

BOROUGH OF STONE HARBOR

CAPE MAY COUNTY, NEW JERSEY

RESOLUTION

2007-S-174

ESTABLISHING A LEASE WITH THE CAPE MAY COUNTY LIBRARY COMMISSION IN CONSIDERATION OF CONSTRUCTION OF A NEW LIBRARY FACILITY

WHEREAS, the Borough of Stone Harbor is a member of the Cape May County Public Library System as administered by the Cape May County Library Commission; and

WHEREAS, the Borough of Stone Harbor is desirous of continuing this public service to the people of the Borough of Stone Harbor by entering into a new lease with the Cape May County Library Commission, conditioned upon the construction, at no cost to the Borough of Stone Harbor, of a new library facility within the Borough as detailed in the lease prepared by Cape May County Counsel, John Porto, Esquire, and on file with the Borough Clerk, which is incorporated herein by reference; and

WHEREAS, N.J.S.A. 40A:12-14 allows municipalities to enter into such a lease with the Library Commission;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Stone Harbor, duly assembled in public session this 7th day of November, 2007, as follows:

1. The preamble of this Resolution is hereby incorporated by reference.
2. The aforementioned Lease, when fully executed by the parties, shall serve as the Lease between the Borough of Stone Harbor ("the Borough") and the Cape May County Library Commission, in accordance with the terms contained therein, for the newly constructed library facility.
3. The Mayor and Clerk be and are hereby authorized to execute the Lease on behalf of the Borough of Stone Harbor.

Offered by Karl A. Giulian Seconded by Barry D. Mastrangelo

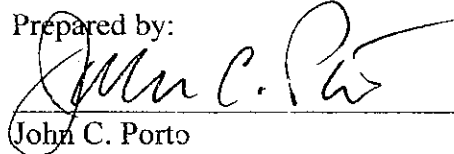
The above resolution was duly adopted by the Borough Council of the Borough of Stone Harbor, New Jersey, at a meeting of said Council duly held on the 7th day of November, 2007

The above resolution approved this 7th day of November, 2007

.....
Borough Clerk

.....
Mayor

Prepared by:


John C. Porto
County Counsel
County of Cape May

LEASE

This Lease is made on 11/30, 2007

BETWEEN the Tenant

CAPE MAY COUNTY LIBRARY COMMISSION

whose address is

30 W. Mechanic Street
Cape May Court House, New Jersey 08210

hereinafter referred to as the "Tenant",

AND the Landlord

BOROUGH OF STONE HARBOR,
a Municipal Corporation of the State of New Jersey

whose address is

9508 Second Avenue
Stone Harbor, New Jersey 08210

hereinafter referred to as the "Landlord".

WHEREAS, Landlord is the owner of three parcels of real estate located in the Borough of Stone Harbor identified as Block 94.01, Lots 13, 11, 9 including the bulkhead right-of-way and the 95th Street right-of-way and hereinafter referred to collectively as "Premises"; and

WHEREAS, Tenant wishes to construct, lease, operate and maintain a public library upon the aforesaid premises.

For and in consideration of the exchange of mutual covenants and conditions, the parties agree as follows:

1. **PREMISES.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord Premises described in this Lease pursuant to and in accordance with all covenants, conditions and provisions of this Lease.

2. **TERM.** The term of this Lease shall be for a period of fifteen (15) years, commencing on 11/30, 2007 and ending on 11/30, 2022 (the "Initial Term") and may be renewed at the option of Tenant, for a period of fifteen (15) years by providing at least ninety (90) days written notice to Landlord (the "Renewal Term"). Collectively, the Initial Term and any Renewal Term may be referred to as the "Term."

3. **USE.** During the term of this Lease, Tenant shall be permitted to use Premises for the following purposes and for no others without the advance written consent of Landlord: the construction, maintenance, and operation of the Stone Harbor Branch of the Cape May County Library (Capital Improvement), which will include meeting rooms, a refreshment concession bar and other associated uses. In addition, a portion of the completed Improvement shall be made available to the Landlord for the access, maintenance and operation of the Stone Harbor Museum. Aside from the construction of space for the Stone Harbor Museum, the Landlord shall be responsible for the fit out of that space for the use by the Stone Harbor Museum.

