A G E N D A

REGULAR MEETING OF THE STUART CITY COMMISSION
TO BE HELD March 27, 2017
AT 5:30 PM
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION

Mayor Tom Campenni
Vice Mayor Troy A. McDonald
Commissioner Kelli Glass Leighton
Commissioner Jeffrey A. Krauskopf
Commissioner Eula R. Clarke

ADMINISTRATIVE

City Manager, Paul J. Nicoletti
City Attorney, Michael J. Mortell
City Clerk, Cheryl White

Agenda items are available on our website at http://www.cityofstuart.us
Phone: (772) 288-5306 .Fax: (772) 288-5305 .E-mail: cwhite@ci.stuart.fl.us

Special Needs: Participants with special needs can be accommodated by calling the City Clerk at least 5 working days prior to the Meeting excluding Saturday and Sunday. We can be reached by phone at (772)288-5306, by fax at (772)288-5305, or by email at cwhite@ci.stuart.fl.us. If you are hearing impaired, please contact us using the Florida Relay Service, Customer Service: Dial 711 or English: (V) 800-682-8706, (TTY) 800-682-8786 Spanish: (V, TTY) 1-800-855-2886 If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
(RC) next to an item denotes there is a City Code requirement for a Roll Call vote.
(QJ) next to an item denotes that it is a quasi-judicial matter or public hearing.

ROLL CALL

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

1. Child Abuse Prevention Month - April 2017
2. Certificate of Recognition - Bob's Gourmet Deli
3. Cerificate for 90th Anniversary of Lesser, Lesser, Landy & Smith

PRESENTATIONS

4. March Service Awards
5. Character Counts - Martin County United Way

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER

APPROVAL OF AGENDA

COMMENTS FROM THE PUBLIC (5 min. max)

WHAT IS CIVILITY?: ***Civility is caring about one's identity, needs and beliefs without degrading someone else's in the process. Civility is more than merely being polite. Civility requires staying "present" even with those persons with whom we have deep-rooted and perhaps strong disagreements. It is about constantly being open to hear, learn, teach and change. It seeks common ground as a beginning point for dialogue. It is patience, grace, and strength of character. Civility is practiced in our City Hall.*** **PUBLIC COMMENT:** ***If a member of the public wishes to comment upon ANY subject matter, including quasi-judicial matters, please submit a Request to Speak form. These forms are available in the back of the Commission Chambers, and should be given to the City Clerk prior to introduction of the item number you would like to address.***

QUASI-JUDICIAL HEARINGS: ***Some of the matters on the Agenda may be "quasi-judicial" in nature. City Commissioners will disclose all ex-parte communications, and may be subject to voir dire by any interested party regarding those communications. All witnesses testifying will be "sworn" prior to their testimony. However, the public is permitted to comment without being sworn. Unsworn testimony will be given appropriate weight and credibility by the City Commission.***

CONSENT CALENDAR: ***Those matters included under the Consent Calendar are self-explanatory, non-controversial, and are not expected to require review or discussion. All items will be enacted by one motion. If discussion on an item is desired by any City Commissioner that item may be removed by a City Commissioner from the Consent Calendar and considered separately. If an item is quasi-judicial it may be removed by a Commissioner or any member of the public from the Consent Calendar and considered separately.***

CONSENT CALENDAR

6. Minutes of 02/27/2017 Joint CRA/CRB/CCM and 03/13/2017 CCM meetings. (RC)
7. RESOLUTION No. 36-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, APROVING AND AUTHORIZING A VOLUNTARY EARLY RETIREMENT AND EARLY SEPARATION INCENTIVE PROGRAM FOR THOSE CITY EMPLOYEES THAT MEET ELIGIBILITY CRITERIA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (RC)

END OF CONSENT CALENDAR

COMMISSION ACTION

8. THIS IS A PLACEHOLDER FOR ANY AND ALL CITY COMMISSION ACTIONS ON ITEMS TO COME BEFORE THE 2017 FLORIDA LEGISLATIVE SESSION.

RESOLUTION No. 38-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING SENATE BILL 596 AND HOUSE BILL 687 RELATING TO UTILITIES AND PROHIBITING LOCAL GOVERNMENTS FROM REGULATING, CHARGING, OR PROHIBITING SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY WHILE IMPOSING COSTS OF THESE FACILITIES ON LOCAL TAXPAYERS. (RC)

9. RESOLUTION No. 40-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZATION TO MAYOR TO EXECUTE A LAND LEASE BETWEEN THE CITY OF STUART, FLORIDA AND PNR HOTELS INC., OR ITS ASSIGN, PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES. (RC)

ORDINANCE FIRST READING

10. ORDINANCE No. 2348-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING A PARCEL OF LAND NORTH OF THE INTERSECTION OF NE SAVANNAH ROAD AND NE BAKER ROAD, CONSISTING OF 14.85 ACRES, SAID PARCEL BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES. (RC)

ORDINANCE SECOND READING

11. (Continued to April 10, 2017) ORDINANCE No. 2351-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTIONS 4-1 THROUGH 4-4, INCLUSIVE OF THE CITY OF STUART, FLORIDA CODE OF ORDINANCES TO CLARIFY AND FURTHER REGULATE ALCOHOLIC BEVERAGES WITHIN THE CITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.(RC)

DISCUSSION AND DELIBERATION

12. Discussion re: 2375 S. Kanner Highway (7-Eleven)

13. Discussion Concerning the Possible Filing of a Lawsuit Against Michael Gorman, Owner of the Property at 105 SE Seminole Street, for Residential Use of a Commercial Building on the Property; and Possible Dangerous Conditions Resulting from Hurricane Matthew.

ADJOURNMENT

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** Ryanne Cavo

Title of Item:
Child Abuse Prevention Month - April 2017

Summary Explanation/Background Information on Agenda Request:
CASTLE began in 1981, and now serves as the model for a national network of child abuse prevention centers that span 50 locations in 27 states. The Board of Directors plays a very active role and is involved with CASTLE's on-going activities. The CASTLE is known for its steady leadership and quality programs.

Funding Source:
N/A

Recommended Action:
Issue the Proclamation

ATTACHMENTS:

	Description	Upload Date	Type
🗋	Child Abuse Proclamation	2/13/2017	Proclamation

PROCLAMATION
CHILD ABUSE PREVENTION MONTH
APRIL 2017

WHEREAS, CASTLE began in 1981, and now serves as the model for a national network of child abuse prevention centers that span 50 locations in 27 states. The Board of Directors plays a very active role and is involved with CASTLE's on-going activities. The CASTLE is known for its steady leadership and quality programs; and

WHEREAS, began as a humble effort to help parents learn better parenting skills and since then have become the recipient of local, state and national accolades. As CASTLE moves into its third decade, the National Exchange Club Foundation, the President of the United Sates, the U.S. House of Representatives and the Florida Senate have proclaimed it the "Flagship" of child abuse prevention; and

WHEREAS, the population we serve includes: families who are at risk for abusing or neglecting their children, families who have had a reported incident of abuse or neglect but who, with support and education, can eliminate further episodes of abuse, families with children 0-18, and families who live in the Treasure Coast and Okeechobee County.

NOW, THEREFORE, BE IT PROCLAIMED by, I, Tom Campenni, Mayor of the City of Stuart that the month of April, 2017, be designated as

CHILD ABUSE PREVENTION MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Stuart to be affixed this 27th day of March, 2017.

_____
TOM CAMPENNI
MAYOR

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** Ryanne Cavo

Title of Item:
Certificate of Recognition - Bob's Gourmet Deli

Summary Explanation/Background Information on Agenda Request:
The City of Stuart hereby salutes Bob's Gourmet Deli for serving our community for over forty (40) years. Joyce, Sam, Dave, and Sue Farrell purchased Bob's Gourmet Deli from Bob Gil in 1976.

Dave and Sue Farrell are married and have worked together more than sixty hours (60) a week for the past forty (40) years. It is their intention to retire and allow the legacy of Bob's Deli to continue.

Funding Source:
N/A

Recommended Action:
Present the Certificate of Recognition

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** Ryanne Cavo

Title of Item:
Cerificate for 90th Anniversary of Lesser, Lesser, Landy & Smith

Summary Explanation/Background Information on Agenda Request:
Certificate of Recognition for the 90th Anniversary of the Law Firm of Lesser, Lesser, Landy & Smith

Funding Source:
N/A

Recommended Action:
Enjoy the presentation

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** R. Johnson

Title of Item:
March Service Awards

Summary Explanation/Background Information on Agenda Request:

John Reddick	Police	20 years
Joseph Tumminelli	Police	20 years
Deborah Arasim Smith	Finance	10 years
John Bradigan	Public Works	10 years
James Minor	Fire Rescue	10 years
Derek Wallace	Fire Rescue	10 years

Funding Source:
General Fund

Recommended Action:
Present Awards

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** Nicole King

Title of Item:
Character Counts - Martin County United Way
Summary Explanation/Background Information on Agenda Request:
Presentation of this year's Character Counts Award
Funding Source:
NA
Recommended Action:
Enjoy the Presentation

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**C White

Title of Item:
Minutes of 02/27/2017 Joint CRA/CRB/CCM and 03/13/2017 CCM meetings. (RC)
Summary Explanation/Background Information on Agenda Request:

Funding Source:
N/A
Recommended Action:
Approve Minutes

ATTACHMENTS:

	Description	Upload Date	Type
🗋	02/27/2017 Joint CRACRBCCM	3/21/2017	Attachment
🗋	03/13/2017 CCM	3/21/2017	Attachment

MINUTES
SPECIAL MEETING OF THE STUART CITY COMMISSION
COMMUNITY REDEVELOPMENT AGENCY AND
COMMUNITY REDEVELOPMENT BOARD
HELD February 27, 2017
AT 4:00 PM Commission Chambers
121 S.W. FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION
Mayor Tom Campenni
Vice Mayor Troy A. McDonald
Commissioner Kelli Glass Leighton
Commissioner Jeffrey A. Krauskopf
Commissioner Eula R. Clarke

COMMUNITY REDEVELOPMENT AGENCY
Chairperson Tom Campenni
Vice Chair Troy A. McDonald
Board Member Jeffrey Krauskopf
Board Member Kelli Glass Leighton
Board Member Eula R. Clarke
Ex Officio Member John Gonzalez
Ex Officio Member Pete Walson

COMMUNITY REDEVELOPMENT BOARD
Chairman - John Gonzalez
Vice Chairman - Pete Walson
Board Member - Frank Wacha(absent)
Board Member - Drew Pittman
Board Member - Chris Lewis
Board Member - Mac Stout
Board Member - Becky Bruner

ADMINISTRATION
City Manager, Paul J. Nicoletti
City Attorney, Michael Mortell
City Clerk, Cheryl White
Board Secretary, Michelle Vicat
Development Director, Terry O'Neil
Special Assistant to the City Manager, Teresa Lamar-Sarno

4:02 PM Roll Call.
Present: Kelli Glass Leighton, Jeffrey Krauskopf, Tom Campenni, Eula Clarke, Troy McDonald, Drew Pittman, Paul Skyers, John Gonzalez, Pete Walson, Becky Bruner.
Absent: Frank Wacha.
APPROVAL OF AGENDA

4:44 PM
1. CRA EXPANSION WORKSHOP #2

Marcella Camblor gave a brief interactive slide show and presented all the residents and board members a clicker to pole their individual input regarding expansion of and issues in the CRA. The results were posted on the screen as the items were voted on.

No action was taken at this time.

COMMUNITY REDEVELOPMENT AGENCY

This item was heard first.
4:03 PM PRESENTATIONS

2. DOWNTOWN STUART STREETSCAPE MASTER PLAN

A brief visual presentation was given by Mike Houston consultant who has designed a Downtown Stuart Landscape Masterplan at the direction of the CRA.

4:32 PM Motion: Downtown Stuart Streetscape Masterplan Plan, Action: Approve, Moved by Jeffrey Krauskopf, Seconded by Eula Clarke.

Public Comment
Andy Karacsonyi came forward and requested the City keep it small town and. He was lead to believe that tonights meeting was going to include a discussion about building a traffic circle and strip mall on Dixie Highway and S.E. 14th Street.

The Commission said they did not know anything about that item or discussion.

Patty O'Connell came forward representing the Downtown Business Association said they were approached by Teresa and Michael Houston about providing feedback for the proposed parking landscape and truck deliveries in the downtown. She said that the organization is very much in favor of landscape upgrades and the trees. She encouraged the palm trees and supported the outdoor dining. She said they look forward to working with the City and CRA during the planning process and offer their support.

Robert Steinberg came forward and expressed concern over why this has to be done now and other CRA neighborhoods are being neglected. He said we can do other

things to make the area tourist friendly and create additional parking but not this project right now.

Jerry Gore came forward and expressed concern over coconut trees and the amount of maintenance that comes with them.

Approved Unanimously- Wacha Absent

CITY COMMISSION

CONSENT CALENDAR

3. Minutes of 01/23/2017 Joint CRA CRB CCM meeting.

4:44 PM Motion: Approve Minutes, Action: Approve, Moved by Jeffrey Krauskopf, Seconded by Troy McDonald.
Motion passed unanimously.

ORDINANCES

COMMUNITY REDEVELOPMENT BOARD

5:16 P.M. ADJOURNMENT

Cheryl White, MMC, City Clerk **Tom Campenni, Mayor**

Minutes to be approved at the Regular Commission Meeting This 27th Day mARCH, 2017.

CRA

Cheryl White, MMC, Secretary **Tom Campenni, Chairperson**

Minutes to be approved at the Regular Commission Meeting This 27th Day March, 2017.

CRB

_____ _____

Cheryl White, MMC, Secretary **John Gonzalez, Chairperson**

Minutes to be approved at the Regular Commission Meeting This 7th Day March, 2017.

MINUTES
REGULAR MEETING OF THE STUART CITY COMMISSION
TO BE HELD March 13, 2017
AT 5:30 PM REVISED AGENDA -REVISED AGENDA -REVISED AGENDA
121 SW FLAGLER AVE.
STUART, FLORIDA 34994

CITY COMMISSION
Mayor Tom Campenni
Vice Mayor Troy A. McDonald
Commissioner Kelli Glass Leighton
Commissioner Jeffrey A. Krauskopf (Absent)
Commissioner Eula R. Clarke
ADMINISTRATIVE
City Manager, Paul J. Nicoletti
City Attorney, Michael J. Mortell
City Clerk, Cheryl White

ROLL CALL **5:27 PM Roll Call.**
Present: Mayor Campenni, Commissioner Clarke, Vice Mayor McDonald, Commissioner Glass Leighton. Absent: Commissioner Krauskopf,

City Manager Nicoletti announced the passing of Mayor James Christie, Jr. on March 11, 2017.

5:32 PM Commissioner Clarke announced the family of James Christie Jr is currently planning his funeral and that it is currently being planned to be at St. Lukes Episcopal Church in Port Salerno at 11am this Saturday.

PLEDGE OF ALLEGIANCE

5:33 PM 1. Arts Moment - March 2017

Pentecostal Church of God and Christ Acapella Trio sang “Take me to the King” for the Commission and public.

Neil Capozzi of the Arts Council introduced a local artist L.S. Finch who introduced her art to the Commission and Public.

PROCLAMATIONS

5:42 PM 2. LEGAL AID SOCIETY OF THE MARTIN COUNTY BAR ASSOCIATION DAY - April 15, 2017

Accepting the Proclamation were Jane Cornett, Legal Aid Society, Gene Zweben of the Martin County Bar Association. Stephen Page of Gunster.
Jane Cornett came forward and graciously accepted the Proclamation.

5:45 PM PRESENTATIONS

3. Certificate of Recognition of the 30th Anniversary of Stuart Main Street Recipient: Michael Houston

Michael Houston came forward and graciously accepted the Certificate of Recognition.

4. March is "Procurement" Month - A Presentation by Lenora Darden, City Procurement Manager.

Lenora Darden, Procurement Manager and Alaina Knofla gave a brief presentation to the public and Commission as to the processes and duties of Procurement in the City.

5:53 PM COMMENTS BY CITY COMMISSIONERS

Commissioner McDonald asked when the Haney Creek project would be completed, and asked for a ribbon cutting.

Sam Amerson stated expected completion is in the Summer.

Commissioner McDonald said he met with Congressman Mast who visited City Hall and who met with the Mayor and himself. He was pleased at his efforts so far in office, and was pleased to see he co-sponsored a bill repealing the MPO Bill. He also was also very saddened by the passing of Mayor Christie. He suggested the City consider naming something in his honor and suggested the 10th Street Recreation Center.

Commissioner Clarke attended Temple Beit Hayam event over the weekend where there was a group attending the event and spoke of bridging the gap of cultural diversity and making our community a better place. Following that event she attended an event that the Police Department was holding a community event at Big Apple Pizza. She was pleased to see the attendance. She also said she met with Congressman Mast in the parking lot, and said she mentioned the River issue and hopes for his support. She mentioned and read a poem that Mayor Christie always read "Keep a Going".

Commissioner Glass Leighton complimented Congressman Mast for his strong and great work ethic. She said she looks forward to working with him.

Mayor Campenni said the Marathon of the Treasure Coast was well attended and is growing. He hopes that Congressman Mast will help the City in their efforts.

