ABSOLUTE NET, UNSUBORDINATED LEASE

City of Stuart and Mulligan's Stuart Acquisition, LLC

THIS LEASE is made and executed as of the ____ day of_____2020, by and between the **CITY OF STUART,** 121 SW Flagler Avenue, Stuart, Florida 34994, a Florida municipal corporation, hereinafter referred to as "LESSOR", and **MULLIGAN'S STUART ACQUISITION, LLC**, Suite 1038 SE Ocean Blvd., Suite C, Stuart, Florida 34996, registered to do business in the State of Florida, and doing business using the registered fictitious name of **MULLIGAN'S BEACH HOUSE & GRILL**, hereinafter referred to as "LESSEE."

THIS LEASE amends the original lease executed by Spoto's Oyster Bar on February 13, 2013 and as well as the amended lease executed by Mulligan's in April, 2018 and shall replace the previous documents. This lease replaces all terms of any and all prior leases. This is a triple absolute net unsubordinated lease. Therefore, the tenant is solely responsible for all the costs relating to the asset being leased (real property and building), in addition to the rent fee applied under the lease. The lessee shall pay the real estate taxes on the leased asset, the building and property insurance and all maintenance related to the property.

Section 1. Demise, Description and Use of Premises.

As used herein, the term "Premises" refers to the real property described in **Exhibit "A"** and to any improvements located thereon from time to time during the term hereof. Seating is limited to 204 seats without special parking arrangements being obtained from the Lessor for additional parking. Mulligan's desires to provide outdoor seating beneath the building. The parking for the outdoor seating will be derived by sharing the lot next door to Mulligans. All spaces in the parking area behind the Stuart Feed Store shall remain open to the public. There are currently 26 spaces in the lot. Stuart code requires one (1) parking space per four (4) seats. Therefore, there shall be no more than a maximum of 104 additional seats provided under the terms of this lease. Failure to comply with this term of the lease shall be considered a default for breach of a material term of this lease. Breach of this condition on more than three separate occurrences shall constitute a default of a material term of the lease which cannot be cured by removing the chairs and will only be considered cured by a signed waiver of the breach signed by the Mayor.

Further, Lessor agrees to provide Lessee an easement over and across the parking lot at 131 Flagler Avenue for the extension of the roadway or other redevelopment of the area. Because Stuart is the owner of the property, a formal easement is not necessary. The purpose of this clause is to expressly authorize the City to use the parking lot in future redevelopment activity. The lessee will not lose any seating due to the loss of any parking spaces in the event that the City modifies the parking lot.

Section 2. Commencement and Term.

2.01. The term of this Lease shall commence on May 1, 2018 (the "Lease Commencement Date"). Rental payments due hereunder shall commence on May 1, 2018 (the "Initial Rent Commencement Date"), and as later provided herein.

2.02. The term of this Lease shall continue until April 30, 2038, unless earlier modified, extended or terminated, as provided herein. Lessee specifically covenants and agrees that the total lease term, including any extensions, shall not exceed a total of twenty (20) years.

Section 3. Initial Rent.

It is the purpose and intent of the Lessor and the Lessee that the rent shall be absolute net to the Lessor. Lessee hereby agrees to pay to Lessor rent for the leased Premises, as follows and more specifically delineated in Exhibit "B", which is made a part hereof.

A. CALANDAR YEAR 2018: Sixteen Thousand ($16,000.00) Dollars per month.

B. CALANDAR YEAR 2019: Seventeen Thousand ($17,000.00) Dollars per month.

C. CALANDAR YEAR 2020: Eighteen Thousand ($18,000.00) Dollars per month.

D. CALANDAR YEAR 2021: Nineteen Thousand ($19,000.00) Dollars per month.

E. CALANDAR YEAR 2022: Twenty Thousand ($20,000.00) Dollars per month.

F. *Rent Index:* Beginning January 1, 2023, the rent shall be indexed for the balance of the term with an annual index of 3%. At the end of each year, the annual rent shall be increased by 3% over the prior year's rent. The actual rent is depicted on Exhibit B attached hereto.

Section 4. Percentage Rent, Rent Credits and Rent Escalation.

