# ABSOLUTE NET
# NON-SUBORDINATED LEASE
## Flagler Park
## Restaurant property

**LESSOR:**
**CITY OF STUART, FLORIDA**

**and**

**LESSEE:**

**Hudson's on the River, LLC**

**Dated as of April 27, 2020**
**(amended July 27, 2020)**
**(second amendment May 3, 2021)**

**ABSOLUTE NET NON-SUBORDINATED LAND LEASE**
**(Flagler Park Ancillary Restaurant)**

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**ABSOLUTE NET NON-SUBORDINATED LAND LEASE**
**(Flagler Park Ancillary Restaurant)**

**THIS ABSOLUTE NET NON-SUBORDINATED LAND LEASE** (the "Lease"), executed on the dates hereinafter set forth and commencing on the date provided herein, between CITY OF STUART, a Florida municipal corporation ("Lessor", "City", or "Stuart City Commission", as appropriate), and HUDSON'S ON THE RIVER, LLC, a Florida limited liability company ("Lessee", or "Hudson's", as appropriate), for the following uses and purposes:

## RECITALS

WHEREAS, on October 28, 2019, the Stuart City Commission, entered into a lease agreement with the Pelican Café, L.L.C, a Florida limited liability company ("Pelican Café"). Said agreement included an assignability clause which also authorized the City to renegotiate the rental payments due to the City for the balance of the lease term; and

WHEREAS, Hudson's has entered into an assignment agreement with the Pelican Café conditioned upon reaching amicable terms with the City of Stuart; and

WHEREAS, the City and Hudson's have agreed to enter into a new lease which will replace the lease with the Pelican Café and will be the controlling document hereafter.

WHEREAS, the City, as fee simple title owner of the Property, desires to lease the Property to Hudson's to be operated as a restaurant as an ancillary use to the Flagler Park; and

WHEREAS, HUDSON'S has approved this Lease, and authorized and directed its execution by the duly Authorized Representatives of, and on behalf of, HUDSON'S, as Lessee.

WHEREAS, HUDSON'S and the CITY hav reviewed the FRDAP grants for the boardwalk, parking area and Flagler Park. The parties to this lease agree to remain in compliance with the FRDAP grants and all improvements will take place outside of the boundary map for Flagler Park that is attached to the FRDAP grant for Flagler Park.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

## AGREEMENT

**1. RECITALS.** The foregoing recitals are true, correct, and incorporated into this Lease.

**2. DEFINITIONS.** Capitalized terms used in this Lease shall have the following definitions:

**2.1.** "Gender" As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders.

Unless the context shall indicate otherwise, the singular shall include the plural as well as the singular number.

**2.2.** "Act" or "Action" means any lawful action taken by the Stuart City Commission or the SCRA, as duly authorized in Chapter 163 or Chapter 166, Florida Statutes, the Charter of the City of Stuart, Florida, and the ordinances and resolutions of the City.

**2.3.** "Absolute Net Rent" means this Lease (that is sometimes colloquially called a "triple net lease") in which the Lessee pays rent, plus all of the costs of ownership and operation, including but not limited to insurance, real estate taxes, repair and replacement, cleaning, and utilities. All obligations of the lessee under the terms of this document shall be deemed as a rental obligation regardless of the description or location in the agreement.

**2.4.** "Additional Rent" means any additional obligation of the Lessee to reimburse the Lessor for sums paid on behalf of the Lessee for all taxes when due or insurance premiums, when due, and as required to be maintained by the Lessee during any Term of this Lease. It shall also mean any other sum that is due to the Lessor from the Lessee as a result of its default, including but not limited to sums paid on behalf of the Lessee, and Lessor's reasonable attorneys' fees and costs.

**2.5.** "Authorized Representative" means the natural or corporate Person or Persons designated and appointed from time to time as such by either party.

**2.6.** "Building Construction Plans" means the plans and specifications submitted by the Lessee and approved by the City that conform to the requirements of the Florida Building Code, and when approved, are satisfactory for the details of construction of the structures on the Property which, upon the final inspection and approval by the Building Official shall become the Leasehold Improvements.

**2.7.** "Building Official" means that Person or those Persons authorized under City's ordinances and the Florida Building Code to perform building inspections and issue on behalf of the City of Stuart a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion, as provided by law.

**2.8.** "Building Permit" means for all or each part of the Leasehold Improvements to be constructed on the Leased Property, any permit, including demolition or foundation only permits, issued by the City of Stuart as the governmental authority having jurisdiction over construction on the Property.

**2.9.** "Existing Improvements" means the buildings, structures, and any other improvements located on the Leased Property prior to the execution of the Lease.

**2.10.** "Improvements" means collectively the Existing Improvements and the Leasehold Improvements.

**2.11.** "Leasehold Interest" means the Lessee's interest under this lease as well as any equitable interest in the Leased Property, the Leasehold Improvements, and all easements and rights appurtenant thereto, as provided by this Lease and applicable law.

**2.12.** "Leasehold Improvements" means the improvements constructed by or on behalf of the Lessee on the Leased Property, including, all structures on and improvements to the Leased Property.

**2.13.** "Leased Property" or "Property" means the real property described and depicted in Exhibit "A".

**2.14.** "Major Alteration" means any addition, alteration, change or improvement to the exterior of any of the Leasehold Improvements that constitutes a substantial deviation from those depicted on the plans and specifications of the Leasehold Improvements approved by Lessor, provided, however, such term shall not include periodic maintenance activities such as replanting or replacing of landscaping, repainting exteriors and replacing damaged, worn or obsolete fixtures, or replacing approved signage.

**2.15.** "Rent" means all rent, as the case may be, as provided in Article 6, together with all taxes due and owing on the Property or the Lease; all unpaid liability or casualty insurance premiums as described in the Lease; all other financial responsibilities of the Lessee pursuant to the terms herein and any late rent that is due and owing.