6:02 PM COMMENTS BY CITY MANAGER

Item #5 will be removed and a complete do-over due to the applicants failure to notice properly. He mentioned that Commissioner Clarke had a question. #11 will be heard with #14. Item #17 will be continued to May 22, 2017.

6:07 PM APPROVAL OF AGENDA

6:07 PM Motion: Approve Agenda , Action: Approve, Moved by Commissioner Glass Leighton, Seconded by Commissioner Clarke. 4/1 Krauskopf absent

6:08 PM COMMENTS FROM THE PUBLIC (5 min. max)

Caryn Yost Rudge was called and excused herself from comment.

Karen Sayer came forward and asked for support from the Commission and staff regarding her concerns. She asked that the Commission include her in any density discussions. She encouraged public, professional participation.

6:12 PM CONSENT CALENDAR

Item #5 was removed from the agenda.

5. (QJ) ORDINANCE No. 2343-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING THE "BAKER ROAD COMMONS PUD" (ORDINANCE NO. 2312-2015), CONSISTING OF 3.02 ACRES, LOCATED AT 1440 NW FEDERAL HIGHWAY AND OWNED BY WYNNE BUILDING CORPORATION, A FLORIDA CORPORATION, SAID LAND BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; APPROVING AN AMENDED SITE PLAN; APPROVING CERTAIN DEVELOPMENT DOCUMENTS; DECLARING THE DEVELOPMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; APPROVING AMENDED DEVELOPMENT CONDITIONS AND A TIMETABLE FOR DEVELOPMENT; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES. (QJ)

6. MINUTES OF 02/13/2017, 02/27/2017 CCM AND 02/27/2017 SCM ATTY-CLIENT FOR APPROVAL.

7. RESOLUTION No. 13-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO AWARD RFP NO. 2016-162, PERFORMANCE APPRAISAL SOFTWARE MANAGEMENT SYSTEM TO THE TOP RANKED FIRM, CORNERSTONE ONDEMAND OF SANTA MONICA, CALIFORNIA, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

8. RESOLUTION No. 29-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, RECOGNIZING THE SATISFACTION OF THE INTER-

FUND LOAN BETWEEN THE PROPERTY MANAGEMENT FUND AND THE GENERAL FUND FOR THE PURCHASE OF THE "DOCKSIDE" PROPERTY, AND ESTABLISHING A RENEWAL AND REPLACEMENT RESERVE IN THE PROPERTY MANAGEMENT FUND.

9. RESOLUTION No. 32-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE USE OF FACSIMILE SIGNATURES ON CHECKS ISSUED BY THE CITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.
10. RESOLUTION NO. 34-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE COMMUNITY SERVICES DIRECTOR TO APPLY FOR AND, IF SUCCESSFUL, DESIGNATE THE RECREATION MANAGER TO EXECUTE THE GRANT, AND SUBSEQUENTLY APPROVE THE EXPENDITURE OF THE GRANT FUNDS FROM THE WALMART FOUNDATION, 2017 HEALTH OUT-OF-SCHOOL TIME GRANT, TO ASSIST IN FUNDING THE COMMUNITY AND AFTER SCHOOL PROGRAM FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

Item 11 was moved to be heard with item 14.
11. RESOLUTION No. 35-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING HOUSE BILL 13 RELATING TO COMMUNITY REDEVELOPMENT AGENCIES.

END OF CONSENT CALENDAR

6:12 PM Motion: , Action: Approve item 5-10, Moved by Vice Mayor McDonald, Seconded by Commissioner Glass Leighton. 4/1 Krauskopf absent

COMMISSION ACTION

6:13 PM 12. PETITION FOR SPEED TABLES ALONG NW NORTH RIVER DRIVE.

Sam Amerson gave a brief presentation regarding the speed data along the roadway that was collected for one week.

Mayor Campenni asked for additional enforcement.

Joseph Mirro came forward and expressed concern over the traffic speed and ignoring of the stop signs along the roadway.

Sandra Maxey came forward and said she walks her dog and is very concerned over the vehicles that ignore the stop signs.

Patricia Rourke came forward and supports the stop signs but is concerned over the cars that don't stop.

Rachel Hughes also came forward and she was in support of the stop signs. She said the increase of traffic has been a concern because the people have found this as a shortcut to avoid the US 1 traffic.

6:22 PM Motion: Direct staff to look at traffic calming device along the roadway and public works will host a public meeting and discuss the neighbors' concerns. Action: Approve, Moved by Commissioner Glass Leighton, Seconded by Commissioner Clarke. 4/1 Krauskopf absent

6:34 PM 13. REOLUTION No. 33-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING HOUSE BILL 17 AND SENATE BILL 1158 WHICH PREEMPT LOCAL BUSINESS REGULATIONS TO THE STATE AND PROHIBIT LOCAL GOVERNMENTS FROM IMPOSING OR ADOPTING ANY NEW REGULATIONS ON BUSINESSES UNLESS EXPRESSLY AUTHORIZED BY THE STATE LEGISLATURE.

Ben Hogarth gave a brief overview regarding the proposed legislation for new regulations regarding business tax.

6:36 PM **Motion:** Resolution 33-2017, **Action:** Approve, **Moved by** Vice Mayor McDonald, **Seconded by** Commissioner Glass Leighton. 4/1 Krauskopf absent

#11 was heard at this time
11. RESOLUTION No. 35-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING HOUSE BILL 13 RELATING TO COMMUNITY REDEVELOPMENT AGENCIES.

Ben Hogarth gave a brief update regarding the proposed legislation to eliminate CRA's.

6:40 PM **Motion:** Resolution 35-2017, **Action:** Approve, **Moved by** Commissioner Clarke, **Seconded by** Commissioner Glass Leighton.4/1 Krauskopf absent

14. THIS IS A "PLACE HOLDER' FOR ANY ACTIONS TO BE TAKEN BY THE CITY COMMISSION REGARDING BILLS TO COME BEFORE THE FLORIDA LEGISLATURE DURING THE 2017 GENERAL SESSION.

Mayor Campenni gave a brief overview regarding proposed legislation.

6:45 PM **Motion:** Prepare a Resolution opposing Election and lobbying bills , **Action:** Approve, **Moved by** Vice Mayor McDonald, **Seconded by** Commissioner Glass Leighton. 4/1 Krauskopf absent

6:46 PM 15. RESOLUTION No. 31-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO APPROVE THE AWARD OF WORK ORDER NO. 2015-156-WO5, ST. LUCIE SEWER BASIN TO THE LOWEST, MOST RESPONSIVE RESPONSIBLE BIDDER, FELIX ASSOCIATES OF FLORIDA, INC., OF STUART, FLORIDA, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Sam Amerson gave a brief overview regarding the proposed project.

6:48 PM **Motion:** Resolution 31-2017 , **Action:** Approve, **Moved by** Vice Mayor McDonald, **Seconded by** Commissioner Glass Leighton. 4/1 Krauskopf absent

ORDINANCE FIRST READING

6:52 PM 16. ORDINANCE NO. 2351-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTIONS 4-1 THROUGH 4-4, INCLUSIVE OF THE CITY OF STUART, FLORIDA CODE OF ORDINANCES TO CLARIFY AND FURTHER REGULATE ALCOHOLIC BEVERAGES WITHIN THE CITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Armond Pasquale came forward in opposition of the proposed Ordinance.

6:59 PM Motion: Ordinance 2351-2017 on First Reading , Action: Approve, Moved by Vice Mayor McDonald, Seconded by Commissioner Glass Leighton.

ORDINANCE SECOND READING
Item #17 was continued to May 22, 2017
17. ORDINANCE No. 2344-2017; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO PROVIDE FOR THE ABANDONMENT OF CERTAIN PUBLIC RIGHT-OF-WAY WITHIN THE CITY BEING THAT CERTAIN 40-FOOT RIGHT-OF-WAY, AS SET FORTH ON THE PLAT OF STUART FARMS, AS RECORDED IN PLAT BOOK 1, PAGE 63, MARTIN COUNTY, FLORIDA PUBLIC RECORDS RUNNING NORTH TO SOUTH THROUGH THE PROPERTY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO AND DEPICTED IN EXHIBIT “B” ATTACHED HERETO; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

7:08 PM 18. ORDINANCE No. 2345-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING A PARCEL OF LAND FRONTING NW FEDERAL HIGHWAY (U.S. HIGHWAY 1) SOUTH OF AND ABBUTTING NORTH STUART BAPTIST CHURCH, CONSISTING OF 9.45 ACRES, SAID PARCEL BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

7:09 PM Motion: Ordinance 2345-2017 , Action: Approve, Moved by Commissioner Clarke, Seconded by Commissioner Glass Leighton. 4/1

DISCUSSION AND DELIBERATION

7:14 PM ADJOURNMENT

_____ _____

Cheryl White, City Clerk Tom Campenni, Mayor

Minutes to be approved at the Special Commission Meeting this 27th day of March, 2017.

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date: 3/27/2017 **Prepared by:** Roz Johnson, Human Resources Director

Title of Item:
RESOLUTION No. 36-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, APROVING AND AUTHORIZING A VOLUNTARY EARLY RETIREMENT AND EARLY SEPARATION INCENTIVE PROGRAM FOR THOSE CITY EMPLOYEES THAT MEET ELIGIBILITY CRITERIA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (RC)

Summary Explanation/Background Information on Agenda Request:
As a cost-saving measure, the VERIP and VESIP program provides an opportunity for employees who meet eligibility criteria to separate voluntarily and receive an incentive for doing so.

Funding Source:
General Fund

Recommended Action:
Adopt R36-2017

ATTACHMENTS:

	Description	Upload Date	Type
🗋	R 36-2017	3/22/2017	Resolution add to Y drive
🗋	R36-2017 Exhibit "A"	3/9/2017	Exhibit

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 36-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING AND AUTHORIZING A VOLUNTARY EARLY RETIREMENT AND EARLY SEPARATION INCENTIVE PROGRAM FOR THOSE CITY EMPLOYEES THAT MEET ELIGIBILITY CRITERIA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The City Commission hereby approves and authorizes an early retirement and an early separation incentive program for those city employees that meet eligibility criteria, as provided in the description provided as Exhibit "A" attached hereto.

SECTION 2: This resolution shall take effect upon adoption.

Commissioner _____ offered the foregoing resolution 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
TOM CAMPENNI, MAYOR				
TROY MCDONALD, VICE MAYOR				
JEFFREY A. KRAUSKOPF, COMMISSIONER				
EULA R. CLARKE, COMMISSIONER				
KELLI GLASS LEIGHTON, COMMISSIONER				

ADOPTED this ___ day of _____, 2017.

ATTEST:

_____
CHERYL WHITE
CITY CLERK

_____
TOM CAMPENNI
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MIKE MORTELL
CITY ATTORNEY

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST (R36-2017)
EXHIBIT "A"

Meeting Date: March 27, 2017 **Prepared By**: Roz Johnson, HR Director

Title of Item: **R36-2017: Voluntary Early Retirement & Separation Incentive Program**

Request approval to implement both:

1. Voluntary Early Retirement Incentive Program (VERIP)
2. Voluntary Early Separation Incentive Program (VESIP)

The City of Stuart is committed to identifying cost-saving opportunities and implementing programs that will successfully reduce recurring fiscal costs while minimizing the impact to City employees and departments. These programs are designed to provide a cost savings in anticipation of budget challenges and offer employees who meet eligibility criteria an incentive when voluntarily separating from City employment.

Summary Explanation / Background Information on Agenda Item:

The VERIP and VESIP programs provide employees, who have met FRS retirement eligibility and other program requirements, the opportunity to obtain the following benefits in addition to their normal retirement benefits.

Retirement Eligibility is defined as:

FRS Pension Plan:

- In **Regular, Elected Officials, and Senior Management Class**, members initially enrolled before July 1, 2011, vested 6 years and age 62 or, after 30 years creditable service regardless of age. For members initially enrolled on or after July 1, 2011, vested 8 years and age 65 or, after 33 years of creditable service regardless of age. Members enrolled before July 1, 2001 were vested depending upon membership class.
- In **Special Risk Class**, members initially enrolled before July 1, 2011 with 6 years of special risk service and age 55 or, 25 total years of special risk service and age 52 or, 25 years of special risk service regardless of age or, 30 years of any creditable service. Members initially enrolled on or after July 1, 2011, 8 years of special risk service and age 60 or, after 30 total years of special risk service and age 57 or, after 30 years of special risk service regardless of age or, after 33 years of any creditable service.

FRS Investment Plan:

- In **Regular, Elected Officials, and Senior Management Class**, members initially enrolled before July 1, 2011, age 62 or older, and 1 or more years of investment plan service or, age 62 or older and 1 or more years of combined pension plan and

investment plan service or, any age and 30 or more years of service. For members hired after July 1, 2011, age 65 or older and 1 or more years of investment plan service or, age 65 or older and 1 or more years of combined pension plan and investment plan service or, any age and 33 or more years of service.

- In **Special Risk Class**, members initially enrolled before July 1, 2011, age 55 or older and 1 or more years of investment plan service or, age 55 or older and 1 or more years of combined pension plan and investment plan service or, age 52 or older and 25 or more years of special risk and military service or, any age and 25 or more years of special risk service. For members hired after July 1, 2011, age 60 or older and 1 or more years of investment plan service or, age 60 and older and 1 or more years of combined pension plan and investment plan service or, age 57 or older and 30 or more years of special risk and military service or, any age and 30 or more years of special risk service.

Eligible employees who elect the VERIP will receive:

A. Up to 36 months health and/or dental insurance coverage at the employee's current election tier and amount of premium contribution in place for all active City employees at the time of separation. The City will continue to pay the employer portion of said coverage for a maximum of 36 months from the date of early retirement, at which time, the City's obligation will end;

~ OR ~

B. A gross (before taxes) one-time lump sum payout of $20,000.00.

Eligible employees who elect the VESIP will receive:

A. Two (2) weeks of pay at the employee's current base rate of pay (less applicable taxes) for each year of service as a full-time City employee, up to a maximum of ten (10) years or, twenty (20) weeks. Service of six months and one day is rounded up to a full year for calculation of payment.
B. Program participants will retain the City's health and/or dental insurance at the employee's current election tier and amount of premium contribution in place for all active City employees through the end of the fiscal year September 30, 2017.

NOTE: *To be eligible for the VERIP or VESIP, employee must have completed six (6) years of continuous full-time service with the City of Stuart and must not have already rendered a separation notification. Service as part-time, temporary, contract, intern, or any other non-full-time service is excluded from this offering.*

In both the VERIP and VESIP, all applicable leave balances shall be paid out per policy. Both the VERIP and VESIP will be open for an election period ending June 30, 2017. Participants must have met eligibility criteria and separate on or before July 31, 2017.

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**jchrulski

Title of Item:

THIS IS A PLACEHOLDER FOR ANY AND ALL CITY COMMISSION ACTIONS ON ITEMS TO COME BEFORE THE 2017 FLORIDA LEGISLATIVE SESSION.

RESOLUTION No. 38-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING SENATE BILL 596 AND HOUSE BILL 687 RELATING TO UTILITIES AND PROHIBITING LOCAL GOVERNMENTS FROM REGULATING, CHARGING, OR PROHIBITING SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY WHILE IMPOSING COSTS OF THESE FACILITIES ON LOCAL TAXPAYERS. (RC)

Summary Explanation/Background Information on Agenda Request:

1. Imposes another unfunded mandate by the State and threatens Home Rule authority. Preempts land use and local zoning authority for wireless communications equipment and facilities.

Funding Source:

N/A

Recommended Action:

1. Adopt R38-2017, as proposed.

ATTACHMENTS:

	Description	Upload Date	Type
🗋	R38-2017 OPPOSING SENATE BILL 596 AND HOUSE BILL 687 RELATING TO UTILITIES	3/20/2017	Resolution add to Y drive
🗋	HB 687 Utilities	3/20/2017	Attachment
🗋	SB 596 Utilities	3/20/2017	Attachment

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 38-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, OPPOSING SENATE BILL 596 AND HOUSE BILL 687 RELATING TO UTILITIES AND PROHIBITING LOCAL GOVERNMENTS FROM REGULATING, CHARGING, OR PROHIBITING SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY WHILE IMPOSING COSTS OF THESE FACILITIES ON LOCAL TAXPAYERS.

* * * * *

WHEREAS, the City Commission of the City of Stuart believes good governance requires public officials be granted the vested authority to protect local residents, visitors, and businesses alike from unwanted or injurious policies, practices, and special interests; and

WHEREAS, Senate Bill 596 and House Bill 687 provide relatively unchecked power to utility companies in establishing micro, wireless antennas along public rights-of-way at the expense of local communities and with little consideration of local impacts; and

WHEREAS, Senate Bill 596 and House Bill 687 unreasonably cap permit application and attachment fees, unreasonably limit permit review timeframes, and require taxpayers to subsidize the business interests of wireless communication providers; and

WHEREAS, the Stuart City Commission believes these measures solely exist to provide a substantial financial benefit to private utility companies by impairing local regulatory authority.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:

SECTION 1: The foregoing precatory language is adopted as if set forth below.

SECTION 2: The City of Stuart, Florida opposes Senate Bill 596 and House Bill 687 relating to utilities and prohibiting local governments from regulating, charging, or prohibiting small wireless facilities in public rights-of-way while imposing infrastructure costs on local taxpayers.

SECTION 3: This Resolution shall become effective upon its adoption.