4.01 *Percentage Rent*. In addition to base rent, Lessee acknowledges that it shall also pay a rental payment equal to a percentage of gross sales as follows:

> The tenant shall pay to the landlord the sum of 5% of the gross sales in excess of Three Million Five Hundred Thousand ($3,500,000.00) Dollars. No later than February 20th of each year, the lessee shall furnish to the Lessor a complete and accurate copy of all monthly Sales and Use Tax Returns filed with the Florida Department of Revenue for the prior Lease Year, along with a payment to lessor evidenced by an electronic transfer receipt (ACH) for the amount required herein. At no time shall the payment be made later than April 10 for the preceding year.

The parties acknowledge and agree that provided for herein are: 1) Rent Escalation; 2) Percentage Rent; and 3) together with Rent Credits extended to the Lessee, the net amount of which is all payable, solely for the convenience of Lessee, in monthly installments as described in Section 3 of this Lease ("Initial Rent") and payable on the first (1st) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any extension terms, subject to adjustments as hereinafter set forth.

All of Lessee's payments shall be made in the form of an electronic transfer (ACH) and shall be made to whomever the Lessor designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason, other than a default hereunder by Lessor which impairs the operation of the business conducted on the Premises.

Section 5. Taxes.

> 5.01 *Payment of Property Taxes*. Beginning on the Lease Commencement Date and throughout the term of this Lease thereafter, including any extension terms, Lessee shall pay, as additional rent hereunder, all taxes. "Taxes" as used herein, means all real property taxes, rates, duties and assessments, local improvement taxes and assessments, whether general or special, that are levied, rated, charged or assessed against the Premises or any part thereof and any rents due Lessor therefrom from time to time by any lawful taxing authority, whether federal, state, county, city, school, or otherwise, and any and all taxes which are imposed in lieu of,

or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the Lease Commencement Date.

5.02 *Tax Notices.* Lessor shall promptly forward to Lessee all notices, bills or invoices Lessor receives requiring payment for any of the items set forth immediately above. Written proof of prompt and timely payment shall be furnished to the Lessor as soon as the same is made by the Lessee.

5.03 *Contest of Real Property Assessment.* Lessee may contest any property assessment, tax or assessment payment, it is required to pay and may file protests or otherwise proceed in the name of Lessor. No contest may be filed for the first year's taxes. Thereafter, any contest must be made by depositing with an escrow agent satisfactory to both Lessor and Lessee sufficient collateral, in a form reasonably satisfactory to Lessor, to protect the Lessor against loss of the property by tax certificate or sale or other tax collection procedure. Lessor may use the collateral at any time Lessor determines in good faith, that such a loss is imminent.

5.04 *Sales, Use and Excise Taxes.* All Federal or State sales and use taxes or taxes similar in nature imposed upon payments made by a Lessee to a Lessor or upon this lease whether on the rents, additional rent or the lease or leasing privilege shall be paid in full by Lessee promptly when due or upon demand therefore.

5.05 *Failure to Pay Taxes.* The tenant shall pay the property taxes no later than November 30, of the year during which the tax notice is received. A failure to pay any or all required Taxes in a timely manner shall be a breach of this Lease. The Lessor shall have the option, but not the obligation, to pay any delinquent Taxes, in which case they shall become Additional Rent. In the event that the Lessor pays the taxes after December 1 because they were not paid by November 30, the tenant shall remain responsible for the taxes paid by the City and shall also be in default of the lease until such time as it has reimbursed the landlord the full amount of the taxes paid by the Landlord plus a fee of 5% of the entire tax bill paid by the City.

Section 6. Early Termination. It is understood and agreed by the parties that the Lessor may terminate the Lease subject to the following conditions:

6.01 The parties agree that there is no provision for an early termination of the lease prior to April 1, 2028. Beginning on April 2, 2028 (Lessor's Termination Notice Period), the landlord shall have the right to exercise the right to early termination pursuant to Section 7 of the lease; and

6.02. During the Lessor's Termination Notice Period, and provided that Tenant is not otherwise in default of any material terms under the Lease following notice and reasonable opportunity to cure, Lessor shall waive any and all Rent (excluding taxes and maintenance expenses) however, the unpaid rent shall be applied toward the payment due to the tenant under section 7 of this lease; and

6.03. On or before the expiration of the Lessor's Termination Notice Period, Tenant shall vacate the Premises, leaving the Premises in good order and repair, ordinary wear and tear expected.