## 3. LEASE.

**3.1.** The Lessor leases to the Lessee, and the Lessee accepts from the Lessor, the Leased Property upon and subject to the terms of this Lease. Lessee accepts the Property in "AS IS" and "Where IS" condition, without any warranties express or implied.

## 4. USES.

**4.1. Construction and Maintenance.** Subject to the terms and conditions of this Lease, Lessee shall use the Leased Property for the operation of a restaurant that shall serve as an ancillary use for the Flagler Park recreation area.

**4.2. Maintenance**. The parties agree that this is a long-term land lease and the Lessee shall be responsible for all maintenance and repair (and expenses relating to such maintenance or repair) of the Improvements and any landscaping located on the Leased Property, with the exception of any maintenance or repairs of the seawall located on or adjacent to the Leased Property which will be the sole responsibility of Lessor.

**4.3. Public Park**. The parties acknowledge that this restaurant is an ancillary use for the Flagler Park and therefore, all common areas outside must remain open to the public during normal operating hours without restricted or conditional access. The Florida Recreational Development Assistance Program entered an agreement with the City of Stuart on September

7, 2001 for the development of Flagler Park Pursuant to the terms of the grant agreement, the land described in the grant will remain in compliance with the Florida Administrative Code 62D-5.059 and therefore land which is developed with FRDAP funds shall be dedicated in perpetuity as an outdoor recreational site for the use and benefit of the general public.

**4.4.** The parties to this agreement recognize that Hudson's will be located at Flagler park and operate as an ancillary use thereto. However, notwithstanding anything to the contrary set forth in Section 4.3 above, Hudson's shall have the right to make final operational decisions and therefore shall have the right to refuse service or accommodation so long as it doesn't violate any civil rights in exercising such discretion.

## 5. LEASE TERM.

**Initial Term.** The Initial Term of this Lease shall commence on May 1, 2020 and shall continue for a period of Ten (10) years ("Initial Term"). The Lessee shall have Two (2) options to extend the Lease. Each option to extend shall be for an additional term of ten (10) years (each additional Ten (10) year term may be referred to hereinafter as an "Option Term" and they may be collectively referred to hereinafter as "Option Terms") for a potential total term of Thirty (30) years. At the end of the original lease as set forth above, the Tenant shall be entitled to two additional options for a term of ten (10) years each. Prior to the expiration of the original lease terms, the parties agree that the Tenant will pay for an appraisal to determine the fair market value of the property at that time. Unless Lessee delivers written notice to Lessor at least Ninety (90) days prior to the expiration of the Initial Term or any additional option referenced herein indicating that Lessee is electing to exercise the next option to extend the Lease for the Option Term, Lessee shall be deemed to have waived the option to extend the Lease and the Lease shall end at 11:59 on the last day of the Lease Term.

## 6. ABSOLUTE NET RENT.

**6.1.** It is the intent of the parties that this Lease shall provide for Absolute Net Rent. In addition to any "rent" payments and beginning on the Lease Commencement Date, continuing throughout the Lease Term, Lessee shall pay, before they become delinquent, all taxes. "Taxes" as used herein, means all real property taxes, rates, duties and assessments, local improvement taxes, whether a general or special, that are levied, rated, charged or assessed against the Premises or any part thereof, and any and all Sales or Use Taxes due on Rent to the Lessor from time to time by any lawful taxing authority, whether Federal, State, Municipal, 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 commencement date. In consideration of the warranties, representations and covenants made by Lessee in this Lease, Rent payable under this Lease shall be as follows:

6.1.1. **Initial Rent.** For the period commencing on September 1, 2021or on the first day of the month after issuance of a Certificate of Occupancy, whichever occurs sooner ("Rent Commencement Date") and ending on the day before the second anniversary of the Rent

Commencement Date, the "Initial Rent" described in this paragraph shall take the place of the "Base Rent" and "Additional Monthly Compensation". The parties agree that the initial rent shall begin at $1,965.00 per month plus sales tax. Lessee shall also pay to the City as additional rent, the sum equal to three percent (3%) of the gross sales, not including sales tax, if any. The additional rent shall be determined on a monthly basis and shall be due and payable to the City on or before the fifteenth day of each month. Along with the rent payment, the Lessee shall furnish a fully executed copy of the monthly Sales and Use Tax Return (DR-15CS), as submitted to the Florida Department of Revenue. The first initial rental payment shall be due on September 1, 2021 or on the first day of the month after issuance of Certificate of Occupancy, whichever occurs sooner. . Then, beginning on the second anniversary of the Rent Commencement Date, the initial rent shall cease and the parties agree that the Base Rent shall be due.

6.1.2. Base Rent: Commencing on the second anniversary of the Rent Commencement Date (Base Rent shall become due 24 months after the date on which the initial rent shall become due) and continuing on the first day of each month throughout the term of this Lease (including any Option Terms), Lessee shall pay to Lessor, at the address set forth for notices under this Lease or at such other address as Lessor shall from time to time designate by notice given to Lessee as hereinafter provided as rental for the Leased Premises, in lawful money of the United States of America, a monthly rent payable in advance in the minimum amount of Six Thousand, Five Hundred and 00/100 Dollars ($6,500.00) plus applicable state sales tax or any other tax as may be hereinafter enacted and applicable to the rental revenue of this lease.

