BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 04-2020 CRA

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF STUART, FLORIDA AUTHORIZING THE CHAIR PERSON TO EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE STUART COMMUNITY REDEVELOPMENT AGENCY AND AVONLEA IMPROVEMENT COMPANY, LLC, PROVIDING FOR THE ALLOCATION OF TAX INCREMENT FUNDS GENERATED FROM THE INCREASE IN PROPERTY VALUE TO THE TAX PARCELS WITHIN THE NEW AVONLEA PUD; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, by adoption of Resolution No. 01-2018 (CRA) on August 27, 2018, the Community Redevelopment Agency approved agreement between the Stuart Community Redevelopment Agency and Avonlea Improvement Company, LLC to provide economic development incentives to facilitate the completion of the offsite improvements for the New Avonlea PUD; and

WHEREAS, city staff has determined that Avonlea Improvement Company has demonstrated that the offsite improvements together with development of the New Avonlea PUD will substantially increase the property values of those parcels within the New Avonlea PUD; and

WHEREAS, the proposed agreement between the Stuart CRA and Avonlea to share the increased tax revenues will fulfill the intent of the CRA plan and provide incentive to the developer to complete the offsite improvements as early as possible; and

WHEREAS, the Community Redevelopment Agency of the City of Stuart will receive a substantial benefit from this agreement.

BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AGENCY BOARD OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The Stuart Community Redevelopment Agency authorizes the Board Chairperson to execute the amended agreement between the Stuart Community Redevelopment Agency and Avonlea attached hereto, sharing the increased tax revenue increment as set forth in the agreement.

SECTION 2: This resolution shall take effect upon adoption.

Board Member _____ offered the foregoing resolution and moved its adoption. The motion was seconded by Board Member _____and upon being put to a roll call vote, the vote was as follows: vote was as follows:

	YES	NO	ABSENT
MICHAEL J. MEIER, CHAIRMAN			
EULA R. CLARKE, VICE CHAIR			
MERRITT MATHESON, BOARD MEMBER			
REBECCA S. BRUNER, BOARD MEMBER			
KELLI GLASS LEIGHTON, BOARD MEMBER			
PETE WALSON, EX-OFFICIO BOARD MEMBER			
NATHAN RITCHEY, EX-OFFICIO BOARD MEMBER			

ADOPTED this ____ day of _____, 2020.

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
MICHAEL J. MEIER
CHAIRMAN

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL MORTELL
CITY ATTORNEY

CRA REAL ESTATE DEVELOPMENT ACCELERATOR (REDA) PROGRAM
AMENDED AND RESTATED
GRANT AGREEMENT FOR THE NEW AVONLEA PROJECT

This Amended and Restated Real Estate Development Accelerator (REDA) Grant Agreement (the "Grant Agreement") is made and entered into this _____ day of _____, 2020, (the "Effective Date") by and between the **City of Stuart, Florida Community Redevelopment Agency (CRA)**, an entity created pursuant to Part III of Chapter 163, Florida Statutes, and **Avonlea Improvement Company, LLC**, a Florida limited liability company (**Company), its successors and assigns.**

WHEREAS, the **Company** is an entity designed to facilitate the completion of the offsite improvement for the New Avonlea PUD. The tax increments which will be the subject to this agreement shall be made up of those lots of the New Avonlea PUD (the "Property") as set forth in Exhibit "B" attached hereto; and

WHEREAS, the **Company** desires to redevelop and revitalize the Property and incorporate it into a mixed-use development known as the New Avonlea Planned Unit Development (hereinafter "New Avonlea"), and as consideration for this agreement shall make the offsite improvements as further defined in section 4 below; and

WHEREAS, the **Company** has requested that the CRA provide certain economic development incentives related to the development; and

WHEREAS, the **Company** will help to achieve the goals of the CRA's Community Redevelopment Area Plan to provide a mixed-use activity center; and

WHEREAS, the CRA is committed to the continual redevelopment and revitalization of areas which have not achieved their full development potential. Because of the nature of The New Avonlea PUD and its potential to positively impact the City, the CRA is proposing to provide a series of Tax Increment Incentive Payments to the **Company**; and

