Chair
Robert Chlebek
Treasurer
Ann Miller
Secretary
Roger Amidon
Bruce A. Beal
Thomas Bean
Cressman Bronson
John D. Couris
Jodie Gless
Gordon Gray
Roe Green
Carrie Hanna
Dawn Hoffman
Todd Hutchison
Dan Jennings
Susan Johnson
Kim Edward Koger, M.D.
Leanna Landsmann
Ed Lunsford
Karen Marcus
James F. Mullen IV, CPA
Joel Paige
Morgan R. Poncy, M.D.
Robert Weisman
Lynne Wells
Diana Wilkin
Jeanette Wyneken, Ph.D.

Emeritus Members

Nancy DiMarco, D.V.M.
Frank W. Harris
Gail Nelson
Emmy S. Rayne

President & CEO

Jack E. Lighton

★★★★ CHARITY NAVIGATOR
Four Star Charity

Ruben Cruz, CFM
Director of Planning and Zoning
Town of Juno Beach
340 Ocean Drive
Juno Beach, FL 33408

November 1, 2016

Dear Mr. Cruz,

We are very excited to embark on our ambitious plan to transform Loggerhead Marinelife Center into the world's most advanced research laboratory, educational hub, and sea turtle hospital.

We have worked in partnership with the town of Juno Beach, Palm Beach County, and Palm Beach County Parks and Recreation on our master plan for our expansion and we look forward to our future together.

We wish to extend our ground breaking timeline from the Town of Juno Beach to parallel our extension as outlined in the executed Third Amendment to our lease with Palm Beach County so that we are able to raise the funds needed for our expansion without the need to access our reserve funds.

We respectfully ask the Town of Juno Beach to approve our request and look forward to any questions or concerns you may have.

Warm regards,

Jack E. Lighton
President & CEO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7013 2630 0000 6412 6601

Facilities Development & Operations Department

Property & Real Estate Management Division

2633 Vista Parkway

West Palm Beach, FL 33411

Telephone - (561) 233-0217

Facsimile (561) 233-0210

www.pbcgov.com/fdo

Palm Beach County Board of County Commissioners

Mary Lou Berger, Mayor

Hal R. Valeche, Vice Mayor

Paulette Burdick

Shelley Vana

Steven L. Abrams

Melissa McKinlay

Priscilla A. Taylor

County Administrator

Verdenia C. Baker

"An Equal Opportunity Affirmative Action Employer"

October 12, 2016

David McClymont
Loggerhead MarineLife Center, Inc.
14200 US Highway One
Juno Beach, FL 33408

RE: Third Amendment to Agreement of Lease

Dear Mr. McClymont:

Enclosed please find a fully executed original of the above referenced document approved by the Palm Beach County Board of County Commissioners on September 27, 2016.

If you should have any questions, please do not hesitate to contact me at (561) 233-0212.

Thank you.

Kindest Regards,

M Jackson

Margaret Jackson
Contract Analyst

Enclosure

c: Raymond E. Grazziotto, 630 Maplewood Drive, Jupiter, FL 33458 (via regular mail)
Scott L. McMullen, Esq., Jones, Foster, Johnson & Stubbs, P.A., 801 Maplewood Drive, Suite 22-A, Jupiter, FL 33458 (via regular mail)
Ross C. Hering, Director – PREM (w/out encl.)
Jean Matthews, Senior Planner, Parks & Recreation Department

G:\PREM\PM\In Lease\MarineLifeCenterJunoBeach\Third Amendment\Ltr.ApprAmend.10-12-2016.doc.docx

THIRD AMENDMENT TO AGREEMENT OF LEASE

R2016-1356

THIS THIRD AMENDMENT TO AGREEMENT OF LEASE (R2003-1246) (the "Third Amendment") is made and entered into as of SEP 27 2016, 2016, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("County") and **LOGGERHEAD MARINELIFE CENTER, INC.**, f/k/a Marinelife Center of Juno Beach, Inc., a Florida not-for-profit corporation ("Tenant").

WITNESSETH:

WHEREAS, County and Tenant entered into that certain Agreement of Lease dated August 19, 2003 (R2003-1246) (the "Lease"), for the use of the Premises as defined in the Lease; and

WHEREAS, County and Tenant entered into a First Amendment to Agreement of Lease, dated October 7, 2008, (R2008-1749), which provided Tenant the right to install underground saltwater lines for the operation of Tenants rehabilitation tank and exhibits; and

WHEREAS, County and Tenant entered into a Second Amendment to Agreement of Lease, dated May 3, 2011, (R2011-0695), which increased the leased premises to expand the educational facilities, extended the lease term and provided funding benchmarks for estimated costs of the Expansion Project; and

WHEREAS, Tenant requires additional time to raise the necessary funds to construct the Expansion Project and has requested the Funding Benchmark of the 100% estimated cost of the Expansion Project and the project construction completion deadlines be extended by eighteen (18) months; and

WHEREAS, the parties wish to amend the Lease to approve an eighteen (18) month extension of the 100% estimated cost of the Expansion Project and the project construction completion deadlines and incorporate certain language required by County.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference. Capitalized terms not defined herein shall have the same meaning ascribed to them in the Lease.