6.1.3. Additional Monthly Compensation: In addition to the base rent, commencing on the second anniversary of the Rent Commencement Date, Lessee shall be responsible to pay Landlord additional rent equal to three percent (3%) of Lessee's gross sales in excess of One Million, Five Hundred Thousand and no/100 Dollars ($1,500,00.00) per year, not including Florida Sales and Use Taxes collected, if any, derived from the Leased Premises. Said gross sales shall be determined on a monthly basis and shall be due and payable to Landlord on or before the fifteenth day of the following month during which it has been determined that the annual gross sales have exceed One Million Five Hundred Thousand Dollars. Unless otherwise agreed in writing, the annual calculation shall begin on January 1 of each year and end on December 31. Along with the rent payment, the Lessee shall furnish a fully executed copy of the monthly Sales and Use Tax Return (DR-15CS), as submitted to the Florida Department of Revenue.

6.1.4. Late Fee: The base rent is due no later than the first day of each month. Any base rent not tendered by the lessor by 5:00 pm on the fifth day of the month is deemed late. A late fee of 5% of the monthly base amount will be payable as a late fee when rent is paid after the fifth day of each month.

6.1.5. Rent Index: The rent shall be adjusted on September 1 each year using the Consumers' Price Index for All Items in Miami-Fort Lauderdale (Series CUURA320SA0) and the new adjusted rent shall be due on the first day of October each

year, provided that annual base rent shall never increase by more that three percent (3%) of the prior year's annual base rent. Notwithstanding anything to the contrary set forth in the preceding sentence, the rent index shall not apply to the first five years and shall begin on October 1, 2025.

6.1.6. In the event that the government prohibits the operation of the Lessee's restaurant, then the Lessee shall be entitled to a pro rata credit from the Base Rent for each day the government prohibits the business from being open. The Lessee shall remain responsible for all other expenses described in the Lease, including but not limited to the taxes, insurance and maintenance.

**6.2. Real Estate Taxes**. The City shall forward the Real Estate/ Ad Valorem tax bill to the Lessee at the address described in this lease within 30 days of receipt of same. The Lessee must pay the entire balance due no later 60 days after receipt of the Tax Notice or December 31, whichever is sooner. If the Lessee fails to pay the bill, the City shall have the right to pay the bill in full and the Lessee shall then owe the City, as additional rent, the amount paid by the City. The amount owed to the City shall be due to the City on the day on which the City's payment has been made and the Lessee shall owe interest at 10 percent per annum on the outstanding balance. If the balance isn't paid to the City in full within 14 days after the date on which the City pays the amount due, the City shall also have the right to terminate this agreement for breach. Notwithstanding anything to the contrary, the parties agree that the Lessee shall be responsible for the taxes, maintenance and insurance for the entire 2020 calendar year.

**6.3. Rent Payments.** Payments of Rent shall be paid monthly to "The City of Stuart" or its assignee, in accordance with provisions this Section 6.

**6.4. Additions to Rent.** All unpaid insurance and tax payments and any taxes, fees described or yet to be implemented required herein shall be considered as additional "rent," and it shall be the responsibility of the Lessee to assure prompt payment by the Lessee, when due, of the same.

## 7. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS AND DAMAGES.

**7.1. Construction to comply with Codes.** Upon issuance of a Building Permit by the City, the Lessee shall commence construction of the Leasehold Improvements in accordance with the plans and specifications approved by the Lessor, and in accordance with the procedures set forth in this Article 7, and the Florida Building Code. All costs of any demolition of the Existing Improvements, and all costs of construction of the Leasehold Improvements shall be borne by, and timely paid for, by the Lessee.

**7.2.** In the event that the Lessee is unable to obtain a permit or operate the business in the manner intended within this Lease, the Lessee shall have the right to rescind this agreement**.** This right of rescission must be exercised in writing prior to March 1, 2021 and is limited to the

inability to construct the Leasehold Improvements as described in the conceptual site plan attached hereto as Exhibit "B" or the inability to obtain a 4COP-SFS liquor license

**7.3. Lessee's Right to Contract.** Lessee shall have the right to enter into separate contracts and agreements for the construction, use, and maintenance of the Leasehold Improvements. At least fourteen (14) days prior to any demolition, or construction in the public rights of way, or on Leased Property which will impact any public space in the park or parking lot, the Lessee shall coordinate directly with the City's Public Works Director or his designee. The Lessor shall not be liable to any contractor, or material provider, for any fee, or cost incurred by the Lessee.

**7.4. Major Alteration of Leasehold Improvements.** In the event Lessee plans to make any demolition, alteration, or change in or to the Leasehold Improvements that constitutes a Major Alteration, the proposed plans and drawings for said proposed Major Alteration shall be submitted to the Lessor for its approval which will not be unreasonably withheld or delayed by Lessor. Notwithstanding the foregoing, Lessee shall be allowed to (i) raise the ground floor of the existing building in order to comply with flood plain regulations promulgated by South Florida Water Management District, and (ii) raise the roof and walls of the existing building by an amount equal to the amount that the floor needs to be raised, provided that Lessor obtains all required building permits from any governmental agencies.

## 8. OWNERSHIP OF IMPROVEMENTS.

**8.1.** Upon the expiration or termination of this Lease, all of the Leasehold Improvements, and any remaining personal property on the Leased Property shall become the sole property of the Lessor.

**8.2.** Storm Water Drainage System and Retention Area: The City is allowing the Lessee to (i) construct a relocated storm water drainage system and retention area on the portion of Flager Park adjacent to the Leased Property located conditioned upon approval of the Public Works department, as shown on the site plan attached hereto as Exhibit "C," and (ii) construct Leasehold Improvements over the portion of the Leased Property where the storm water drainage system and retention area is currently. Lessee shall be responsible for all costs and expenses in connection with the construction of the relocated storm water drainage system and retention area and Lessee shall perform the work in accordance with all regulations and approval of the Public Works Department. Notwithstanding anything to the contrary that may be set forth elsewhere in this Lease, Lessor shall be responsible for all repairs and maintenance (and any costs or expenses in connection with such repair or maintenance) of the entire storm water drainage system and retention area that will be relocated onto the portion of Flagler Park adjacent to the Leased Property as shown on Exhibit "C."

