

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration

2500 Jupiter Park Drive, Jupiter, Florida 33458-8964

Telephone (561) 747-5700 • Fax (561) 747-9929 • www.loxahatcheeriver.org



D. Albrey Arrington, Ph.D., Executive Director

MEMORANDUM

TO: GOVERNING BOARD
FROM: D. ALBREY ARRINGTON, Ph.D.
DATE: MARCH 7, 2016
SUBJECT: LRD-BWS RESTATED LICENSE AGREEMENT

On July 21, 2011 the LRD Governing Board authorized then Chairman Boggie to execute the Restated LRD-BWS License Agreement. That agreement included a ten year term (from the original execution date) with five (5) optional five (5) year renewals upon the same terms and conditions.

The full LRD-BWS Restated License Agreement is provided following this memorandum.

I am happy to report that both BWS and LRD staff are happy with the Restated License Agreement. Both Mr. Hitzig and I recommend your approval of the restated license agreement as presented, and I offer the following suggested motion:

“THAT THE DISTRICT GOVERNING BOARD authorize Chairman Boggie to execute the first five year optional renewal through March 22, 2021 of the LRD-BWS Restated License Agreement.”

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Stephen B. Rockoff
Board Member

Dr. Matt H. Rostock
Board Member

Gordon M. Boggie
Chairman

Harvey M. Silverman
Board Member

James D. Snyder
Board Member

Restated LICENSE AGREEMENT – 1st Renewal

THE Restated LICENSE AGREEMENT, dated as of August 11, 2011, between the Loxahatchee River Environmental Control District, having an office located at 2500 Jupiter Park Drive, Jupiter, Florida 33458; and THE BUSCH WILDLIFE SANCTUARY, INC., a Florida Corporation, having an office at 2500 Jupiter Park Drive, Jupiter, FL 33458, is hereby renewed through March 22, 2021.

IN WITNESS THEREOF, the parties have executed the first of five optional five year renewals for the Restated License Agreement.

Witnesses:

THE BUSCH WILDLIFE SANCTUARY, INC
a Florida Corporation

Peter, W. Busch, Chairman/Founder
Dated: _____, 2016

Witnesses:

LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT

By Gordon M. Boggie, Chairman
Dated: _____, 2016

July 21, 2011

Restated LICENSE AGREEMENT

THIS Restated LICENSE AGREEMENT, dated as of August 11, 2011 is to amend and restate the LICENSE AGREEMENT dated March 8, 2006, the IMMEDIATE AMENDMENT dated January 18, 2007, the Eco Center Amendment dated October 23, 2006, and the Water Use Amendment dated October 21, 2010, between the Loxahatchee River Environmental Control District, ("District") having an office located at 2500 Jupiter Park Drive, Jupiter, Florida 33458; and THE BUSCH WILDLIFE SANCTUARY, INC., a Florida Corporation, ("Busch") having an office at 2500 Jupiter Park Drive, Jupiter, FL 33458, as well as to incorporate amended terms to include the "Wildlife Hospital".

RECITALS. WHEREAS, Busch is a not for profit corporation dedicated to the protection and conservation of Florida's wildlife and natural resources, and a provider of environmental education programs and wildlife rehabilitation and management services and wishes to incorporate the District's "old" Wildpine Lab (referred to herein as the "Wildlife Hospital") into its existing facilities referred to as the Busch Wildlife Sanctuary, including the Discovery Center Building (formerly referred to as "Eco Center", "Visitor Center", and "Otter Creek") and grounds owned by the District. The Parties wish to enter into this Restated License Agreement for the District's property for environmental education facilities and other services.

WHEREAS, on June 19, 2008 and June 16, 2011, the Governing Board of the District approved in concept the Lease of the Wildlife Hospital to Busch Wildlife Sanctuary.

NOW THEREFORE IN CONSIDERATION OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the parties agree as follows:

Contingent Amendment. The Contingent Amendment dated January 18, 2007 between the parties is deemed null and void, as the District's Administrative Building is not available to Busch.

New Wildpine Lab: The District has constructed and occupied a "new" Wildpine Lab.