Commissioner _____ offered the foregoing resolution 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
TOM CAMPENNI, MAYOR				
TROY A. MCDONALD, VICE MAYOR				
EULA R. CLARKE, COMMISSIONER				
KELLI GLASS LEIGHTON, COMMISSIONER				
JEFFREY A. KRAUSKOPF, COMMISSIONER				

ADOPTED this _____ day of _____, 2017.

ATTEST:

_____
CHERYL WHITE
CITY CLERK

_____
TOM CAMPENNI
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL MORTELL
CITY ATTORNEY

A bill to be entitled

An act relating to utilities; amending s. 337.401, F.S.; providing a short title; defining terms; prohibiting the Department of Transportation and certain local governmental entities, collectively referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; specifying that an authority may require permit fees only under certain circumstances; requiring an authority to receive and process applications for and to issue permits subject to specified requirements; providing that approval of, and charges by, an authority are not required for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; requiring an authority to approve the collocation of small wireless facilities on authority utility poles, subject to certain requirements; providing requirements for rates, fees, and other terms related to authority utility poles; providing that specified provisions do not authorize collocations of small wireless facilities on certain property; prohibiting an authority from adopting or

enforcing any regulations on the placement or operation of certain communications facilities and from regulating any communications services or imposing or collecting any taxes, fees, or charges not specifically authorized under state law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 337.401, Florida Statutes, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(7)(a) This subsection shall be known as the "Advanced Wireless Infrastructure Deployment Act."

(b) As used in this subsection, the following definitions apply:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

5. "Authority utility pole" means a utility pole owned or operated by an authority in the right-of-way.

6. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.

7. "FCC" means the Federal Communications Commission.

8. "Micro wireless facility" means a small wireless facility having dimensions not larger than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

9. "Small wireless facility" means a wireless facility that meets both the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

10. "Utility pole" means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.

11. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including:

a. Equipment associated with wireless communications; and

b. Radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated.

12. "Wireless infrastructure provider" means a person certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission

equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

13. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

14. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

15. "Wireless services provider" means a person who provides wireless services.

16. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require permit fees only in accordance with subsection (3). An authority shall accept applications for, process, and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for

the authority.

2. An applicant may not be required to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless service providers.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

5. Within 10 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an

application is deemed incomplete, the authority must specifically identify the missing information. An application shall be deemed complete if the authority fails to provide notification to the applicant within 10 days or when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority.

6. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if the authority fails to approve or deny the application within 60 days after receipt of the application.

7. The authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application will be deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

8. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

(e) An authority may not require approval or require fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on messenger cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

(f) An authority shall approve the collocation of small wireless facilities on authority utility poles, subject to the following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the

services provided by the collocating person.

3. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or $15 per year per authority utility pole.

4. If the authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority shall, no later than January 1, 2018, revise such rate, fee, or term to be in compliance with this subsection.

5. Persons owning or controlling authority utility poles shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

b. For authority utility poles that support aerial facilities used to provide communications services or electric service, the parties shall comply with the process for make-

ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For authority utility poles that do not support aerial facilities used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.

d. The authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless service providers for similar work and may not include any consultant fees or expenses.

(g) This subsection does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other

private property without the consent of the property owner.

(h) Except as provided in this chapter or specifically required by state law, an authority may not adopt or enforce any regulations on the placement or operation of communications facilities in the rights-of-way by any provider authorized by state law to operate in the rights-of-way and shall not regulate any communications services or impose or collect any taxes, fees, or charges not specifically authorized under state law.

Section 2. This act shall take effect July 1, 2017.

By the Committee on Communications, Energy, and Public Utilities; and Senators Hutson and Young

579-02186-17 2017596c1

A bill to be entitled

An act relating to utilities; amending s. 337.401, F.S.; providing a short title; defining terms; prohibiting the Department of Transportation and certain local governmental entities, collectively referred to as the "authority," from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances; authorizing an authority to require permit fees only under certain circumstances; requiring an authority to receive and process applications for permits, and to issue such permits, subject to specified requirements; providing that height limitations do not apply to the placement of small wireless facilities on or before a specified date under certain circumstances; prohibiting an authority from requiring approval or charges for routine maintenance, the replacement of certain wireless facilities, or the installation, placement, maintenance, or replacement of certain micro wireless facilities; requiring an authority to approve the collocation of small wireless facilities on authority utility poles, subject to certain requirements; providing requirements for rates, fees, and other terms related to authority utility poles; prohibiting an authority from adopting or enforcing any regulation on the placement or operation of certain communications facilities and from regulating any communications services or imposing or collecting any

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tax, fee, or charge not specifically authorized under state law; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 337.401, Florida Statutes, to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(7)(a) This subsection may be cited as the "Advanced Wireless Infrastructure Deployment Act."

(b) As used in this subsection, the term:

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

2. "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. The term includes local government historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

3. "Applicant" means a person who submits an application and is a wireless provider.

4. "Application" means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

5. "Authority utility pole" means a utility pole owned by an authority in the right-of-way. The term does not include a utility pole owned by a municipal electric company.

6. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.

7. "FCC" means the Federal Communications Commission.

8. "Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

9. "Small wireless facility" means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the

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connection of power and other services, and utility poles or other support structures.

10. "Utility pole" means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function.

11. "Wireless facility" means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

12. "Wireless infrastructure provider" means a person who is certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but is not a wireless services provider.

13. "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

14. "Wireless services" means any services provided using licensed or unlicensed spectrum, whether at a fixed location or

mobile, using wireless facilities.

15. "Wireless services provider" means a person who provides wireless services.

16. "Wireless support structure" means a freestanding structure, such as a monopole, a guyed or self-supporting tower, a billboard, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(c) Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way.

(d) An authority may require permit fees only in accordance with subsection (3). An authority shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

2. An applicant may not be required to provide more information to obtain a permit than is required of electric service providers and other communications service providers that are not wireless services providers.

3. An authority may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.

4. An authority may not limit the placement of small

wireless facilities by minimum separation distances or a maximum height limitation; however, an authority may limit the height of a small wireless facility to no more than 10 feet above the tallest existing utility pole, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the authority may limit the height of the small wireless facility to no more than 60 feet. The height limitations do not apply to the placement of any small wireless facility on a utility pole or wireless support structure constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

5. Within 10 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 10 days or when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority.

6. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application.

7. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable

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codes. If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

8. An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

(e) An authority may not require approval or require fees or other charges for:

1. Routine maintenance;

2. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

3. Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

(f) An authority shall approve the collocation of small wireless facilities on authority utility poles, subject to the

following requirements:

1. An authority may not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.

2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

3. The rate to collocate equipment on authority utility poles may not exceed the lesser of the annual recurring rate that would be permitted under rules adopted by the FCC under 47 U.S.C. s. 224(d) if the collocation rate were regulated by the FCC or $15 per year per authority utility pole.

4. If an authority has an existing pole attachment rate, fee, or other term that does not comply with this subsection, the authority shall, no later than January 1, 2018, revise such rate, fee, or term to be in compliance with this subsection.

5. A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.

a. The rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this subsection.

b. For an authority utility pole that supports an aerial

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facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

c. For an authority utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant.

d. An authority may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(g) Except as provided in this chapter or specifically required by state law, an authority may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way by a provider authorized by state law to operate in the rights-of-way and may not regulate

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

any communications services or impose or collect any tax, fee, or charge not specifically authorized under state law.

(h) This subsection does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative, a privately owned wireless support structure, or other private property without the consent of the property owner.

(i) This subsection may not be construed to limit local governments' authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

Section 2. This act shall take effect July 1, 2017.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**Michael Mortell

Title of Item:

RESOLUTION No. 40-2017; A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZATION TO MAYOR TO EXECUTE A LAND LEASE BETWEEN THE CITY OF STUART, FLORIDA AND PNR HOTELS INC., OR ITS ASSIGN, PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES. (RC)

Summary Explanation/Background Information on Agenda Request:

The subject property consists of one undeveloped parcel totaling 1.97 acres and is located at 1001 NW Federal Highway at the east corner of U.S. 1 (Federal Highway) and North Shores Boulevard, approximately 600 feet north of Wright Boulevard.

July 2011 - City of Stuart and Martin County jointly purchased most of the site for Haney Creek preservation purposes. The City separately purchased the subject 1.97-acre parcel for purposes of leasing commercially to generate revenues for O&M for Haney Creek and other City owned lands.

December 2011 - City adopted amendments to Future Land Use and Zoning designations to reflect present and future uses for the subject site and larger adjacent Haney Creek parcel.

November 2013 - City Commission directed staff to prepare a major amendment to Ordinance No. 2095-07 to provide for administrative level review of potential commercial development for the subject site.

The City Commission approved the item with a 5-0 at second reading in February, 2014.

The CPUD Approval granted by the City Commission approved a list of potential uses and further directed that as long as the project was in substantial conformity with the site plan attached to this agenda item that the matter would be approved and processed at staff level without further hearing.

Therefore, if this lease is approved and the applicant submits plans in conformity with the attached site plan, there will be no further review by any advisory boards or the City Commission.

The essential terms of the lease provide for a 50 vacant land lease based upon 10% of the value of the land. However, the Tenant will receive rent credits in the form of abatement for those pre-determined expenses necessary to provide the infrastructure to bring the property site ready. In addition, the indexing rate for the future rent has been reduced to .38 to provide a credit to the tenant for the structure that will become the property of the City at the end of 50 years. The current estimated value of the improvement is 10 million dollars. A building valued at 10 million dollars 50 years ago would have a current value of 73 million dollars. This is only for demonstrative purposes.

Additionally, pursuant to the RFP as well as the terms of the lease, the City is responsible for the payment of the Brokerage Fee for the transaction. Attached is a copy of the original brokerage agreement. At the expiration of the agreement, the City Commission did not renew for an exclusive listing and instead stated that it would honor a commission for any broker that brought an end user. NAI Southcoast did bring PNR Hotel to the City and is seeking approval of the commission pursuant to the terms of the brokerage agreement.

CITY MANAGER'S NOTE: For many weeks, the City Attorney has been engaged in negotiating the best possible lease for this property. I am satisfied that it will meet the needs of both the City and the Lessee. While the lease "index" is very low, that is compensated by the magnitude of the improvements being made, and maintained on the property, and shorter duration of the lease.

Funding Source:
N/A
Recommended Action:
Approve Resolution 40-2017 authorizing the Mayor to execute a Land Lease for the Haney Creek property.

ATTACHMENTS:

	Description	Upload Date	Type
🗋	R40-2017 Haney Creek Resolution	3/22/2017	Resolution add to Y drive
🗋	Proposed Lease	3/22/2017	Attachment
🗋	Site Plan	3/22/2017	Attachment
🗋	Brokerage Agreement	3/22/2017	Attachment

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 40-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZATION TO MAYOR TO EXECUTE A LAND LEASE BETWEEN THE CITY OF STUART, FLORIDA AND PNR HOTELS INC., OR ITS ASSIGN, PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSESS.

* * * * *

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

SECTION 1: The CITY COMMISSION authorizes the Mayor to execute a land lease for the development of the, City-Owned Haney Creek Property with PNR Hotels, Inc., of Boca Raton, FL or its assign.

SECTION 2: Conflicts. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 3: Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

Commissioner _____ offered the foregoing resolution 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
THOMAS CAMPENNI, MAYOR			
TROY MCDONALD, VICE MAYOR			
JEFFREY A. KRAUSKOPF, COMMISSIONER			
KELLI GLASS-LEIGHTON, COMMISSIONER			
EULA R. CLARKE, COMMISSIONER			

ADOPTED this 27th day of March, 2017.

ATTEST:

_____
CHERYL WHITE
CITY CLERK

_____
JEFFREY A. KRAUSKOPF
MAYOR

APPROVED AS TO FORM AND
CORRECTNESS:

_____
MICHAEL MORTELL
CITY ATTORNEY

ABSOLUTE NET
NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

LESSOR:
CITY OF STUART, FLORIDA

and

LESSEE:

RIVERSIDE HOSPITALITY, INC., OR ASSIGNS

Dated as of March 7, 2017

ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

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ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

THIS ABSOLUTE NET NON-SUBORDINATED LAND LEASE (the "Lease"), executed on the dates hereinafter set forth and commencing on the date provided herein, between CITY OF STUART, a Florida municipal corporation ("Lessor", "City", or "Stuart City Commission", as appropriate), and RIVERSIDE HOSPITALITY INC., a Florida corporation ("Lessee", or "RIVERSIDE", as appropriate) or its assigns, for the following uses and purposes:

1. RECITALS

WHEREAS, the Stuart City Commission, passed Ordinance 2275-2014 amending Ordinance 2095-07 providing for development approval of a 1.97 acre commercial portion of the Haney Creek property known as the Haney Creek Trust Commercial Property which provided for administrative level review of potential commercial development for the subject site. PNR Hotels, a Florida for profit corporation, responded to the marketing material for the property and desires to lease the 1.97 acre property informally known as the "Haney Creek Trust Commercial Property (Haney Creek)," and more properly described in **Exhibit "A"** (the "Property") for a commercial redevelopment project of the entire Property ("Haney Creek" or "Project" as appropriate), subject to the negotiation of business terms; and

WHEREAS, RIVERSIDE desires to enter into the Lease, and to own and construct the Project; and

WHEREAS, the City, as fee simple title owner of the Property, desires to lease the Property to RIVERSIDE; and

WHEREAS, at a duly called public meeting on February 10, 2014, the City Commission approved an amended Ordinance amending the Haney Creek Trust Commercial Property and authorizing staff to market same; and

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

2. DEFINITIONS

2.1 **Recitals.** The foregoing recitals are true, correct, and incorporated into this Lease.

2.2 **Definitions.** Capitalized terms used in this Lease shall have the following definitions:

2.3 As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, the singular shall include the plural as well as the singular number.

2.4 "**Act**" or "**Action**" means any lawful action taken by the Stuart City Commission or the SCRA, as duly authorized in Chapter 163 or Chapter 166, Florida Statutes, the Charter of the City of Stuart, Florida, and the ordinances and resolutions of the City.

2.5 "**Absolute Net Rent**" means this Lease (that is sometimes colloquially called a "triple net lease") in which the tenant pays rent, plus all of the costs of ownership and operation, including but not limited to insurance, real estate taxes, repair and replacement, cleaning, and utilities.

2.6 "**Additional Rent**" means any additional obligation of the Lessee to reimburse the Lessor for sums paid on behalf of the Lessee for all taxes when due or insurance premiums, when due, and as required to be maintained by the Lessee during any Term of this Lease. It shall also mean any other sum that is due to the Lessor from the Lessee as a result of its default, including but not limited to sums paid on behalf of the Lessee, and Lessor's reasonable attorneys' fees and costs. This paragraph is intended to capture any unknown taxes or assessments that would be general to all landowners and is not intended to authorize the City to add additional expenses or costs which would be exclusive to this land lease.

2.7 "**Authorized Representative**" means the natural or corporate Person or Persons designated and appointed from time to time as such by either party.

2.8 "**Building Construction Plans**" means the plans and specifications submitted by the Lessee and approved by the City that conform to the requirements of the Florida Building Code, and when approved, are satisfactory for the details of construction of the structures on the Property which, upon the final inspection and approval by the Building Official shall become the Leasehold Improvements.

2.9 "**Building Official**" means that Person or those Persons authorized under City's ordinances and the Florida Building Code to perform building inspections and issue on behalf of the City of Stuart a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion, as provided by law.

2.10 "**Building Permit**" means for all or each part of the Project to be constructed on the Leased Property, any permit, including demolition or foundation only permits, issued by the City of Stuart as the governmental authority having jurisdiction over construction on the Property.

2.11 "**Certificate of Occupancy**" means the final Certificate of Occupancy or Certificate of Completion, as appropriate, issued for the Leasehold Improvements by a Building Official pursuant to the Florida Building Code.

2.12 "**City**" means the City of Stuart, a municipal corporation created under the laws of the State of Florida.

2.13 "**City Codes**" or "**Codes**" means the ordinances and codes of the City of Stuart that regulate the development and construction of the Project and each Building, including but not limited to: the Stuart City Charter, the Stuart City Code of Ordinances, the Stuart Land Development Code, The Stuart Comprehensive Plan, and the Florida Building Code, including all of its separate codes, standards, provisions, and appendices.

2.14 "**City Commission**" or "**Stuart City Commission**" means the elected governing body of the City, by whatever name known or however constituted from time to time.

2.15 "**Construction Commencement Date**" means the date on which the Lessee commences or causes a Contractor to commence construction of any part of the Leasehold Improvements. Lessor acknowledges and agrees that the mobilization of equipment onto the Leased Property shall constitute "commencing" construction for all purposes under this Lease.

2.16 "**Construction Completion Date**" means the date on which construction for all of the Leasehold Improvements are substantially complete in accordance with the terms of this Lease, as evidenced by a Certificate of Occupancy or a Certificate of Completion.

2.17 "**Construction Financing**" means the funds provided by the Construction Lender under the Construction Loan for the hard and soft construction and development costs related solely to developing any part of the Leasehold Improvements, including the design, professional consulting, construction and equipping costs, and the costs for the Leasehold Improvements to be made on the Leased Property, which may be secured by a Leasehold Mortgage, security interest, pledge, lien or other encumbrances and includes all modifications, renewals, extensions and replacements thereof and future advances thereunder against the Lessee's Leasehold Interest in the Leased Property and/or the Leasehold Improvements.

