LICENSE AGREEMENT

CITY OF STUART AND STUART MAIN STREET ASSOCIATION, INC. AND DOWNTOWN BUSINESS ASSOCIATION OF STUART, INC. (STUART MAIN STREET PROMOTION COMMITTEE)

THIS LICENSE AGREEMENT, hereinafter "License" is made and entered into this 14th day of January, 2019 by and between the CITY OF STUART, FLORIDA a municipal corporation of the State of Florida, whose principal address is 121 SW Flagler Avenue, Stuart, Florida 34994, hereinafter the "City," and THE DOWNTOWN BUSINESS ASSOCIATION OF STUART, INC., a State of Florida not for profit corporation, and IRS recognized 501(c) organization, whose principal address is PO Box 1708, Stuart, Florida, 34995 and STUART MAIN STREET ASSOCIATION, INC., a Florida not for profit corporation, , and IRS recognized 501(c) organization, whose principal address is PO Box 3035, Stuart, Florida, 34995, collectively hereinafter the "Licensee."

WITNESSETH

The City and the Licensee do hereby agree as follows:

1. DESCRIPTION OF LICENSED AREA PREMISES. City licenses to Licensee, and Licensee accepts such License from City, for the purpose of operating a weekly outdoor concert series upon the Riverwalk Stage and adjacent park area, and further depicted in the drawing attached hereto as **Exhibit "A,"** hereinafter the "Premises."
2. TERM. The initial term of this License shall commence on the date first written above and continue henceforth until terminated by either party upon ninety (90) days written notice to the other; hereinafter the "Term." The City licenses the Premises only on each Sunday during the Term from 9:00 a.m. through 6:00 p.m., unless otherwise expressly permitted by the City Manager, in advance and in writing, for additional Special Events of a temporary nature.
3. FEE. The License Fee for the use of the Premises during the Term as provided in paragraph 2 above is $1,500.00 annually, to be paid within 30 days of the execution of this agreement, and subsequent renewal payments on or before the first day of October each year the agreement remains in effect beginning October 1st, 2019.
4. CITY'S COMMITMENT. City will be committed to do the following:

A. The Premises shall be kept in good condition and repair by the City; and the City will use its best efforts to make repairs to the Premises and boardwalk and bathroom facilities, including emergency repairs, as needed.

B. Assure that the public bathrooms adjacent to City Hall are cleaned at the beginning of each Sunday morning, no later than 8:30 AM, and assure the bathrooms are open and available for use by the public during the use of the Premises.

C. Provide a sufficient amount of 90 gallon Green Carts for solid waste, and 90 gallon Blue Carts for Recyclable materials to be located in the paved area at the top of the Riverwalk Stage.

D. Cause all City vehicles to be parked outside the Premises. The City will make all reasonable efforts to clear the area of privately owned vehicles but cannot guarantee all private vehicles will be removed.

E. Designate five (5) parking spaces depicted in the attached hereto as Exhibit "A," along the east side of SW Saint Lucie Avenue, between SW Seminole Street and SW Osceola Street, for the loading and unloading use by event vendors, organizers, and for other commercial deliveries.

F. Designate a reserved loading zone depicted in the attached hereto as Exhibit "A," along the south side of the westernmost section of SW Seminole Street, for the temporary exclusive use of event sound technicians. An additional loading zone sign shall be placed at location identifying such use for each Sunday, between the hours of 2:00 AM and 5:00 PM.

G. Provide and permit the Licensee the use of any necessary barricades, cones, traffic control and directional signage, and related materials during the use of the Premises.

H. Provide electrical and water service to the Premises as reasonably needed, and as currently installed.

I. Provide shade to the Premises as currently installed.

J. Provide and permit the Licensee the use of promotional banner locations including special event banner locations, street pole banners, and the Riverwalk Stage banner poles for up to 10 days before the occupancy by the Licensee of the Premises.

K. Use this agreement in lieu of a "Hold the Date" application to reserve all covered dates in the City special event permitting system and calendars.

