Return to:

City Attorney's Office
City of Stuart
121 SW Flagler Street
Stuart, FL 34994

ORDINANCE No. 2394-2018

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING THE KORNBLUH COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) FOR PARCEL OF LAND FRONTING NW FEDERAL HIGHWAY (U.S. HIGHWAY 1) SOUTH OF ABUTTING NORTH STUART BAPTIST CHURCH, CONSISTING OF 2.57 ACRES OWNED BY ALAN M. KORNBLUH REVOCABLE TRUST AND SYLVAN H. SARASOHN REVOCABLE TRUST; AND BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR A FINAL SITE PLAN WITH TWO PHASES OF DEVELOPMENT; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

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WHEREAS, on August 28, 2017, the City of Stuart City Commission adopted Ordinance No. 2349-2017, annexing the land fronting NW Federal Highway (U.S. Highway-1), consisting of 2.57 acres, more particularly described in **Exhibit "A"**, attached hereto and made a part thereof, and adopted Ordinance 2350-2017, designating said property Commercial and Commercial Planned Unit Development (CPUD); and

WHEREAS, Petitioners, Alan M. Kornbluh, Trustee, Margo Rausenberger and Lisa Sarasohn, constituting the fee simple title holder to the land have applied for a major amendment to the CPUD; and

WHEREAS, the City Commission has considered the Petitioner's request for a major amendment to the CPUD, the provision of a final site plan with two phases, and has also considered the recommendation of the Stuart Land Planning Agency and City staff.

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

SECTION 1. The foregoing recitals are true and adopted as findings of fact and conclusions of laws.

SECTION 2. The legal description of the property, reflecting the 2.57 acre parcel, is set forth in **Exhibit "A"** attached hereto and made a part hereof by reference. A boundary and topographical survey depicting the Property is attached hereto as **Exhibit "B"** and made a part hereof by reference. The 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 3: The Owners' written acceptance of this Ordinance shall constitute an agreement with the City for the purposes expressed herein, but the same shall not be construed as a "Development Agreement," as provided in Section 163.3221, Florida Statutes.

SECTION 4. The following "Development Documents" on file as public records of the City at the office of the City Development Department and as attached hereto as **Exhibit "D"** shall be henceforth deemed as Approved, and shall become a part of the development conditions applicable to the Subject Property, and all construction shall be in accordance therewith:

1. **CPUD Master Site Plan by Carter Associates, Inc, Sheet C-1, dated 10.23.18.**
2. **Site Plan for Phase I, by Carter Associates, Inc., Sheet C-2, dated 10.23.18.**
3. **Landscape Plan prepared Gentile, Glas, Holloway, O' Mahoney and Associates, Inc., Sheet LP-1 and LP-2, dated 10.10.18.**

4. **Tree Disposition Plan, prepared by Gentile, Glas, Holloway, O' Mahoney and Associates, Inc., Sheet TDP-1, dated 10.10.18.**
5. **Architectural Elevations, prepared by Casco, dated 8.23.18.**

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 City's Land Development Code. The failure of the owner to comply with the Development 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 Owner to seek administrative or judicial redress.

SECTION 6. Following the adoption and acceptance of this ordinance by the Owner, 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 by the developer 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. All ordinances or parts of ordinances in conflict with this ordinance or any part thereof is hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 8. 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 9. This ordinance shall be effective upon its adoption. However, the Future Land Use Designation granted herein shall not be effective until thirty-one (31) days after adoption, and as otherwise provided by law F.S. 163.3187.

SECTION 10. The complete execution and recording of this ordinance by the City Clerk shall occur no later than 45 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

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING ORDINANCE, AND 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

FOREGOING 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 DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ADMINISTRATIVE ACTIONS AND PENALTIES MAY BE TAKEN AGAINST THE UNDERSIGNED, ITS SUCCESSORS OR ASSIGNS, BY THE CITY, INCLUDING BUT NOT LIMITED TO SANCTIONS DESCRIBED IN THIS ORDINANCE, CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING SUSPENSIONS OR REVOCATIONS, AND ANY OR ALL OTHER APPLICABLE CIVIL AND CRIMINAL ACTIONS.