2.18 "**Construction Financing Documents**" means any commitment, agreement, note, leasehold mortgage or other instrument evidencing and securing the Construction Loan, as amended, modified, renewed, extended, replaced or restated from time to time.

2.19 "**Construction Lender**" or "**Leasehold Mortgagee**" means any Person providing a Construction Loan.

2.20 "**Construction Loan**" means funds in the principal amount evidenced in the commitment made by Construction Lender in favor of the Lessee for the construction of all or any part of the Leasehold Improvements which are secured by a Leasehold Mortgage.

2.21 "**Construction Schedule**" means the schedule for the construction of the Leasehold Improvements, to this Lease, and as amended from time to time.

2.22 "**Contractor**" means one or more Persons constituting a general contractor or major subcontractor properly licensed or registered by the State of Florida, or other appropriate jurisdiction to the extent required by applicable law, authorized to perform construction contractor services in the State of Florida, registered with the City as required by applicable law, insured to the extent required by applicable law, and bonded.

2.23 **"Due Diligence Period"** means 90 days commencing on the Effective Date.

2.24 "**Effective Date**" means the date upon which this Lease has been executed by the last of Lessor and Lessee.

2.25 "**Existing Improvements**" means the buildings, structures, and any other improvements located on the Leased Property prior to the Lease Commencement Date.

2.26 "**Expiration Date**" means the date on which this Lease expires.

2.27 "**Final Development Approval**" means the issuance of all of the following: (a) the Stuart City Commission approves the Plans and Specifications, as evidenced by adoption of a Commercial Planned Unit Development (CPUD) Ordinance for the Project, and the Lessor or its successor in interest, executes an Acceptance of the CPUD; and (b) all other approvals, permits and licenses from the City and all other governmental and quasi-governmental entities for development and operation of the Project.

2.28 "**Improvements**" means collectively the Existing Improvements and the Leasehold Improvements.

2.29 **"Initial Term"** means the period of time commencing on the Lease Commencement Date and shall continue for a period of twenty-five years **(25)**, and shall end at 11:59 P.M. on the day of the 25th anniversary of the Lease Commencement Date

2.30 "**Payment Schedule**" rather than an adjustable index, the parties have entered an indexed payment schedule which is attached hereto as exhibit C.

2.31 "**Lease**" means this Lease between the Lessor and the Lessee, for the Leased Property which permits and requires the development and operation of the Project, including all attached exhibits, as amended, modified, or restated from time to time.

2.32 "**Lease Commencement Date**" means the date on which this Lease commences as provided in Article 7.

2.33 "**Lease Year**" means every twelve (12) month period of the Lease Term with the initial Lease Year beginning on the Lease Commencement Date.

2.34 "**Lessee**" or "**Tenant**" means RIVERSIDE HOSPITALITY, INC., or its assigns, and any permitted successor or assignee thereof.

2.35 "**Leasehold Interest**" means the Lessee's interest under this lease as well as any equitable interest in the Leased Property, the Leasehold Improvements, and all easements and rights appurtenant thereto, as provided by this Lease and applicable law.

2.36 "**Leasehold Improvements**" means the improvements constructed by or on behalf of the Lessee on the Leased Property, including, all structures on and improvements to the Leased Property.

2.37 "**Leasehold Mortgage**" means a mortgage on all or some of the Leasehold Improvements to secure the payment of a Construction Loan.

2.38 "**Leased Property**" or "**Property**" means the real property located at 1001 NW Federal Highway, Stuart, Florida 34994 described in **Exhibit "A".**

2.39 "**Lender**" or "**Leasehold Mortgagee**" means any Person providing Long Term Financing to the Lessee for the Leasehold Interest.

2.40 "**Long Term Financing**" means financing provided by a Lender to the Lessee secured by the Leasehold Interest and may be used to replace the Construction Financing.

2.41 "**Major Alteration**" means any addition, alteration, change or improvement to the exterior of any of the Leasehold Improvements that constitutes a substantial deviation from those depicted on the approved Plans and Specifications, provided, however, such term shall not include periodic maintenance activities such as replanting or replacing of landscaping, repainting exteriors and replacing damaged, worn or obsolete fixtures, or replacing approved signage.

2.42 "**Permit**" means any zoning, variance, conditional use approval, zoning approval, or other development order respecting land use and compliance with City Codes, and consents, waivers, or variances, required to be granted, awarded, issued, or given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Leasehold Improvements, or any part thereof, to commence, continue or be completed. This term includes a Building Permit, but the term Building Permit, does not include any other Permit.

2.43 "**Person**" means any natural person, firm, partnership (general or limited), corporation, company, joint venture, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

2.44 "**Plans and Specifications**" mean each and every of the plans and specifications and including those separately identified as Exhibits in the approved Commercial Planned Unit Development Ordinance ("CPUD") for the Project, and including all Demolition Permits for the Existing Improvements, and all of the Building Plans and Permits for the Leasehold Improvements, including such plan documents and specifications as may be later submitted, amended, modified, or restated from time to time, all of which must be substantially consistent with the scale, height, quality, and content of the Conceptual Site Plan and elevation Drawing attached hereto as **Exhibit "B." (HOTEL SITE PLAN)**

2.45 "**Project**" or "**Haney Project**" means, collectively, improvement of the 1.97 vacant acres, the construction and development of the Leasehold Improvements, and the operation and maintenance of the Leasehold Improvements. It shall also mean that upon issuance of the Certificate of Occupancy, and thereafter, to include the operation of a hotel, and maintenance of common areas, parking, and the general safe and efficient operation of the Property throughout the entire Term of the Lease, including any Initial Term, options, extensions or Renewal Term.

2.46 "**Project Professionals**" means any architects, engineers, consultants, planners, construction managers, contractors, or any other persons, or combination thereof, retained or employed by Lessee in connection with the planning, design, construction, completion and opening of the Project.

2.47 **"Renewal Term"** means the second 25 year term of this lease as described in section 5 of this lease.

2.48 "**Rent**" means all rent, as the case may be, as provided in Article 6, together with all taxes due and owing on the Property or the Lease, all unpaid liability or casualty insurance premiums as described in the Lease, and any late rent that is due and owing.

2.49 "**Rent Commencement Date**" means the first (1st) day of the thirty-seventh (37th) month following the Lease Commencement date.

2.50 "**Right to Contest**" means the procedure set forth in this lease for challenging any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as described therein.

2.51 "**Space Lease**" means any rental, lease, sub-sublease or other arrangement between Lessee and any Space Tenant.

2.52 "**Space Tenant**" means any tenant, subtenant, licensee, or other occupant of any portion of the Leasehold Improvements which does not comprise or which is not intended to be used primarily as a residential dwelling unit.

2.53 "**State**" means the State of Florida, and any applicable agency, department, office or official of the government of the State of Florida.

2.54 "**Stuart Community Redevelopment Agency**" or "**CRA**" means the duly authorized community redevelopment agency or agency board for the City of Stuart, under prevailing Florida law.

2.55 "**Unavoidable Delay**" means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are more specifically defined in and subject to the conditions described in this Lease.

3. LEASE

3.1 The Lessor leases to the Lessee, and the Lessee accepts from the Lessor, the Leased Property upon and subject to the terms of this Lease. Lessee accepts the Property in "AS IS" and "Where IS" condition, without any warranties express or implied, or other Permitted Title Exceptions, and included herein.

4. USES

4.1 **Construction and Maintenance.** Subject to the terms and conditions of this Lease, Lessee shall use the Leased Property to demolish the Existing Improvements and to construct, develop, operate, and maintain the Leasehold Improvements on the Leased Property during the entire Initial and Renewal Terms of the Lease, including any option periods or extensions thereof.

4.2 **Commercial Hotel Use.** Lessee shall have the right to use the Property as hotel and such other ancillary or accessory uses as may be permitted by the Lessor, in writing, from time to time.

4.3 **Ancillary or Accessory Uses.** Prior to a sub-lease for a period in excess of 6 months, Lessee shall be required to obtain the written approval of the Stuart City Manager, which approval shall be subject to a determination that the proposed use is ancillary or accessory to the primary use of the Leased Property, and that all required governmental and non-governmental approvals, taxes, and permits have been obtained. Such uses may include, but shall not be limited to: a leasing office, a newsstand, a café or coffee shop, a dry cleaning drop-off, a sundry kiosk, a bicycle rental, a parking valet, a swimming pool concession, or similar uses.

4.4 **Use of Public Property and Rights of Way.** The tenant shall construct ingress and egress to the property and the lessor shall execute those documents necessary to assist in acquisition and construction of same.

5. LEASE TERM (50 years with options).

5.1 **Term.** The Initial Term of this Lease shall commence on the Lease Commencement Date and shall continue for a period of twenty-five years **(25)**, and shall end at 11:59 P.M. on the day of the 25th anniversary of the Lease Commencement Date (the "**Initial Term**"). The Lessee at its sole discretion shall have one option to renew the Lease for a second term of twenty-five-years ("**Renewal Term**"). Lessee shall exercise its renewal option by providing written notice to the landlord 90 days prior to the expiration of the Initial Term.

5.2 **Extension of lease beyond fifty (50) years**. In the event Lessee desires to extend the lease beyond the Renewal Term, the parties agree that on the first day of the twenty-third (23rd) anniversary of the Renewal Term, or at such other times as is mutually agreeable to Lessor and Lessee, the parties shall convene to negotiate in good faith the terms of the new lease of the Property. The City shall have the right to consider all present market conditions and any indexing which is customary.

5.3 **Early Termination Right.** In the event Lessee elects to renew the Lease, commencing on the first day of the tenth (10th) and twentieth (20th) anniversaries of the Renewal Term, Lessee shall have the right to elect an early termination of this Lease and be free of any further obligation hereunder **(Early Termination Right)**. Lessee's Early Termination Right may only be exercised at the time, and in manner, hereinafter described. Beginning on the first day of the tenth (10th) and twentieth (20th) anniversaries of the Renewal Term and provided Lessee is not in default, Lessee may elect to exercise its Early Termination Right upon ninety (90) days written notice to landlord of such election. Lessee's Early Termination Right is waved if not elected in writing within 120 days following the first (1st) day of the tenth (10th) anniversary and within 120 days following the first (1st) day of the twentieth (20th) anniversary of the Renewal Term.

6. ABSOLUTE NET RENT.

6.1 In consideration of the warranties, representations and covenants made by Lessee in this Lease, Rent payable under this Lease shall be as set forth in exhibit C.

6.2 **Taxes.** It is the intent of the parties that this Lease shall provide for Absolute Net Rent. In addition to any "rent" payments and beginning on the Lease Commencement Date, continuing throughout the Lease Term, Lessee shall pay, before November 30, all taxes. "Taxes" as used herein, means all real property taxes, rates, duties and assessments, local improvement taxes, whether a general or special, that are levied, rated, charged or assessed against the Premises or any part thereof, and any and all Sales or Use Taxes due on Rent to the Lessor from time to time by any lawful taxing authority, whether Federal, State, Municipal, School or otherwise, and any and all taxes

which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the commencement date.

6.3 **Rent Payments.** Payments of Rent shall be paid monthly to "The City of Stuart" or its assignee, in advance, and received by the Lessor or assignee no later than close of business on the first (1st) day of each calendar month, and sent by electronic payment to an account designated in writing from time to time by the City.

6.4 **Late Rent Payments.** Payments received by the Lessor which are later than the fifteenth (15th) day of any calendar month shall include an additional late rent payment of $500.00 or five (5%) percent of the current Base Rent payment, whichever is greater, at the time of the late rent payment.

6.5 **Rent Escalation.** The Rent shall be paid pursuant to the Rent Schedule incorporated herein as Exhibit C.

6.6 **Failure to Comply with Triple net requirements.** If lessee fails to pay the rent requirements, the City shall retain the right to make these payments and preserve the asset. All unpaid insurance and tax payments and any taxes, fees described or yet to be implemented which are required herein shall be the responsibility of the Lessee to assure prompt payment by the Lessee, when due, of the same.

6.7 **Recession Clause**. In the event of a national recession, as economically defined as two consecutive quarters of negative economic growth as measured by GDP or as declared by the National Bureau of Economic Research, the parties agree that the tenant shall have the right to request a mediation conference for the sole purpose of temporarily modifying the lease payments to an amount that would allow the business to remain sustainable. The parties recognize that financial disclosure will be necessary for the City to make an informed decision.

7. EFFECTIVE DATE and LEASE COMMENCEMENT DATE

7.1 **Upon the Effective Date.** The effective date of this lease shall be the first day of the first month following the execution of this lease by the City of Stuart as well as the lessee.

7.2 **Lease Commencement Date.** This Lease shall commence, and the Lessee shall take possession of the Leased Property **on the effective date.**

7.3 **Building Permit Application.** On or before **one hundred and eighty (180) days** following the Lease Commencement Date, the Lessee shall file a complete application for a Building Permit for all of the vertical construction on the Leased Property. Within thirty (30) days after receipt of a complete application for a Building Permit, the City

shall review the application and take all necessary steps to satisfy the requirements for issuance of the Building Permit in compliance with applicable law.

7.4 **Construction Security:** Prior to obtaining a Building Permit for the vertical construction on the Property, and continuing until the date of the issuance of a final Certificate of Occupancy, the Lessee shall furnish to the Lessor, and maintain in full force and effect, a, or other irrevocable instrument or account in a form acceptable to the City Attorney in the City Attorney's reasonable discretion, and in an amount sufficient to restore the property to its original condition or complete the project. This instrument can be a letter of credit by the institution providing financing for the project.

8. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS AND DAMAGES

8.1 **Construction to comply with Codes.** Upon issuance of a Building Permit by the City, the Lessee shall commence construction of the Leasehold Improvements in accordance with the Plans and Specifications approved by the Lessor, and in accordance with the procedures set forth in this Article 8, and the Florida Building Code. All costs of demolition of the Existing Improvements, and all costs of construction of the Leasehold Improvements shall be borne by, and timely paid for, by the Lessee.

8.2 **Lessee's Right to Contract.** Lessee shall have the right to enter into separate contracts and agreements for the development, construction, use, and maintenance of all of the Leasehold Improvements, and for Space Leases, if any, without Lessor's consent. At least fourteen (14) days prior to any demolition, or construction in the public rights of way, or on Leased Property which is not on the Site, the Lessee shall coordinate directly with the City's Public Works Director or his designee. The Lessor shall not be liable to any contractor, or material provider, for any fee, or cost incurred by the Lessee.

8.3 **Contractors and Construction Means and Methods.** Contractors for the Leasehold Improvements shall be selected and construction work shall be completed in accordance with the following:

8.3.1 Lessee shall select Contractors to demolish the Existing Improvements and construct the Leasehold Improvements substantially in accordance with the Plans and Specifications.

8.3.2 Each Contractor shall be required to continue to pursue and prosecute the construction of the Leasehold Improvements using commercially reasonable efforts, except for Unavoidable Delays.

8.3.3 All construction work on the Leasehold Improvements shall be done substantially in accordance with the Plans and Specifications.

8.3.4 Commencing with the issuance of a Building Permit for vertical construction of the Leasehold Improvements, the Lessee shall make no less than quarterly written reports to the Lessor's Authorized Representative, approved by Lessee, as to the actual progress of the construction of the Leasehold Improvements.

8.4 **Proper Location.** The location of the Leasehold Improvements shall be as specifically located and set forth in the Plans and Specifications approved by the City.

8.5 **Utility Relocations.** Any modification, renovation, or relocation of any utilities upon City-owned lands or adjacent public or private rights of way shall be at the expense of the Lessee without recourse to the City, and such activities shall not affect the payment of Rent due under this Lease; provided however, that the foregoing shall be subject to review and approval by Lessee during the Due Diligence Period.

8.6 **Timely (36 Month) Construction Required.** Following issuance of the Building Permit for vertical construction of the Leasehold Improvements, Lessee shall have thirty-six (36) months within which to complete the entire Project subject to extension for Unavoidable delays. CONSTRUCTION BONUS: If Lessee obtains a certificate of occupancy for the operation of the hotel before twenty-four (24) months from the Effective Date, Lessee shall receive a $50,000.00 rent credit as described on the payment schedule attached as exhibit C. In the event Lessee qualifies for the rent credit, it shall receive a Ten Thousand Dollar rent credit for the first five years that rental payments are made pursuant to Exhibit "C".

8.7 Lessee may, at any time during the Term of this Lease, at Lessee's sole cost and expense, make or permit to be made any demolition, alteration, or change of, in, or to the Improvements or any part thereof or any building or improvement which is currently erected thereon without Lessor's consent; subject to the Lessee being responsible for any and all financial obligations associated therewith; provided, however, that: (i) Lessor shall have the right to approve changes that constitute Major Alterations; which approval shall not be unreasonably withheld, conditioned or delayed; (ii) such work shall be performed in a good and workmanlike manner and shall be completed free of any mechanic's and materialmen's liens; and (iii) that Lessee shall have obtained the approval of the Building Department of the City, if required, under applicable City Codes.

8.8 **Major Alteration of Leasehold Improvements.** In the event Lessee plans to make any demolition, alteration, or change in or to the Leasehold Improvements that constitutes a Major Alteration, the proposed plans and drawings for said proposed Major Alteration shall be submitted to the Lessor for its approval. There shall be no alterations without the express written approval by the landlord.