**9. PERMITS, FEES, AND APPROVALS.** Lessor shall be responsible to obtain all necessary approvals and permits and pay all fees prior to making any improvements to the property.

## 10. REPRESENTATIONS AND WARRANTIES.

**10.1.** Lessee represents and warrants to the Lessor that each of the following statements is true and accurate as of the Effective Date, and agrees the Lessor may rely upon each of the following statements:

10.1.1. Lessee is a Florida limited liability company duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida. Lessee shall not later contest this Lease on the basis of a lack of authority or ultra vires act By Lessee.

10.1.2. This Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Lessee, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Lessee.

10.1.3. This Lease and, to the extent such documents presently exist in form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

10.1.4. There are no pending or, to the knowledge of Lessee, actions threatened in writing or proceedings before any court or administrative agency against Lessee which question the validity of this Lease or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Lessee.

10.1.5. To the best of Lessee's actual knowledge, Lessee has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Lessee, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Lessee.

10.1.6. The principal place of business and principal executive offices of Lessee is Hudson's on the River, LLC, c/o Michael J. Matakaetis, Jr.., Manager, 6860 SE South Marina Way, Stuart FL 34996, Stuart, Florida. Lessee shall have the affirmative duty to notify the Lessor, in writing, of any change of address for its principal offices.

10.1.7. The execution, delivery, consummation, and performance under this Lease will not violate or cause the Lessee to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which Lessee is a party or constitute a default there under or cause acceleration of any obligation of the Lessee there under.

**10.2.** Lessor represents, and agrees that Lessee may rely upon, the following statements:

10.2.1. Entering into this Lease is a valid, binding and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

10.2.2. All steps, acts and conditions required to be done as a condition precedent to the execution of this Lease have been done, and the Lessor has full authority to enter into this Lease. Lessor shall not later contest this Lease on the basis of lack of authority or ulta vire act by Lessor.

10.2.3. The parties understand and agree that this land lease is for the land as shown in exhibit "A". This land is within the boundaries of a City Park and is subject to all restrictions related to the park including any grant restrictions related to the acquisition of the park and boardwalks surrounding same. The Lessee agrees that any restrictions in the grant agreements shall supersede this lease.

10.2.4. The individuals executing this Lease and related documents on behalf of Lessee are duly authorized to take such action, which action shall be, and is, binding on Lessee and Lessor.

10.2.5. Hudson's shall be credited for forty (40) parking spaces on Flagler Avenue which shall remain open to the public and shall not be for the exclusive use of the Lessee but shall be credited to the Lessee for purposes of obtaining a permit, licensing or other wise operating the Lessee's business.

## 11. PROPERTY CONDITION.

**11.1.** The Leased Property is subject to certain public rights-of-way or easements for public access, utilities, or similar situations. The Lessee acknowledges that it has made a thorough and complete inspection of the Leased Property and accepts this Lease and the Leased Property and the Existing Improvements and is fully advised of its extent and condition, subject to Lessee's inspection rights during the Due Diligence Period in accordance with the terms hereof. The Lessee fully accepts the Leased Property in its present "as is, where as"

physical state and condition subject to Lessee's inspection rights during the Due Diligence Period in accordance with terms hereof and all other terms and conditions of this Lease.

**11.2.** Lessor agrees to eliminate all of the following items, if any, as are identified in writing by Lessee prior to the Lease Commencement Date:

11.2.1. Reversionary interests;
11.2.2. Liens or other encumbrances; and

11.2.3. Any other matters that would prevent Lessee from using the Leased Property for its intended purpose in accordance with the terms of this lease.

**11.3.** Lessor covenants and agrees that any liens or encumbrances on the Leased Property identified by Lessee as to be unacceptable shall be settled, satisfied, or released by Lessor, at Lessor's sole cost and expense, prior to the Lease Commencement Date. Any covenants, liens or encumbrances existing prior to May 1, 2020 that were not deemed unacceptable in writing prior to the execution of this lease shall be deemed accepted.

**12. GENERAL OBLIGATIONS OF THE PARTIES.** The following constitute obligations and covenants of the parties, their successors and assigns:

**12.1.** Lessee shall keep and maintain all Leasehold Improvements and Existing Improvements (with the exception of any Existing Improvements or portions thereof that are being demolished) on the Leased Property in a safe and secure manner, and in compliance with all governmental laws and requirements. Lessee shall have the right, at its own cost, to contest by appropriate legal proceedings, diligently conducted, the validity or applicability of complying with such laws or requirements. Lessor, on written request, shall sign any appropriate papers, or join in any such contest or empower Lessee to act in the name of Lessor as may be necessary or proper to permit Lessee to contest such laws or requirements. Any city code violations which may occur on the Property, following the Lease Commencement Date, shall be the responsibility of the Lessee, only if caused by and allowed to continue by the Lessee.

**12.2.** In the event of a breach of any of the provisions of this Lease, resulting in an action before a judicial or non-judicial tribunal, the prevailing party shall be entitled to recover from the non-prevailing all costs, expenses, reasonable attorneys' fees which may be incurred or sustained by reason of such breach, including but not limited to, all reasonable attorney's fees incurred through all appeals.

**12.3.** Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased

Property by a Leasehold Mortgagee. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, Florida Statutes, and subsequent revisions of that law. UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED. If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

**12.4. Payment of All Taxes.** For all portions of the Leased Property that are not tax-exempt, from and after the Lease Commencement Date, Lessee agrees to pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Leased Property, if any. From and after the Lease Commencement Date, the Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Lease, including any sales taxes due on rental payments.