Wildlife Hospital Renovations: Upon execution of this License Agreement, Busch shall take possession of and begin the process of renovating the Wildlife Hospital to accommodate wildlife rehabilitation and veterinarian services, at the sole cost and expense of Busch in accordance with the concept plans presented to the District at the July 17, 2008, Governing Board meeting, copies of which are attached hereto as the "Wildpine Lab Renovations Exhibit C". Busch is responsible for preparation of the "Plans" and "Improvements" and obtaining the "Approvals" in accordance with this License Agreement, including ¶s 30 & 31.

Welcome Center Building: Busch is in the process of obtaining an alternative structure for the old gift shop facilities within the Discovery Center (herein referred to as the "Welcome Center"). Busch is responsible for preparation of the "Plans" and "Improvements" and obtaining the "Approvals" in accordance with this License Agreement, including ¶s 30 & 31. The District agrees to reimburse up to \$50,000.00 to assist Busch in obtaining or constructing an alternate structure to house the Welcome Center including site plan, plumbing, electrical, construction of a new entrance, or any other associated expense to the external area of the Welcome Center. Busch shall complete the renovation of the Discovery Center, Construction (or abandonment) of the Welcome Center, and Wildpine Lab Renovations before beginning any new construction projects, unless otherwise approved by LRD.

Discovery Center Renovations: Busch is in the process of renovating the Discovery Center Building. Busch shall remove the gift shop and maintenance shop and renovate the Discovery Center to accommodate environmental education activities at the sole cost and expense of Busch in accordance with the concept plans presented to the District at the July 17, 2008 Governing Board meeting, copies of which are attached hereto as the "Discovery Center Renovations Exhibit D". Busch is responsible for preparation of the "Plans" and "Improvements" and obtaining the "Approvals" in accordance with this License Agreement, including ¶s 30 & 31.

Perimeter Fencing: The District will replace &/or improve in segments the existing security fence by installing and maintaining an 8' security fence on the perimeter of the District site.

The License Agreement terms are amended and restated as follows:

I. SPECIFIC LICENSE TERMS AND CONDITIONS:

1. The District as owner of the land, Discovery Center Building (approx. 1,600 s.f. wood frame building), Wildlife Hospital, and Busch Trailer will license the Discovery Center Building, Wildlife Hospital, Busch Trailer, Welcome Center when added, and grounds, as generally described and presented in Exhibit A, to Busch for \$10.00 per year. Notwithstanding the general location of District property proposed for the Busch Wildlife Sanctuary operation as shown in Exhibit A, a condition of this license is the agreement by Busch of the existence of District underground utility lines and infrastructure and potential need for future underground and above ground utility lines and infrastructure which shall be allowed at all times within the boundaries subject to this agreement.

2. The Term of the License Agreement is ten (10) years from March 8, 2006 to March 8, 2016, with five (5) optional five (5) year renewals upon the same terms and conditions. Provided however, either party may terminate this Agreement by providing written notice to the other of its intention not to renew not less than three hundred sixty five (365) days prior to the expiration of the Agreement Term or any Renewal Date.

3. Busch will pay the salary and overhead of Busch personnel directly associated with the operations at Busch Wildlife Sanctuary.

4. Intentionally left blank.

5. Busch will be responsible for all separately metered electric utility bills for Busch Wildlife Sanctuary operations, and pay for its own telephone services, and solid waste service (garbage and recycling). Wastewater utility service is considered included in the lease payment terms and will continue to be provided by the District. District will provide Busch with up to a \$125.00 per month allowance credit for District warehouse paper supplies to be used in the Public Restrooms and other supplies as authorized by the District's Executive Director. Potable water, in the amount of 1,604,633 gallons per year (October 1 through September 30), is considered included in the lease payment terms and will continue to be provided by the District. Busch shall reimburse the District for potable water use in excess of 1,604,663 gallons per year at the Town of Jupiter usage rates and charges in existence at the time the District bills Busch for the excess annual potable water use. The Irrigation Quality Water Agreement dated November 19, 2010 between the District and Busch is incorporated herein by reference.