Section 7. Termination Payment: In the event that Lessor terminates the Lease via the Early Termination clause, in addition to the rights and obligations stated herein, Lessor's payment to Tenant, as follows:

7.01. In the event Lessor provides written notice of the termination of the Lease after April 30, 2028, Lessor shall pay to Tenant the following single-year sum dependent upon when the termination occurs (i.e. if the Lessor terminates the lease during year 14, the Lessor shall pay the Tenant a sum of $1,400,000):

$2,000,000 in year 11 of the lease;
$1,800,000 in year 12 of the lease;
$1,600,000 in year 13 of the lease;
$1,400,000 in year 14 of the lease;
$1,200,000 in year 15 of the lease;
$1,000,000 in year 16 of the lease;
$800,000 in year 17 of the lease;
$600,000 in year 18 of the lease;
$500,000 in year 19 of the lease;
$500,000 in year 20 of the lease.

In the event that the Tenant contests or challenges this condition of the lease, then the early termination fee shall be reduced to a flat fee of $100,000.00.

Section 8. Permitted Uses.

8.01. Lessee shall develop and operate the entire Premises only for use as a Restaurant, with accessory retail sales, and vehicle parking.

(1) Lessor shall not interfere with Lessee's efforts to so develop and operate the Premises, except that all improvements collectively costing $30,000 or more to the Premises shall be subject to the written approval of the Lessor's city manager, which approval shall not be unreasonably withheld or delayed.

(2) All exterior improvements and signage shall require the city manager's prior written approval, which approval shall not be unreasonably withheld or delayed. A commercially suitable sign package shall require the approval of the City's Development Director, and Lessee shall be responsible for the payment of any and all reasonable costs incurred in connection with the development of the Premises including the preparation of any applications, plans, surveys or other documents and all impact fees and development incurred in connection with development of the Premises.

8.02. Lessee shall have the right to have the Premises open for business between the hours of 8:00 AM to 11:00 PM, Sunday through Thursday, and 8:00 AM to midnight on Friday and Saturday, at all times throughout the year. In the event that Lessee is not

open for business for more than any thirty (30) consecutive-day period, without an Act of God, Natural Disaster, or Unavoidable Delay (See Sec. 32) having occurred, the Lessor shall be free to cancel the Lease, and re-take the Premises, without requiring any court action. Under these circumstances the Lessee shall not prevent or complain about any "self-help" actions taken by the Lessor in this regard.

Section 9. Non-Subordination of Real Property Interest and Encumbrances of Lessee's Leasehold Interest.

9.01. *No Subordination.* Nothing contained herein shall be construed to require Lessor to execute any document or instrument, which would create any financial liability upon the Premises, or to alter or impair Lessor's rights under this Lease. **The Lessor is prohibited by Florida law from burdening any part of or all of the fee interest of the Premises, or to grant or agree to any such encumbrance or to any obligation which will burden the property beyond the Lease term.** Lessor shall not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

9.02. *Leasehold Encumbrance.* Lessee shall not, without obtaining Lessor's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. Such encumbrance shall not be unreasonably withheld or delayed by the Lessor, but may require the Lessee to furnish satisfactory evidence of the commercial viability of the debt, the loan, and the mortgage terms.

9.03. *Notice and Cure of Lessee's Default.* Lessor further agrees, in connection with Lessee's efforts to obtain financing for the development of the Premises, to provide any Mortgagee of whom Lessor has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default Lessor sends to Lessee hereunder and prior to terminating this Lease as a result of any default by Lessee, Lessor shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, Lessor shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the Mortgagee curing Lessee's default.

9.04. *Estoppel Letter.* Lessor shall from time to time, within ten (10) days after Lessee shall have requested it, execute, enseal, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to Lessor with the request.

Section 10. Assignment and Sublease.

Lessee may not assign all or any portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by Lessor or other portions of the Premises for any purpose without the consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any assignment or sublease may be conditioned by the Lessor on the commercial suitability, the good reputation in the community, and the financial strength and solvency of the proposed assignee or sub-tenant, all or any of which may be require suitable proof thereof. Notwithstanding any assignment or sublease, the Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof. No sub-lease shall extend beyond the existing term of this Lease. No sub-lease shall alter the terms of this Lease.

Section 11. Uses Prohibited.

11.01. Specific Uses Prohibited.

A. The Lessee shall not operate the Premises as a Night Club, regardless of the type of liquor license it holds from the State of Florida. The definition of Night Club follows:

Night Club means any stand-alone bar, bottle club, restaurant or other establishment which meets all of the following requirements:

(1) serves or allows the consumption of alcoholic beverages on the premises without the full service of food; and

(2) has live or recorded music, entertainment, or dancing, or any combination thereof; and

(3) which is open for business later than midnight.

