BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2385-2018

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A MAJOR AMENDMENT TO THE WINDEMERE POINT COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF NW FEDERAL HIGHWAY AND NW WINDEMERE DRIVE THEREBY AMENDING THE PROJECT'S SITE PLAN TO INCLUDE MEDICAL AND OTHER SERVICE RELATED USES; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY THE APPLICANT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING DIRECTIONS TO THE CITY CLERK AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission approved the Commercial Planned Unit Development (CPUD) for Windemere Point (per Ordinance No. 2149-08); and

was amended by Resolution No. 137-08, Resolution No. 15-2010, Ordinance No. 2237-2011, & Ordinance No. 2273-2014 of the Stuart City Commission, and

WHEREAS, The applicant is seeking approval to amend the CPUD'S approved site plan to include medical and other service related uses within the development located on the southeast corner of NW Federal Highway and NW Windemere Drive in the City of Stuart, Fl.

WHEREAS, the applicant has committed to the City that its development will comply with all development codes, plans, standards and conditions approved by the City Commission; and that it will bind its successors in title to any such commitments made upon approval of the CPUD amendment; and

WHEREAS, the City's Local Planning Agency held a properly noticed public hearing at a regularly scheduled meeting on September 20, 2018, to consider a major amendment to Ordinance No. 2149-08, and recommended approval to the City Commission; and

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission meeting held on October 8, 2018 to consider the application of the Owners for the property to approve the major amendment to the CPUD; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the City Commission has determined the application is consistent with the overall planning and development goals and objectives of the City; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: A legal description of the property is set forth in **Exhibit "A"** attached hereto and made a part hereof by reference. A map depicting the property is attached hereto as **Exhibit "B"** and made a part hereof by reference. The new conditions of development for the property are attached hereto as **Exhibit "C"** and made a part hereof by reference, and each shall constitute one of the development documents.

SECTION 2: The following documents on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit "D"**, hereinafter the "Development Documents", shall be deemed a part of the development conditions applicable to the Property:

1. **Overall Site Plan (Windemere Point – Phase 3), Sheet AS-101, by Gallo Herbert Architects, last revised 5.22.18.**

2. **Parking Study, Windemere Point, Stuart Fl by Traffic Impact Group, LLC dated September 5, 2018.**

SECTION 3: In all other respects and except as amended hereby, Ordinance No.2149-08, Resolution No.137-08, Resolution No. 15-2010 and Ordinance 2237-11, Ordinance No. , Ordinance No. 2273-2014, Ordinance 2304-2015 and Resolution 99-2017 shall remain in full force and effect.

SECTION 4: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof are hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any prior contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 5: Except as otherwise provided herein, no development permits, site permits or building permits shall be issued by the City except in compliance with the aforesaid Development Documents. The failure to complete the development, or to comply with the Development Documents, or with any term or condition of development set forth in this ordinance, shall be deemed a zoning violation and no further permits, or other development approvals or orders shall be issued by the City to the owner until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Developer to seek administrative or judicial redress.

SECTION 6: Following the adoption and acceptance of this ordinance by the Owners, and in addition to any other action for failure to complete development or otherwise comply with the Development Documents, the City Development Director may obtain a hearing before the City Commission, and shall thereupon give at least five (5) days written notice of the time, date and location of the hearing, along with specific notice of

the alleged breach. At the hearing before the City Commission the developer may appear, and may contest the allegation of breach or explain the reason or reasons for the breach. Upon a finding of a material breach of the Development Documents and therefore, the Ordinance(s) adopting the same, the City Commission may impose or do any or all of the following:

a. Initiate the process to amend or repeal this or any other ordinance pertaining to the development.
b. Direct the City Development Director to initiate the process to rezone the CPUD property or any portion of the CPUD property.
c. Impose an administrative penalty of up to $1,000.00 for each violation, and up to $5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this CPUD ordinance shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 7: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid; the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 8: This ordinance and agreement shall be effective upon the adoption by the City Commission, and proper execution by the Owners.

SECTION 9: The complete execution and recording of this Ordinance by the City Clerk shall occur no later than 60 days from the date of this approval, failing which

this ordinance shall be void.

Passed on first reading the ____ day of _____, 2018.

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

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

ADOPTED on second and final reading this _____day of _____, 2018.

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
KELLI GLASS LEIGHTON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL MORTELL
CITY ATTORNEY

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2018, by Kelli Glass Leighton and Mary Kindel, the Mayor and City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation.

_____
Notary Public, State of Florida
My Commission Expires:

Notary Seal

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

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ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE ORDINANCE. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO DEVELOP THIS COMMERCIAL PLANNED UNIT DEVELOPMENT ACCORDING TO THIS ORDINANCE, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

_____

_____

Print Name: _____

_____

Print Name: _____

1560 Boone, LLC
A New York Limited Liability Company
By:_____

Joseph Castellano, Owner

OWNERS' ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2015, by Joseph Castellano, the owner of 1560 Boone, LLC.

_____
Notary Public, State of Florida
My Commission Expires:

Notary Seal

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

WITNESSES:

Jensen Beach Investors, LLC
A Florida Limited Liability Company

_____

By:_____

Print Name: _____

Alan Sakowitz, President

_____

Print Name: _____

OWNERS' ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2015, by Alan Sakowitz, the president of Jensen Beach Investors, LLC.