L. Conduct an annual review of the terms and conditions of this agreement.

5. LICENSEE'S OBLIGATIONS. Licensee shall have the obligation to do the following:

A. Generally the Licensee shall have access to the Premises at 9:00 AM Sunday morning, and shall vacate the Premises not later than 6:00 PM the same day, subject only to the further restrictions contained herein.

B. The Licensee shall keep the Premises clean throughout its Sunday operation, including but not limited to the adjacent walkways, driveways, and streets, and the entire Premises shall be cleaned and restored to its prior condition by 6:00 PM each Sunday of operation. At that time, date and time-stamped photographs shall be taken of restrooms and area and sent to the City Manager or their designee.

C. The Licensee shall use the provided 90 gallon Green Carts for solid waste, and 90 gallon Blue Carts for Recyclable materials provided by the City and return them to the paved area at the top of the Riverwalk Stage by 6:00 PM each Sunday of operation.

D. Any sale, distribution, or consumption of alcoholic beverages during each event will be limited to a predefined area as determined and approved by the City Manager, or their designee. Such activity by the Licensee or any of their designated vendors will be considered ancillary to the scope and nature of the license, and may be revoked by the City Manager, or their designee for any reason, at any time.

E. The Licensee shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any improvements on it, except if the Licensee shall have damaged the same.

F. Licensee shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, or any activity or condition on or in the Premises.

G. Licensee shall provide to the City recognition of 501(c) status by the IRS and remain in compliance with all fiduciary requirements and obligations as required by Internal Revenue Code and the State of Florida. Licensee will make available upon request by the City, or any member of the public, a copy of its IRS determination letter, or any document issued by the IRS concerning its 501(c) application, and any tax returns within the most recent three-year period as required by federal law.

H. Licensee may be permitted the use of temporary event signage within the designated event area. All signage erected or placed by Licensee shall be first approved by the City Manager.

I. Licensee will use its best efforts to assure that event vendors, sponsors, and organizers do not park their vehicles or place any equipment on the streets immediately adjacent to the Premises, or in the City Hall parking lot, with the exception of the designated loading zones depicted herein this agreement.

J. Licensee shall pay to the City, an additional fee of $80.00 for each event occurring in February, March, and April of every calendar year for the purpose of assigning one police officer for traffic control over a two hour period; and/or as may otherwise be determined by the City with reasonable notice given to the Licensee.

K. If Licensee elects to make alcoholic beverages available for sale, distribution, or consumption during its licensed event, Licensee may be required to hire at its own expense, additional public or private security officers as determined by the City.

6. NON-EXCLUSIVE USE. City grants this License to the Licensee as a non-exclusive right to use the Premises, except that the City agrees it shall not grant a similar license or right to use the Premises during the dates and times of this License without first consulting and making a suitable mutual agreement with Licensee. Licensee's use of the Premises is nonetheless a "public use" provided by a private entity for the benefit of the general public. The City, in

granting this License to the Licensee, reserves the right to alter or otherwise require the Licensee to modify its use of the Premises with reasonable notice given to the Licensee.

7. CITY'S RIGHT OF ENTRY. Licensee shall permit City and its agents and employees to enter the Premises at all reasonable times for inspection, and for other public purposes, including but not limited to the provision of safety and security of the general public.
8. NOTICES. All notices, demands, or other writings in this License provided to be given or made or sent, or which may be given or made or sent, by either party to this License to the other, shall be deemed to have been fully given or when either hand delivered to the offices of or made in writing and deposited in the United States Certified Mail, and postage prepaid, or emailed and receipted, and properly addressed to:

    to the City: City Manager
    121 SW Flagler Avenue
    Stuart, FL 34994
    cmanager@ci.stuart.fl.us & mmortell@ci.stuart.fl.us

    to the Licensee: Stuart Main Street Promotion Committee
    PO Box 3035
    Stuart, FL 34995
    info@stuartmainstreet.org & info@historicdowntownstuart.com

9. TAXES AND ASSESSMENTS. In the event any governmental taxes or assessments are levied upon the Premises as a result of the occupancy and activities of the Licensee hereunder, Licensee, as an additional license fee, shall pay and discharge said taxes or assessments as they become due, promptly and before delinquency.
10. UTILITIES. City shall provide electrical service and water service to the Premises to the extent such service is reasonably needed to operate the outdoor concert series. Any other public utilities shall be provided by the Licensee.
11. LIENS. Licensee shall keep all of the Premises free and clear of any and all liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Licensee, any

alteration, improvement, or repairs or additions which Licensee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Licensee on or about the Premises, or any obligations of any kind incurred by Licensee. Licensee shall at all times promptly and fully pay and discharge any and all claims on which any lien may or could be based, and shall indemnify City and all of the Premises and all buildings and improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens.

