BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 66-2019

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF STUART AND STUART GREEN MARKET, INC A DESIGNATED 501(c) ORGANIZATION; GRANTING A NON-EXCLUSIVE LICENSE TO OPERATE A WEEKLY OUTDOOR MARKET PLACE FOR SALES TO THE GENERAL PUBLIC FOR FRESH PRODUCE, BAKED GOODS, PLANTS, AND ASSORTED FOODS AND GREEN PRODUCT SERVICES BY INDEPENDENT VENDORS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:

SECTION 1: The foregoing precatory language is adopted as if set forth below.

SECTION 2: The Mayor and City Clerk are hereby authorized to execute a non-exclusive license to Stuart Green Market, Inc. for the operation of a weekly outdoor market place for sales to the general public of fresh produce, baked goods, plants, and assorted foods and green product services by independent vendors.

SECTION 3: This Resolution shall take effect upon its adoption.

Resolution No. 66-2019
Resolution Authorizing a License Agreement with Stuart Green Market

Commissioner GLASS LEIGHTON offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner CLARKE and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
REBECCA S. BRUNER, MAYOR	Y			
EULA R. CLARKE, VICE MAYOR	Y			
KELLI GLASS LEIGHTON, COMMISSIONER	Y			
MERRITT MATHESON, COMMISSIONER	Y			
MIKE MEIER, COMMISSIONER	Y			

ADOPTED this 22nd day of July, 2019.

ATTEST:

MARY R. KINDEL
CITY CLERK

REBECCA S. BRUNER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL
CITY ATTORNEY

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LICENSE AGREEMENT
CITY OF STUART AND STUART GREEN MARKET, INC.

This LICENSE AGREEMENT, hereinafter "License" made and entered into this 22nd day of July, 2019, by and between the CITY OF STUART, FLORIDA, a municipal corporation of the State of Florida, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter the "City," and STUART GREEN MARKET, INC., a Florida not for profit corporation, 121 S.W. Flagler Avenue, Stuart, FL, 34994, hereinafter the "Licensee."

W I T N E S S E T H:

The City and the Licensee do hereby agree as follows:

1. DESCRIPTION OF LICENSED PREMISES. City licenses to Licensee, and Licensee accepts such License from City, for the purpose of operating an outdoor market place for sales to the general public of fresh produce, baked goods, plants, and assorted foods and green products and services, by independent vendors, upon that portion of the parking lot adjacent to Stuart City Hall at 121 S.W. Flagler Avenue, and further described in the drawing attached hereto as **Exhibit "A,"** hereinafter the "Premises." The Premises does not include the parking area to the south (front) of the City Hall building, nor does it include the fire lanes adjacent thereto.

2. TERM. The initial term of this License shall commence on the date first written above and continue henceforth until terminated by either party upon sixty (60) days written notice to the other; hereinafter the "Term." The City licenses the Premises only on each Sunday during the Term from 6:00 a.m. through 5:00 p.m., unless otherwise expressly permitted by the City Manager, in advance and in writing, for additional Special Events of a temporary nature.

3. FEE. The License Fee for the use of the Premises during the Term as provided in paragraph 2 above is $2,000.00 annually, to be paid within 30 days of the execution of this agreement, and subsequent renewal payments on or before the first day of July, each year the agreement remains in effect beginning July 1st, 2020.

4. CITY'S OBLIGATIONS. City shall have the obligation to do the following:

A. The Premises shall be kept in good condition and repair by the City; and the City will use its best efforts to make repairs to the bathroom facilities, including emergency repairs, as needed.

B. Assure that the public bathrooms adjacent to City Hall are cleaned at the beginning of each Sunday morning, no later than 8:30 AM, and assure the bathrooms are open and available for use by the public during the use of the Premises.

C. Provide three (3) 90 gallon Green Carts for solid waste, and three (3) 90 gallon Blue Carts for Recyclable materials to be located behind the stem wall next to City Hall.

D. Cause all City vehicles to be parked outside the Premises. The City will make all reasonable efforts to clear the lot of privately owned vehicles but cannot guarantee all private vehicles will be removed.

E. Provide two barricades at the entrances of the parking lot to prohibit entrance at certain times during the use of the Premises.

F. Provide electrical and water service to the Premises as reasonalby needed, and as currently installed.

G. Conduct an annual review of the terms and conditions of this agreement.

5. LICENSEE'S OBLIGATIONS. Licensee shall have the obligation to do the following:

A. The Licensee must furnish to the City, a copy of its annual financial report, including any 990 forms filed with the IRS, or as otherwise required by law as a recognized 501(c) organization, each year this agreement remains in effect. The Licensee must also maintain an IRS tax exempt, 501(c) status throughout the term of this agreement. Revocation of Licensee's tax exempt status by the IRS, whether automatic or as an outcome of an audit, will constitute a material breach of the terms of this license.

