Lease of Riparian Rights Agreement

THIS LEASE OF RIPARIAN RIGHTS AGREEMENT AND WAIVER OF OBJECTION (the "Agreement") is made and entered into this__ day of _____, 2022 v, by and between the **City of Stuart, Florida, a municipal corporation, organized and existing under the laws of the State of Florida** (hereinafter referred to as the "Lessor") and **Middle Island Management and Development, LLC, a Florida limited liability company** (hereinafter referred to as the "Lessee").

WITNESS ETH:

WHEREAS, The Lessor is the owner of certain waterfront property located at 59 NW Flagler Avenue, Stuart, FL , which waterfront property is legally described in **Exhibit "A"** attached hereto (the "Upland Premises"); and

WHEREAS, the Lessee desires to lease from Lessor the property, together with the riparian rights (the "Riparian Rights") which attach to the Upland Premises for the purposes set fo11h herein.

NOW, THEREFORE, in consideration of the sum of Ten ($10.00) Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, the patties hereto do hereby agree as follows:

1. Recitals. All of the above recitals are true and correct and are incorporated herein.

2. **Purposes and Permitted Uses.**

a. The Lessee shall have the right to construct, and maintain, a Riverwalk directly adjacent to the Upland Premises as said Riverwalk is graphically depicted in **Exhibit "B"** attached hereto. Said Riverwalk shall be open to the public.

- The construction and maintenance of a Riverwalk which remains open to the public is a material condition of this agreement and failure to provide public access or construct the Riverwalk shall form a basis for the cancellation of this agreement.
- The Lessee has also agreed to provide the City with a lift for the use of the City to keep the City vessel at the marina. The parties agree that the vessel will be between 23-36 feet.

b. The Lessee shall also have the right to construct and maintain one or more Boardwalks, along with docks attached to said Boardwalks, extending from the Riverwalk into the deep water as graphically depicted in **Exhibit "C"** attached hereto.

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c. The Lessee shall have the right to construct gates on the Boardwalks leading out to the docks from the public Riverwalk so as to limit public access to the private marina areas but not on the Public portion of the Riverwalk.

d. The Lessee shall provide a landing point in an appropriate place on the Riverwalk, or within the Marina, for a Water Taxi to dock and allow passengers on the Water Taxi to board, and deboard as appropriate.

3. Term and Conversion to Perpetual Easement. The term of this Lease shall be ninety-nine (99) years, unless later extended or terminated. The Lessee shall have the right, but not the obligation, to extend this Lease for a like term, if at the time of the expiration of the initial Lease, the Riverwalk is actively being used by the Lessee for the public purposes contemplated herein, and written notice is given to the Lessor prior to its expiration

4. Rent. The rent shall include the duty to maintain the Riverwalk as well as provide a liability policy naming the City of Stuart as an additional insured with minimum liability coverage in the amount of $1,000,000.00. The lessee shall pay additional rent for the term of this Lease in the amount of TEN DOLLARS AND NO/100 ($10.00) per annum which Lessee shall pay to Lessor within ten (10) days of the date of this Lease.

5. Rights Reserved to Lessor. The Lessor hereby reserves all rights to the land and access to the water to the extent that said rights do not prohibit the lessee from using the Riparian Rights for the purpose of obtaining a submerged land lease and constructing a dock and marina as depicted herein. The rights shall include but not be limited to sharing of Riparian Rights when appropriate.

6. Notice/Due Diligence: In the event that the Lessee discovers a title issue pertaining to the upland parcel or the Riparian Rights herein, its sole remedy shall be to terminate this agreement. Further, the Lessee is aware of claims already made on related to the upland property and the property adjacent thereto, specifically but not limited to claims by North Stuart Acquisitions and Development, LLC; claims raised in Case number 2021-933 CA in Martin County Circuit Court; claims raised by North Point Ventures, LLC.; claims raised in Case number 2017CA0073 in Martin County Circuit Court as well as any issues pertaining to the Title of the property. The Lessee has had the opportunity to perform a Title Search as well as perform all due diligence that it deems necessary to enter into this agreement and is aware of the memorandums of lease recorded in public records pertaining to the property as well as any other information revealed by a title search and is satisfied and enters this agreement knowingly voluntarily.

7. Riverwalk. The Lessee agrees that the Riverwalk to be connected hereunder and as contemplated herein shall be substantially constructed pursuant to those standards described in **Exhibit "D"** attached hereto. Further, the Riverwalk shall be constructed to the standards necessary to provide public access and use of the Riverwalk as determined by the City of Stuart.

8. Construction of Riverwalk. The Lessee agrees to construct the Riverwalk and connection in front of the Property in a good and workmanlike manner within two (2) years of the date of commencement of construction. Further, if the Riverwalk has not been completed by January 1, 2027, the City shall have the right to terminate this agreement.