6. Busch will pay for all operating supplies and expenses at the Busch Wildlife Sanctuary.
7. Busch will maintain the Wildlife Hospital, Discovery Center, Busch Trailer, Welcome Center when added, and grounds, and pay for all repairs up to \$2,500.00 per item per repair per Building up to a total amount not to exceed \$10,000.00 per calendar year per Building (\$40,000.00 in total). Written approval from the District must be obtained for all structural repairs and modifications to the Wildlife Hospital, the Discovery Center, and Busch Trailer and the Welcome Center when added, prior to initiation of said structural repairs and/or modifications.
8. Busch will be responsible for security to the Wildlife Hospital, the Discovery Center, Busch Trailer, the Welcome Center when added, and ancillary structures utilized by Busch.
9. Busch will indemnify, defend and hold harmless the District against all claims of liability resulting from its uses and operations at the Busch Wildlife Sanctuary.
10. Busch will operate the Busch Wildlife Sanctuary as an open to the public facility for a minimum of 260 days per calendar year to provide interpretive tours and educational opportunities. Should Busch choose to charge a general admission fee, such fees shall be mutually agreed upon by LRD and Busch. Busch reserves the right to set the fees for special events, activities, tours, classes, and other approved uses as generally described in Exhibit B.
11. Busch will offer a minimum of 100 days of educational instruction to students at the Busch Wildlife Sanctuary during the school year.
12. Busch will provide a minimum six (6) week summer educational programming based at the Busch Wildlife Sanctuary for students and camps.
13. Busch shall pursue opportunities to recognize the partnership between Busch Wildlife Sanctuary and the Loxahatchee River District, as set forth in paragraphs 13.1 and 13.2 below.
 - 13.1 Within the boundaries of the District as defined by the legislature, Busch will endeavor going forward to ensure that all printed and text materials including but not necessarily limited to letterhead, site signage, brochures, interpretive flyers and maps, advertisements, notices, mailers, banners, remote exhibition signage, web sites, etc., incorporate the logo of the District where practical and operate under the name: "Busch Wildlife Sanctuary at Loxahatchee River District".
 - 13.2 Busch shall endeavor, where practical, to incorporate into the Busch Wildlife Sanctuary interpretative tours, educational programs and lesson plans, the mission and accomplishments of the District including sewer & I.Q. Water Reuse, WildPine Laboratory research & monitoring projects, and preservation initiatives. Within the boundaries of the District as defined by the legislature, Busch agrees it shall operate in partnership with the District's environmental outreach program.
14. Busch will allow the District and/or the Friends of the Loxahatchee River to have access to the Busch Wildlife Sanctuary and use of the facilities for special functions/events, provided such use is mutually agreed upon and that the specified function/event will not conflict with the operations of Busch Wildlife Sanctuary.

Busch agrees to actively participate, at no additional charge to the District unless otherwise mutually arranged, in such functions/events designated by the District, up to eight (8) times a calendar year. Such activities may include, but not necessarily be limited to, RiverFest, symposiums, and other events sponsored by the District. Additionally, the District extends the same courtesy to Busch, and agrees to allow Busch use of the District's Board Room and/or River Center facilities, provided such use is mutually agreed upon and that the specified function/event will not conflict with the operations of District and/or River Center.

15. Busch and District agree to support one another in the applications for grants relative to the Busch Wildlife Sanctuary and/or the District. Busch agrees to pursue grants for the Busch Wildlife Sanctuary and if grants are obtained specifically for the Busch Wildlife Sanctuary at Loxahatchee River District, said grants must be utilized for said purpose.

16. All grant applications specific to the development of the Busch Wildlife Sanctuary facilities shall be mutually agreed upon by the Executive Director of the District and the Executive Director of Busch.

17. Busch will be responsible for and receive all net revenue from the sale of products and services specific to Busch Wildlife Sanctuary.

18. Busch will market products of District and the Friends of the Loxahatchee River and will pay District and the Friends of the Loxahatchee River the net revenue received from such products.

19. By May 1st of each year, Busch shall provide to the District Director of Operations an annual hurricane preparedness plan for the Busch Wildlife Sanctuary facilities and operations.

20. Busch shall provide the District with copies of their annual budget and financial statements, and any audits performed.

21. Busch shall provide a quarterly written summary and verbal report on its activities to the District Governing Board at a Governing Board meeting.

22. One member of the District Governing Board, or their designate, shall have rights to be a formal voting member on the Busch Wildlife Sanctuary Board of Directors, providing that such position, or particular vote of the Busch Board does not create a conflict of interest for either party. Busch hereby waives any claim for conflict of interest as to the member of the District Governing Board, or their designate, arising solely out of being a member of the Busch Board of Directors.