9. OWNERSHIP OF IMPROVEMENTS.

9.1 During the term of this Lease, the vertical and horizontal improvements constructed as part of the Leasehold Improvements will be owned and maintained by the Lessee and shall become the property of the Lessor upon the expiration of the lease.

9.2 Lessee shall be entitled to depreciation on the buildings, other structures, improvements and fixtures comprising the Leasehold Improvements which are now or shall subsequently be erected upon the Leased Property.

9.3 Upon the expiration or termination of this Lease, all of the Leasehold Improvements, and any personal property not removed by the tenant shall become the sole property of the Lessor.

9.4 The Lessee shall have a duty to maintain the property in good condition excepting reasonable wear and tear.

10. PERMITS, FEES, AND APPROVALS

10.1 **Governmental Approvals.** Lessor agrees to use its reasonable best efforts to provide or secure all governmental or quasi-governmental approvals, licenses and permits necessary to construct and operate the Project, **with the specific understanding that Lessor's governing body, as a matter of the public trust, will not, and cannot, waive or relinquish any of its own governmental or regulatory power or authority, either now or in the future.** If requested by Lessee, Lessor will join in any application for any permit or permits for the Leasehold Improvements, or, alternatively, recommend to and urge any other governmental authority to which application for a permit or permits has been made that such permit or permits be issued or approved. Upon obtaining any such permit or permission, the Lessor shall have a continuing obligation to maintain in full force and effect, and in good standing, all of the foregoing approvals, licenses and permits. Lessor's willful or negligent failure to do so shall constitute a default of Lessor, and an Unavoidable Delay, and in addition to any other remedies, the Lessee shall have the right to obtain such approvals, licenses and permits.

10.2 **Waiver or Credit for Building Permit Fees.** Lessor agrees, to the extent permitted by law, contract, or covenant to waive, credit, or rebate, its normal and customary fees for Building Permits for the demolition of the Existing Improvements.

10.3 **Impact Fees.** Lessee shall be responsible for the payment of all Impact Fees to the City and County.

11. (RESERVED)

11.1 Paragraph 11 and all subparts are reserved for future terms.

12. ACCESS TO THE LEASED PROPERTY

12.1 Commencement on the Effective Date and continuing throughout the Due Diligence Period, Lessee shall have the right to enter onto and physically inspect the Leased Property and conduct its due diligence related thereto. Lessee and Lessee's officers, employees, consultants, attorneys and other authorized representatives shall have the right to reasonable access, upon reasonable prior notice to the Lessor, onto the Leased Property and to all records of Lessor related thereto (including without limitation title information, surveys, environmental assessment reports and other information concerning the condition of the Leased Property), at reasonable times, for the purpose of inspecting the Leased Property, taking soil and ground water samples, conducting hazardous materials inspections and other environmental tests and assessments, including, but not limited to, Phase I and Phase II environmental assessments and geotechnical reports. Lessee agrees not to disrupt the normal business operations of the Leased Property, or to hamper the salvage rights of the Lessor. Lessee shall have the right to extend the Due Diligence Period by not more than sixty (60) days, if Lessee determines it is necessary to perform a Phase II Environmental Assessment of the Leased Property. Lessee shall notify Lessor in writing of its election to extend the due Diligence Period, prior to the end of the original term of the Due Diligence Period. Within sixty (60) days, after receipt of notice from Lessee, Lessor shall remediate any hazardous substances or other environmental issues identified by the Phase I or Phase II environmental assessments to standard permitting the unrestricted future use of the Leased Property and remove any underground storage tanks, and Lessor shall cure any encroachment, encumbrance or other defect disclosed by any survey or title information which shall not be acceptable to Lessee. Lessor's failure to timely comply with said requirement shall be deemed an Unavoidable Delay for all purposes under this Lease until such requirement has been satisfied. An extension of the Due Diligence Period will not change the Effective Date of the Lease or any other calculations in this document. Lessee may terminate the Leases for any reason during the Due Diligence Period.

12.2 Lessor shall give Lessee any authorizations which may be reasonably required by any third party in order to gain access to records or other information pertaining to the Leased Property or the use.

12.3 As of the Effective Date, Lessor has provided to the Lessee the following documents, if the same are held by the Lessor:

12.3.1 Copy of existing owner's title insurance policy and all applicable title exceptions;

12.3.2 Copy of survey and/or proposed legal description of the Leased Property (if different from the legal description in the owner's title insurance policy);

12.3.3 Copies of all existing permits; and

12.3.4 Copies of all environmental site assessment reports in the City's possession for the Leased Property and any adjoining areas.

13. REPRESENTATIONS AND WARRANTIES

13.1 Lessee represents and warrants to the Lessor that each of the following statements is true and accurate as of the Effective Date, and agrees the Lessor may rely upon each of the following statements:

13.1.1 Lessee is a Florida for profit corporation duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida. Lessee shall not later contest this Lease on the basis of a lack of authority or ultra vires act By Lessee.

13.1.2 This Lease and, to the extent such documents presently exist in a form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Lessee, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Lessee.

13.1.3 This Lease and, to the extent such documents presently exist in form accepted by the Lessor and Lessee, each document contemplated or required by this Lease to which Lessee is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

13.1.4 There are no pending or, to the knowledge of Lessee, actions threatened in writing or proceedings before any court or administrative agency against Lessee which question the validity of this Lease or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially

adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Lessee.

13.1.5 To the best of Lessee's actual knowledge, Lessee has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by Lessee, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Lessee.

13.1.6 All financial information and other documentation, including that pertaining to the Project or Lessee, delivered by Lessee to the Lessor, was, on the date of delivery thereof, true and correct to the best of Lessee's actual knowledge.

13.1.7 The principal place of business and principal executive offices of Lessee are in 3235 NW Stoney Creek Avenue, Jensen Beach, FL 34957. Lessee shall have the affirmative duty to notify the Lessor, in writing, of any change of address for its principal offices.

13.1.8 The execution, delivery, consummation, and performance under this Lease will not violate or cause the Lessee to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which Lessee is a party or constitute a default there under or cause acceleration of any obligation of the Lessee there under.

13.2 Lessor represents, and agrees that Lessee may rely upon, the following statements:

13.2.1 Entering into this Lease is a valid, binding and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

13.2.2 All steps, acts and conditions required to be done as a condition precedent to the execution of this Lease have been done, and the Lessor has full authority to enter into this Lease. Lessor shall not later contest this Lease on the basis of lack of authority or ulta vire act by Lessor.

13.2.3 The individuals executing this Lease and related documents on behalf of Lessee are duly authorized to take such action, which action shall be, and is, binding on Lessee and Lessor.

14. PROPERTY CONDITION

14.1 The Lessee acknowledges that it has made a thorough and complete inspection of the Leased Property and accepts this Lease and the Leased Property and is fully advised

of its extent and condition. The Lessee fully accepts the Leased Property in its present "as is, where as" physical state and condition subject to Lessee's inspection rights during the Due Diligence Period in accordance with terms hereof and all other terms and conditions of this Lease.

14.2 Lessor agrees to eliminate all of the following items, if any, as are identified in writing by Lessee prior to the Lease Commencement Date:

14.2.1 Reversionary interests discovered during the Due Diligence Period;

14.2.2 Liens or other encumbrances; and

14.2.3 Any other matters that would prevent Lessee from using the Leased Property for its intended purpose in accordance with the terms of this lease.

14.3 Lessor covenants and agrees that any liens, encumbrances or other matters on the Leased Property identified by Lessee as to be unacceptable shall be settled, satisfied, or released by Lessor, at Lessor's sole cost and expense, prior to the Lease Commencement Date. Lessor's failure to timely comply with said requirement shall be deemed an Unavoidable Delay for all purposes under this Lease until such requirement has been satisfied.

14.4 Lessee shall maintain the property to sustain a Brand standard equal to or greater than the "Flag" licensed to operate at the opening of the hotel. It is anticipated that the hotel will initially operate as a "Comfort Suites".

15. GENERAL OBLIGATIONS OF THE PARTIES

15.1 Lessee shall keep and maintain all Leasehold Improvements and Existing Improvements (prior to their demolition) on the Leased Property in a safe and secure manner, and in compliance with all governmental laws and requirements. Lessee shall have the right, at its own cost, to contest by appropriate legal proceedings, diligently conducted, the validity or applicability of complying with such laws or requirements. Lessor, on written request, shall sign any appropriate papers, or join in any such contest or empower Lessee to act in the name of Lessor as may be necessary or proper to permit Lessee to contest such laws or requirements. Any city code violations which may occur on the Property, following the Lease Commencement Date, shall be the responsibility of the Lessee, only if caused by and allowed to continue by the Lessee.

15.2 In the event of a breach of any of the provisions of this Lease, resulting in an action before a judicial or non-judicial tribunal, the prevailing party shall be entitled to recover from the non-prevailing all costs, expenses, reasonable attorneys' fees which may be incurred or sustained by reason of such breach, including but not limited to, all reasonable attorney's fees incurred through all appeals.

15.3 Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by a Leasehold Mortgagee. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, Florida Statutes, and subsequent revisions of that law. UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED. If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

15.4 **Payment of All Taxes.** For all portions of the Leased Property that are not tax-exempt, from and after the Lease Commencement Date, Lessee agrees to pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Leased Property, if any. From and after the Lease Commencement Date, the Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Lease, including any sales taxes due on rental payments. The intent of this paragraph is to address general taxes and the parties agree that the City will not create or levy any exaction solely in respect to this leasehold with the exception of code enforcement.

15.5 The Lessee shall have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Leased Property or the improvements built and placed on the Leased Property, and in case any such real property taxes, assessments, or other charges shall, as a result of such proceedings or otherwise, be reduced, cancelled, set aside or to any extent discharged, the Lessee shall pay the amount that shall be finally assessed or

imposed against the Leased Property or the improvements built and placed on them by the Lessee, which are finally determined to be due and payable on any such disputed or contested items. All expenses of such litigation, including court costs, shall be paid by Lessee free of all expenses to Lessor. The term "legal proceeding", as used above, shall be construed as including appropriate appeals from any administrative actions, judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them. If required by law, Lessor agrees to join in any such legal proceeding or empower Lessee to act in the name of Lessor.

15.6 Lessor will cooperate with Lessee in any filing or appeal to the Martin County Property Appraiser pertaining to the Lessee's use of the Leased Property for purposes of determining ad valorem real property taxes. In connection therewith, the Lessor and Lessee understand and agree that the development contemplated by this Lease is being undertaken by Lessee as a community redevelopment project.

15.7 The Lessee agrees, at its expense, to keep and maintain the Leased Property, the improvements, furnishings, fixtures and personal property located thereon in a good state of repair and condition, normal wear and tear or damage by the elements excepted.

15.8 After the Construction Completion Date, Lessee may not, without the prior written consent of Lessor, which consent will not be unreasonably delayed, withheld, or conditioned, make any Major Alteration to all or any part of the Leasehold Improvements located on the Leased Property owned and controlled by Lessee or Lessee's successors or assigns.

15.9 The Lessee at its expense agrees to deliver the Leased Property to the Lessor upon the termination of this Lease in a good state of repair and condition at the time of surrender, wear and tear and events of casualty excepted, subject to the terms and conditions of this Lease.

15.10 Lessor covenants, warrants and agrees that Lessee, and Lessee's successors and assigns, shall be entitled to peacefully enjoy, to occupy, and to possess the Leased Property throughout the Lease Term without interference, hindrance or molestation.

16. CONDEMNATION

16.1 Lessor represents and warrants to Lessee that Lessor has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Property. In the event of a taking of all of the Leased Property or so much of it so as to render the Leased Property unfit for purposes intended by this Lease as determined by Lessee in its reasonable discretion, for any public or quasi-public purpose, under any statute or by right of eminent domain, the Lessee's liability to perform the terms and conditions of this Lease shall cease, but the Lessee shall be entitled to any claim against the condemnor to which the Lessee may be entitled. Lessor shall refund to Lessee any

Rent or other sums paid by Lessee for the period after the termination date of this Lease. In the event that Lessee is not a party to such condemnation, Lessee shall receive any portion of an award or compensation to the Lessor which is attributable to the fair market value of Lessee's Leasehold Interest, less the value of the reversionary interest in the Leasehold Improvements, as determined by any court or courts of competent jurisdiction. Notwithstanding anything set forth herein to the contrary, to the full extent under applicable law, Lessor hereby waives any and all rights to take any portion of the Leased Property by eminent domain or condemnation proceeding. Lessor shall have no interest in any such award, compensation or payment, or any portion thereof, made in respect of the Leasehold Interest or the Leasehold Improvements, all of which shall belong to and be paid to Lessee.

16.2 In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be feasible for the continued operation of the Project for the purposes intended by the Lessee as determined by Lessee in its reasonable discretion, then this Lease shall continue in full force and effect, and Lessee shall receive that portion of the award or compensation allocable to its Leasehold Interest and all awards for any improvements located on the Property. Lessee shall use the proceeds received by the Lessee pursuant to this Article 16 for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit, but only to the extent that Lessee receives proceeds sufficient to cover said restoration and in no event shall Lessee be required to pay any amounts in connection with said restoration.

16.3 In determining whether repair or restoration is feasible, the Lessee shall consider, among other factors: (i) the cost of repairing or restoring the improvements affected by the condemnation; (ii) the amount of damage or destruction involved and the condemnation proceeds available to pay for the repair or restoration of the improvements affected by the loss; (iii) the effects of the loss on the Project's ability to operate in a commercially reasonable manner, and whether it is commercially reasonable to attempt to repair or restore; (iv) Lessee's ability to obtain all necessary Permits and other governmental approvals required to repair or restore, and operate the Project in compliance with all applicable City codes and ordinances and all other applicable governmental laws and to a reasonably commercial standard or condition; and (v) the length of time remaining in the Lease Term at the time of the condemnation.

17. DEFAULTS AND REMEDIES

17.1 **Lessee's Defaults.** Each of following events shall be events of default by Lessee under this Lease ("Event of Lessee's Default").

17.2 **Failure to Commence.** Subject to Unavoidable Delay and the terms of **Notice and Cure** below, should Lessee fail to commence construction of the Leasehold Improvements as provided in this Lease, this Lease and the Leasehold Interest shall

terminate. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation under this Lease.

17.2.1 **Failure to Commence; Remedies.** In the event there shall be a material default by Lessee under this Lease PRIOR to the Construction Commencement Date, and such material default shall continue after the expiration of the applicable grace period set forth in Section 17.5, subject to Unavoidable Delay, Lessor shall have the following rights and remedies:

17.2.1.1 The Lessor, by notice in writing transmitted to the Lessee, as provided in the paragraph entitled "NOTICES", may at its option declare the Lessee's interest under this Lease ended and without further force and effect. The Lessor is then authorized call in any bond or surety and to re-enter and repossess the Leased Property and the improvements and personal property on them and the Lessee does in such event waive any demand for possession of the Leased Property, and agrees to surrender and deliver up the Leased Property peaceably to Lessor.

17.2.1.2 The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. The Lessor shall be under no duty to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by the Lessee. Upon the Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of the Lessee's abandonment or surrender.

17.3 **Failure to Complete.** In the event there shall be a material default by Lessee under this Lease AFTER the Construction Commencement Date but PRIOR to the issuance of a Certificate of Occupancy, and such material default shall continue after the expiration of the applicable grace period set forth in Section 17.5, subject to Unavoidable Delay, Lessor shall have the right to all legal and equitable remedies under applicable law, including but not limited to the Lessor shall be authorized to call in any bond or surety, and to re-enter and repossess the Leased Property and the improvements and personal property thereon. The Lessee covenants that no surrender or abandonment of the Leased Property or of the remainder of the term shall be valid unless accepted by the Lessor in writing. The Lessor shall be under no duty to re-let the Leased Property in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the Leased Property by the Lessee. Upon the Lessee's abandonment or surrender or attempted abandonment or attempted surrender of the Leased Property, the Lessor shall have the right to retake possession of the Leased Property or any part of them, and such retaking of possession shall not constitute an acceptance of the Lessee's abandonment or

surrender. In addition, the Lessor may use the surety to demolish or complete the Leasehold Improvements, and to then seek to re-let the Leasehold Improvements. Notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessor be responsible for any consequential, indirect or punitive damages.

17.3.1 **Failure to Complete; Remedies.** In the event there shall be a material default by Lessee under this Lease AFTER the issuance of the Certificate of Occupancy for the Leasehold Improvements, and such Material Default shall continue after the expiration of the applicable grace period set forth in Section 17.5, Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth herein regarding the Lessee's failure to repair and maintain the Leased Property, excepting, however, Lessor shall expressly not have the right to terminate this Lease or obtain the right of re-entry or repossession of the Leased Property, except upon the failure to pay Rent which continues beyond any applicable notice and cure period. As indicated hereinabove, notwithstanding anything set forth in this Lease to the contrary, in no event shall Lessor be responsible for any consequential, indirect or punitive damages.

17.4 **Lessor's Damages for Abandonment.** If, after issuance of the Certificate of Occupancy, the Leasehold Improvements are effectively "abandoned" for more than thirty (30) consecutive days, subject to Unavoidable Delay and written notice to the Lessee and an opportunity to cure said default in accordance with the Notice and Cure subsection, Lessor may declare an Event of Lessee's Default, terminate the Lease, collect any past due Rent through the end of the current quarter of the Lease Year, call-in and surety available, and take control of the Leased Property. Lessor's right to terminate the Lease, collect any past due rents, call-in any surety, and take control of the Leased Property shall be the sole and exclusive remedy of Lessor in the event that Lessee abandons the Lease Property. For purposes of this Lease, the term "abandoned" shall not mean any period of time during which any portion of the Leasehold Improvements are unoccupied (a) during initial "lease-up" of the Project following issuance of the Certificates of Occupancy; or (b) as a result of a Tenant ceasing operations for any reason whatsoever.