B. In the event that the Licensee makes any charitable contributions, donations, or takes similar actions, all parties to this agreement recognize that the proceeds from the "green market" are a direct result of the use of City of Stuart Public Property, and the parties further agree that it is the intent of the organization to provide public benefit to the City of Stuart. Therefore, any charitable actions which use funds generated from the Green Market shall be for the public benefit of the City of Stuart and its residents, property owners, and businesses. The Board for Stuart Green Market Inc., agrees to seek approval from the Stuart City Manager prior to making any donations or contributions as set forth above.

C. The Licensee shall have access to the Premises at 6:00 AM Sunday morning, and shall vacate the Premises not later than 5:00 PM the same day.

D. Licensee shall be permitted to employ no more than seventy five (75) privately contracted vendors ("Vendors") each Sunday, who shall each be permitted to temporarily erect for licensed uses, 10'x10' canopies, tables,

and displays for the sale or distribution of produce, food, beverages, wares, or services.

E. The Vendors shall set up between 6:00 AM and 9:00 AM, at which time the general public will be admitted to the Premises. At 4:00 PM the general public will no longer be admitted to the Market, and the remaining Vendors will begin to close their operations.

F. Licensee agrees and will assure that no more than 45 of its Vendors shall be permitted to remain on the Premises from 1:00 PM to 4:00 PM, and only in the areas designated by the City for their use nearest to the Riverwalk Stage.

G. The Licensee shall keep the Premises clean throughout its Sunday operation by the Licensee, including but not limited to the parking lot, the outdoor bathrooms at City Hall, the adjacent walkways, driveways, and streets, and the entire Premises shall be cleaned and restored to its prior condition by 5:00 PM each Sunday of operation.

H. The Licensee shall use the three (3) 90 gallon Green Carts for solid waste, and three (3) 90 gallon Blue Cart for Recyclable materials provided by the City, and shall collapse and fold all cardboard boxes and place them in the Blue recycle cart or immediately adjacent to it in a neat and orderly fashion behind the stem wall next to City Hall by 5:00 PM each Sunday of operation.

I. The City of Stuart is in the process of becoming a 'zero plastic waste' city as directed by the City Commission. It will be the responsibility of the Stuart Green Market Inc. to ensure its vendors comply with and conform to any such policy once adopted by the City Commission. Any violation of this policy after its effect will be considered a material breach of this agreement. Licensee shall be subject to any penalties as set forth in the policy. Further, failure to comply with same shall be grounds for termination of this agreement.

J. Any sale, distribution, or consumption of alcoholic beverages during each event will be limited to a predefined area as determined and approved by the City Manager, or their designee. Such activity by the Licensee or any of their designated vendors will be considered ancillary to the scope and nature of the license, and may be revoked by the City Manager, or their designee for any reason, at any time.

K. The Licensee shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or

any improvements on it, except if the Licensee or any of its independent vendors shall have damaged the same.

L. Licensee shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in the Premises.

M. Any signage constructed or placed by Licensee shall be first approved by the City Manager.

N. Licensee Vendors will not park their vehicles on the streets immediately adjacent to the Licensed Premises, or within the City Hall parking lot except when setting up or breaking down equipment to be transported to and off premise. Repeated violations of this policy may constitute a material breach of the license agreement.

O. Licensee shall pay to the City, a fee of $80.00 for each event occurring in February, March, and April of every calendar year for the purpose of assigning one police officer for traffic control over a two hour period; and as may otherwise be determined by the City with reasonable notice given to the Licensee.

P. If Licensee elects to make alcoholic beverages available for sale, distribution, or consumption during its licensed event, Licensee may be required to hire at its own expense, additional public or private security officers as determined by the City.

6. NON-EXCLUSIVE USE. City grants this License to the Licensee as a non-exclusive right to use the Premises, except that the City agrees it shall not grant a similar license or right to use the Premises during the dates and times of this License, without first consulting and making a suitable mutual agreement with Licensee. Licensee's use of the Premises is nonetheless a "public use" provided by a private entity.

7. CITY'S RIGHT OF ENTRY. Licensee shall permit City and its agents and employees to enter the Premises at all reasonable times for the purpose of inspecting them.