23. Busch shall award a position on its advisory council to a member of the District staff or their designate.

24. Busch and the District shall hold joint meetings of Senior Staff at least quarterly with the date, schedule and agenda set by the District with solicited input from Busch. The District shall provide at least ten (10) business days notice of the date of the meeting. The intent of these meetings is to foster strategic discussions and coordination on current and future projects, activities, and operations that may affect either party, identify areas for improved coordination, and resolve issues. It is not the intent of these regular meetings to prevent any 'as needed' communications.

II. POTENTIAL FUTURE OPPORTUNITIES

The intent of this section is to memorialize the good faith intentions of the District and Busch for either future amendment to this agreement or separate agreements in the future. This section is not intended to be binding in any manner to the terms and conditions of this agreement. The items listed below are not intended to be a limitation upon the potential future opportunities between the District and Busch.

25. Intentionally left blank.

26. **Expansion of Busch Facilities.** There may be future desires and opportunities for expansion of Busch Wildlife Sanctuary facilities or interpretive tours onto other parts of the District grounds (i.e. blending and distribution lakes). If approved by the District, expansion by Busch onto other areas of the District property will be conducted at no cost to the District. Exceptions may exist for cost sharing if it is mutually agreed that proposed expansions provide a direct benefit to both parties.

27. **Contract for Services.** This agreement is not intended to limit future additional relationships with Busch. Future opportunities may exist for the District and Busch to engage in additional agreements for services which may include but not necessarily limited to Busch developing and conducting District education programs, regional interpretive tours, satellite facilities management, or capital expansion of Busch Wildlife Sanctuary facilities to view and promote interpretative experience of sanctuary visitors relative to the function and successes of the District's wastewater utility, I.Q. Reuse program, and District legislative mission of environmental preservation of the Loxahatchee River Watershed.

III. GENERAL LICENSE TERMS AND CONDITIONS:

28. **PREMISES AND USE.** The location and description of the Premises is shown on Exhibit A to include the Wildlife Hospital. The Premises will be used by Busch for the purpose of environmental education, animal sanctuary, and the other uses currently conducted by Busch which Uses are specifically listed on Exhibit B attached hereto and made hereof (the "Uses"). All additional proposed Uses are subject to the prior written approval of the District. Should an issue arise that potentially poses a threat to public health, safety and welfare and/or adversely affecting the District's current and/or future proposed operations and functions, the District will attempt to work with Busch to resolve any such issue before final action is taken by District. The District reserves the right to revoke authorization for a permitted Use based upon public health, safety and welfare, and/or adversely affecting the District's current and/or future proposed operations and functions. In the event of circumstances resulting in a District's decision to revoke an approved use, the decision process will be conducted in accordance with applicable State laws, rules, and regulations, in a non-arbitrary and non-capricious manner.
29. **RENT.** Rent will commence upon the date of execution of this agreement and shall be paid in advance for each year of the Agreement Term and the Renewal Term(s).
30. **Design and Placement of Improvements.** From time to time hereafter, the District and Busch shall mutually agree on the design and placement of any Improvements on the Premises to be made by Busch (the "Improvements"). Busch shall give the District plans and specifications ("Plans") showing the proposed design of the

Improvements. The Plans will include a site map showing where the Improvements will be constructed and installed at the Premises. If Special Projects proposed by Busch include a request for utilization of District employee labor and materials, the proposal shall include a list of requested materials and requested District labor. Prior to proposal submittal by Busch for approval by the District, Busch shall discuss the proposal with the District Director of Operations to determine project feasibility and accuracy of proposal estimate of requested materials and District employee labor. The District has thirty (30) working days after receipt of the Plans to review and approve them or to request reasonable modifications to the Plans. Busch shall accommodate all reasonable requests by the District, including aesthetics and location of the Improvements on the Premises. The District will grant or deny its final approval of the Plans in writing within thirty (30) working days after Busch submits revised Plans reflecting modifications requested by the District. The District grants to Busch, its agents, employees and independent contractors, the right to enter upon the Site at all reasonable hours to perform field-work necessary to complete the Plans, so long as the District has (24) hours prior written notice of the same and such party has necessary insurance required by the District naming the District as an additional insured on projects or improvements exceeding \$25,000.00. Busch acknowledges the District has the right at all times to install the District's equipment and improvements in, upon, above, underneath, around, and at the Premises, subject to the operational limitations of Busch's Improvements.