4. RENT: Tenant covenants and agrees to pay to Landlord, as rent for and during the Lease term, the sum of One (\$1.00) Dollar annually, receipt of which is herewith acknowledged as well as the exchange of mutual covenants and conditions. In addition, Tenant is exempt from all real estate taxes. If applicable, Tenant shall pay municipal utilities charges as additional rent.

5. CONDITION OF PREMISES.

(a) Tenant acknowledges to Landlord that Tenant has had adequate opportunity prior to the execution of this Lease to inspect the Premises. Tenant hereby acknowledges its acceptance of the Premises.

(b) At the execution of this Lease, Landlord and Tenant acknowledge the Premises is vacant and without improvements. It is understood that the County of Cape May and Tenant will fund, design and construct a public library building on the Premises. The Capital Improvement will be constructed in accordance with all applicable building codes. Assuming there are no regulatory agency permitting issues, construction is expected to start within nine months following the signing of this lease and construction completion thirty six months thereafter. Upon construction completion, the Capital Improvements and Premises will be collectively referred to as "Premises". It is agreed that all buildings and improvements placed upon the premises during any term of this Lease, and including any renewal thereof, by the County of Cape May or Tenant shall remain the property of the Tenant for the balance of any term or renewal term(s) of this Lease. Upon notice to the Landlord, the Tenant shall have the right to make such alterations and changes in the Capital Improvement as it deems necessary for its purpose, at its own expense. Tenant is permitted to place appropriate signage on the Premises.

6. LIBRARY REPAYMENT: If, within ten (10) years of the execution of this Lease, Landlord requires Tenant to vacate the Premises and to terminate this Lease, Landlord shall provide Tenant with two (2) years prior written notice of its intentions. At that time, Landlord shall repay Tenant all costs and expenses associated with the funding, design, planning and construction of any capital improvements on the Premises provided by Tenant and the County of Cape May. Tenant shall provide to Landlord documentation of all costs and expenses associated therewith.

7. REPAIRS AND CARE; DELIVERY OF PREMISES TO LANDLORD AT EXPIRATION OF LEASE: Tenant shall maintain the Premises in good condition and shall, at Tenant's own cost and expense, make all repairs of any kind or nature whatsoever to Premises. In addition, Tenant's repair and maintenance obligations shall include replacement of all or any portion of the Premises which may be necessitated or caused by any reason whatsoever arising in any manner from Tenant's use or occupancy of the Premises, reasonable wear and tear excepted. At the termination of the Lease, expiration of the term or any extension thereof, Tenant shall remove all of its facilities, library resources, and library related structures from the Premises, render the Premises "broom clean" and obtain such certification and approval of satisfactory cleanup from Landlord. In the event of the destruction or partial destruction of the Premises or Capital Improvements thereon by any cause, Tenant, at its own expense and upon notice to the Landlord, shall have the option to rebuild any Capital Improvement to satisfy the stated use. This Lease shall continue in full force and effect and shall not be terminated in this event.

8. UTILITIES: Unless otherwise specified by further provisions in this Lease, Tenant shall pay when due all rents or charges for electric, gas and other utilities used by Tenant, which are or may be assessed or imposed upon the Premises. Landlord shall provide water and sewer services to the Premises at no costs to Tenant.

9. COMPLIANCE WITH LAWS: Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the federal, state and municipal governments or public authorities and agencies, including all their departments, bureaus and subdivisions, which are applicable to and affect Premises, their use and occupancy. This compliance obligation shall include but not be limited to compliance with all federal and state regulatory agencies, including any and all permits required by NJDEP, compliance with state and local land use law and regulations and the correction, prevention and abatement of nuisances, violations and other grievances in, upon or connected with Premises, during the Lease term. Tenant, at Tenant's own cost and expense, shall promptly comply with all orders, regulations,

requirements and directives of the Board of Fire Underwriters or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering Premises and its contents, for the prevention of fire or other casualty, damage or injury.