12.4.1. The Lessee shall have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Leased Property or the improvements built and placed on the Leased Property, and in case any such real property taxes, assessments, or other charges shall, as a result of such proceedings or otherwise, be reduced, cancelled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or imposed against the Leased Property or the improvements built and placed on them by the Lessee, which are finally determined to be due and payable on any such disputed or contested items. All expenses of such litigation, including court costs, shall be paid by Lessee free of all expenses to Lessor. The term "legal proceeding", as used above, shall be construed as including appropriate appeals from any administrative actions, judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them. If required by law, Lessor agrees to join in any such legal proceeding or empower Lessee to act in the name of Lessor.

Lessor will cooperate with Lessee in any filing or appeal to the Martin County Property Appraiser pertaining to the Lessee's use of the Leased Property for purposes of determining ad valorem real property taxes.

**12.5.** The Lessee agrees, at its expense, to keep and maintain the Leased Property, the improvements, furnishings, fixtures and personal property located thereon in a good state of repair and condition, normal wear and tear or damage by the elements excepted.

**12.6.** After completion of construction of the Leasehold Improvements shown on the exhibits to this lease, Lessee may not, without the prior written consent of Lessor, which consent will not be unreasonably delayed, withheld, or conditioned, make any Major Alteration to all or any part of the Leasehold Improvements located on the Leased Property owned and controlled by Lessee or Lessee's successors or assigns.

**12.7.** The Lessee at its expense agrees to deliver the Leased Property to the Lessor upon the termination of this Lease in a good state of repair and condition at the time of surrender, wear and tear and events of casualty excepted, subject to the terms and conditions of this Lease.

**12.8.** Lessor covenants, warrants and agrees that Lessee, and Lessee's successors and assigns, shall be entitled to peacefully enjoy, to occupy, and to possess the Leased Property throughout the Lease Term without interference, hindrance or molestation.

## 13. CONDEMNATION.

**13.1.** Lessor represents and warrants to Lessee that Lessor has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Property. In the event of a taking of all of the Leased Property or so much of it so as to render the Leased Property unfit for purposes intended by this Lease as determined by Lessee in its reasonable discretion, for any public or quasi-public purpose, under any statute or by right of eminent domain, the Lessee's liability to perform the terms and conditions of this Lease shall cease, but the Lessee shall be entitled to any claim against the condemnor to which the Lessee may be entitled. Lessor shall refund to Lessee any Rent or other sums paid by Lessee for the period after the termination date of this Lease. In the event that Lessee is not a party to such condemnation, Lessee shall receive any portion of an award or compensation to the Lessor which is attributable to the fair market value of Lessee's Leasehold Interest, less the value of the reversionary interest in the Leasehold Improvements, as determined by any court or courts of competent jurisdiction. Notwithstanding anything set forth herein to the contrary, to the full extent under applicable law, Lessor hereby waives any and all rights to take any portion of the Leased Property by eminent domain or condemnation proceeding. Lessor shall have no interest in any such award, compensation or payment, or any portion thereof, made in respect of the Leasehold Interest or the Leasehold Improvements, all of which shall belong to and be paid to Lessee.

**13.2.** In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be feasible for the continued operation of restaurant operated by Lessee on the Leased Property for the purposes intended by the Lessee as determined by Lessee in its reasonable discretion, then this Lease shall continue in full force and effect, and Lessee shall receive that portion of the award or compensation allocable to its Leasehold Interest and all

awards for any improvements located on the Property. Lessee shall use the proceeds received by the Lessee pursuant to this Article 16 for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit, but only to the extent that Lessee receives proceeds sufficient to cover said restoration and in no event shall Lessee be required to pay any amounts in connection with said restoration.

**13.3.** In determining whether repair or restoration is feasible, the Lessee shall consider, among other factors: (i) the cost of repairing or restoring the improvements affected by the condemnation; (ii) the amount of damage or destruction involved and the condemnation proceeds available to pay for the repair or restoration of the improvements affected by the loss; (iii) the effects of the loss on the Lessee's ability to operate the restaurant located on the Leased Property in a commercially reasonable manner, and whether it is commercially reasonable to attempt to repair or restore; (iv) Lessee's ability to obtain all necessary Permits and other governmental approvals required to repair or restore, and operate the Project in compliance with all applicable City codes and ordinances and all other applicable governmental laws and to a reasonably commercial standard or condition; and (v) the length of time remaining in the Lease Term at the time of the condemnation.

## 14. DEFAULTS AND REMEDIES.

**14.1. Lessee's Defaults.** Each of following events shall be events of default by Lessee under this Lease ("Event of Lessee's Default"):

14.1.1. **Failure to Commence. S**hould Lessee fail to commence construction of the Leasehold Improvements as shown on the conceptual site plan attached hereto as Exhibit "B" and complete said improvements by March 1, 2021, the City shall have the right to terminate this Lease and the Leasehold Interest shall terminate. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation under this Lease.

14.1.2. **Time and Performance are the Essence of the Lease.** Lessor and Lessee each covenant and agree promptly to perform, comply with and abide by this Lease, and each agree that time of payment and of performance of material obligations are of the very nature and essence of this Lease.

## 15. OWNERSHIP AT TERMINATION OR EXPIRATION.

**15.1.** Subject to the provisions herein, any improvements and fixtures located on the Leased Property at termination of the Lease shall become the sole property of the Lessor.

**15.2.** Any trade fixtures or personal property installed, attached to or located on the Leased Property by Lessee or any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such Lessee's or subtenant's property and may be removed by the Lessee

or subtenant prior to the termination of the Lease, provided that the Lessee or subtenant shall repair, restore and save the Lessor harmless from all damage to any of the Leased Property including improvements located thereon and owned or controlled by the Lessee or subtenant, caused by such removal. While this Lease is in effect, nothing herein is intended to prevent the Lessee or a subtenant from being entitled to depreciation on the improvements and fixtures that are now or shall subsequently be erected upon the Leased Property. All personal property not removed by the Lessee within thirty (30) days of the Termination of the Lease, shall become the sole property of the Lessor.