31. **Construction of Improvements.** After Busch and the District agree on the Plans, Busch will apply for and obtain all necessary permits or other approvals, including but not limited to zoning, required by state law and local laws, rules, regulations, ordinances (the "Approvals") as a condition for the construction of the Improvements. The District will reasonably cooperate with and assist Busch in obtaining the Approvals. The District will promptly sign all applications and other papers which must be signed by the owner of the Site in order for Busch to obtain the Approvals. Busch will pay all costs of obtaining the Approvals, and all costs of constructing and installing the Improvements. Busch shall obtain both a payment and performance bond in accordance with Florida Statutes 255.05 et. al., for all contracted work performed at the Site estimated by the District to be in excess of \$25,000.00. Busch shall construct the Improvements in a good and workmanlike manner, and will comply with all applicable Federal, State and other governments, local laws, rules, regulations, ordinances and requirements. Busch shall make every effort to avoid interfering with the District's operations and activities at the Site. If Busch needs to undertake construction activities which are likely to cause high levels of noise, dust, or other hazardous conditions at the Site, Busch will give the District advance notice of a minimum of fourteen (14) days of the construction activities so that the District can give appropriate notices and information to personnel at the Site and other concerned parties. The District grants Busch a temporary easement over the Site for ingress, egress, access, equipment, storage, vehicle parking, and other construction-related activities during normal business hours at a mutually agreed upon location. The temporary easement will automatically terminate when Busch completes construction and installation of the Improvements and removes all of its construction equipment and personnel from the Site.
32. **NO CONSTRUCTION LIENS.** In accordance with Florida Statutes 713.10, neither Busch nor anyone claiming through Busch shall have the right to file construction liens or any other kind of lien on the Site or Premises and the filing of this notice under the LICENSE constitutes notice that such liens are invalid. Further, Busch agrees to give actual advance notice to any contractors, subcontractors or suppliers

of goods, labor, or services that such liens will not be valid. Busch simultaneously herewith signs the **Notice attached hereto and made a part hereof as Exhibit E with the update Exhibit A showing the Wildlife Hospital** and agrees the Notice will be recorded in the Public records of Palm Beach County by the District.

33. **TAXES & UTILITIES.** Busch shall be responsible for the payment of all taxes (real and personal) arising from its use of the Improvements on the Premises and Busch's use of the Premises. Busch agrees to pay sales tax on its rental payments. Busch may obtain a Consumer Certificate of Exemption under Florida Administrative Code Rule 12A-1.038. As used herein, the term "sales tax" shall mean all taxes, levies and/or assessments imposed or collected by any governmental authority with respect to the rent required to be paid hereunder, whether now or hereafter imposed or collected, excluding however, Federal or State income tax payable by the District on account of the rent.
34. **ASSIGNMENT/SUBLICENSE.** Busch shall not assign or transfer this Agreement without the prior written consent of District, which consent may be withheld in the sole discretion of the District.
35. **MAINTENANCE OF PREMISES & IMPROVEMENTS.** Busch shall be 100% responsible for the maintenance, upkeep, operation, repair and replacement of the Improvements and Premises kept in good working order and in safe condition at Busch's expense, less ordinary wear and tear. Annually on the anniversary date of the LICENSE, Busch shall provide District with an Inspection Report on the Premises and Improvements detailing the condition of the same, in a form acceptable to the District. In the event Busch is not maintaining, operating, repairing, or replacing the Improvements or Premises in good working order and in safe condition in the determination of the District, after affording Busch with reasonable notice and opportunity to cure, the District has the right to conduct such maintenance, operation, repair or replacement at Busch's sole cost and expense, which shall be considered "Additional Rent" due hereunder.
36. **BUSCH INSURANCE AND INDEMNITY.** Busch shall procure and maintain a public liability policy, with limits of \$1,000,000.00 for bodily injury, \$50,000.00 for property damage, \$2,000,000.00 aggregate, with a certificate of insurance to be furnished to the District before Busch shall undertake any Improvements or Occupy the Premises. Such policies shall name the District as an additional insured and provide that cancellation will not occur without at least fifteen (15) days prior written notice to the District. Busch agrees to indemnify, save harmless, and defend District, its directors, officers, employees, and agents, from and against any and all claims, actions, damages, liability and expense (including reasonable attorney's fees and costs) arising from or out of the use and/or occupancy of the Building, the Premises, and the Improvements. Busch agrees to indemnify, save, defend and hold harmless the District against loss or expense arising from Busch's operations by reason of the liability imposed upon the District for damage because of: a) bodily injuries, including death, at any time resulting therefrom sustained by any person or persons, or b) damage to property, or c) the employees of Busch's death or disability. This paragraph survives the expiration or termination of this LICENSE. The dollar limits of insurance in this paragraph shall be increased upon the reasonable agreement of the parties at each renewal term of this Agreement.
37. **DISTRICT INSURANCE.** The District is responsible to maintain property insurance coverage (windstorm, act-of-god, fire) for the Wildlife Hospital, the Discovery Center, the Welcome Center when added, and the Busch Trailer (not exhibit