10. INSURANCE AND INDEMNIFICATION.

(a) Tenant, at Tenant's own cost and expense, shall obtain or provide and keep in full force for its benefit and the benefit of the Landlord, during the term hereof, general public liability insurance, insuring against any and all liability or claims of liability arising out of, occasioned by or resulting from any accident or otherwise in or about Premises, including but not limited to such liability and liability claims arising out of the Tenant's use and occupancy of Premises for limits of not less than One Million (\$1,000,000.00) Dollars for injuries to one person and Three Million (\$3,000,000.00) Dollars for injuries to more than one person in any one accident or occurrence and for loss or damage to the property of any person or persons for not less than Five Million (\$5,000,000.00) Dollars. The policy or policies of insurance shall be of a company or companies authorized to do business in this State and shall be delivered to the Landlord, together with evidence of the payment of the premiums therefor, not less than fifteen (15) days prior to the commencement of the term hereof or of the date when the Tenant shall enter into possession, whichever occurs first. Coverage shall continue until such time as Tenant removes all facilities and structures from the Premises, renders Premises "broom clean". Tenant shall name Landlord as an "additional insured" on all such policies of insurance and shall deliver a certificate confirming that to Landlord at least fifteen (15) days prior to the commencement of the Lease term. In addition, and at least fifteen (15) days prior to the expiration or termination date of any policy, Tenant shall deliver a renewal or replacement policy to Landlord with proof of the payment of the premiums therefor. All policies of insurance shall provide that the proceeds shall be payable to Tenant.

(b) Tenant hereby waives any and all rights of recovery it may hereafter have against Landlord for any injuries or losses sustained by, or damages caused to Tenant, its employees, property, or the property of others under Tenant's control, to the extent that such loss or damage is covered under the terms of the insurance policies required hereunder. Landlord hereby waives any and all rights of recovery they may hereafter have against Tenant for any injuries or losses sustained by, or damages caused to, Landlord, its employees, property, or the property of others under Landlord's control, to the extent that such loss or damage is covered under the terms of its insurance coverage.

(c) Tenant agrees unconditionally to hold harmless and indemnify Landlord from and against any and all claims, loss, liability, cost, payment and expense, including reasonable attorney's fees, arising or occasioned in whole or in part from any act or omission on the part of Tenant or Tenant's agents, employees, guests, licensees, invitees, subtenants, contractors, subcontractors, assignees or successors or for any cause or reason whatsoever arising out of or by reason of the Tenant's occupancy of or Tenant's conduct upon Premises.

(d) Landlord agrees unconditionally to hold harmless and indemnify Tenant from and against any and all claims, loss, liability, cost, payment and expense, including reasonable attorney's fees, arising or occasioned in whole or in part from any act or omission on the part of Landlord or Landlord's agents, employees, guests, licensees, invitees, subtenants, contractors, subcontractors, assignees or successors or for any cause or reason whatsoever arising out of or by reason of the Landlord's conduct upon Premises.

(e) Landlord agrees unconditionally to hold harmless and indemnify Tenant from and against any and all environmental claims, losses, liabilities, reasonable costs, fines, payments, damages (including without limitation, punitive damages) and expenses, including, but not limited to, any penalty or fine imposed by any governmental agency, the expense of remediation, cleaning up or disposing of any hazardous substance or regulated materials and all reasonable attorney's fees, arising or occasioned in whole or in part from any act or omission on the part of Landlord or Landlord's agents, employees, guests, licensees, invitees, subtenants, contractors, subcontractors, assignees or successors or for any cause or reason whatsoever arising out of or by reason of the Landlord's performance or nonperformance under this Lease or Landlord's conduct upon the Premises or which may or might arise directly or indirectly by reason of the presence of any hazardous substance; except such damages or liability arising from, or

attributable to Tenant or Tenant's agents, employees, guests, licensees, invitees, subtenants, contractors, subcontractors, assignees or successors negligence.

(f) The obligations of this paragraph shall survive the termination or expiration of this Lease.