WHEREAS, the Florida Legislature has encouraged the use of public-private partnerships to rehabilitate and redevelop property within a Community Redevelopment Area; and

WHEREAS, the offsite improvements for the New Avonlea will occur in phases. This agreement is intended to provide incentives related to off-site improvements as well as other development incentives within the purview of the City Real Estate Development Accelerator Program; and

WHEREAS, the CRA plan provides incentives in the form of Tax Increment Incentive Payments (as defined below); and

WHEREAS, the purpose of the CRA's involvement in this redevelopment project is to encourage and accelerate the timing of the redevelopment and completion of specific

components of the Avonlea Planned Urban Development, thus generating additional tax increment revenue, which will result in enhanced economic benefit to the community and provide stability and potential for future development of adjacent properties.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and such other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

Section 2. Definitions. The following terms shall have the following meanings:

"*Lender*" means the bank or banks, or other financial institution or institutions, or other persons or entities primarily responsible for providing financing to the Developer, or Owners of property within the New Avonlea PUD.

"*Property*" means the total parcels making up the New Avonlea PUD. Currently there are sixteen parcels contiguous to each other together with the offsite right of way. The only parcels which will qualify for tax increment distribution are attached hereto as Exhibit "B".

"*Tax Increment Incentive Payment*" means the portion of the Tax Increment Revenues directly attributable to The New Avonlea PUD to be provided by the CRA pursuant to this Grant Agreement.

"*Tax Increment Revenue*" means the "increment revenues" (as defined in Section 163.340(22), Part III of Chapter 163, Florida Statutes) deposited into the Trust Fund that are directly attributable to Avonlea's calculated in accordance with the formula set forth in section 163.387(1), Florida Statutes. For purposes of Section 3(B) below, the base year value of each Tax Parcel in New Avonlea shall be the assessed value for the entire geographic area of each Tax Parcel including any sub parcels for each specific lot described in Exhibit B as set by the Martin County Property Appraiser for the year before the first Certificate of Occupancy issued for any location within each lot.

"*Tax Parcel*" means one of the ten lots described in Exhibit "B" including any sub parcels within said lot that may be created in the future. The ten lots are attached hereto as Exhibit "B" Only those ten tax parcels, or sub parcels of the original ten parcels, listed in this agreement shall qualify for REDA. If additional parcels are created that are not listed in this agreement, and fall outside of the geographical area of the ten parcels, no value shall be used from said parcels and no TIF shall be due for development on said parcels.

"*Taxable Assessed Value*" means, for all Parcel Control Numbers which make up the total land mass of each lot listed in Exhibit B, the assessed value for property-tax purposes as determined by the Martin County Property Appraiser or, if applicable, the Value Adjustment Board or the Nineteenth Judicial Circuit.

"*Trust Fund*" means the Redevelopment Trust Fund for the Community Redevelopment Area established pursuant to §163.387, Florida Statutes, into which are deposited the "increment revenues" (as defined in Section 163.340(22), Part III of Chapter 163, Florida Statutes) appropriated and paid each Fiscal Year by each taxing authority in connection with the Community Redevelopment Area.

"*Offsite Improvement Plan*" shall mean the Offsite Improvement Plan of the New Avonlea PUD as may be amended by agreement of the Company and the City of Stuart.

Section 3. Tax Incentive Payment.

A. ***Recapture Period.*** Provided that the real estate taxes levied on the Property are paid and the **Company** complies at all times with the performance benchmarks referenced herein, the Tax Increment Incentive Payments will be provided to **Company** annually on a Tax Parcel by Tax Parcel basis over a 5 year period (the "Recapture Period"). The five annual payments shall be made on May 1st of each year to coincide with the final due dates for payment of real estate taxes. In the event that the New Avonlea PUD for the subject parcel is not in default and the performance benchmarks have been reached, the City shall pay the incentive payments for each Tax Parcel annually for five (5) consecutive years commencing on May 1 of the second year after a certificate of occupancy has been issued for any property within that Tax Parcel as described herein. In no event shall the CRA be obligated to make any Tax Increment Incentive Payments for any eligible Tax Parcel after May 1, 2039.