17.5 **Notice and Cure.** If any of the Events of Lessee's Defaults set forth in this Article occur, or if Lessee shall fail in the performance of any term of this Lease, then the Lessor, or its agent, shall send to the Lessee a written notice of default, specifying the nature of the default, and Lessee shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessee, and if Lessee, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessee shall not be in default under this Lease.

Failure of the Lessor to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

17.6 **Lessor's Defaults.** Each of the following events shall be events of default by Lessor under this Lease ("Event of Lessor's Default"):

17.6.1 reserved
17.6.2 reserved
17.6.3 reserved

17.7 **Failure to Perform; Notice and Cure.** If Lessor shall fail in the performance of any material term of this Lease, then the Lessee, or its agent, may send to the Lessor a written notice of default, specifying the nature of the default, and Lessor shall, within sixty (60) days after the date of the notice, cure and remedy the default, and this Lease shall then continue as before; provided, however, in the event such breach cannot with due diligence be cured within a period of sixty (60) days, and if written notice of the default shall have been given to Lessor, and if Lessor, prior to the expiration of sixty (60) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds to cure and uses commercially reasonable efforts to cure such default and does so cure such default within a reasonable period of time, then Lessor shall not be in default under this Lease. Failure of the Lessee to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions and agreements.

17.8 **Lessee's Rights for Lessor's Default.** In the event there shall be an Event of Lessor's Default and such Event of Lessor's Default shall continue after any applicable grace period, Lessee shall have the right to terminate this Lease and all legal and equitable remedies under applicable law.

17.9 **Time and Performance are the Essence of the Lease.** Lessor and Lessee each covenant and agree promptly to perform, comply with and abide by this Lease, and each agree that time of payment and of performance of material obligations are of the very nature and essence of this Lease.

18. RIGHT TO CONTEST

18.1 Subject to the conditions set forth herein, the Lessor or Lessee each may, at its sole discretion and expense, after prior written notice to the other party hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any

taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof), the Leased Property, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Lease, or compliance with any law, rule, regulation, or other such legal requirement.

18.2 The right to contest any charge, payment or requirement pursuant to this Article (Right to Contest) is subject to the following:

18.2.1 Such proceeding shall toll and suspend the execution or enforcement of such charge, payment or requirement;

18.2.2 Such proceeding will not create any risk of impairment of the acquisition or preparation of the Leased Property, the construction, completion, operation or use of the Project, the Leased Property, or any part thereof, in any material respect, and neither the Project or Leased Property, nor any part of the Project or the Leased Property, would be subject to any risk of being involuntarily sold, forfeited or lost or the acquisition of the Leased Property or the construction, equipping, or completion of the Leasehold Improvements or any part thereof be delayed or prohibited;

18.2.3 Such proceeding will not subject any other party to criminal liability or risk of material civil liability for failure to comply therewith, or involve risk of any material claim against such party; and

18.2.4 The party seeking the benefit of this (Right to Contest) shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested by the others, to protect the Project and the Leased Property, and any part thereof, and any interest of such parties hereunder.

19. DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or in any related to this Lease, or any of the transactions or occurrences described or contemplated herein, the parties shall be obligated to follow the following dispute resolution procedures:

19.1.1 **First Step.** The parties, by and through their respective Authorized Representatives or their designees, shall attempt to negotiate a resolution of the dispute by direct discussions. Such negotiation shall be initiated by written demand by one party to another, and the negotiations may occur with or without counsel, as the parties elect.

19.1.2 **Second Step.** In the event that any dispute is not resolved during the first step, within three weeks of written demand for negotiation, the parties shall mediate the dispute under the statutes and rules governing mediation in the State of Florida. The parties shall first attempt to select a mediator by mutual agreement. Any mediator selected, or sought to be appointed as provided below, shall be a mediator certified by the Supreme Court of the State of Florida to mediate civil cases. If they cannot do so within thirty (30) days either party may petition the Chief Judge of the Nineteenth Judicial Circuit of Florida to appoint an appropriate mediator. Such mediation shall be without prejudice to further voluntary or court-ordered mediation in the event it is unsuccessful. The costs of obtaining the appointment of a mediator, the fees and expenses of the mediation, or any other cost or charge of the mediation shall be borne equally by the parties, unless otherwise agreed.

19.1.3 **Third Step.** Notwithstanding the Second Step, if there is an emergency or a determination by either party of irreparable damage or harm, that party may seek an injunction as provided by law.

19.1.4 **Fourth Step.** If any dispute is not resolved pursuant to the foregoing process, either party may resort to any other legal or equitable remedies available to them under this Lease and applicable law.

20. OWNERSHIP AT TERMINATION

20.1 Subject to the provisions of this Section, any improvements and fixtures located on the Leased Property at termination of the Lease shall become the sole property of the Lessor.

20.2 Any trade fixtures or personal property installed, attached to or located on the Leased Property by Lessee or any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such Lessee's or subtenant's property and may be removed by the Lessee or subtenant prior to the termination of the Lease, provided that the Lessee or subtenant shall repair, restore and save the Lessor harmless from all damage to any of the Leased Property including improvements located thereon and owned or controlled by the Lessee or subtenant, caused by such removal. While this Lease is in effect, nothing herein is intended to prevent the Lessee or a subtenant from being entitled to depreciation on the improvements and fixtures that are now or shall subsequently be erected upon the Leased Property. All personal property not removed by the Lessee within thirty (30) days of the Termination of the Lease, shall become the sole property of the Lessor. In the context of this section, "subtenants" shall include both Residential Tenants and Space Tenants.

21. LIABILITY INSURANCE

21.1 Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to Lessor. **The coverages required herein shall be written on occurrence-type basis and the Lessor shall be listed as an additional insured.**

21.2 **Insurance.** Lessee covenants to provide during the entire term hereof at Lessee's own cost and expense, as additional rent, by advance payment of premiums, a comprehensive liability policy of insurance covering, defending and protecting Lessor and Lessee as their interest may appear, against any liability whatsoever, occasioned by or occurring on or about the demised premises or any appurtenances thereto. Such policy shall be approved by Lessor, written by a company rated not less than A+, in an amount of not less than One Million Dollars ($1,000,000.00) to cover the claim or damage from any single person, and not less than Two Million Five Hundred Thousand Dollars ($2,500,000.00) to cover more than a Single claim which may arise from a single action, and in a sum no less than the replacement value in respect to claims for any property damage. Such policy shall insure Lessee and Lessor against any liability that may accrue against them or either of them, on account of any occurrence on or to the demised premises during the term thereof, resulting in personal injury, death, property damage, or any liability; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to Lessor an original or dupl8icate original of all such policies, together with evidence of payment of the premium thereon upon the beginning date of this Lease, and from time to time thereafter as premiums shall become due. Lessor may require an increase in the limits of coverage or extent of coverage at anytime such increase is deemed commercially reasonable in Martin County, Florida. All insurance coverage called for under the Lease shall name the Lessor, its officials and employees as additional insureds, and shall contain provisions granting Lessor thirty days notice prior to termination thereof and shall be written by an insurance company authorized to do business in Florida. Copies of the policies shall be promptly furnished to Lessor. All hazard insurance policies carried by the Lessee covering property located on the demised premises will provide and designate the Lessor as an additional named insured.

21.3 Unless otherwise agreed in writing by the Lessor's Authorized Representative, the amount, form, and type of insurance shall conform to the following minimum requirements:

21.3.1 Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability

Coverage of at least $100,000 each person - accident, $100,000 each person - disease, $500,000 aggregate - disease.

21.3.2 Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Form filed by the Insurance Services Office. Lessor shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of $1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

21.3.3 Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors. Fire Legal Liability insurance must be endorsed on this policy with limits no less than $100,000 per occurrence.

21.3.4 Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

21.4 Lessee shall require Contractors during construction of the Leasehold Improvements to provide or cause to be provided, pay for and keep in full force and affect, the types and amounts of insurance customarily carried by contractors and subcontractors on jobs comparable to this Project, including but not limited to Workers' Compensation, vehicle and general liability insurance.

21.5 Required insurance shall be documented by certificates of insurance that provide that Lessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Lease must be listed on the certificate. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Lessor, an ACORD 25. Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the Lessor the Lessee shall, upon instructions of Lessor, cease all operations under the Lease until directed by Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Stuart, 121 SW Flagler Avenue, Stuart, FL 34994.

21.6 Lessee's required coverages shall be considered primary and all other insurance shall be considered as excess, over and above the Lessee's coverage.

21.7 Notwithstanding anything in this Lease to the contrary, Lessor waives any rights of action for negligence against Lessee, which may arise during the Lease Term for damage to the Property or to the personal property therein, resulting from any fire or other casualty of the kind which is covered by All Risk property insurance policies carried by Lessee.

21.8 For separate consideration, the sufficiency and amount of which is agreed by both parties, the Lessee shall indemnify, defend and save harmless the Lessor from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Lease, for any personal injury, bodily injury, loss of life or damage to property sustained on the Leased Property, or to or about the Leasehold Improvements placed on the Leased Property, or their appurtenances, or upon adjacent sidewalks or streets excepting therefrom public streets maintained by Lessor, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Lessee shall also specifically defend any action or proceeding brought against Lessor as the result of any such claim for bodily injury, loss of life or damage to property, at no cost or expense to Lessor. If Lessee has supplied Lessor with evidence of insurance covering any of the aforementioned risks, no claim shall be made against Lessee unless and until the insurer shall fail or refuse to defend or pay all or any part thereof.

21.9 Notwithstanding that each party to this Lease shall carry liability insurance, and shall even name each other as additional insureds, the Lessor hereunder shall only be liable for claims, torts, actions, damages, suits, and causes of action derived from its own actions or inactions and for those of its officials, employees and agents. It is the intent of this Lease that the City of Stuart, as Lessor, shall be responsible only for its own tort liability, and not that of the Lessee, and the Lessee specifically acknowledges the limitations of liability afforded to the Lessor by the provisions of Section 768.28, Florida Statutes, which are fully claimed by the Lessor. The Lessee shall not be deemed to be in default under the provision of this Article 21 if all or a portion of insurance required under this paragraph is not commercially available.

21.10 Lessor and Lessee hereby waive, or agree to cause their respective insurers to waive subrogation or consent to a waiver of right of recovery, or to agree that the insurance is not invalidated if the insured has waived, or has waived before the casualty, the right to recover against the other party.

22. CASUALTY INSURANCE

22.1 Lessee shall determine the amount and type of property and casualty insurance required herein. However, at a minimum, the Lessee shall provide an All Risk Policy in the amount of at least eighty (80%) percent of the replacement value of the Leasehold

Improvements. The Lessor shall be named as a beneficiary of any such policy "as its interest may appear." It shall be the Lessee's sole obligation to insure the Leasehold Improvements, and the Lessor shall have the right, following written notice to Lessee, but not the obligation to provide such insurance, if the Lessee fails to do so. The cost of such insurance shall become additional Rent to the extent unpaid by Lessee. Notwithstanding this provision, the Lessee shall obtain all other coverages required herein.

22.2 If a casualty loss affecting all or that part of the improvements located on the Leased Property should occur for all or that part of the Leasehold Improvements, the Lessee shall promptly notify the Lessor about the loss ("Notice of Loss"). The Notice of Loss shall include the date on which the loss occurred and the determination of the Lessee, in its reasonable opinion, as to whether the repair or restoration of the improvements affected by the loss is feasible. If repair or restoration is feasible as determined by Lessee, the proposed construction schedule and budget for implementing such repair or restoration shall be sent to Lessor within ninety (90) days after delivery of the Notice of Loss, subject to Unavoidable Delay. The Lessee recognizes and agrees that this Lease is a "non-subordinated land lease" and that Lessee is solely responsible for repairs to any and all Leasehold Improvements on the land. Such repairs shall be pursued in a timely and workmanlike manner, and without delay, subject to Unavoidable Delay.

22.3 If the Lessee determines in its reasonable opinion that repair or restoration is feasible, the casualty insurance proceeds ("Proceeds") if any, shall be used, collected and disbursed to pay for the repair or restoration in accordance with the proposed construction schedule and budget for implementing such repair or restoration. If any Proceeds remain after paying for the repair or restoration, they shall be disbursed to the Lessee.

22.4 If the Lessee determines in its reasonable opinion that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to the Lessor. Upon such surrender, this Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee. The time between the date of the casualty and the date on which Notice of Loss is given shall be considered an Unavoidable Delay under this Lease. Lessee will not be obligated to make any repair or restoration that is feasible, unless and until Lessee's time for performance has been extended by a period of time sufficient to repair or restore such loss and complete the balance of the Project.

22.5 Subject to Lessee's determination that repair or restoration of the Leasehold Improvements is feasible in accordance with 22.1 above, Lessee is required to rebuild if

the Leasehold Improvements are destroyed in whole or in part by fire, flood, or windstorm damage, or other casualty, or any combination thereof, whether insured or noninsured, or whether totally destroyed or partially damaged. Monthly rent payments to the City during such occurrence shall be forgiven during a period of disruption after the date of such casualty, and only if the Lessee is not collecting Rents from the sub-tenants. This Lease shall not be terminated during such period provided Lessee is using good faith efforts to cause the Leasehold Improvements to be reconstructed in an expeditious manner provided, however, Lessee shall not be penalized for its inability to obtain permits or building materials or skilled labor due to the consequences of the event that caused the casualty (for instance, a hurricane). Restitution of the Leasehold Improvements is the prime objective of the Lessor, subject however, to the terms of 22.1 above.

23. ASSIGNMENT

23.1 The Lessee may assign this Lease to a qualified party, subject to consent by the Lessor as set forth herein. The Lessor shall respond within forty (40) calendar days of the receipt of all necessary information (including information about the financial and experience ability of the assignee to perform under this Lease), for an assignment by the Lessee. Such consent must be obtained formally by affirmative action of the Lessor's City Commission prior to any assignee taking control or occupancy of the Property or any portion thereof. Nothing herein shall prevent the Lessee from renting individual residential units to third parties, without the Lessor's approval.

23.2 Lessor's criteria to approve an Assignment of this Lease shall be the following:

23.2.1 The City Commission, in its reasonable discretion, must be satisfied that the assignee intends to use the Leased Property in a manner that is consistent with uses allowed by this Lease.

23.2.2 The City Commission must be satisfied in its reasonable discretion that the assignee possesses the financial capacity, a good reputation, and sound managerial ability to operate the Project successfully on the Leased Property.

24. SUCCESSORS IN INTEREST

24.1 The covenants and agreements contained in this Lease shall be binding on and inure to the benefit of the respective permitted successors and assigns of the parties whether by merger or otherwise. Wherever used, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

25. NOTICES

25.1 All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

25.1.1 All notices, demands, requests for approvals or other communications given by either party to another shall be in writing signed by the party or its counsel identified below, and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) courier service, , or (c) hand delivery to the office for each party indicated below and addressed as follows:

To Lessee:
RIVERSIDE HOSPITALITY, INC., or ASSIGNS
Patel, Nimesh
9481 Grand Estates Way
Boca Raton, FL 33496

To the Lessor:

City Manager
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

Copy to:
City Attorney
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

25.2 Any such notice shall be considered delivered: (a) on the date of hand delivery, (b) on the first business day after the date of deposit with an overnight courier, (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as non-deliverable, as the case may be, if mailed by certified mail. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as later changed), shall be deemed to have been an effective delivery as provided in this Section 25. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other party, and such notices shall be effective upon receipt. Until a written notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

26. ESTOPPEL CERTIFICATES

26.1 Lessor agrees that, at any time and from time to time during the term of this Lease, within twenty (20) days after request by the Lessee, the Lessor will execute, acknowledge and deliver to any prospective Space Tenant, assignee, mortgagee or other person designated by Lessee, a certificate stating: (a) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) confirming that the Rent has been paid in full and the date of the last payment; (c) whether or not there is any known existing default by either party hereto, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any known setoffs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder; and (e) any other information relating to this Lease reasonably requested by the Lessee.

26.2 Lessor will provide estoppel certificates to the lenders of Lessee or any Space Tenant which certificates shall confirm: (a) the term of the Lease, (b) no defaults under the Lease, and (c) other matters reasonably requested by the Space Tenant's lender, if applicable.

26.3 In the event Lessee or any Space Tenant obtains Construction Financing and/or Long Term Financing for the Leasehold Improvements or any other financing, Lessor agrees to cooperate with said lender(s) in connection with requests by said lenders for commercially reasonable "lender protection" terms provided said terms impose no additional obligation to or risk to Lessor.

26.4 Lessor agrees to enter into "non-disturbance" agreements with any Space Tenant, pursuant to which Lessor will not disturb the occupancy of any Space Tenant that is not then in default of its Space Lease.

27. SEVERABILITY

27.1 If any paragraph, subparagraph, sentence, clause, provision, or part of this Lease shall be held invalid for any reason, the remainder of this Lease shall not be affected.