8. NOTICES. All notices, demands, or other writings in this License provided to be given or made or sent, or which may be given or made or sent, by either party to this License to the other, shall be deemed to have been fully given or when either hand delivered to the offices of or made in writing and deposited in the United States Certified Mail, and postage prepaid, or emailed and receipted, and properly addressed to:

to the City: City of Stuart
ATTN: City Manager
121 SW Flagler Avenue
Stuart, FL 34994
cmanager@ci.stuart.fl.us and mmortell@ci.stuart.fl.us

to the Licensee: Stuart Green Market, Inc.
3467 SW Englewood Street
Port St. Lucie, FL 34953
stuartgreenmarket@yahoo.com

9. TAXES AND ASSESSMENTS. In the event any governmental taxes or assessments are levied upon the Premises as a result of the occupancy and activities of the Licensee hereunder, Licensee, as an additional license fee, shall pay and discharge said taxes or assessments as they become due, promptly and before delinquency.

10. LIENS. Licensee shall keep all of the Premises free and clear of any and all liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Licensee, any alteration, improvement, or repairs or additions which Licensee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Licensee on or about the Premises, or any obligations of any kind incurred by Licensee. Licensee shall at all times promptly and fully pay and discharge any and all claims on which any lien may or could be based, and shall indemnify City and all of the Premises and all buildings and improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens.

11. INDEMNIFICATION OF CITY. Under separate consideration, the amount and sufficiency which is acceptable to each party, it is further agreed that the City shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Licensee, or by any of Licensee's vendors, or any other person who may at any time be using or occupying or visiting the Premises or be in, on, or about the Premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Licensee or of any occupant, vendor, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing. Licensee shall hold the City, its agents and employees harmless, and shall indemnify the City, its agents and employees against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. The foregoing indemnification shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of the City, its agents, or employees. This indemnification shall be insured, at all times during this License, by the Licensee, in amounts provided in Section 13, below, failing which this License shall be automatically terminated without further action by the City.

12. INSURANCE. Licensee shall maintain in effect throughout the term of this License personal injury liability insurance covering the Licensee, and the City and the operations of the business in the amount of $1,000,000 for injury to or death of any one person, and $1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance on the Premises in the amount of $50,000. The insurance shall specifically insure Licensee against all contractual liability assumed by it under this License, as well as liability imposed by law, and shall insure both City and Licensee.

13. REDELIVERY OF PREMISES. Licensee shall pay the fees and all other sums required to be paid by Licensee under this License in the amounts, at the times, and in the manner provided in this License, and shall keep and perform all the terms and conditions of this License on its part to be kept and performed, and at the expiration or sooner termination of this License, Licensee shall peaceably and quietly quit and surrender the Premises to City in good order and condition. In the event of the non-performance by Licensee of any of the covenants that Licensee has undertaken, this License may be terminated as provided herein.

14 NOTICE OF DEFAULT. For any material breach of this License, including the failure to maintain the required insurance coverages, the Licensee shall not be deemed to be in default under this License unless City shall first give to Licensee 10 days written notice of the default and Licensee fails to cure the default within 10 days, thereafter. Fees shall be due and shall become delinquent without notice thereof given by City to Licensee.

15. DEFAULT. In the event of any material breach of this License by Licensee, and following notice as required herein, if any is required, City, in addition to the other rights or remedies it may have, shall have the immediate right to cancel this License and may remove the Licensee and all invited or uninvited persons and property from the Premises. Such personal property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Licensee.

16. WAIVER. The failure of either party to take action with respect to any breach of any term, covenant, or condition contained in this License shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach, or of any other term, covenant, or condition contained in the License. The subsequent acceptance of the license fee under this License by City shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this License, other than the failure of Licensee to pay the particular license fee so accepted, regardless of City's knowledge of the preceding breach at the time of acceptance of the license fee.

17. MISCELLANEOUS. The License embodies the entire understanding and agreement of the parties concerning the use of the Premises by the Licensee. The Licensee shall not rely upon any prior written agreement or any oral agreement concerning the use of the Licensehold. No modification or amendment to this License

Exhibit A



process to enforce any terms of the License, the prevailing party shall be entitled to reasonable attroneys fees and costs, at all levels of litigation.

IN WITNESS WHEREOF, the parties have respectively signed and sealed this License the days and year written below.

ATTEST:

MARY KINDEL
CITY CLERK

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL
CITYATTORNEY

CITY:
CITY OF STUART, FLORIDA

BECKY BRUNNER
MAYOR

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LICENSEE:
STUART GREEN MARKET, INC.

PAT BRADLEY
PRESIDENT