Notary Seal

_____
Notary Public, State of Florida
My Commission Expires:

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

WITNESSES:

Realty Income Properties 5, LLC a
Delaware limited liability company

_____

By:_____

Print Name: _____

Richard G. Collins, Executive Vice President

_____

Print Name: _____

OWNERS' ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2015, by Richard G. Collins, Executive Vice President of Realty Income Properties 5, LLC.

Notary Seal

_____
Notary Public, State of Florida
My Commission Expires:

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

'Exhibit A' Legal Description

EXHIBIT "A"
LEGAL DESCRIPTION OF [B] PROPERTY

ALL THAT CERTAIN LOT, PARCEL OR TRACT OF LAND, SITUATE AND LYING IN THE CITY OF STUART, COUNTY OF MARTIN AND STATE OF FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEING PART OF LOTS 12, 13 AND 14, BLOCK 2, SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, ST. LUCIE GARDENS SUBDIVISION, ACCORDING TO THE PLAT THEREOF FILED JANUARY 22, 1921, RECORDED IN PLAT BOOK 1, PAGE 85, ST. LUCIE (NOW MARTIN) COUNTY, FLORIDA PUBLIC RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 (STATE ROAD 5) AND THE SOUTH LINE OF SAID LOT 12, BLOCK 2, SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, ST. LUCIE GARDENS SUBDIVISION; THENCE

RUN NORTH 18°51'32" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 FOR 687.79 FEET; THENCE

RUN NORTH 31°26'14" EAST FOR 25.66 FEET; THENCE

RUN NORTH 31°30'00" EAST FOR 84.11 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 920.00 FEET; THENCE

RUN EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°30'00" FOR 49.87 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 105.00 FEET; THENCE

RUN EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°58'00" FOR 43.92 FEET TO A POINT OF TANGENCY; THENCE

RUN SOUTH 71°02'00" EAST FOR 941 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 1045.20 FEET; THENCE

RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9°05'00" FOR 165.87 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 96.46 FEET; THENCE

RUN EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°02'42" FOR 21.96 FEET TO A POINT OF TANGENCY; THENCE

RUN NORTH 86°38'18" EAST FOR 152.27 FEET; THENCE

RUN SOUTH 3°09'42" EAST FOR 62.97 FEET; THENCE

RUN SOUTH 69°18'22" WEST FOR 78.94 FEET; THENCE

RUN SOUTH 38°08'45" WEST FOR 79.49 FEET; THENCE

RUN SOUTH 38°08'22" WEST FOR 69.57 FEET; THENCE

RUN SOUTH 16°54'49" WEST FOR 36.27 FEET; THENCE

RUN SOUTH 89°45'43" EAST FOR 95.77 FEET; THENCE

RUN SOUTH 23°08'57" EAST FOR 26.82 FEET; THENCE

RUN SOUTH 7°35'15" EAST FOR 24.37 FEET; THENCE

RUN SOUTH 0°47'23" WEST FOR 110.92 FEET; THENCE

RUN SOUTH 29°15'34" EAST FOR 42.67 FEET; THENCE

RUN SOUTH 53°54'39" EAST FOR 51.12 FEET; THENCE

RUN SOUTH 46°25'23" EAST FOR 17.17 FEET; THENCE

RUN SOUTH 25°16'18" EAST FOR 20.94 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 14, BLOCK 2, SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, ST. LUCIE GARDENS SUBDIVISION; THENCE

RUN NORTH 89°29'56" WEST ALONG THE SOUTH LINE OF SAID LOTS 14, 13 AND 12, BLOCK 2, SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, ST. LUCIE GARDENS SUBDIVISION, FOR 626.58 FEET TO THE POINT OF BEGINNING.

LOT 1 OF THE PLAT OF WINDEMERE POINTE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2660 AT PAGE 843 OF THE PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA.

SUBJECT TO ANY/ALL EASEMENTS, RESERVATIONS, DEDICATIONS OR RESTRICTIONS.

LOT 2 OF THE PLAT OF WINDEMERE POINTE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2660 AT PAGE 843 OF THE PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA.

SUBJECT TO ANY/ALL EASEMENTS, RESERVATIONS, DEDICATIONS OR RESTRICTIONS.

LOT 3 OF THE PLAT OF WINDEMERE POINTE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2660 AT PAGE 843 OF THE PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA.

SUBJECT TO ANY/ALL EASEMENTS, RESERVATIONS, DEDICATIONS OR RESTRICTIONS.

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Windemere Pointe major amendment to include medical and other service related uses

'Exhibit B' - Location Map



EXHIBIT "C"

DEVELOPMENT CONDITIONS

ORDINANCE #2385-2018 "Windemere Pointe major amendment to include medical and other service related uses

Approved Plans and Documents

1. **Overall Site Plan (Windemere Point – Phase 3), Sheet AS-101, by Gallo Herbert Architects, last revised 5.22.18.**
2. **Parking Study, Windemere Point, Stuart Fl by Traffic Impact Group, LLC dated September 5, 2018.**

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Exhibit 'D' Development Documents