11. ASSIGNMENT AND SUBLETTING: Tenant may assign, delegate, mortgage, hypothecate or sublet this Lease or all or any part of Premises or any of its obligations hereunder to the County of Cape May. Upon assignment, Tenant is relieved from all liabilities and obligations provided herein. Any other purported assignment, delegation, mortgage, hypothecation or sublet shall be void and the assignee will acquire no rights from the purported assignment.

12. RESTRICTION ON USE: Tenant shall use the Premises for the purpose as specifically set forth herein. Tenant shall not occupy, use or permit or suffer the occupancy or use of any portion of the Premises for any purpose other than what is described in this Lease.

13. CONDEMNATION AND EMINENT DOMAIN: If the land and premises which are the subject of this Lease or of which these Premises form a part shall be taken under eminent domain or condemnation proceedings or if suit or other action shall be instituted for the taking or condemnation thereof or if in lieu of any formal condemnation proceedings or actions, Landlord shall grant an option to purchase and or shall sell and convey said Premises or any portion thereof to the governmental or other public authority, agency, body or public utility, seeking to take said land and Premises or any portion thereof, then this Lease, at the option of the Landlord, shall terminate and the term hereof shall end as of such date as the Landlord and Tenant may mutually agree in writing. In the event these conditions or proceedings described herein occur within ten (10) years of the execution of this Lease, the Landlord and Tenant shall proceed in accordance with Paragraph 6 of this Lease captioned LIBRARY REPAYMENT. Tenant agrees to execute and deliver any instruments, without cost to Tenant, as Landlord may deem necessary or required in order to proceed with any condemnation proceedings or to effectuate a proper transfer of title to such governmental or other public authority, agency, body or public utility seeking to take or acquire the said lands and Premises or any portion thereof. Tenant covenants and agrees to vacate Premises, to remove all Tenant's personal property therefrom and to deliver up peaceable possession thereof to Landlord or to such other party designated by Landlord in the aforementioned notice.

14. REIMBURSEMENT OF LANDLORD: If Tenant shall fail or refuse to comply with or shall fail or refuse to perform any of the conditions and covenants in this Lease, Landlord may, at its option, undertake and perform those conditions and covenants, but at Tenant's sole cost and expense; this cost and expense shall be payable by Tenant to Landlord on demand or at the option of Landlord shall be added as additional rent to the installment of rent next due, but in no case later than thirty (30) days after demand, whichever occurs first. This remedy shall be in addition to such other remedies as Landlord may have in this Lease by reason of Tenant's breach of any of the covenants and conditions in this Lease.

15. REMEDIES ON TENANT'S DEFAULT:

(a) It is agreed that no default or breach of covenant shall be deemed to have occurred on the part of the Tenant until ten (10) days after written notice of such default or breach shall have been given to Tenant. Following such notice, Tenant shall be provided with sixty (60) days to remedy or cure such default or breach. If additional time is required by Tenant to remedy or cure any default, Landlord in consultation with Tenant shall provide such additional time as necessary.

(b) It is hereby agreed that if at any time hereafter, any dispute, difference or question shall arise between the parties touching upon the construction, meaning or effect of these presents or of any act or omission to act of either of the parties or the rights or liabilities of either of the parties under this Lease, every dispute, difference or question shall be referred to arbitration by a single arbitrator as provided under the rules of the American Arbitration Association. Each party shall bear their own costs and expenses for arbitration and shall share equally the cost of the single arbitrator.

16. NON-WAIVER BY LANDLORD: The various rights, remedies, options and elections of Landlord, expressed herein, are cumulative; the failure of Landlord to enforce strict performance by Tenant of the conditions and covenants of this Lease or to exercise any election or option or to resort or to have recourse to any remedy herein conferred shall not be construed or deemed as a waiver or a relinquishment in the future by Landlord of any such conditions, covenants, rights, remedies, options and elections, all of which shall remain and continue in full force and effect.