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

WITNESSES:

Alan M. Kornbluh Revocable Trust
Agreement Dated April 24, 2006

_____
Print Name:_____

By:_____
Alan M. Kornbluh, Trustee

_____
Print Name:_____

OWNERS ACKNOWLEDGMENT

The above Acceptance and Agreement of Ordinance No. _____ was acknowledged before me this _____ day of _____, 2018, by Alan M. Kornbluh, Trustee of Alan M. Kornbluh Revocable Trust Agreement dated April 24, 2006.

_____
Notary Public, State of Florida
My Commission Expires:
Notary Seal

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

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING ORDINANCE, AND 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

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

WITNESSES:

_____ By:_____

Print Name:_____ Margo Rausenberger

_____

Print Name:_____

OWNERS ACKNOWLEDGMENT

The above Acceptance and Agreement of Ordinance No. _____ was acknowledged before me this _____ day of _____, 2018, by Margo Rausenberger.

_____

Notary Public, State of Florida
My Commission Expires:
Notary Seal

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

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE FOREGOING ORDINANCE, AND 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

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

WITNESSES:

_____ By:_____

Print Name:_____ Lisa Sarasohn

_____

Print Name:_____

OWNERS ACKNOWLEDGMENT

The above Acceptance and Agreement of Ordinance No. _____ was acknowledged before me this _____ day of _____, 2018, by Lisa Sarasohn.

_____

Notary Public, State of Florida
My Commission Expires:
Notary Seal

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

Exhibit "A"
Legal Description

A PORTION OF LOT 11 AND 12, BLOCK 2, PLAT NO. 1, SAINT LUCIE GARDENS, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 35 OF THE PUBLIC RECORDS OF ST. LUCIE (NOW MARTIN) COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 365.24 FEET MORE OR LESS OF THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 37 SOUTH, RANGE 41 EAST, LYING WESTERLY OF THE EXISTING RIGHT-OF-WAY LINE OF STATE ROAD 5 (U.S. 1) BEING 336' FEET WIDE AS MEASURED AT RIGHT ANGLES FROM SAID WESTERLY RIGHT-OF-WAY LINE; LESS AND EXCEPT THE NORTHERLY 50.00 FEET THEREOF. SUBJECT TO ANY APPLICABLE EASEMENTS, RIGHTS-OF-WAY, OR OTHER RESTRICTIONS OF RECORD.