B. **Calculation of Tax Increment Incentive Payment**. The amount of the Tax Incentive Payment for a Tax Parcel shall be 50% of the Tax Increment Revenue (TIF) resulting from increases in the taxable assessed value of that Tax Parcel as listed in Exhibit "B" less any amount that is owed to the City for reimbursement for uncovered expenses related to a grant that reduced the offsite improvement costs, for each year of the five year period. The TIF is 95% of the difference between the base year ad valorem tax and the current year ad valorem tax. If the taxable assessed value of the Property (as determined by the Martin County Property Appraiser, taking into consideration any allowable adjustments by the Value Adjustment Board) in any year during the Recapture Period exceeds the Base Year Value, the Tax Increment Incentive Payment shall equal 50% of the Tax Increment Revenue. The incentive shall be 50% of the increased TIF for each calendar year during the five-year period as set forth herein. The amount of the payment shall be determined annually based upon the actual TIF generated for each calendar year.

C. **Master List.** Avonlea shall provide the City with a master list of all subdivided or platted parcels that have been assigned a parcel control number for any property that falls within the ten lots described in Exhibit B which it desires the City to include in the TIF calculation. This list shall be included with the Annual Status Report due by February 15. The City will only be responsible to pay TIF for the parcel identification numbers listed in Exhibit B and those sub-parcels that have been provided to the City in the Annual Status report. If a PCN was not included that fell within the original ten lots and a TIF payment was made, any funds previously due for that PCN shall be waived.

D. The CRA's obligation to provide the Tax Increment Incentive Payments to the Company shall terminate upon the failure of the owner of a given Tax Parcel to comply with a condition of this agreement. The CRA will mail notice to the Company by each April 1 during the Recapture Period of the amount of the Tax Increment Revenue directly attributable to each of the Tax Parcels listed in Exhibit "B", including the sub parcels which have been created and assigned parcel identification numbers as long as they have been previously provided to the City in the Annual Status Report and the applicable Tax Increment Incentive Payment which will be made on May 1 of the same year so long as the PUD and REDA agreements are not in default.

E. Once any part of one of the original ten Tax Parcels qualifies for the TIF calculation and payment as described in paragraph "B" above, that entire Tax Parcel including all of its sub parcels shall only be used to calculate the TIF due to the company for the next 5 years. At the end of the five (5) year period, the increase in value for that parcel shall be excluded from the TIF calculation due to the Company. However, if the offsite improvements contemplated in this agreement are removed or impacted to the extent that they would not be deemed complete for initial qualification purposes, the City of Stuart shall have the right to declare a breach of this agreement for the balance of the TIF payments or in the alternative, replace or repair the improvements and deduct that expense from any future payments due to the Company pursuant to this agreement unless impact is due to governmental action.

Section 4. Offsite Improvements

A. The Offsite improvements described in the PUD and attached as Exhibit "A" must be complete as a condition precedent to the Company qualifying for any tax increment revenue as it pertains to each Tax Parcel.

Section 5. Covenants and Representations of Company. The Company hereby covenants, represents, and acknowledges the following covenants and representations that the Town and CRA have relied upon in agreeing to provide the incentives described herein:

A. **Company**. The Company is an entity whose members are fee simple owners of Parcels of the Plat of New Avonlea and whose members will be constructing the Offsite Improvements.

B**. Approvals**. The New Avonlea PUD has received a PUD approval necessary to develop Avonlea, including the Property.

C. **Taxable Value of Property.** The Company shall not intentionally take any action or omit to take any action that would cause the taxable value of New Avonlea to materially diminish (other than as provided by law to petition the Value Adjustment Board or to otherwise challenge the property appraiser's valuation).

Section 6. Annual Status Reports. Company shall submit to the CRA by no later than each February 15th, annual status reports evidencing and certifying compliance with the Performance Benchmarks and the Covenants and Representations contained in section 4, such annual status reports to be in a form reasonably acceptable to the City Manager and the CRA's Executive Director.