28. LEASEHOLD MORTGAGES

28.1 No mortgage may be placed on the underlying fee simple interest of the City or on the Leasehold Improvements, provided, however, Lessee shall have the right to grant a mortgage on the Leasehold Interest pursuant to the terms of this Article.

28.2 Lessee may not mortgage, pledge or encumber all or any part of the Leasehold Interest, without the prior written consent of the Lessor, except to a Leasehold Mortgagee. The provisions of this Article 28 and any other provisions contained in this

Lease which benefit a Leasehold Mortgagee shall only apply to Leasehold Mortgagees under mortgages complying with the terms of this Article.

28.3 No Leasehold Mortgagee shall have the rights or benefits described in this Article, nor shall the provisions of this be binding upon Lessor with respect to any such mortgage or any assignment thereof, unless or until such Leasehold Mortgagee shall deliver to Lessor an executed counterpart of such mortgage, together with a statement signed and acknowledged by such Leasehold Mortgagee that such mortgage will be subject and subordinate to the rights of Lessor hereunder. Nothing contained in such a mortgage or contained herein, whether express or implied, shall have the effect of subordinating any interest or estate of Lessor in and to the Leased Property, to the lien of such a mortgage.

28.4 If Lessee shall mortgage all or any part of the Leasehold Interest to a Leasehold Mortgagee(s), in compliance with this Lease, the following provisions shall apply until the subject mortgage has been satisfied:

28.4.1 There shall be no cancellation or surrender of this Lease by joint action of Lessor and Lessee without the prior consent in writing of the Leasehold Mortgagee(s), not to be unreasonably withheld.

28.4.2 There shall be no modification of this Lease which would materially increase the Rent hereunder or shorten the Lease Term, by joint action of Lessor and Lessee, without the prior consent in writing of the Leasehold Mortgagee(s), not to be unreasonably withheld.

28.4.3 Provided Lessee has provided Lessor written notice of the name and notice address of its Leasehold Mortgagee, Lessor, upon serving Lessee any notice of default or any other notice or demand required under this Lease, shall also serve a copy of such notice upon such Leasehold Mortgagee, and no notice or demand by Lessor to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so served.

28.4.4 Any Leasehold Mortgagee shall have the right to perform any term or condition of this Lease to be cured or performed by Lessee, and Lessor shall accept such performance by such Leasehold Mortgagee with the same force and effect as if furnished by Lessee, provided that such Leasehold Mortgagee remedies any monetary default no later than fifteen (15) days after same may be remedied by Lessee hereunder, and remedies any non-monetary default or performs such term or condition no later than the date that is thirty (30) days after the last date by which such default may be remedied by Lessee hereunder.

28.4.5 In the event that the Leasehold Mortgagee is unable to cure such default without first obtaining control or title to the Leasehold Interest, Lessor shall provide the Leasehold Mortgagee an extended period of time in which to obtain control or

title to the Leasehold Interest and to effectuate such cure, provided that the Leasehold Mortgagee commences proceedings to obtain control or title to the Leasehold Interest within sixty (60) days of receipt of a notice called for pursuant to this Section and diligently prosecutes such action or actions and commences to and diligently proceeds to cure such default upon obtaining possession or title to the Leasehold Interest. In the event that such proceedings are not necessary to enable the Leasehold Mortgagee to cure such default, the periods for curing the same shall not be extended as described in the preceding sentence.

28.5 The leasehold mortgagee of all or any portion of that part of the Leasehold Property covered by the Leasehold Mortgagee(s) may become the legal owner and holder of the Lessee's interest, which shall not disturb any Residential Lease or Residential Tenant, except for the failure to pay residential rent or other default of a Residential lease, except that such leasehold mortgagee may assign the Residential lease(s) to any Leasehold assignee at any time whether prior or subsequent to the construction or completion of the Leasehold Improvements constructed or to be constructed the Leased Property covered by the Leasehold Interest in lieu of foreclosure provided that all obligations of Lessee hereunder are fulfilled in accordance with the terms of this Lease, including the right of an Leasehold Mortgagee to cure defaults hereunder.

28.6 In the event that a Leasehold Mortgagee shall become the owner or holder of the Lessee's interest by foreclosure of its mortgage or by assignment of the Lease in lieu of foreclosure or otherwise, the leasehold mortgagee shall stand in the shoes of the Lessee for all purposes of the Lease, including the payment of Rent.

29. ASSIGNMENT BY LESSOR

29.1 Lessor shall only transfer, convey, or mortgage its interest in the Leased Property or this Lease, or any portion thereof (subject to the Lessee's "Right of First Refusal" provided below) on the following terms. Any such transfer, conveyance, or mortgage shall be subject to this Lease (provided the Lessee agrees to attorn to such transferee or mortgagee), and the transferee or mortgagee shall acknowledge in writing that its interest in the Leased Property is subject to this Lease (including Lessee's Right of First Refusal provided below) and, with respect to a purchaser or transferee, that it assumes all the obligations and liabilities of the Lessor hereunder. At the closing of the transfer of its interest in the Leased Property and this Lease in accordance with this paragraph, Lessor shall be released from any liability hereunder arising after the closing of the transfer.

29.2 In consideration of Lessee's execution of this Lease, Lessor hereby grants to Lessee for the entire Term of this Lease including the Initial Term and the Renewal Term, a right of first refusal ("Right of First Refusal") with respect to the Leased Property, subject to the terms and provisions set forth below. In the event Lessor receives an offer to purchase the Leased Property or any portion thereof during the Term of this Lease,

which the Lessor intends to accept ("Offer"), Lessor shall provide to Lessee written notice of receipt of the Offer together with a copy of the Offer within five (5) days of receipt of the Offer by Lessor. The giving of such notice shall constitute an offer by Lessor to sell the Leased Property (or applicable portion thereof) to the Lessee at the same purchase price as contained in the Offer and otherwise in accordance with the terms and provisions of the Offer. Not later than ninety (90) days after receipt of such notice, the Lessee may elect to purchase the Leased Property (or applicable portion thereof) at the purchase price in accordance with the terms and provisions of the Offer by delivery to the Lessor of **all of the following within such ninety (90) day period:**

29.2.1 A written notice of the election of the Lessee to acquire the Leased Property (or applicable portion thereof); and

29.2.2 A check made payable to the trust account of the attorneys for the Lessor, as escrow agent, in the amount of the deposit set forth in the Offer; and

29.2.3 A duly executed sales agreement which contains the terms and provisions of the Offer.

29.3 In the event the Lessee fails to elect to purchase the Leased Property (or applicable portion thereof) within said ninety (90) day period and in accordance with the foregoing, then Lessor shall be free to accept the Offer and the Leased Property (or applicable portion thereof) may be sold and conveyed to the buyer under the Offer free and clear of the Right of First Refusal (subject to the provisions of Paragraph pertaining to Assignment). In the event the sale of the Leased Property pursuant to the Offer does not occur, the Right of First Refusal granted to Lessee pursuant to the provisions of this Section will apply to any subsequent proposed sale or transfer of the Leased Property by the Lessor. In the event the sale of the Leased Property pursuant to the Offer does occur, the Right of First Refusal granted to lessee pursuant to the provisions of this Section will apply to any subsequent proposed sale or transfer of the Leased Property by Lessor's successor in interest.

29.4 Notwithstanding anything to the contrary contained in this Section, the Right of First Refusal herein shall not apply to Lessor's conveyance, sale or transfer of the entire Leased Property to a duly created agency of the Lessor, provided such conveyance, sale or transfer is subject to all the terms, conditions and covenants in this Lease, including this Section, and such transferee expressly assumes in writing all terms, conditions and covenants in this Lease applicable to the Lessor hereunder, including, but not limited to, the terms of the Right of First Refusal, and such written assumption is recorded in the Public Records of the County.

29.5 Simultaneously with the execution of this Lease, a Memorandum of Right of First Refusal in substantially the form attached hereto shall be executed by Lessee and Lessor and recorded in the public records of Martin County, Florida. The cost of recording shall be borne by Lessee.

30. COMPLETE AGREEMENT

30.1 The parties mutually represent and warrant to each other that this Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Lease been induced on the part of any party except as expressed in writing in this Lease.

31. NON-DISCRIMINATION

31.1 Lessee shall not discriminate against contractors, sublessees or users of the Existing Improvements or Leasehold Improvements with regard to race, creed, color, handicap, familial status, disability, marital status, religion, national origin or content of speech. Lessee accepts sole responsibility for ensuring such non-discriminatory access to the Leased Property.

32. SUBROGATION

32.1 The Lessor shall have the option, after sixty (60) calendar days' prior written notice to Lessee and without waiving or impairing any of Lessor's rights, to pay any sum or perform any act required of the Lessee not timely performed by Lessee under this Lease, which remains outstanding after all notice and cure rights, and the amount of any such payment and the value of any such performance, together with interest on them, shall be secured by this Lease, and shall be promptly due and payable to the Lessor as Additional Rent.

33. CONFORMITY TO LAW

33.1 Lessee acknowledges that the Leased Property and the Existing Improvements, and Leasehold Improvements to be constructed thereon are subject to all applicable laws, and to provisions and restrictions governing land use and zoning, site and structure design, compliance with building, environmental and occupational codes as determined by the applicable governing entity or instrumentality having jurisdiction.

34. LICENSES AND PERMITS

34.1 Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all applicable laws relative to development and operation to be conducted on the Leased Property in accordance with this Lease. Upon

Lessor's written request, at reasonable intervals, Lessee agrees to provide Lessor with a copy of such permits and payments related to the Leased Property.

35. RADON GAS

35.1 Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type:

35.1.1 **RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.**

36. RESTRAINTS UPON USE

36.1 Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions in the City Codes, and the terms of this Lease. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority.

37. NO MERGER

37.1 There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Leased Property or any part thereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leased Property or any interest in such fee estate.

38. SUBORDINATION

38.1 Lessor hereby subordinates in favor of any leasehold mortgagee any right to a Lessor's lien against the furnishings, fixtures, machinery, equipment, furniture, inventory and/or any other items of personal property which is owned by Lessee or tenants of Lessee, and now located or may hereafter be delivered or installed in or upon any of the improvements situated upon the Leased Property. This subordination is self-executing and no further evidence of the subordination must be produced. However, if requested by any leasehold mortgagee, Lessor shall execute and deliver a subordination agreement in the form reasonably required by such leasehold mortgagee within fifteen

(15) business days of written request and the governing body of Lessor hereby authorizes and instructs its Authorized Representative to sign and deliver such subordination agreement when found not to be inconsistent with the purpose and intent of this Article.

39. UNAVOIDABLE DELAY

39.1 In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in this Lease shall be extended by the time period caused by any and all Unavoidable Delay. "Unavoidable Delays" mean any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Lease Commencement Date), strikes or labor disturbances, delays due to proceedings under Florida Statutes, restoration in connection with any of the foregoing, the City's failure to timely respond to or approve the application for any Permit or governmental or quasi-governmental approval related to the Project, or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement, or acts of any governmental authority.

40. GOOD FAITH AND FAIR DEALING

40.1 Lessor and Lessee hereby agree to interpret the terms, conditions and provisions of this Lease in good faith exercising reasonable business judgment, and to attempt to resolve any and all issues, disputes or conflicts that may arise hereunder in a reasonable and fair manner. Lessor acknowledges and agrees that, except as may be otherwise expressly set forth in this Lease, in all instances in which Lessor has the right to approve or consent to any matter set forth in this lease. Lessor shall not have the right to unreasonably with-hold, condition or delay such consent or approval.

41. NO JOINT VENTURE

41.1 The parties hereby agree that it is their intention to create only the relationship of Lessor and Lessee, and neither this Lease, nor any term, provision, payment or right hereunder shall in any way or for any purpose, constitute or cause Lessor to become or be deemed a partner of Lessee in the conduct of its business, or otherwise, or to cause Lessor to become or be deemed a joint adventurer or a member of a joint enterprise with Lessee, nor shall this Lease, or any term or payment required herein, confer or be deemed to confer any interest upon Lessor in the conduct of Lessee's business.

42. EXCULPATION

42.1 Notwithstanding anything to the contrary provided in this Lease, neither Lessor, nor any officer, director, trustee, employee, agent, advisor or affiliate of Lessor, nor any holder of a superior interest in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessor is in breach or default with respect to its obligations or otherwise.

42.2 Notwithstanding anything to the contrary provided in this Lease, neither Lessee, nor any officer, director, trustee, employee, agent, advisor or affiliate of Lessee, nor any holder of a superior interest in the Property, whether direct or indirect, shall have any personal liability with respect to any of the provisions of this Lease and, if Lessee is in breach or default with respect to its obligations or otherwise.

43. LEASE FOR BENEFIT OF PARTIES HERETO

43.1 Nothing in this Lease, whether express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Lessor, Lessee or their officers, directors or incorporators, any right, remedy or claim under or by reason of this Lease or any covenant, condition or stipulation thereof; and the covenants, stipulations or agreements contained in this Lease are and shall be for the sole and exclusive benefit of the aforementioned parties, and their permitted successors and assigns.

44. QUIET ENJOYMENT

44.1 Lessor agrees that Lessee, upon paying the Rent and all impositions and other charges herein provided for and performing all the covenants and conditions of this Lease, shall (subject to Lessor's rights specified in this Lease) lawfully and quietly occupy the Premises during the term of this Lease as against Lessor or any persons claiming under or through Lessor.

45. UNDERSTANDINGS AND AGREEMENTS

45.1 All understandings and agreements between the parties are merged into this Lease, which fully and completely expresses the parties' agreement, and the same is entered into after full investigation; neither party is relying on any statement or representation made by the other not embodied in this Lease.

46. SEVERABILITY

46.1 If any of the provisions of this Lease, or any article, section, clause, phrase, word, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Lease, and of the application of any such provision, action, sentence, clause, phrase, or word, in other circumstances, shall not be affected thereby.

47. COVENENTS RUN WITH THE LAND

47.1 All provisions of this Lease and all exhibits attached hereto, and any amendments thereof, shall be construed as covenants running with the Land, and of every part thereof and interest therein.

48. CAPTIONS

48.1 The captions used in this Lease and upon the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Lease or exhibits hereto.

49. RESERVED

49.1 Section 49 is reserved for future use.

50. GOVERNING LAW AND VENUE

50.1 This Lease shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida, without regard to principles of conflicts of law. Venue of all proceedings in connection herewith shall be in Martin County, Florida, and each party hereto hereby waives whatever their respective rights may have been in the selection of venue.

51. AUTHORITY OF LESSEE AND LESSOR

51.1 Lessee is a limited liability company, and each individual executing this Lease on behalf of the company is duly authorized to execute and deliver this Lease on behalf of the company in accordance with a duly adopted resolution of the Managing Member(s) of the company, and that this Lease shall as of the Effective Date be binding upon the company in accordance with its terms. Lessee shall, within ten (10) days after the execution of this Lease, deliver to Lessor a certified copy of a resolution of the Managing Member(s) of the company authorizing or ratifying the execution of this Lease.

51.2 Lessor is a municipal corporation, and each individual executing this Lease on behalf of the Lessor is duly authorized to execute and deliver this Lease on behalf of the Lessor in accordance with a duly adopted resolution of the Stuart City Commission, and that this Lease shall as of the Effective Date be binding upon the Lessor in accordance with its terms. Lessor shall, within ten (10) days after the execution of this Lease, deliver to Lessee a certified copy of a resolution of the City Commission authorizing or ratifying the execution of this Lease.

52. SUCCESSORS AND ASSIGNS

52.1 Except as otherwise provided in this Lease, the conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

53. INDEPENDENT COUNSEL AND CONSTRUCTION

53.1 Lessor and Lessee each acknowledge and warrant that each has been represented or as had an opportunity to be represented by independent counsel, and has executed this Lease after being fully advised as to its legal effect and significance. This Lease is the result of negotiations between the parties and their respective attorneys, and shall be construed in an even and fair manner, regardless of the party who drafted this Lease or any provision thereof.

[ALL SIGNATURES ON THE FOLLOWING PAGE]

ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals on this _____th day of September, 2016.

Executed and delivered
in the presence of:

LESSOR:
CITY OF STUART, FLORIDA
A Florida Municipal Corporation

_____
Print Name:

_____
Tom Campenni
Mayor

_____
Print Name:

ATTEST:

_____
CHERYL WHITE
City Clerk

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
City Attorney

Executed and delivered
in the presence of:

LESSEE:
RIVERSIDE HOSPITALITY, INC., LLC
OR ASSIGNS,

_____
Print Name:

_____
NIMESH PATEL
Managing Member

_____
Print Name:

EXHIBITS

"A" Legal Description

"B" Conceptual Site Plan and Elevation (2 Pages)

"C" Rent Schedule

ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

EXHIBIT "A"
LEGAL DESCRIPTION

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTH ½ OF GOVERNMENT LOTS 2 AND 3, SECTION 32, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 3, SECTION 32, TOWNSHIP 37 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE NORTH 89°45'17" WEST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 426.43 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION MAP SECTION 89010-2555, DATED 11-30-92; THENCE SOUTH 18°59'53" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 542.80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 18°59'53" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.41 FEET; THENCE NORTH 74°07'27" EAST, DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 305.00 FEET; THENCE NORTH 15°52'33" WEST, A DISTANCE OF 275.00 FEET; THENCE SOUTH 74°07'27" WEST, A DISTANCE OF 320.00 FEET TO AN INTERSECTION WITH SAID EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 AND THE POINT OF BEGINNING.