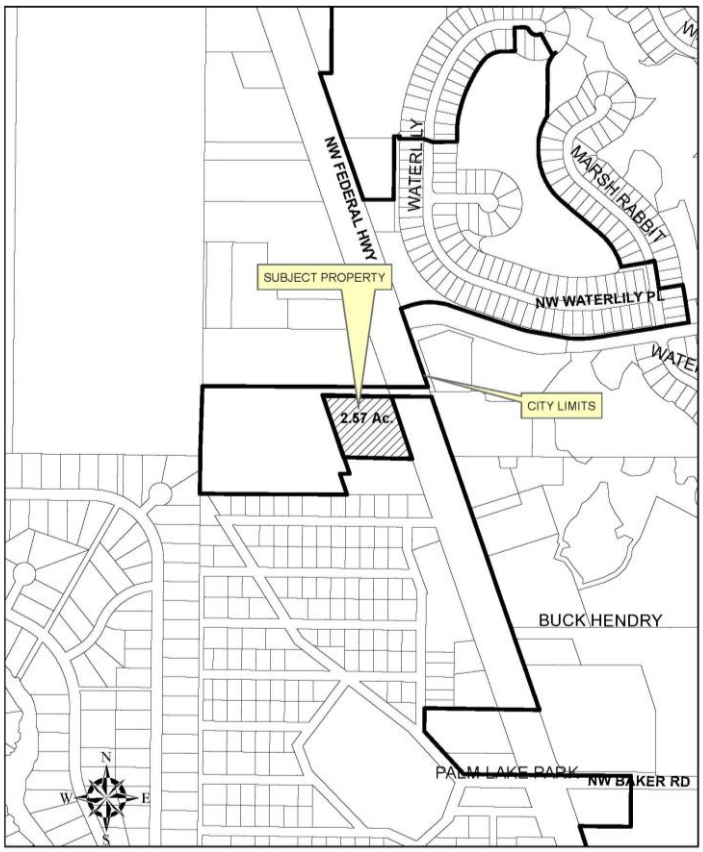
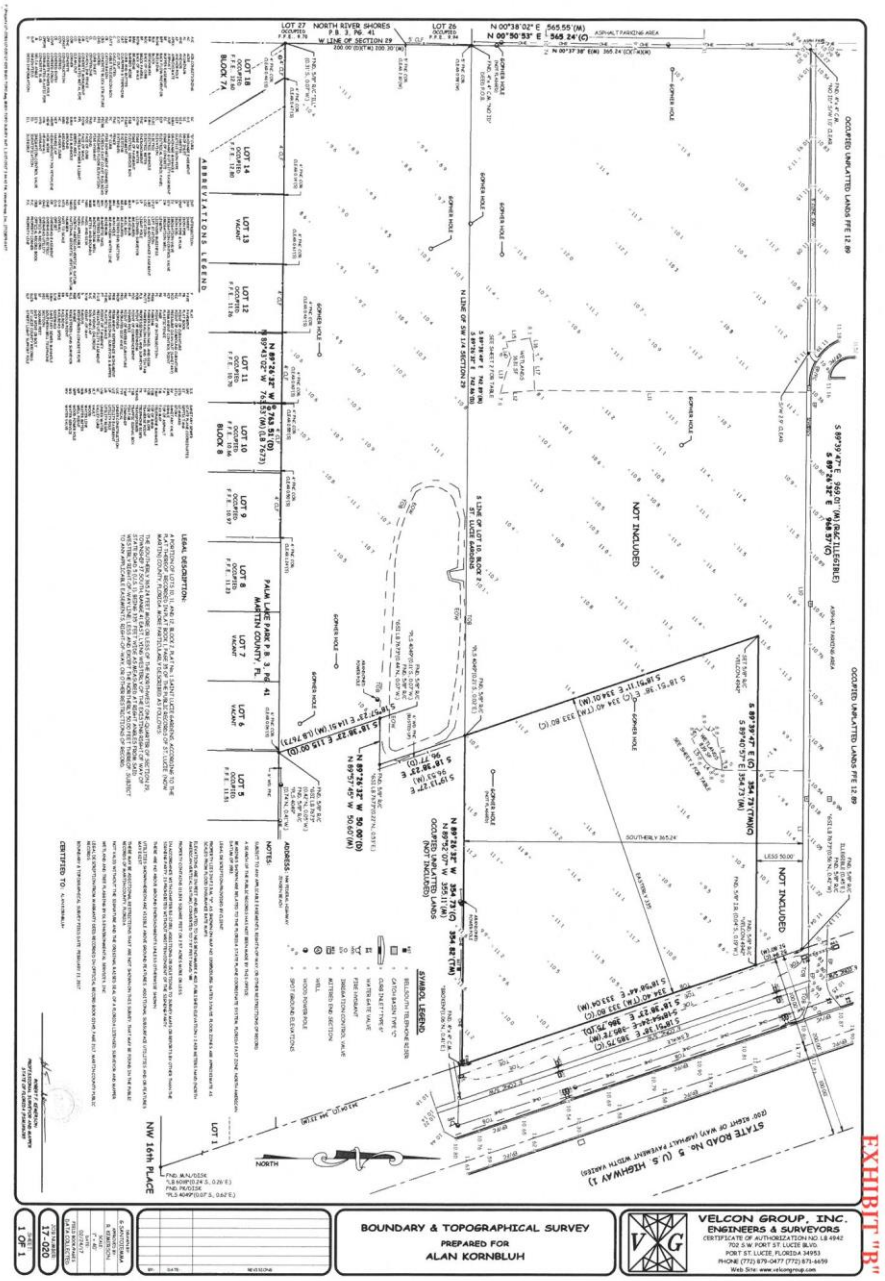