17. TITLE AND QUIET ENJOYMENT: Landlord covenants that Landlord is the owner of the Premises and has the right and authority to enter into, execute and deliver this Lease. Landlord further covenants that, so long as Tenant shall perform all conditions and covenants required to be performed by Tenant, then Tenant shall have quiet possession and enjoyment of the Premises for the term of the Lease.

18. TENANT AUTHORITY: Tenant covenants that Tenant has the right and authority to enter into, execute and deliver this Lease to Landlord. Upon request, Tenant shall provide to Landlord such certificates or resolutions reasonably requested by Landlord to confirm this authority.

19. LIENS: In the event that Tenant causes or permits any lien, charge or order for the payment of money to encumber Premises or if any Lien, Notice of Intention, Notice of Unpaid Balance or Contract shall be filed against Premises by reason of any labor performed or materials furnished for the direct or indirect benefit of Tenant, then Tenant shall, at its own cost and expense, cause all such liens and other filings to be discharged and removed of record within ten (10) days after Tenant has received notice of the filing thereof. In the event that Tenant fails to comply with this provision, then Landlord shall have the option, but not the obligation, to discharge or bond any such lien, charge, order, filing or other encumbrance and shall be entitled, in addition to any other remedies provided to Landlord in the event of Tenant's default, to prompt reimbursement, as additional rent, from Tenant for all cost and expense, including reasonable attorneys' fees, paid or incurred by Landlord.

20. ATTORNMEN: In the event that Premises shall at any time be sold or conveyed by Landlord to any other party, then Tenant agrees to recognize and attorn to that party as substitute Landlord for and during the remainder of the term of this Lease. Nothing herein shall be deemed to excuse Tenant from its payment and performance obligations under this Lease in the event of such sale or conveyance. From and after the date of such sale or conveyance and upon notice having been provided by Landlord to Tenant, then Landlord shall be and become relieved of any and all obligations in any way created under this Lease.

21. LAND USE APPROVALS: Tenant, at Tenant's sole costs, shall be responsible for obtaining all land use approvals relating to the proposed use of the Premises and the construction of any facilities and structures upon the Premises.

22. MISCELLANEOUS:

(a) This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey.

(b) This Lease shall be binding upon and shall inure to the benefit of the parties hereto, their respective legal or personal representatives, heirs, and successors.

(c) The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision of this Lease; all such other provisions shall remain in full force and effect.

(d) This Lease contains the entire agreements and understandings made by and between Landlord and Tenant; there shall be no further agreements or understandings made by and between Landlord and Tenant, unless they are in writing, signed by both Landlord and Tenant.

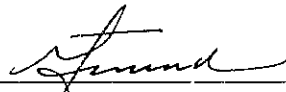
(e) This Lease shall not be recorded without the written consent of both parties. Notwithstanding, Landlord and Tenant agree to execute a short form Memorandum of Lease in form for recording, specifying the date of the commencement of the term hereof.

(f) All notices under this Lease shall be in writing and shall be hand delivered, transmitted by facsimile with adequate proof of service or sent by certified mail, return receipt requested, to the parties at their respective addresses set forth at the beginning of this Lease, unless otherwise notified in advance in writing. The parties agree to cooperate and act in good faith for purposes of receiving any and all such notices.

Notice to Landlord: Kenneth J. Hawk, Administrator
Notice to Tenant: Deborah Poillon, Director, with a copy
to: Stephen O'Connor, Clerk/Administrator
County of Cape May

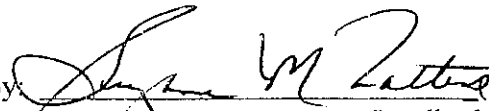
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and the proper corporate officers and their proper corporate seals to be affixed hereto, the day and year first above written.

Witnessed or Attested by:



Borough Clerk

BOROUGH OF STONE HARBOR

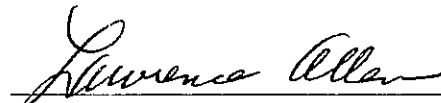
By:  (Seal)

Mayor Landlord

Witnessed or Attested by:



CAPE MAY COUNTY LIBRARY
COMMISSION

By:  (Seal)

Tenant