9. Maintenance. The Lessee agrees to maintain the Riverwalk for the entire term of

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this Lease, including the Boardwalks and docks, if any, that may be built by the Lessee pursuant to subparagraphs a. and b. of paragraph 2, above. The Riverwalk shall be open to the public at such hours as may be reasonably set by Lessor. The Lessee shall have the right to provide a gate on the Riverwalk at the beginning of any extensions from the Riverwalk that lead to docks. The Lessee shall not permit trash, garbage or debris to be accumulated, and the same shall be promptly removed. Fishing shall not be permitted on the Riverwalk, except for Special Events that may be organized or permitted by the Lessee. Low level lighting may be installed by the Lessee on the Riverwalk in such a manner as to not interfere with the quiet enjoyment of the Upland Premises. If the Upland Premise, including any seawalls or bulkheads, should be in need of maintenance or repair, or new construction that might require access for machinery, barges or vessels, the Lessor may give notice to the Lessee and the Lessee shall temporarily close a portion or portions of the Riverwalk, and allow the Lessor to remove sections of the Riverwalk in order that access for the repairs or construction. The Lessor shall replace such portion or portions of the Riverwalk that it removed or damaged while gaining access.

10. Interest in Riparian Upland Property. Lessor agrees that during the term of this Lease, Lessee does by this Lease possess hereunder sufficient upland interest in the adjacent contiguous upland property owned by Lessor as required by paragraph 18-21.004 (3) (b) Florida Administrative Code. This sufficient upland interest is required by the State of Florida for the Lessee to lease from the State of Florida the submerged lands owned by the State of Florida adjacent to the upland property owned by Lessor. Lessor agrees to take any such further actions in the future as may be required by the State of Florida to maintain, and, or extend the lease of the submerged lands adjacent to the upland property owned by Lessor.

11. Hold Harmless. The Lessee will hold the Lessor harmless from and against any and all claims, actions, damages, liability and expense arising from or out of any occurrence in, upon or at that portion of the Riverwalk constructed or to be constructed as contemplated herein, or any part thereof, or occasioned, wholly or in part, by any act or omission of the Lessee, its agents, contactors, employees, servants and invitees, including the public at large. This indemnification shall also apply to any business invitee of the Lessee that accesses the upland and shall cover injury or expense that occurs on the upland. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall hold the Lessor harmless in connection with such litigation.

12. Waiver of Objection. The Lessor hereby waives any objection related to the Riparian Rights being assigned herein to the Lessee pertaining to the Lessee obtaining any and all governmental permits as may be required for the Lessee to construct or maintain the Riverwalk, as set forth herein.

13. Termination. In the event of destruction of the Riverwalk and in the event reconstruction does not occur within one hundred twenty (120) days or such other time as reasonably required, this Lease may, upon notice from either party to the other, be terminated and, upon such termination, the Riverwalk and all pilings shall be promptly removed by Lessee. Notwithstanding this provision, and, in the event that the Lessee gives written notice within the 120 days described above, and is actively pursuing all of the permits and construction funds necessary to reconstruct the Riverwalk, the Lessee shall be entitled to an additional 180 days as an extension to comply with the terms of this paragraph.

14. Notices.

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As to the Lessee: Middle Island Management and Development, LLC
75 NW Flagler Avenue
Stuart, FL 34994

As to the Lessor: City Manager
City of Stuart, Florida
121 S.W. Flagler Avenue
Stuart, FL 34994

With a Copy to: City Attorney
City of Stuart, Florida

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121 S.W. Flagler Avenue
Stuart, FL 34994

15. Miscellaneous.

Amendments. Any amendment to this Agreement shall not bind any of the parties hereto, unless such amendment is in wiring and executed by the Lessor and the Lessee.

Assignment. All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of their respective heirs, personal representatives, successors and assigns of the parties, provided, however, the Lessee shall not assign this Agreement, or any rights or obligations hereunder without the prior written consent of the Lessor which the Lessor may not unreasonably withhold.

Captions. The captions inserted in this Agreement are for convenience only, and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

Time. Tor the purposed hereof, the parties agree that time shall be of the essence with respect to this Agreement, and that the representations and warranties expressly set forth herein are alI material and of the essence of this Agreement.

IN WITNESS \VHEREOF, the Lessor and the Lessee have executed this Lease Agreement of the day and year indicated.

LESSOR:
City of Stuart, Florida, a municipal corporation, organized and existing under the laws of the State of Florida

MARY B. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQUIRE

Dated as of: _____

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Witnesses:

LESSEE:
Middle Island Management and Development LLC, a Florida limited liability company

_____

By: _____

_____
Print Name

Print Name: _____

_____

Its: _____

_____
Print Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this___ day of_____, 2021, by_____, as _____of Middle Island Management and Development LLC, a for a Florida limited liability company, on behalf of the Company.

_____
Notary Public - State of Florida

(SEAL)

Printed Name: .....

Personally Known OR Produced Identification
Type of Identification Produced:_____

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EXHIBIT "A"

Waterfront Property

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