B. *Littering Prohibited.* The Lessee shall not permit its staff or patrons to litter the Premises or the adjacent St. Lucie River, and the Lessee shall be responsible for the collection and containment of all solid waste, including service items and recyclables, such that no trash, garbage, recyclables, or other disposable or non-disposable items are allowed to accumulate on the outdoor portion of the Premises or enter into the St. Lucie River. Any accidental or purposeful dumping of any items into the St. Lucie River by Lessee, its customers, or invitees shall result in the items being promptly collected and properly disposed of by the Lessee.

C. If the event that the restaurant desires to stay open later than midnight, the LESSEE agrees to file for a Special Events Permit, which the City may permit up to four times annually.

11.02. *General Uses Prohibited.* Lessee shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose or purposes, nor shall Lessee

maintain a nuisance on the Premises or use or permit the use thereof for immoral or adult entertainment purposes. The Premises may not be used as a toxic waste dump or storage facility, a solid waste disposal site or any use which could have a harmful effect on the land itself, or upon the St. Lucie River. The Lessee shall not commit waste. No construction, improvement or use may be made of the Premises which would impair the right to collect rental adjustments called for herein.

11.03. *Outdoor Sound Regulated.* Lessee shall fully comply with the City of Stuart sound ordinance at all times.

Section 12. Improvements, Repairs, Additions, Replacements to the Real Property.

12.01. Throughout the term of this Lease, the Lessee shall have the right (but not the duty) to construct, erect, or reconstruct any and all manner of improvements upon the Premises as are permitted by this Lease, and applicable codes and laws of the city and state.

12.02. Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in good repair and good condition, the Premises, including the parking lot – including all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage, or injury.

12.03. Lessor shall not be required to furnish any services or facilities or to make any repairs, improvements or alterations in or to the Premises during the term of this Lease, it being understood that the Lessee takes the Premises in an "AS IS" condition, having made all of the inspections it chose to make, prior to entering into this Lease, and that the Lessee is satisfied with the condition of the Premises.

12.04. Lessee's rights and obligations, as set forth in this Section 11, shall be subject to the following conditions:

A. The cost of any construction, or of any change, alteration or improvements shall be borne and paid for by Lessee.

B. The Premises shall, at all times, be kept free of mechanics' and materials men's liens.

C. The parties shall enter into a Memorandum of Lease, in recordable form, in form and content acceptable to Lessor, and the same shall be recorded prior to the commencement of any work on the premises. The Lessee agrees to execute such further agreements as may be necessary, from time to time, to preserve the leased premises from the imposition of liens. The Lessee shall provide in any contracts and shall require any General Contractor to provide in all sub-contracts and sub-sub-contracts that the parties thereto must look solely to the Lessee for payment and that no liens shall be filed against the land itself. **It is understood by the parties that as a Florida municipality, the City of Stuart is not subject to the mechanic's lien laws of the State**

of Florida, and therefore liens shall not be permitted to attach to city-owned property.

D. The Lessee acknowledges that the Lessor has personal property in the form of fixtures, furniture and equipment ("Lessor's FF&E"), including kitchen equipment. The Lessee shall be responsible and liable for the normal use, of the Lessor's FF&E, fair wear and tear excepted. The Lessee shall only be responsible for repair and replacement of the Lessor's FF&E when the same shall become missing, or irreparable due to intentional damage, and the Lessee shall notify the Lessor in writing that any such of Lessor's FF&E is missing, or irreparable within five (5) days of such occurrence. The Lessor's FF&E shall not transfer to the Lessee, and shall continue to be owned by the Lessor throughout the term of the Lease, unless later agreed upon by the parties in writing. However, the Lessee shall insure the FF&E, as if it were then owned by the Lessee.

E. During the term of the Lease, or any extended term, Lessee shall not demolish or remove any building or improvements located on the premises. At the end of term hereof, all improvements located on the Premises will become the property of Lessor and at Lessor's option, Lessor can require Lessee to remove all or any part of the improvements and to place the Premises in their original condition.

Section 13. Liability Insurance.