Provided that the real estate taxes levied on the Property are paid and the Company complies at all times with the performance benchmarks referenced herein, the Tax Increment Incentive Payment will be provided to Company on an annual basis over a 5 year period (the "Recapture Period") as more particularly described in Section 3.A. hereof.

Section 7. Indemnification. This agreement in no way creates a joint venture between the parties. The sole purpose of this document is to provide a TIF incentive to the Company in consideration for the acceleration of the real estate development within this portion of the CRA.

Section 8. Breach and Remedy.

A. **Company's Breach**. Subject to Force Majeure (as defined herein), the Company failure to comply at all times with its obligations contained herein, including, but not limited to, the Performance Benchmarks and the Covenants and Representations shall be a material breach of this Grant Agreement. Upon such breach, the CRA may suspend the payment of any incentive provided for herein until such breach is cured. The CRA shall provide written notice of such breach to the Company ("Notice of Breach"). The Company's failure to cure such breach within 30 calendar days from the date of its receipt of the Notice of Breach shall result in the immediate termination of this Agreement and the incentives provided for herein. However, the Company shall be allowed to cure such breach and if it is able to cure the breach, any payments remaining under the original time frames of this agreement can be recovered by the Company. However, any payments due during the time the agreement is in breach shall be waived and shall not be recoverable.

The failure to cure such breach within the time period provided for above shall result in the immediate suspension of the Tax Increment Incentive Payments for the Tax Parcel with a breach until such time as the breach is cured. In the event of such suspension, the CRA shall have no obligation to make any Tax Increment Incentive Payments so long as the breach exists and remains uncured, and the Recapture Period shall not be extended. Additionally, CRA shall have the right to require the Company specific performance under the terms and conditions of this Grant Agreement.

B. CRA Breach. In the event that the CRA materially breaches any of its respective obligations contained herein, including, but not limited to the obligation to provide the incentives, and fails to cure such breach within 30 calendar days from the date of its receipt of written notice of such breach from the Company, then the Company shall have the right to require the CRA's specific performance under the terms and conditions of this Agreement. If the Company prevails in any legal proceeding requiring the CRA to pay an

economic development incentive provided for herein, then the CRA, as appropriate, shall pay statutory interest on the amount due.

Section 9. Bankruptcy or Re-organization. In the event (a) an order or decree is entered appointing a receiver of the Company or its assets, which is not appealed (or if appealed is determined adverse to the Company) or (b) a petition is filed by the Company for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty days after the filing thereof, then the CRA shall have the right to terminate immediately this Grant Agreement

Section 10. No Liability or Monetary Remedy. The Company hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the CRA, and that the CRA bears no liability for direct, indirect or consequential damages. The only remedy available to the Company for any breach by the CRA is to require the CRA's specific performance under the terms and conditions of this Grant Agreement.

Section 11. Severability. Any provision of this Grant Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.

Section 12. Effective Date and Term. This Grant Agreement shall become effective on the Effective Date first written above, and end, subject to the termination and severability provisions set forth herein, upon satisfaction in full of all of the obligations of the parties.

Section 13. Relationship. This Grant Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among the CRA, and the Company. The Company cannot create any obligation or responsibility on behalf of the CRA or bind the CRA in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Grant Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Grant Agreement or any responsibility or obligation contemplated herein. The Company further represents and acknowledges that no one was paid a fee, commission, gift or other consideration by the Company as an inducement to entering into this Grant Agreement.

Section 14. Personal Liability. No provision of this Grant Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the CRA in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the CRA hereunder.

Section 15. Waiver. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by an authorized representative of the parties to this agreement. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time. Further, any agreement between the parties in this agreement shall not modify or change the PUD ordinance. Further, modifications of the PUD shall not change this document. If the offsite improvements required in the PUD change, this agreement shall remain binding and the improvements described herein shall remain a requirement.

Section 16. Applicable Law and Venue. This Grant Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Grant Agreement must be brought and heard in Martin County, Florida.