2. Section 5.a. of the Second Amendment is hereby deleted and replaced with the following:

a. Tenant shall reasonably demonstrate to County Tenant's financial ability to complete construction of the Expansion Project by complying with the "Funding Benchmarks" (as hereinafter defined). For the purposes of this paragraph, the term "Funding Benchmarks" shall mean (i) Tenant shall have raised 10% of the estimated cost of the Expansion Project within

two (2) years of the Second Amendment Effective Date, (ii) Tenant shall have raised 50% of the estimated cost of the Expansion Project within three (3) years of the Second Amendment Effective Date; and (iii) Tenant shall have raised 100% of the estimated cost of the Expansion Project no later than November 2, 2017. For purposes hereof, a firm commitment from a bank or other institutional lender to provide construction financing shall be deemed acceptable to meet the Funding Benchmarks. Prior to each deadline, Tenant shall provide County with a written statement of funding received, together with the current estimate of Expansion Project costs, in order to demonstrate compliance with each phase of the Funding Benchmarks. Should Tenant fail to meet the Funding Benchmarks as provided herein, County shall have the right to terminate the Lease as to the Additional Premises according to the procedure set forth in 5.c. below.

3. Section 5.c. of the Second Amendment is hereby deleted and replaced with the following:

c. Tenant shall obtain all governmental approvals and commence construction of the Expansion Project no later than November 2, 2017, and Tenant shall have until November 2, 2019, to complete construction thereof. For the purposes of this paragraph, commencement of construction and completion of construction shall have the same meaning as those terms are used in Section 1.02 of the Lease. Should Tenant fail to achieve the Funding Benchmarks, or commence or complete construction of the Expansion Project as required herein, County shall have the right to terminate the sections of the Second Amendment pertaining solely to the Additional Premises and Expansion Project, by delivering written notice to the Tenant that Sections 2, 3, 4, 5, 6 and 11 of the Second Amendment are terminated and of no further force or effect. No acknowledgment from Tenant is required to make such termination effective, although Tenant shall execute an amendment to the Lease confirming such termination if so requested by County. Upon termination of the sections referenced above, the Lease, including Sections 1, 7, 8, 9, 10, 12, 13, 14, 15, and 16 of the Second Amendment, shall continue in full force and effect as to the Original Premises. In the event Tenant has commenced construction on the Additional Premises, County shall identify in such notice of termination which, if any, of Tenant's improvements made in conjunction with the construction of the Expansion Project Tenant shall be required to remove. Tenant shall remove any improvements as required pursuant to the notice within sixty (60) days after Tenant's receipt of such notice, at Tenant's sole cost and expense. Tenant's obligation to remove all improvements as required pursuant to such notice, shall survive the termination of the provisions of the Second Amendment relating to the Additional Premises and Expansion Project.

4. Section 5.k.iii. of the Second Amendment is hereby deleted and replaced with the following:

iii. Tenant shall have met all of the Funding Benchmarks as provided in Section 5. hereof, as amended.

4. Section 4.08 of the Lease is hereby deleted and replaced with the following:

Section 4.08 Non-Discrimination.
Tenant shall assure and certify that it will comply with Title VI 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, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information with respect to any activity occurring on the Premises or conducted pursuant to this Lease. Tenant warrants that in the event the facilities constructed or operated upon the Premises are public facilities the same shall be open to and benefit all residents of Palm Beach County and shall be available thereto on the same cost and availability basis as to residents of the municipality in which the Premises are located.

Tenant has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, has acknowledged through a signed statement provided to County that Tenant will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

5. Section 7.07 of the Lease is hereby deleted and replaced with the following:

Section 7.07 Certificate of Insurance.
Tenant will deliver to Insurance Tracking Services, Inc. (ITS), County's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the Tenant under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801
Email: pbc@instracking.com or Facsimile: (562) 435-2999

Subsequently, Tenant shall, during the term of the Lease, and prior to each renewal thereof, provide such evidence to ITS at pbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or not renewed during the life of this Lease, Tenant shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Tenant fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Tenant shall promptly pay as Additional Rent, upon demand from County, all premiums and expenses incurred by County.

6. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizens of Palm Beach County or employees of County or Tenant.

7. Except as set forth herein, the Lease, as amended by the First Amendment and Second Amendment, remains unmodified and in full force and effect.

8. This Third Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, the parties have executed this Third Amendment on the date set forth above.

Signed and delivered in the presence of:

WITNESS:

Shelley Cardenas
Witness Signature

Shelley Cardenas
Print Witness Name

Bgrot
Witness Signature

Sudha Bgrot
Print Witness Name

TENANT:

LOGGERHEAD MARINELIFE CENTER, INC., a Florida not-for-profit corporation

By: _____
Brian K. Waxman, President

(SEAL)
(corporation not for profit)

R2016 1356

COUNTY SEP 27 2016

ATTEST:

SHARON R. BOCK
CLERK &COMPTROLLER

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY FLORIDA

PALM BEACH COUNTY, a political subdivision of the State of Florida

By: Mary Lou Berger
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Chief Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: Red Armm Wolf
Department Director

G:\PREM\PM\In Lease\MarineLifeCenterJunoBeach\Third Amendment\3rd Amendment.hf app 7-21-2016.docx