13.01. Lessee covenants to provide, during the entire term hereof at Lessee's own cost and expense, as additional rent, by advance payment of premiums, a comprehensive liability policy of insurance protecting Lessee against any liability whatsoever, occasioned by accident on or about the demised premises or any appurtenances thereto. Such policy shall be approved by Lessor, shall name the City of Stuart as an Additional Insured, shall be written by a company rated not less than "AAA", by Best's Register, in an amount not less than One Million Dollars ($1,000,000) to cover the claim of damage from any single person, and not less than Two Million Five Hundred Thousand Dollars ($2,500,000) to cover more than a single claim which may arise from a single action, and in the sum of Five Hundred Thousand Dollars ($500,000) in respect to claims for property damage. Such policy shall insure Lessee and Lessor against any liability that may accrue against them or either of them, on account of any occurrence on or to the demised premises during the term thereof, resulting in personal injury, death, property damage, liquor liability or any other liability whatsoever; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense.

13.02. Lessee shall see to it that the Lessor shall at all times be in possession of a valid Certificate of Insurance, naming the City of Stuart as an additional insured. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to Lessor an original or duplicate original of all such policies, together with

evidence of payment of premium thereon, upon the beginning date of this Lease, and from time to time thereafter as premiums shall fall due. Lessor may require an increase in the limits of coverage or extent or coverage at any time such increase is deemed commercially reasonable by Lessor. Lessor may increase the amounts of required insurance coverage provided the same is commercially reasonable.

13.03. All insurance coverage called for under the Lease shall contain provisions stating the Insurer will grant the City the same notification rights that it provides to the first named insured regarding cancellation and nonrenewal. Copies of the policies, and all replacement policies and declaration pages, shall be promptly furnished to Lessor.

13.04. All hazard insurance policies carried by the Lessee covering its property located on the Premises will provide that the Lessor is an additional named insured, as its interest may appear. Lessee shall have an affirmative duty to insure the Lessor's FF&E to the full extent of its value.

Section 14. Indemnification of Lessor.

14.01. In consideration of said Premises being leased to Lessee, and based upon separate consideration the amount, receipt, and sufficiency of which is acknowledged by the parties, the Lessee agrees that Lessee; at all times while Lessee holds interest in the property and all times following when lessee holds interest in the property so long as injuries, damages, liabilities and expenses from claims filed resulted from the time when Lessee held interest in the property; hereby indemnifies and holds Lessor harmless from all losses, damages, liabilities and expenses, which may arise or be claimed against Lessor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Lessee, or consequent upon or arising from any acts, omissions, neglect or fault of Lessee, its agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Lessee's failure to comply with any laws, statutes, ordinances, codes or regulations as herein provided. Lessor shall not be liable to Lessee or any damages, losses or injuries to the persons or to property of Lessee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations, and Lessee will indemnify and keep harmless Lessor from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against Lessor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises as a result of the negligence of Lessee, his agents, employees, servants, licensees, visitors, customers, patrons and invitees.

14.02. All personal property placed or moved into the Leased Premises by the Lessee shall be at the sole risk of Lessee or the owners thereof, and Lessor shall not be liable to Lessee or any third party for any damages to said personal property. Lessee shall maintain at all times during the term of this Lease an insurance policy or policies in an amount or amounts sufficient to indemnify Lessor and to pay Lessor's

damages, if any, resulting from any matters set forth hereinbefore in this Paragraph 13. Lessee's insurance policies shall contain a waiver of the right of subrogation as against the Lessor.

Section 15. Time.

It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants and conditions of this Lease.

Section 16. Requirements of Public Authority.

16.01. During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (collectively "regulations") of the Federal, State, County, and City Governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force on the Lease Commencement Date or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 16. If such regulations shall so restrict the use or development of the Premises so as to render the development of the Premises unfeasible in the discretion of Lessee, Lessee shall have the option to terminate this Lease upon thirty (30) days written notice to Lessor.

16.02. Lessee shall have the right to contest by appropriate legal proceeding, diligently conducted in good faith in the name of the Lessee, without costs, liability or expense to Lessor, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (A) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceedings. Nothing herein shall delay the payment of all sums due to Lessor herein required to be paid.

Section 17. Lessor's Title/Possession.

Lessor covenants that as of the Lease Commencement Date:

A. Lessor has the fee simple title to the Premises, with full right and authority to make and enter into this Lease;

B. The Premises are free and clear of all liens, easements, restrictions, leases and encumbrances, except for easements shown on survey, if any.