enclosures, cages, etc.) and flood insurance coverage for the Wildlife Hospital, and Discovery Center, the Welcome Center when added, in such amounts as the District determines in its sole discretion, including the right of the District to decide to self insure any and all of such risks. The District will not provide coverage for contents of Busch.

38. **NOTICES.** All notices must be in writing to the address set forth above, and are effective when sent by: (a) hand delivery, (b) overnight delivery, (c) certified mail, return receipt requested, (d) telephone facsimile transmission as long as a record of the receipt of the transmission is retained by the sending party and as long as an original of the notice is mailed to the receiving party, or (e) as otherwise provided by law.
39. **REMOVAL &/OR CLAIMING IMPROVEMENTS.** Upon Busch's termination of this Agreement, Busch shall remove its Improvements at Busch's expense, except those Improvements which shall, at the option of the District, become District property. Should District decline to claim certain of the Improvements, Busch shall remove the unclaimed Improvements at Busch's sole expense. Busch shall restore the Premises to the condition existing at the time of the Certificate of Occupancy for the Wildlife Hospital, the Discovery Center, and Busch Trailer, except for ordinary wear and tear, within thirty (30) days of the expiration or termination of this Agreement. In the event there is a failure to timely remove the Improvements or restore the Premises, District shall have the right to remove such Improvements and restore the Premises and Busch agrees to be directly responsible for the costs of such removal and restoration. This paragraph survives the expiration or termination of this LICENSE.
40. **RELOCATION.** The District shall have the right to relocate the operations of Busch and Busch's Improvements to an alternate location on the District's property and/or space within a building situated on the District's property; provided however that such relocation will (1) be at the District's expense, (2) be performed by the District or its agents, (3) not result in an interruption of over sixty (60) days in the service provided by Busch on and from the District's property, (4) be done in accordance with the terms and conditions in paragraphs 40.1 and 40.2 below,
 - 40.1 **Relocation Notice.** District will exercise its relocation rights by delivering written notice (the "Notice") to Busch. In the Notice, District will propose an alternate site on District's property on which Busch may relocate its Improvements. Busch will have thirty (30) days from the date it receives the Notice to evaluate District's proposed relocation site. If Busch fails to disapprove of such proposed relocation site in writing within said 30 day period, then Busch shall be deemed to have approved such proposed relocation site. If Busch disapproves such relocation site, then District may thereafter propose another relocation site by Notice to Busch in the manner set forth above. In the event the District and Busch cannot agree upon a relocation site, then either party may give ninety (90) days written notice to the other of the termination of this Agreement. Any relocation site which the District and Busch agree upon in writing is referred to hereinafter as the "Relocation Site", Busch shall have a period of sixty (60) days after the execution of a written agreement between the parties concerning the location of the Relocation Site to relocate its Improvements to the Relocation Site.
 - 40.2 **Survey of Relocation Site.** Upon relocation of the Improvements, or any part thereof, to the Relocation Site, all references to the Premises in the Agreement

will be deemed to be references to the Relocation Site. District and Busch hereby agree that the Relocation Site (including the access and utility right of way) may be surveyed by a licensed surveyor at the sole cost of Busch, and such survey then shall replace Exhibit A and become a part hereof and will control or describe the Premises. Except as expressly provided in this paragraph, in no event will the relocation of the Improvements, or any part thereof, affect, alter, modify or otherwise change any of the terms and conditions of the LICENSE Agreement.