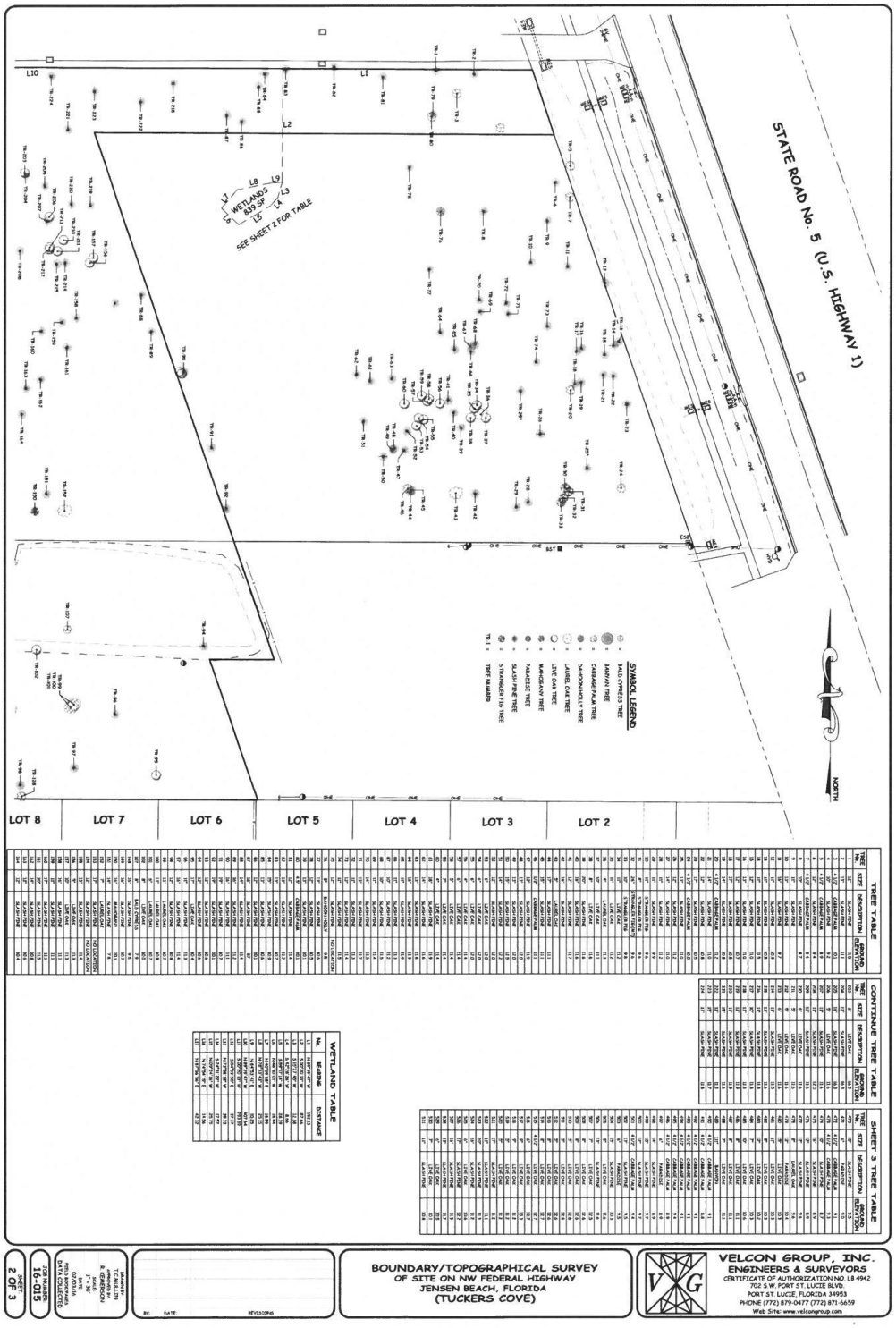