Section 17. Amendement. This Grant Agreement may not be amended, unless evidenced in writing and executed by all parties hereto.

Section 18. Notices. Any notices required to be given hereunder shall be effective upon receipt and sent by either facsimile, hand-delivery, U.S. mail, first class, postage prepaid, or by certified or registered mail (return receipt requested) to the following addresses:

To the CRA
131 SW Flagler Avenue
Stuart, Florida 34994
Email: pgandhi@ci.stuart.fl.us

To **Company**:

Nikolaus Schroth
3200 St. Lucie Blvd.,
Fort Pierce, FL 34946
NikSchroth@NAISouthCoast.com

Frank Wacha
P.O. Box 1610
Jensen Beach, FL 34958
FrankWacha@gmail.com

Section 19. Captions. The captions and headings of sections or paragraphs used in this Grant Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Grant Agreement.

Section 20. Entire Agreement; Conflicts. This Grant Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written are merged herein. This agreement is intended to resolve all disputes between the parties which have arisen regarding the City's inability to provide water and sewer to the site.

Section 21. Attorney's Fees. Should either party have to pursue any legal remedies to enforce the terms of this Grant Agreement, the prevailing party shall be entitled to recover its costs and legal fees incurred before trial, during trial and in connection with any and all appellate proceedings.

Section 22. Grants & City of Stuart Contributions to Offsite Improvements: In the event the city obtains a grant and completes a portion of the offsite infrastructure as required by the then approved Offsite Infrastructure plan within the New Avonlea PUD, then the Company shall not be entitled to any payments until such a time as the City of Stuart has been reimbursed for its expenditure through TIF revenue. The CRA and the City of Stuart shall notify the Company of its intention to apply for a grant and illustrate the Offsite Improvement to be a part of the grant application, the parcels that would benefit from the improvement, and the costs associated with the improvements. The Company has been notified and has no objection to the Florida Department of Transportation (FDOT) Transportation Alternatives Program (TAP) grant approved for sidewalk along the east side of Dixie Highway and Green River Parkway. The City has already applied for and received the TAP which is being used to install sidewalks and crosswalks on the east side of Dixie Highway and Green River Parkway. The Company shall reimburse the City from TIF payments as described below, the actual cost incurred by the City, not to exceed $75,000.00.

Section 22(A). Deductions by City. The payments due to the City will not defer payments to the Company. It is the intent that they will be deducted from the amount owed to the Company. Any funds due to the City for reimbursement of monies expended on offsite improvements shall be deducted from the next Tax Increment payment that is due to the company. In the event that the amount owed to the City exceeds the amount owed to the company for a given tax year, then the balance owed to the City shall be deducted from the funds due to the company for the following tax year until the entire balance due to the City has been paid in full. The City will not distinguish between parcels when deducting the reimbursement funds.

IN WITNESS WHEREOF, the CRA and Company have executed this Grant Agreement as of the Effective Date.

Signatures are on following page

COMMUNITY REDEVELOPMENT AGENCY
By: _____
Michael J. Meier, Mayor

Attest:

_____
Clerk

Approved as to form and legal sufficiency
this ____ day of _____, 20__.

_____
Michael Mortell, City Attorney,
City of Stuart, Florida

STATE OF FLORIDA
COUNTY OF MARTIN
The foregoing instrument was acknowledged before me this ____ day of _____, 20, by Michael J. Meier, who is personally known to me.

_____
Notary Public, State of Florida
Printed Name: _____

Company – AVONLEA IMPROVEMENT COMPANY, LLC
a Florida limited liability company
By: _____
Name: _____
Title: _____

Witnesses:
(1) Sign Name:
Print Name: _____

(2) Sign Name: _____
Print Name: _____

STATE OF FLORIDA
COUNTY OF _____
The foregoing instrument was acknowledged before me this ____ day of_____, 20__, by _____, as the _____ of _____, a Florida limited liability company, and who has acknowledged that he/she has executed the same on behalf of _____ and that he/she was authorized to do so. He/She is personally known to me or has produced _____ as identification.

_____

Notary Public, State of Florida
Printed Name: _____