C. Lessee has received a copy of the survey of the property and has accepted the state of the survey.

D. Lessee shall be delivered possession of the Premises; and

E. Lessee shall have quiet and peaceful possession and enjoyment of the Premises and of all appurtenances thereunto belonging during the term of this Lease including all extension terms.

Section 18. Care of Premises.

Lessee shall in nowise violate any of the zoning or other governmental restrictions now or hereafter placed upon the said real property. Lessee shall, at its sole expense, pay for any alterations, improvements, machinery or equipment, including replacement of Lessor's FF&E, which may be required by any applicable governing body now or at any time during the term of this Lease. Lessee will replace "furniture" (tables and chairs) that are lost, stolen, or damaged for any reason. Lessee will be responsible for replacing Lessor's equipment that becomes irreparable due to normal wear and tear.

Section 19. Conditional Limitations – Lessee Default Provisions.

19.01 This lease and the term hereof are subject to the limitation that if, at any time during the term of this Lease, any one or more of the following events (herein called an "event of default") shall occur, that is to say:

A. If Lessee shall make an assignment of this Lease for the benefit of its creditors; or

B. If any petition shall be filed against Lessee in any court, whether or not pursuant to any Statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, and if any such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be so filed by Lessee; or

C. If Lessee shall fail to pay any installment of the rent, or any part hereof, when the same shall become due and payable, and such failure shall continue for thirty (30) days; or

D. If Lessee shall fail to pay when due any other charge required to be paid by Lessee hereunder, and such failure shall continue for thirty (30) days after written notice thereof from Lessor to Lessee; or

E. If Lessee shall fail to perform or observe any other requirement of this Lease (not hereinbefore in this Section 20 specifically referred to) on the part of Lessee to be performed or observed, and such failure shall continue for thirty (30) days after written notice thereof from Lessor to Lessee, unless Lessee shall have commenced to cure any such default as is referred to in this sub-section E. within said thirty (30) day period and diligently pursues such cure to completion;

19.02 Then upon the happening of any one or more of the aforementioned events of default, and the expiration of the period of time for remedying the same, Lessor may:

A. Give to Lessee a notice hereinafter called ("Notice of Termination") of intention to end the term of this Lease and the term hereof, as well as all of the right, title and interest of the Lessee hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date originally specified herein for the expiration of this Lease had arrived and the Lessee shall then quit and surrender the Premises to Lessor, and

B. Lessor may at any time after an event of default re-enter the Premises and remove Lessee therefrom, and all or any of its property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, and;

C. It is expressly and specifically covenanted and agreed that the entire unpaid balance of the basic rental shall at the sole option of the Lessor, immediately become due and payable, which amount shall be reduced to present value, and

D. All of the right, title, estate and interest of Lessee (i) in and to the improvements, all changes, additions, alterations therein, and all renewals and replacements thereof, and (ii) all rents, sub-leases, issues and profits of the Premises, or any part thereof, whether then accrued or to accrue, shall automatically pass to, vest in, and belong to Lessor, without further action on the part of either party, free of any claim thereto by Lessee.

E. Lessor shall have any other remedy provided by Florida law.

Section 20. Lessor's Defaults.

If Lessor fails to perform or observe any requirements or covenant of this Lease to be performed and observed by Lessor and such default continues for a period of thirty (30) days after written notice thereof from Lessee to Lessor, Lessee shall have the option of terminating this Lease upon thirty (30) days written notice to Lessor without waiving any other legal rights hereunder or in the alternative, Lessee shall have the right of specific performance.

Section 21. Waivers.

Failure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provisions of this Lease or a consent to any subsequent breach of the same of any other provisions. No acceptance by Lessor of any partial payment shall constitute an accord and satisfaction, but shall only be deemed a partial payment on account.

Section 22. Notices, Etc.