Exhibit "B"
Boundary and Topographical Survey



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STATE ROAD No. 5 (U.S. HIGHWAY 1)
WETLANDS 859 SF
SEE SHEET 2 FOR TABLE
SYMBOL LEGEND
LOT 8
LOT 7
LOT 6
LOT 5
LOT 4
LOT 3
LOT 2
NORTH
TREE TABLE
CONTINUE TREE TABLE
SHEET 3 TREE TABLE
WETLAND TABLE
BOUNDARY/TOPOGRAPHICAL SURVEY
OF SITE ON NW FEDERAL HIGHWAY
JENSEN BEACH, FLORIDA
(TUCKERS COVE)
VELCON GROUP, INC.
ENGINEERS & SURVEYORS
CERTIFICATE OF AUTHORIZATION NO. LB 4942
702 S.W. PORT ST. LUCIE BLVD.
PORT ST. LUCIE, FLORIDA 34953
PHONE (772) 879-0477 (772) 871-6659
Web Site: www.velcongroup.com
SHEET 2 OF 3
JOB NUMBER 16-015
DRAWN BY: T.C.WALSH
CHECKED BY: R.EMERSON
SCALE: 1" = 30'
DATE: 09/30/16
FIELD DATA COLLECTED: 09/30/16
BY: DATE: REVISIONS

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Exhibit "C"
Development Conditions

Approved Plans and Documents

1. The first phase of the project shall comply with the CPUD Master Site Plan by Carter Associates, Inc, Sheet C-1, dated 10.23.18, and the Site Plan for Phase I, by Carter Associates, Inc., Sheet C-2, dated 10.23.18.

2. The first phase of the project shall comply with the Landscape Plan prepared Gentile, Glas, Holloway, O' Mahoney and Associates, Inc., Sheet LP-1 and LP-2, dated 10.10.18, and the Tree Disposition Plan, prepared by Gentile, Glas, Holloway, O' Mahoney and Associates, Inc., Sheet TDP-1, dated 10.10.18.

3. The architectural elevations shall demonstrate compliance with all applicable commercial development standards in Section 6.05.00 of the Land Development Code. At the minimum, the project shall comply with the Architectural Elevations, prepared by Casco, dated 8.23.18.

4. Any modifications to the CPUD Site Plan, due to final engineering, that exceeds 10% of the approved building footprint, building setbacks; gross square footage; building location; parking size; location and number; drainage areas; and location of landscaping shall require further approval by the City Commission via a public hearing.

Permitted Uses

5. The project has been approved in two phases: the first phase is for a stand-alone 9,000 square foot retail building (Rooms to Go). Uses within the proposed Rooms to Go building are limited to non-intensive sales and service, retail – intensive sales and service, and limited warehousing of retail items with no outside storage or sales. The second phase is a 6,000 square foot future development. Uses within phase two are limited to non-intensive sales and service, retail – intensive sales and service, and limited warehousing of retail items with no outside storage or sales, restaurant – general/limited, fitness center/health club, microbreweries and craft distilleries, medical/health related office, low intensity medical office, business and professional office and bank. Uses that are not allowed within the retail building are night club, arcade, pool hall, medical marijuana treatment center, outdoor entertainment and adult businesses and bars.

Prior to Issuance of Site Permits

6. Civil plans shall be reviewed and approved by all applicable City departments prior to the issuance of a site permit.

7. The applicant is responsible for obtaining all state, federal and local permits.

8. Lighting shall comply with Section 6.07.00 of the Land Development Code and reviewed by Police for CPTED/Crime Prevention recommendations. Lighting shall include shields to direct the light away from the future residential/multi-family development to the west of the property.

9. A Preserve Area Management Plan (PAMP), in accordance with LDC Section 5.04.03, shall be submitted and approved prior to the issuance of a site permit.