41. **TERMINATION.** Busch may terminate this Agreement at any time by notice to District without further liability if Busch does not obtain all approvals (collectively "Approval") required from any governmental authority to operate on the Premises and the Improvements, or if any such Approval is canceled, expires or is withdrawn or terminated outside of the control of Busch, or if District does not have authority to enter into this Agreement, or if Busch becomes financially unable to support the operation of the facility. District may terminate this Agreement at any time by notice to Busch without further liability if the Use of the Premises and/or Improvements is determined by the governing authority to be detrimental to the public health or outside the proper authority of the District to allow the Use on the Premises.
42. **DEFAULT.** If Busch is in default under this Agreement for a period of ten (10) days following receipt of notice from the District with respect to a default which may be cured solely by the payment of money, or if either party is in default under this Agreement for a period of thirty (30) days following receipt of notice from the nondefaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, this Agreement may, at the option of the District, be terminated and the District shall be entitled to possession of the Premises.
43. **HAZARDOUS SUBSTANCES.** Busch shall not allow any substance, chemical or waste on the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Busch shall immediately remove, remediate and clean up any such substance on the Premises.
44. **INDEPENDENT CONTRACTOR.** It is understood and agreed that Busch is an independent contractor, and not an agent or employee of the District. In connection with Busch's operations and Improvements, Busch shall at its own expense: provide for all labor, supplies, tools and equipment to perform its operations; procure all necessary licenses, certificates and permits required in the performance of the operations; Pay all payroll, unemployment and Social Security taxes, sales and use taxes, and all other taxes or charges; Busch agrees and covenants to be exclusively liable for payroll taxes, and contributions under Federal, City, County and State laws, measured by amounts paid to Busch, Busch's employees, and the employee of any sub-contractor engaged by Busch, and to hold harmless, save and defend the District free from payment of any such taxes and contributions.
45. **RESTRICTIVE COVENANT.** Busch, as an independent contractor of the District, as an inducement for the District undertaking the significant capital expenditure of funds for the construction of the Welcome Center Building and Wildlife Hospital Building, hereby agrees with the District, to refrain (i) from carrying on or engaging in a similar operation; and (ii) from moving to another location within a reasonably limited time of thirty (30) years from the commencement of this Agreement and a reasonably limited area of within twenty miles of the Premises, so long as the District has available the Premises for occupancy by Busch. Provided however,

Busch may commence another operation complimentary with the Busch operation at the District (and not competitive therewith as determined by the District, after prior written approval of the District). This covenant shall be enforced by injunction by a court of competent jurisdiction in accordance with Section 542.33(2)(a), Florida Statutes (1995).

46. OTHER STANDARD PROVISIONS:

46.1 Binding Effect; Time. This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement. Time is of the essence in this Agreement.

46.2 Governing Law. This Agreement is governed by the laws of the State of Florida without application of conflict of law principles. Venue for any legal proceedings and lawsuits brought to enforce this Agreement shall be Palm Beach County, Florida.

46.3 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior written and verbal Agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties. District and Busch have participated fully in the negotiation and preparation of this Agreement. Accordingly, this Agreement shall not be more strictly construed against either party.

46.4 Severability. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

46.5 Attorneys Fees. The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of the Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party. This paragraph survives the expiration or termination of this LICENSE.

46.6 Radon Gas. Florida Law requires the following statement in an Agreement for the use of a Building: Radon is a natural occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from your county public health unit.

July 21, 2011

IN WITNESS THEREOF, the parties have executed this Restated License Agreement the dates set forth below.

Witnesses:

David Hitzig
Anna M. Manuel

THE BUSCH WILDLIFE SANCTUARY, INC
a Florida Corporation

Peter W. Busch
Peter, W. Busch, Chairman/Founder
Dated: Aug 11, 2011

Witnesses:

Debbie H
Cathy Star

LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT

Gordon M. Boggie
By Gordon M. Boggie, Chairman
Dated: July 21, 2011