**16. LIABILITY INSURANCE.**

**16.1.** Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to Lessor. **The coverages required herein shall be written on occurrence-type basis and the Lessor shall be listed as an additional insured**.

**16.2.** Unless otherwise agreed in writing by the Lessor's Authorized Representative, the amount, form, and type of insurance shall conform to the following minimum requirements:

16.2.1. Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least $100,000 each person - accident, $100,000 each person - disease, $500,000 aggregate - disease.

16.2.2. Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Form filed by the Insurance Services Office. Lessor shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of $1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

16.2.3. Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors. Fire Legal Liability insurance must be endorsed on this policy with limits no less than $100,000 per occurrence.

16.2.4. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

**16.3.** Lessee shall require Contractors during construction of the Leasehold Improvements to provide or cause to be provided, pay for and keep in full force and affect, the types and amounts of insurance customarily carried by contractors and subcontractors on jobs

comparable to this Project, including but not limited to Workers' Compensation, vehicle and general liability insurance.

**16.4.** Required insurance shall be documented by certificates of insurance that provide that Lessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Lease must be listed on the certificate. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Lessor, an ACORD 25. Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the Lessor the Lessee shall, upon instructions of Lessor, cease all operations under the Lease until directed by Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Stuart, 121 SW Flagler Avenue, Stuart, FL 34994.

**16.5.** Lessee's required coverages shall be considered primary and all other insurance shall be considered as excess, over and above the Lessee's coverage.

**16.6.** Notwithstanding anything in this Lease to the contrary, Lessor waives any rights of action for negligence against Lessee, which may arise during the Lease Term for damage to the Property or to the personal property therein, resulting from any fire or other casualty of the kind which is covered by All Risk property insurance policies carried by Lessee.

**16.7.** For separate consideration, the sufficiency and amount of which is agreed by both parties, the Lessee shall indemnify, defend and save harmless the Lessor from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease, for any personal injury, bodily injury, loss of life or damage to property sustained on the Leased Property, or to or about the Leasehold Improvements placed on the Leased Property, or their appurtenances, or upon adjacent sidewalks or streets excepting therefrom public streets maintained by Lessor, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Lessee shall also specifically defend any action or proceeding brought against Lessor as the result of any such claim for bodily injury, loss of life or damage to property, at no cost or expense to Lessor. If Lessee has supplied Lessor with evidence of insurance covering any of the aforementioned risks, no claim shall be made against Lessee unless and until the insurer shall fail or refuse to defend or pay all or any part thereof.

**16.8.** Notwithstanding that each party to this Lease shall carry liability insurance, and shall even name each other as additional insureds, the Lessor hereunder shall only be liable for claims, torts, actions, damages, suits, and causes of action derived from its own actions or inactions and for those of its officials, employees and agents. It is the intent of this Lease that the City of Stuart, as Lessor, shall be responsible only for its own tort liability, and not that of the Lessee, and the Lessee specifically acknowledges the limitations of liability afforded

to the Lessor by the provisions of Section 768.28, Florida Statutes, which are fully claimed by the Lessor. The Lessee shall not be deemed to be in default under the provision of this Article 21 if all or a portion of insurance required under this paragraph is not commercially available.

**16.9.** Lessor and Lessee hereby waive, or agree to cause their respective insurers to waive subrogation or consent to a waiver of right of recovery, or to agree that the insurance is not invalidated if the insured has waived, or has waived before the casualty, the right to recover against the other party.

## 17. CASUALTY AND CASUALTY INSURANCE.

**17.1.** Lessee shall determine the amount and type of property and casualty insurance required herein. However, at a minimum, the Lessee shall provide an All Risk Policy in the amount of at least eighty (80%) percent of the replacement value of the Leasehold Improvements. The Lessor shall be named as a beneficiary of any such policy "as its interest may appear." It shall be the Lessee's sole obligation to insure the Leasehold Improvements, and the Lessor shall have the right, following written notice to Lessee, but not the obligation to provide such insurance, if the Lessee fails to do so. The cost of such insurance shall become additional Rent to the extent unpaid by Lessee. Notwithstanding this provision, the Lessee shall obtain all other coverages required herein.

**17.2.** If a casualty loss affecting all or that part of the improvements located on the Leased Property should occur for all or that part of the Leasehold Improvements, the Lessee shall promptly notify the Lessor about the loss ("Notice of Loss"). The Notice of Loss shall include the date on which the loss occurred and the determination of the Lessee, in its reasonable opinion, as to whether the repair or restoration of the improvements affected by the loss is feasible. If repair or restoration is feasible as determined by Lessee, the proposed construction schedule and budget for implementing such repair or restoration shall be sent to Lessor within ninety (90) days after delivery of the Notice of Loss, subject to Unavoidable Delay. The Lessee recognizes and agrees that this Lease is a "non-subordinated land lease" and that Lessee is solely responsible for repairs to any and all Leasehold Improvements on the land. Such repairs shall be pursued in a timely and workmanlike manner, and without delay.

**17.3.** If the Lessee determines in its reasonable opinion that repair or restoration is feasible, the casualty insurance proceeds ("Proceeds") if any, shall be used, collected and disbursed to pay for the repair or restoration in accordance with the proposed construction schedule and budget for implementing such repair or restoration. If any Proceeds remain after paying for the repair or restoration, they shall be disbursed to the Lessee.

**17.4.** If the Lessee determines in its reasonable opinion that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to the Lessor. Upon such surrender, this Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for

the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee.