10. The tree mitigation requirements are set forth in the Landscape Plan by Gentile, Glas, Holloway, O' Mahoney and Associates, Inc item #2 above. The tree mitigation to be provided shall meet the standards sets forth in Section 5.05.02 for tree replacement and/or mitigation through the City tree fund at the replacement ratios specified prior to the approval of a site permit.

11. There is exotic vegetation on site according to the Environmental Assessment prepared by EW Consultants, Inc. The exotic vegetation will be evaluated prior to the issuance of a site permit.

12. Verification of gopher tortoise relocation in accordance with Florida Fish and Wildlife Conservation Commission shall be provided.

Landscaping

13. All landscape areas shall be provided with an irrigation system of sufficient capacity to maintain the landscaping in a healthy growing condition.

14. The City's landscape inspector shall have the opportunity to inspect all trees and/or landscape material with the landscape architect prior to installation. The developer shall bear the pass-thru fee for landscape consulting fees not to exceed $1,500.00.

15. A landscape maintenance plan, executed in accordance with the LDC, shall be submitted to the Development Department and approved prior to the issuance of a certificate of occupancy.

16. "Hat racking" of trees is prohibited on the property.

Development and Construction

17. Construction activity shall be limited from 7:00 am to 6:00 pm Monday - Saturday.

18. Building generators, if utilized, shall be located behind the building that they serve, and screened with decorative materials or landscaped with hedge material. Sound attenuation shall be provided to assure that noise levels do not exceed 65 db at the property line.

Non-emergency testing of generators shall be limited to the hours of 12:00 p.m. to 3:00 p.m. on weekdays.

19. All mechanical equipment associated with the development shall be roof top or located along the side or rear of the building and decoratively screened or landscaped with hedge material. Roof top satellite dishes shall be limited to 3 feet in diameter and screened from view.

20. To the extent possible, all on-site utilities must be buried except for any existing FPL transmission lines.

21. Backflow prevention devices and required above ground utilities shall be delineated on the landscape plans during final site plan review and shall be out of view or screened from the public right-of-way.

22. Erosion and dust control measures to be implemented during construction shall be provided on the civil plans and submitted during site permit review. Water trucks shall be provided by the applicant as necessary during construction in order to reduce dust generated on-site.

23. All utility improvements constructed by the developer including all lift stations shall be constructed in a manner and form acceptable to the City of Stuart Utility Department. The developer shall grant any such utility easements necessary for this site as may be required by the City.

24. No temporary or modular buildings are permitted on the property except for permitted temporary construction trailers.

25. Any proposed signage shall comply with Section 6.11.00 of the Land Development Code. A separate permit(s) for all signs are required.

26. The building shall be fire sprinklered based on occupancy, unless subsequent plans submitted show conditions for which exceptions are allowed by the FFPC.

27. If, at the time of this approval, a valid access easement, in favor of the applicant exists on the 50-foot wide portion of the adjacent property to the north/west, or if the adjacent property owner to the north/west subsequently grants an access easement in favor of the applicant, the applicant shall, upon direction by the City Commission, construct the northern driveway connection as depicted on the CPUD Site Plan, within 180 days of the City Commission's direction to do so. The City shall notify the applicant, the owners of the property to the north/west and the owner of the North Baptist Church property, in writing 30 days in advance of any City Commission meeting at which direction to construct the northern driveway connection is considered.

28. As determined by the Development Director, the deceleration right turn lane may be subject for reduction in length to avoid conflict with the entrance to the 9-acres parcel to the west.

Development Timetable

29. Timetable for development shall be as follows:

- Site and Building Permit Submission for Phase I – January 1, 2020
- Site and Building Permit Submission for Phase II – January 1, 2021
- Certificate of Occupancy for Phase I – June 1, 2021
- Certificate of Occupancy for Phase II – June 1, 2022.

Platting

30. The PUD property may be platted and conveyed to separate owners without further amendment to this Ordinance. A property owners association shall be established and responsible for the maintenance of the following site features:

a. Preserve/water management areas
b. Common landscape islands and common sidewalks
c. Asphalt parking including common drive aisles
d. Site lighting
e. The entrance apron from US 1

Exhibit "D"
Development Documents