SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between Plaintiff JUAN CARLOS GIL ("Plaintiff"), and Defendant CITY OF STUART, Florida ("Defendant"). For purposes of this Agreement, Plaintiff and Defendant shall be referred to herein as the "Parties," and individually, as a "Party." The Agreement is effective on the date last signed by the Parties (the "Effective Date").

This Agreement is made as a compromise between the Parties for the complete and final settlement of all of their claims, differences, and causes of action as follows:

RECITALS

WHEREAS, Plaintiff initiated a lawsuit against Defendant in the United States District Court for the Southern District of Florida (the "Court"), Civil Action No. 2:18-cv-14334-RLR entitled, *Juan Carlos Gil v. City of Stuart* (the "Lawsuit") claiming the content provided within Defendant's website www.cityofstuart.us (the "Website") is not fully accessible to individuals with disabilities in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* ("Title II of the ADA"), and Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794 ("Section 504");

WHEREAS, Defendant disputes the allegations in the Lawsuit and denies that the content on the Website is not fully accessible to individuals with disabilities in violation of Title II of the ADA, or in violation of Section 504 of the Rehabilitation Act; and

WHEREAS, to avoid further costs, burdens, and distractions of litigation, the Parties now desire to settle fully and finally any and all individual claims alleged or that could have been alleged in a complaint filed in any legal, judicial, administrative, or regulatory forum;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises, covenants and undertakings contained herein and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following terms and conditions as a full and complete settlement of the Lawsuit and any and all claims related to the allegations made in the Lawsuit:

1. **Recitals.** The aforementioned Recitals are incorporated into this Agreement.

2. **General Release.** In consideration for Defendant entering into this Agreement, and for such other good and valuable consideration received from Defendant, the receipt and sufficiency of which is hereby acknowledged, Plaintiff, on behalf of himself and any of his agents, employees, representatives, assigns, heirs, executors, trustees, and partners (collectively, the "Releasing Persons"), hereby fully releases, acquits, satisfies, and forever discharges Defendant, together with Defendant's City Commissioners, agents, attorneys, employees, and other representatives (collectively, the "Released Parties") from any and all claims, demands, rights, liabilities, damages, lawsuits, losses, fees, costs or expenses, debts, judgments, actions, causes of action, and suits of any kind whatsoever, for reimbursement of attorneys' fees, costs, expert fees, litigation expenses, and damages, including any compensatory, punitive, injunctive or declaratory relief relating thereto, and any other damages, if any, and all other legal responsibilities arising from or relating to the allegations made in the Lawsuit in connection to the accessibility of content within the Website, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, or actual or potential, including, without limitation, those pursuant to Title II of the ADA or equivalent state of local law, including any

violation of any United States, state, or local law or equity regarding acts or omissions by the Released Parties prior to the Effective Date of this Agreement (collectively, the "Released Claims").

3. **Attorneys' Fees, Costs, Expenses, and Payments.** As a full and complete compromise and settlement of all Released Claims, Defendant shall pay, and Plaintiff agrees to accept the total sum of Fourteen Thousand Five Hundred Dollars and 00/100 cents ($14,500.00) (the "Settlement Payment") as payment in full. Allocation of the Settlement Payment is as follows: (a) Thirteen Thousand Five Hundred Dollars and 00/100 cents ($13,500.00) for Plaintiff's attorneys' fees, expert fees, court cost, and other associated expenses; and (b) One Thousand Dollars and 00/100 cents ($1,000.00) for Plaintiff's alleged damages, if any, and general release.

The Parties expressly acknowledge and agree that the Settlement Payment is made in satisfaction of any and all claims which were raised, or could or should have been raised in the Lawsuit, by Plaintiff, whether known or unknown, including without limitation, for Plaintiff's attorneys' fees, court costs, associated expenses, general releases, damage claims, if any, and any and all other claims relating to the Lawsuit. No later than fifteen (15) working days after the Effective Date and upon Defendant's receipt of an executed copy of this Agreement and an IRS W-9 completed by Scott R. Dinin, P.A., Settlement Payment in a single check and made payable to "Scott R. Dinin, P.A. IOTA" shall be delivered to Scott R. Dinin, P.A., 4200 NW Seventh Avenue, Miami, Florida 33127. Defendant will issue a 1099-MISC form to Scott R. Dinin, P.A. reflecting the Settlement Payment amount.

It shall be Plaintiff and Plaintiff's counsel's sole responsibility to pay taxes, if any, on the Settlement Payment. Plaintiff and Plaintiff's counsel hereby indemnify, defend, and hold harmless the Released Parties from the assessment of any taxes, interest, and penalties that the IRS or any other taxing authority, court, or tribunal determines should have been paid in connection with any monies paid by Defendant pursuant to this Agreement.

4. **No Other Proceedings.** Plaintiff represents that, other than the Lawsuit, Plaintiff has not filed any charges, complaints, lawsuits, or other proceedings against the Released Parties relating to the Released Claims with any court or municipal, state, or federal agency charged with the enforcement of any law.