12. INDEMNIFICATION OF CITY. Under separate consideration, the amount and sufficiency which is acceptable to each party, it is further agreed that the City shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Licensee, or any other person who may at any time be using or occupying or visiting the Premises or be in, on, or about the Premises, whether the loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Licensee or of any occupant, vendor, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing. Licensee shall hold the City, its agents and employees harmless, and shall indemnify the City, its agents end employees against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. The foregoing indemnification shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of the City, its agents, or employees. This indemnification shall be insured, at all times during this License, by the Licensee, in amounts provided in Section 13, below, failing which this License shall be automatically terminated without further action by the City.
13. INSURANCE. Licensee shall maintain in effect throughout the term of this License personal injury liability insurance covering the Licensee, and the City and the operations of the business in the amount of $1,000,000 for injury to or death of any one person, and $1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance on the Premises in the amount of $50,000. The insurance shall specifically insure Licensee against all contractual liability assumed by it under this License, as well as liability imposed by law, and shall insure both City and Licensee.

14. REDELIVERY OF PREMISES. Licensee shall pay the fees and all other sums required to be paid by Licensee under this License in the amounts, at the times, and in the manner provided in this License, and shall keep and perform all the terms and conditions of this License on its part to be kept and performed, and at the expiration or sooner termination of this License, Licensee shall peaceably and quietly quit and surrender the Premises to City in good order and condition. In the event of the non-performance by Licensee of any of the covenants that Licensee has undertaken, this License may be terminated as provided herein.
15. NOTICE OF DEFAULT. For any material breach of this License, including the failure to maintain the required insurance coverages, the Licensee shall not be deemed to be in default under this License unless City shall first give Licensee 10 days written notice of the default and Licensee fails to cure the default within 10 days, thereafter. Fees shall be due and shall become delinquent without notice thereof given by Licensor or Licensee.
16. DEFAULT. In the event of any material breach of this License by Licensee, and following notice as required herein, if any is required, City, in addition to the other rights or remedies it may have, shall have the immediate right to cancel this License and may remove the Licensee and all invited or uninvited persons and property from the Premises. Such personal property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Licensee.
17. WAIVER. The failure of either party to take action with respect to any breach of any term, covenant, or condition contained in this License shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach, or of any other term, covenant, or condition contained in the License. The subsequent acceptance of rent under this License by City shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this License, other than the failure of Licensee to pay the particular rental so accepted, regardless of City's knowledge of the preceding breach at the time of acceptance of rent.
18. MISCELLANEOUS. The License embodies the entire understanding and agreement of the parties concerning the use of the Premises by the Licensee. The Licensee shall not rely upon

any prior written agreement or any oral agreement concerning the use of the Licensehold. No modification or amendment to this License shall be valid, unless the same shall be in writing and signed by the authorized representative of each party. In the event that it becomes necessary to use legal process to enforce any terms of the License, the prevailing party shall be entitled to reasonable attorneys' fees and costs at all levels of litigation.

IN WITNESS WHEREOF, the parties have respectively signed and sealed this License in the days and year written below.

ATTEST:

_____
MARY KINDEL
CITY CLERK

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
CITY ATTORNEY

CITY:
CITY OF STUART, FLORIDA

_____
REBECCA S. BRUNER
MAYOR

LICENSEES:
STUART MAIN STREET ASSOCIATION, INC.

_____
NIK SCHROTH
PRESIDENT

DOWNTOWN BUSINESS ASSOCIATION OF STUART, INC.

_____
WILLIAM MOORE
PRESIDENT

Exhibit A

Site Area Rock'n Riverwalk

Rock'n Riverwalk Site Plan 2019