All notices, consents, demands and requests which are required or desired to be given by either party to the other shall be in writing. All such notices, consents, demands and requests shall be 1) Hand delivered; or 2) Delivered by overnight courier; or 3) sent by United States certified mail, return receipt requested, postage prepaid, and addressed to the other party as follows:

TO THE LESSOR: Delivered to City Hall or mailed to:

David M. Ross, City Manager - DRoss@ci.stuart.fl.us
121 SW Flagler Avenue
Stuart, FL 34994

WITH A COPY TO:

City Attorney- mmortell@ci.stuart.fl.us
121 SW Flagler Avenue
Stuart, FL 34994

TO THE LESSEE: Delivered to the Premises or mailed to:

Mr. Greg Carey, Chairman of the Board, greg.carey@jpbpartners.com

Mr. George Hart - georgehart97@me.com

MULLIGAN'S BEACH HOUSE & GRILL
1038 S.E. Ocean Blvd. Suite D
Stuart FL, 34996

or at such other place as may from time to time be designated in writing to the other party given pursuant to the provisions of this Section. Notices, consents, demands and requests which are served upon Lessor or Lessee in the manner aforesaid, shall be deemed to have been "served" for all purposes hereunder on the third (3rd) business day next following the date on which such notice, consent, demand or request shall has been mailed as aforesaid, or upon the actual date received, as ascertained by a receipt from the serving company or person, whichever is the earlier date. Emailed copies shall not be deemed "served."

Section 23. Governing Law.

This Lease and the performance of the covenants and terms thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida.

Section 24. Partial Invalidity.

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 25. Sales and Use Taxes on Lease

Lessee shall promptly pay to the Lessor, all sales or similar type taxes imposed upon the various amounts of money payable as rent hereunder. In the event it is subsequently determined that any

amount required to be paid hereunder was miscalculated or demand is made by the State of Florida for additional or uncollected tax, Lessee shall promptly pay the same and any penalties and interest payable thereon.

Section 26. Covenants Binding the Respective Parties.

Except as herein expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, successors and assigns.

Section 27. Disposition of Improvements on Termination of Lease.

On termination of this Lease for any cause, Lessor shall become the owner of any building or other improvements made by the Lessee on the Premises. If Lessee is not in default, Lessee shall however have the right to remove any furniture, fixtures, equipment (other than Lessor's FF&E), or other things which may be removed from the premises without changes to any of the buildings or improvements hereinafter located on the Premises.

Section 28. Broker's Commission.

The parties represent and warrant to the other, that no Broker has participated in the negotiation of this agreement and in the event that a broker fee is due, the Lessee shall be solely responsible for same.

Section 29. Attorney's Fees and Costs.

In connection with any litigation arising out of this Lease, the prevailing parties shall be entitled to recover all costs incurred, including reasonable attorneys' fees and costs through and including any and all appellate actions.

Section 30. Lessee's Attornment.

In the event of a transfer of Lessor's interests in the Premises or the purchase of the Lessor's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or the purchase, pursuant to a power of sale contained in any mortgage, then in any such events, Lessee shall, at Lessor's request, attorn to and recognize the transferee or purchaser of the Lessor's interest, as the case may be, as Lessor under this Lease, for the balance then remaining of the term and thereafter this Lease shall continue as it is directly between such person as "Lessor" and "Lessee", it being agreed that no such transferee shall have the right to disturb Lessee's tenancy hereunder so long as Lessee shall not be in default under the terms hereof.

Section 31. Waiver of Trial by Jury.

It is mutually agreed by and between Lessor and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee and Lessee's use of or occupancy of the Premises. Lessee further agrees that it shall not interpose any counterclaim or counterclaims in a summary

proceeding or in any action based upon nonpayment of rent or any other payment required of Lessee hereunder.

Section 32. Delays.

In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in this Lease shall be extended by the time period caused by the Unavoidable Delay, all except for the Term of this Lease, which shall not be extended without the majority approval of the City of Stuart voters at a referendum election, as required by Section 9.05, Stuart City Charter, if then in effect. "Unavoidable Delay" shall mean any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Lease Commencement Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of any governmental authority.

Section 33. Good Faith and Fair Dealing.

Lessor and Lessee hereby agree to interpret the terms, conditions and provisions of this Lease in good faith exercising reasonable business judgment, and to attempt to resolve any and all issues, disputes or conflicts that may arise hereunder in a reasonable and fair manner.

Section 34. Additional Terms and Conditions.

A. FAILURE TO PAY WHEN DUE. If the Lessee fails to pay any sum when due for taxes, insurance or other sums required to be paid under the Lease, the Lessor may, at Lessor's option and without waiving its right to dispossess Lessee, pay such sum and such sum shall immediately become due and payable as additional rent.

B. INTEREST ON RENT. All rents due under the Lease, and remaining unpaid beyond the period set forth in Section 19.01 C hereof, shall bear interest at the rate provided under Florida law for the payment of interest on money judgments.