5. **No Knowledge of Potential Claimants.** Releasing Persons represent and warrant that Releasing Persons are unaware of any potential plaintiff, putative class member, or other counsel who intends to make demands or bring litigation based on the Released Claims against the Defendant. Releasing Persons further represent and warrant that Releasing Persons have not been notified nor otherwise informed of any such intention or consideration thereof. Additionally, Plaintiff states at all relevant times he has been unmarried and knows of no one who could make a claim through him in connection with any allegation made in the Lawsuit.

6. **Covenant Not to Sue.** Releasing Persons covenant that the Releasing Persons will not file, charge, claim, sue, encourage, aid or participate in any legal action or administrative proceeding against the Released Parties relating to the Released Claims. The Parties agree that this obligation is a material term of this Agreement and a primary consideration for Defendant entering into this Agreement.

7. **Enforcement.** If any of the parties hereto claim that this Agreement or any

portion of it has been violated ("breach"), the Party alleging the breach shall give written notice (including reasonable particulars) of such violation to the Party alleged to be in breach. The Party alleged to be in breach of this Agreement must respond to such written notice of breach no later than sixty calendar (60) days thereafter ("Cure Period"). If the parties are unable to reach a mutually acceptable resolution during the Cure Period, or any extension thereof, the Party alleging a breach of the Agreement may seek court enforcement of compliance with this Agreement. The Court shall, in its discretion, award reasonable attorneys' fees and costs to the prevailing Party in any such enforcement action.

8. **Dismissal with Prejudice.** Within seven (7) days from the Effective Date of this Agreement, the Plaintiff shall file with the Court a stipulation of dismissal of the Lawsuit with prejudice. The Parties further agree that this Agreement shall not be filed with the Court, except as necessary for enforcement purposes, or unless otherwise required by the Court.

9. **Invalidation.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall remain in full force and effect, provided that the Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all agreements and communications, whether written or oral, previously made in connection with such matters. Any agreement to amend or modify the terms or provisions of this Agreement must be in writing and executed by both of the Parties hereto. No waiver of any provision of this

Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged.

11. **Non-Admission of Liability.** This Agreement is the result of a compromise and settlement and shall never be construed as an admission of any liability, wrongdoing, responsibility, or unlawful conduct by Defendant or the Released Parties. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of continued of the Lawsuit.

12. **Binding Nature of Settlement Agreement.** This Agreement shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each Party and to its respective heirs, administrators, representatives, executors, successors, and assigns.

13. **Authority.** Each Party represents that each person, or authorized counsel, executing this Agreement on its behalf has been authorized to sign on behalf of the respective Party and to fully bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, Title II of the ADA (where applicable) and Section 504 of the Rehabilitation Act (where applicable) without regard to principles of conflicts of law. Any suit arising as a result of a breach of this Agreement or relating to enforcement of this Agreement shall be filed in the United States District Court for the Southern District of Florida.

15. **Counterparts.** The Parties agree that this Agreement and any and all other documents in connection with settlement of this matter may be executed in exact counterparts,

each of which shall be deemed an original but both of which taken together shall constitute one and the same instrument. Any signature page delivered by facsimile transmission or e-mail shall be treated in all manner and respects as an original document.

16. **Accessibility Measures.** Defendant will make best efforts that all PDF content newly added to the Website after twelve (12) months from the Effective Date of this Agreement are accessible per the minimum requirements of applicable law and regulations to visually impaired individuals who use screen reader software.

17. **Future Visits**. If Releasing Parties visit Defendant's Website in the future and encounter what Releasing Parties, in good faith, believe to be violations of the ADA, Rehabilitation Act or other applicable accessibility law, Releasing Parties shall, prior to filing any new suits, claims, charges, complaints, or demands, whether monetary or injunctive, of any kind whatsoever, whether with any local, state, or federal court or any governmental, administrative or other agency or board against Defendant, provide written notice of the alleged violations to Michael Mortell, City Attorney at City of Stuart Attorney's Office, 121 SW Flagler Avenue, Stuart, Florida 34994 with no fewer than 90 calendar days to make the content at issue accessible as required by law or regulation.

18. **Effective Date**. This Agreement is not effective until approved by Defendant's City Commission and signed by the Parties, and the effective date of this Agreement is the date of the last signature as set forth below. If Defendant's City Commission rejects this Agreement, Plaintiff is not bound by any terms and conditions as set forth herein even if Plaintiff signs this Agreement first.

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates indicated below.

_____Date:_____
JUAN CARLOS GIL

APPROVED AS TO FORM:

SCOTT R. DININ, P.A.

By:_____Date:_____
4200 NW 7th Ave.
Miami, FL 33127
Telephone: (786) 431-1333
inbox@dininlaw.com
Florida Bar No. 097780

J. COURTNEY CUNNINGHAM PLLC

By:_____Date:_____
8950 S.W. 74th Court, Suite 2201
Miami, FL 33156
Telephone: (305) 351-2014
cc@cunninghampllc.com
Florida Bar No. 628166

Attorneys for Plaintiff

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of City of Stuart, Florida, by its Chair of its City Commissioners, its seal affixed hereto, as attested by its Deputy Clerk as of the _____day of _____, 2018.

(SEAL)

CITY OF STUART, FLORIDA

ATTEST:

By:_____

Chair

By:_____

Deputy Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____

City of Stuart City Attorney