**17.5.** Subject to Lessee's determination that repair or restoration of the Leasehold Improvements is feasible in accordance with 17.4 above, Lessee is required to rebuild if the Leasehold Improvements are destroyed in whole or in part by fire, flood, or windstorm damage, or other casualty, or any combination thereof, whether insured or noninsured, or whether totally destroyed or partially damaged. Monthly rent payments to the City during such occurrence shall be forgiven during a period of disruption after the date of such casualty, and only if the Lessee is not collecting Rents from the sub-tenants. This Lease shall not be terminated during such period provided Lessee is using good faith efforts to cause the Leasehold Improvements to be reconstructed in an expeditious manner provided, however, Lessee shall not be penalized for its inability to obtain permits or building materials or skilled labor due to the consequences of the event that caused the casualty (for instance, a hurricane). Restitution of the Leasehold Improvements is the prime objective of the Lessor, subject however, to the terms of 17.4 above.

**17.6. SUCCESSORS IN INTEREST.**

17.6.1. The covenants and agreements contained in this Lease shall be binding on and inure to the benefit of the respective permitted successors and assigns of the parties whether by merger or otherwise.

**18. NOTICES.**

**18.1.** All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

18.1.1. All notices, demands, requests for approvals or other communications given by either party to another shall be in writing signed by the party or its counsel identified below, and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) courier service, , or (c) hand delivery to the office for each party indicated below and addressed as follows:

To Lessee:

Hudson’s on the River, LLC
Michael J. Matakaetis, Jr., Manager
6860 SE South Marina Way
Stuart FL 34996

Copy to:

Steven G. Vitale, Esq.
211 S. Colorado Ave.
Suite 2
Stuart FL 34994

To the Lessor:

City Manager
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

Copy to:

City Attorney
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

**18.2.** Any such notice shall be considered delivered: (a) on the date of hand delivery, (b) on the first business day after the date of deposit with an overnight courier, (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as later changed), shall be deemed to have been an effective delivery as provided in this Section 18. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other party, and such notices shall be effective upon receipt. Until a written notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

**19. SEVERABILITY.**

**19.1.** If any paragraph, subparagraph, sentence, clause, provision, or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected.

**20. LEASEHOLD MORTGAGES.**

**20.1.** No mortgage may be placed on the underlying fee simple interest of the City or on the Leasehold Improvements.

**21. ASSIGNMENT.**

**21.1.** The Lessee may assign this Lease to any person or entity, subject to consent by the Lessor which shall not be unreasonably withheld or delayed. The Lessor shall respond within forty (40) calendar days of the receipt of all necessary information (including information

about the financial and experience ability of the assignee to perform under this Lease), for an assignment by the Lessee. Such consent must be obtained formally by affirmative action of the Lessor's City Commission prior to any assignee taking control or occupancy of the Property or any portion thereof.

**21.2.** Lessor's criteria to approve an Assignment of this Lease shall be the following:

21.2.1. The City Commission, in its reasonable discretion, must be satisfied that the assignee intends to use the Leased Property in a manner that is consistent with uses allowed by this Lease.

21.2.2. The City Commission must be satisfied in its reasonable discretion that the assignee possesses the financial capacity, a good reputation, and sound managerial ability to operate the Project successfully on the Leased Property.

21.2.3. **COMPLETE AGREEMENT.**

21.2.3.1. 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.

**22. 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.

**23. SUBROGATION.** The Lessor shall have the option, after sixty (60) calendar days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of the Lessee not timely performed by Lessee under this Lease, which remains outstanding after all notice and cure rights, and the amount of any such payment and the value of any such performance, together with interest on them, shall be secured by this Lease, and shall be promptly due and payable to the Lessor as Additional Rent.

**24. CONFORMITY TO LAW.** Lessee acknowledges that the Leased Property and the Existing Improvements, and Leasehold Improvements to be constructed thereon are subject to all applicable laws, and to provisions and restrictions governing land use and zoning, site and structure design, compliance with building, environmental and occupational codes as determined by the applicable governing entity or instrumentality having jurisdiction.

**25. LICENSES AND PERMITS.** Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all applicable laws relative to

development and operation to be conducted on the Leased Property in accordance with this Lease. Upon Lessor's written request, at reasonable intervals, Lessee agrees to provide Lessor with a copy of such permits and payments related to the Leased Property.

**26. RADON GAS.** Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type:

**26.1. 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.**

**27. RESTRAINTS UPON USE.** Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions in the City Codes, and the terms of this Lease. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority.

**28. NO MERGER** There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Leased Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Property or any interest in such fee estate.

**29. SUBORDINATION.** Lessor in no way subordinates its interest in the property or structures thereon. The Lessee is prohibited from allowing any liens to be recorded against this parcel. Further, the parties are on notice that this property is owned by a Florida Municipality and the Lessee shall not have authority to obligate the real property in any way or form.

**30. RELATIONSHIP OF THE PARTIES / NO JOINT VENTURE.** The parties hereby agree that it is their intention to create only the relationship of Lessor and Lessee, and neither this Lease, nor any term, provision, payment or right hereunder shall in any way or for any purpose, constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint adventurer or a member of a joint enterprise with Lessee, nor shall this Lease, or any term or payment required herein, confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business.

**31. EXCULPATION.** Notwithstanding anything to the contrary provided in this Lease, no officer, director, trustee, employee, agent, advisor or affiliate of Lessor, nor any holder of a superior interest in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessor is in breach or default with respect to its obligations or otherwise.

**31.1.** Notwithstanding anything to the contrary provided in this Lease, no officer, director, trustee, employee, agent, advisor or affiliate of Lessee, nor any holder of a superior interest

in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessee is in breach or default with respect to its obligations or otherwise.

**32. LEASE FOR BENEFIT OF PARTIES HERETO.** Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Lessor, Lessee or their officers, directors or incorporators, any right, remedy or claim under or by reason of this Lease or any covenant, condition or stipulation thereof; and the covenants, stipulations or agreements contained in this Lease are and shall be for the sole and exclusive benefit of the aforementioned parties, and their permitted successors and assigns.