C. UPON TERMINATION. In the event of judicial or mutual termination of this Lease, Lessee shall provide Lessor with a Release and Surrender Agreement with two witnesses, in recordable form, to remove the Memorandum of Lease as a cloud on the title within seven days of written demand therefore.

D. FAILURE TO MAINTAIN. In the event that the Lessee fails to maintain the Premises in a condition free of federal, state, county or city code violations, the Lessor shall

have the right, but not the obligation, to enter onto the Premises and repair or replace any items not in code compliance. Thereafter, the actual cost, plus five (5%) percent administrative charge shall be additional rent, to be paid by the Lessee upon the next time that rent is due hereunder.

E. RADON GAS. Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type: "RADON GAS: Radon is a naturally 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 and radon testing may be obtained from your county public health unit."

F. COMPLETE AGREEMENT. The parties mutually represent and warrant to each other that this Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease been induced on the part of any party except as expressed in writing in this Lease.

G. NON-DISCRIMINATION. Lessee shall not discriminate against contractors, sublessees or users of the Existing Improvements or Leasehold Improvements with regard to race, creed, color, handicap, familial status, disability, marital status, religion, national origin or content of speech. Lessee accepts sole responsibility for ensuring such non-discriminatory access to the Leased Property.

H. BENEFITS OF THE LEASE. The parties agree that this lease shall benefit only the parties hereto and is not intended to benefit any third party whatsoever.

Section 35. Contractual Authority.

By signing this Lease the Lessee swears or affirms, under penalty of perjury, that this is a valid act of the Lessee, and that no later claim shall be made by the Lessee that the Lease contract is invalid or an *ultra vires* act, by reason of a failure to have the proper authority to execute the Lease. In the event that a court of competent jurisdiction later determines that the Lease is or would be null and void for failure of the signatory to have proper or complete authority, this Lease shall nonetheless be deemed valid under the theory of "apparent authority," or in the sole alternative of the City, Shall be deemed to be the act of the signatory, as an individual, who shall be fully responsible for its complete performance.

Section 36. Sovereign Immunity.

Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits granted to the Lessor as established under chapter 768.20 Florida Statutes, as amended from time to time.

[LEASE SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals of the date shown below.

Witnesses:

LESSOR:

City of Stuart, Florida

_____
Print Name:_____

_____
KELLI GLASS LEIGHTON
Mayor

_____
Print Name:_____

_____
Date

APPROVED AS TO FORM AND CORRECTNESS:

_____
MICHAEL MORTELL
City Attorney

Witnesses:

LESSEE:

Mulligan's Beach House & Grill

_____
Print Name:_____

_____
BY:_____

_____
Print Name:_____

Its:_____

PERSONAL GUARANTEE:

In consideration of the Lessor extending a lease to the Lessee (a Florida Corporation), plus other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor personally guarantees the prompt, full and complete performance of any and all present and future duties, obligations and indebtedness pursuant to the above lease agreement. This personal guarantee shall be construed exclusively in accordance with, and governed by, the laws of the Statute of Florida. This Personal Guarantee may not be assigned or transferred without a written document, signed by the Lessor, permitting such assignment or transfer.

Dated this day of April, 2018

Witness: Guarantor

_____ _____

(Signature) (Signature of Guarantor)

_____ _____

(Signature) (Printed name of Guarantor)

EXHIBIT A
LEGAL DESCRIPTION

EXHBIT B
RENT ROLL

			Year	Annual Rent	Monthly Payment
Years	20	1	2018	$192,000	$16,000.00
		2	2019	$204,000	$17,000.00
		3	2020	$216,000	$18,000.00
Rent %	3.00%	4	2021	$228,000	$19,000.00
		5	2022	$240,000	$20,000.00
		6	2023	$247,200	$20,600.00
		7	2024	$254,616	$21,218.00
		8	2025	$262,254	$21,854.54
		9	2026	$270,122	$22,510.18
		10	2027	$278,226	$23,185.48
		11	2028	$286,573	$23,881.05
		12	2029	$295,170	$24,597.48
		13	2030	$304,025	$25,335.40
		14	2031	$313,146	$26,095.46
		15	2032	$322,540	$26,878.33
		16	2033	$332,216	$27,684.68
		17	2034	$342,183	$28,515.22
		18	2035	$352,448	$29,370.67
		19	2036	$363,022	$30,251.79
		20	2037	$373,912	$31,159.35
		21	2038	$385,130	$32,094.13