**33. QUIET ENJOYMENT.** Lessor agrees that Lessee, upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, shall (subject to Lessor's rights specified in this Lease) lawfully and quietly occupy the Premises during the term of this Lease as against Lessor or any persons claiming under or through Lessor.

**34. UNDERSTANDINGS AND AGREEMENTS.** All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Lease. The terms and conditions of this Lease shall supersede and replace the terms and conditions of the Absolute Net Non-Subordinated Land Lease entered into by and between the parties on April 27, 2020.

**35. COVENANTS RUN WITH THE LAND.** All provisions of this Lease and all exhibits attached hereto, and any amendments thereof, shall be construed as covenants running with the Land, and of every part thereof and interest therein.

**36. CAPTIONS.** The captions used in this Lease and upon the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

**37. GOVERNING LAW AND VENUE.** This Lease shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in Martin County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

**38. AUTHORITY OF LESSEE AND LESSOR.**

**38.1.** Lessee is a limited liability company, and each individual executing this Lease on behalf of the company is duly authorized to execute and deliver this Lease on behalf of the company in accordance with a duly adopted resolution of the Managing Member(s) of the company, and that this Lease shall as of the Effective Date be binding upon the company in accordance with its terms. Lessee shall, within ten (10) days after the execution of this Lease,

deliver to Lessor a certified copy of a resolution of the Managing Member(s) of the company authorizing or ratifying the execution of this Lease.

**38.2.** Lessor is a municipal corporation, and each individual executing this Lease on behalf of the Lessor is duly authorized to execute and deliver this Lease on behalf of the Lessor in accordance with a duly adopted resolution of the Stuart City Commission, and that this Lease shall as of the Effective Date be binding upon the Lessor in accordance with its terms. Lessor shall, within ten (10) days after the execution of this Lease, deliver to Lessee a certified copy of a resolution of the City Commission authorizing or ratifying the execution of this Lease.

**39. SUCCESSORS AND ASSIGNS.** Except as otherwise provided in this Lease, the conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**40. INDEPENDENT COUNSEL AND CONSTRUCTION.** Lessor and Lessee each acknowledge and warrant that each has been represented or has had an opportunity to be represented by independent counsel, and has executed this Lease after being fully advised as to its legal effect and significance. This Lease is the result of negotiations between the parties and their respective attorneys, and shall be construed in an even and fair manner, regardless of the party who drafted this Lease or any provision thereof.

**[ALL SIGNATURES ON THE FOLLOWING TWO (2) PAGES]**

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals on this day of July, 2020.

Executed and delivered
in the presence of:

**LESSOR:**
**CITY OF STUART, FLORIDA**
A Florida Municipal Corporation

_____
Print Name:

_____
Michael J. Meier
Mayor

_____
Print Name:

ATTEST:

_____
MARY KINDEL
City Clerk

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
City Attorney

Executed and delivered
in the presence of:

**LESSEE:**
**HUDSONS ON THE RIVER, LLC,**
A Florida Limited Liability Company,

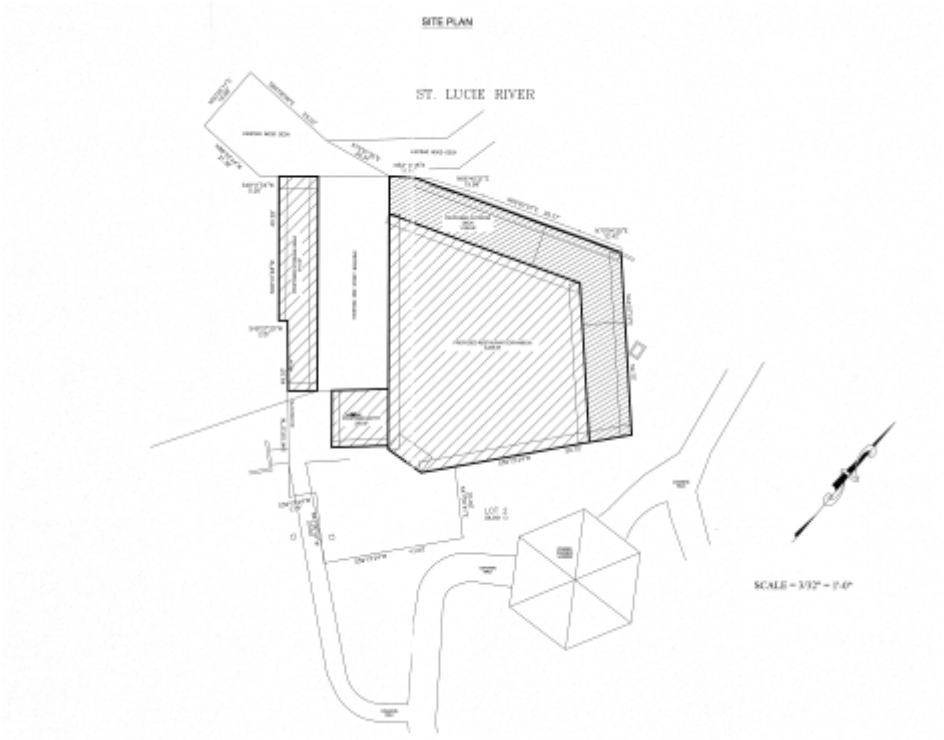
_____
Print Name:

_____
Michael J. Matakaetis, Jr.,
Manager

_____
Print Name:

**ABSOLUTE NET NON-SUBORDINATED LAND LEASE**
**(Flagler Park Ancillary Restaurant)**

CONCEPTUAL SITE PLAN




Site Plan above will be in hashed area outside of park boundary