CONTAINING 85,937 SQUARE FEET, OR 1.97 ACRES, MORE OR LESS.
PCN 32-37-41-000-000-00011-0

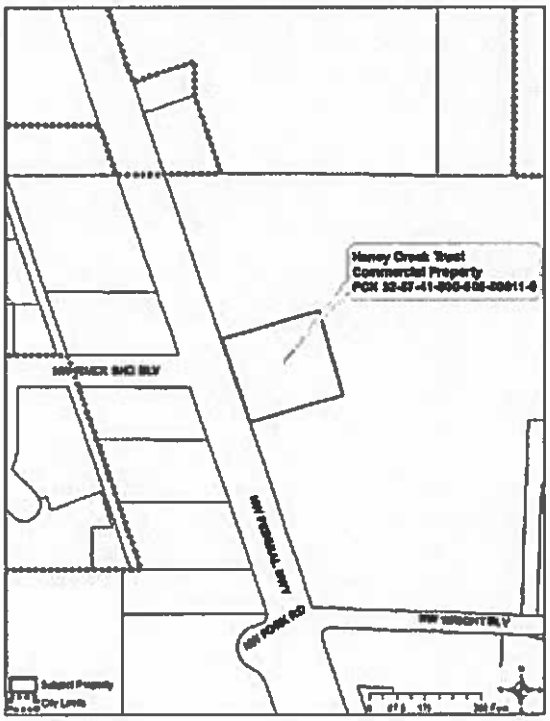
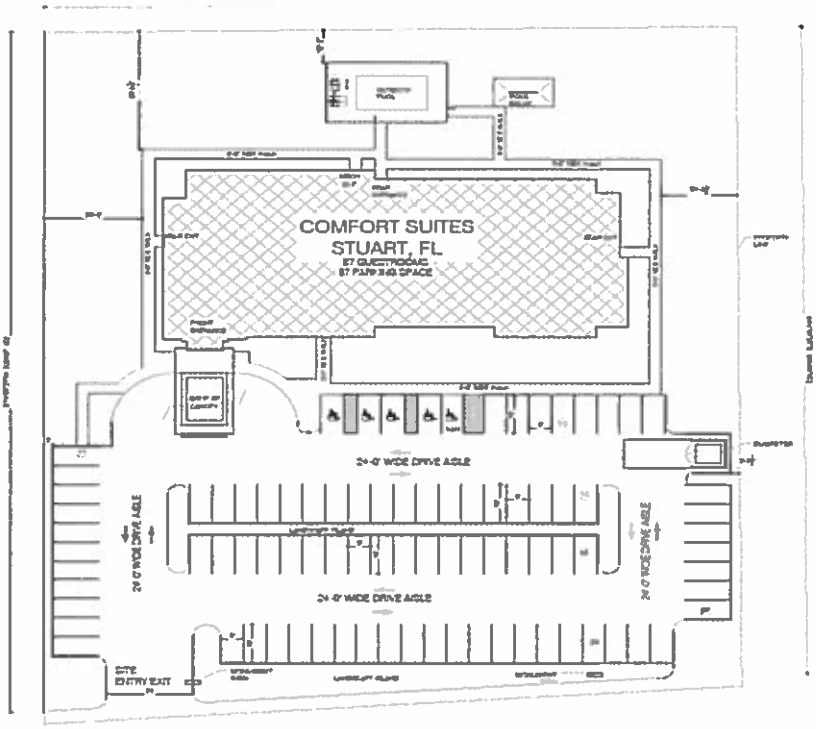


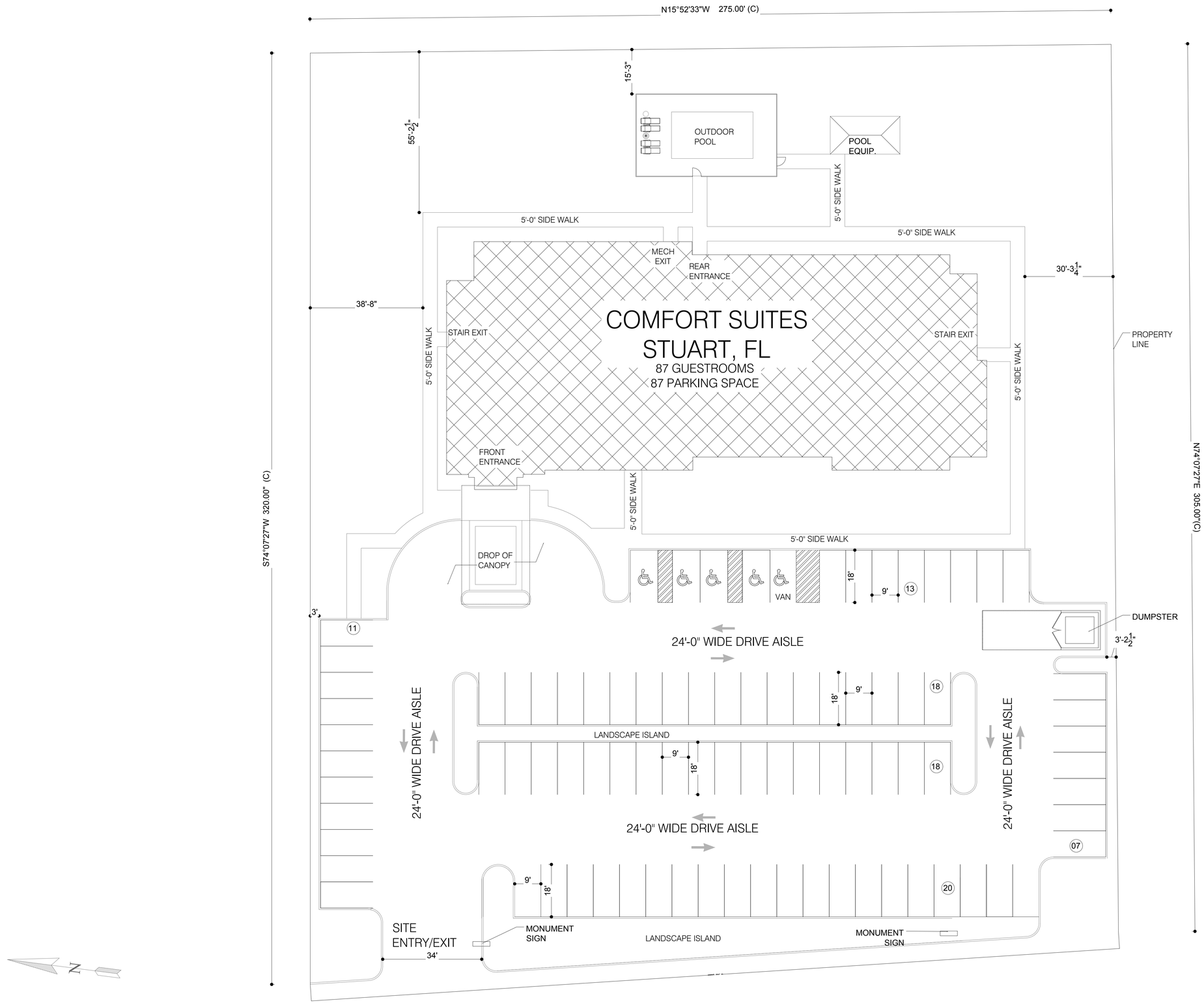
EXHIBIT "B"
SITE PLAN



ABSOLUTE NET NON-SUBORDINATED LAND LEASE
(Haney Creek 2 acre Property)

EXHIBIT "C" RENT SCHEDULE

Date	Year	Rent	Monthly	Date2	Year2	Rent	Monthly2
2017	1	0		2063	47	136,252	11,354
2018	2	0		2064	48	136,934	11,411
2019	3	24,000	2,000	2065	49	137,618	11,468
2020	4	24,000	2,000	2066	50	138,306	11,526
2021	5	24,000	2,000	2067	51	138,998	11,583
2022	6	24,000	2,000	2068	52	139,693	11,641
2023	7	24,000	2,000	2069	53	140,391	11,699
2024	8	66,000	5,500	2070	54	141,093	11,758
2025	9	66,000	5,500	2071	55	141,799	11,817
2026	10	66,000	5,500	2072	56	142,508	11,876
2027	11	66,000	5,500	2073	57	143,220	11,935
2028	12	66,000	5,500	2074	58	143,936	11,995
2029	13	115,000	9,583	2075	59	144,656	12,055
2030	14	115,575	9,631	2076	60	145,379	12,115
2031	15	116,153	9,679	2077	61	146,106	12,176
2032	16	116,734	9,728	2078	62	146,837	12,236
2033	17	117,317	9,776	2079	63	147,571	12,298
2034	18	117,904	9,825	2080	64	148,309	12,359
2035	19	118,493	9,874	2081	65	149,050	12,421
2036	20	119,086	9,924	2082	66	149,796	12,483
2037	21	119,681	9,973	2083	67	150,545	12,545
2038	22	120,280	10,023	2084	68	151,297	12,608
2039	23	120,881	10,073	2085	69	152,054	12,671
2040	24	121,486	10,124	2086	70	152,814	12,735
2041	25	122,093	10,174	2087	71	153,578	12,798
2042	26	122,703	10,225	2088	72	154,346	12,862
2043	27	123,317	10,276	2089	73	155,118	12,926
2044	28	123,934	10,328	2090	74	155,893	12,991
2045	29	124,553	10,379	2091	75	156,673	13,056
2046	30	125,176	10,431	2092	76	157,456	13,121
2047	31	125,802	10,483	2093	77	158,243	13,187
2048	32	126,431	10,536	2094	78	159,035	13,253
2049	33	127,063	10,589	2095	79	159,830	13,319
2050	34	127,698	10,642	2096	80	160,629	13,386
2051	35	128,337	10,695	2097	81	161,432	13,453
2052	36	128,978	10,748	2098	82	162,239	13,520
2053	37	129,623	10,802	2099	83	163,051	13,588
2054	38	130,271	10,856	2100	84	163,866	13,655
2055	39	130,923	10,910	2101	85	164,685	13,724
2056	40	131,577	10,965	2102	86	165,509	13,792
2057	41	132,235	11,020	2103	87	166,336	13,861
2058	42	132,897	11,075	2104	88	167,168	13,931
2059	43	133,561	11,130	2105	89	168,004	14,000
2060	44	134,229	11,186	2106	90	168,844	14,070
2061	45	134,900	11,242	2107	91	169,688	14,141
2062	46	135,574	11,298	2108	92	170,536	14,211



1 SITE PLAN

SCALE: 1/16"=1'-0"

BASE4

BASE4
9858 GLADES ROAD, #237
BOCA RATON, FLORIDA 33434
1.720.72BASE4
www.base-4.com

JEFF GAITHER, AIA
4101 Woodlynne Ln
Orlando, FL 32812

Seal

Owner:

CHOICE HOTELS
Rockville, Maryland, United States.

COMFORT SUITES

No.	ISSUE DATE	PROJECT STATUS

DATE	2016.07.20
DRAWN BY	KP
CHECKED BY	VDR
SCALE	AS NOTED
PROJECT NO.	
SHEET NAME	

SITE PLAN

DRAWING NO.

A1.0

AGREEMENT FOR REAL ESTATE MARKETING SERVICES
BETWEEN
CITY OF STUART AND NAI SOUTHCOAST

PROJECT: Real Estate Marketing Services

CONSULTANT: NAI Southcoast
2055 South Kanner Highway
P.O. Box 3059
Stuart, Florida 34994

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, hereinafter "Contract," made and entered into the 26th day of November, 2012 by and between NAI Southcoast, hereinafter referred to as "Consultant" and the City of Stuart, Florida, a municipal corporation, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter referred to as "City", for and in consideration of the following terms, conditions and covenants.

I. PURPOSE OF AGREEMENT

City intends to enter into a contract with Consultant for provision of Real Estate Marketing services by the Consultant and the payment for those services by City as set forth below.

II. SCOPE OF SERVICES

The Consultant shall provide real estate marketing services for the two acre parcel on US1 and the former Dockside restaurant located at 131 SW Flagler Avenue, Stuart, Florida. These services will include serving as City's consulting representative for the Project, providing consultation and advice and furnishing customary services and services incidental thereto as described in the Scope of Service.

Section 1. Scope of Service

The City of Stuart is interested in leasing a two acre parcel located on US1 and the water front restaurant property formerly known as the Dockside Restaurant located at 131 SW Flagler Avenue. In order to accomplish this project the Consultant will provide the following services:

1. Review the immediate market competition and evaluate the property's position and competitiveness. Recommend rental rates.

2. Develop, implement and maintain an effective leasing program for the properties that will encompass direct leasing activity as well as coordination and involvement by outside firms engaged in leasing activity.

3. Provide market data regarding the supply and absorption of competing leasable space.

4. Conduct market surveys and analysis in order to assure that the property is competitive in the marketplace and is achieving maximum rental income.

5. Coordinate prospective tenant support services such as space planning, tenant improvements, pre and post occupancy services.

6. Create draft and final reports and PowerPoint presentations

7. Actively pursue renewal of tenant leases and tenant retention programs.

8. Prepare advertisements and other promotional materials, as necessary.

III. AGREEMENT PROVISIONS

Section 1. Period of Service

1.1 Term of Agreement

Upon award of this Agreement, the effective date of this Agreement shall be the date of execution by both City and Consultant. Term of this agreement shall be for an initial period of one (1) year with the option of two (2) additional one-year renewal periods. Upon the mutual agreement of City and Consultant this contract may be converted to "continuing services" agreement with no set term but with a termination clause (Section 6.1 Termination for Convenience).

Section 2. Compensation and Method of Payment

2.1 Fee Schedule

CITY will compensate Consultant for Real Estate Consulting Services with a Lump Sum not to exceed amount for the successful lease of properties owned by the City of Stuart:

Waterfront Restaurant Property, 131 SW Flagler Ave	$50,000.00
Two Acre Parcel on US 1	$100,000.00

2.2 Invoices

This section not used

2.3 Payment

Payment for services rendered is due within thirty days of receipt and approval of invoice by City. Payment is delinquent 30 days following receipt and approval of invoice by City. The City will make payment only for services rendered, invoiced and approved for payment by City. No retainage or pre-payment will be made.

Section 3. Reimbursable Expenses

This section not used

Section 4. Additional Services

4.1 Requests for Additional Services

The undertaking by the Consultant to perform services defined within this Contract extends only to those services specifically described herein. If upon the request of the City, the Consultant agrees to perform additional services hereunder, the City shall pay the Consultant for the performance of such additional services an amount (in addition to all other amounts payable under this Agreement) based on a lump sum addendum to this Contract, executed by the parties to this Contract which addresses the additional services.

4.2 Changes in Scope/Conditions

Additional Services shall include revisions to work previously performed that are required because of a change in the data or criteria furnished to the Consultant, or a change in the scope of concept of the Project initiated by the City, or services that are required by changes in the requirements of public agencies, after work under this Contract has commenced.

Section 5. Use of Documents

5.1 Ownership of Original Documents

All documents related to any transaction resulting from this agreement, deliverable analyses, reference data, survey data, plans, reports and advertising or any other form of written instrument or document that may result from the Consultant's services or have been created during the course of the Consultant's performance under this Contract shall become the property of and shall be delivered to the City by Consultant.

Section 6. Termination

6.1 Termination for Convenience

Either party upon a seven (7) day written notice to the other party may terminate this Contract. In the event of any termination, Consultant shall be paid for all services rendered to the date of termination including all reimbursable expenses.

Section 7. CITY's Obligations

7.1 Data to be Furnished

The CITY shall provide Consultant with all data, studies, surveys, plats and all other pertinent information concerning the Project in the possession of the CITY upon request.

7.2 Designated Representative

The Designated Representative of the City to act with authority on the City's behalf with respect to all aspects of the Project shall be the City Manager.

Section 8. Persons Bound by Agreement

8.1 Parties to the Agreement

The persons bound by this Contract are the Consultant and the City and their respective partners, successors, heirs, executors, administrators, assigns and other legal representative.

8.2 Assignment of Interest in Agreement

This Contract and any interest associated with this Contract may not be assigned, sublet or transferred by either party without the prior written consent of the other party. Nothing contained herein shall be construed to prevent Consultant from employing such independent Consultants, associates and subcontractors as Consultant may deem appropriate to assist in the performance of the services hereunder.

8.3 Rights and Benefits

Nothing herein shall be construed to give any rights or benefits arising from this Contract to anyone other than Consultant and the City.

Section 9. Indemnification of City

Consultant assumes the entire responsibility and liability for all damages or injury to all persons, and to all property, caused by the Consultant or Consultant 's employees, and Consultant shall to the fullest extent allowed by law defend, indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract. Specific consideration for this indemnity is $10.00, the receipt and sufficiency of which are hereby acknowledged by Consultant.

Consultant shall obtain, maintain and pay for general liability insurance coverage to insure the provisions of this paragraph.

Section 10. Insurance.

10.1. Workers' Compensation

The Consultant shall procure and maintain, during the life of this Contract, Worker's Compensation insurance as required by Florida Statutes, Chapter 440 for all employees of the Consultant engaged in work on the Project under this Contract.

10.2 Insurance Policy Limits

Consultant shall procure and maintain insurance policies with at least the following coverage and amounts, during the life of this contract:

10.2.1 **Commercial General Liability Insurance**. In a combined single limit of $1,000,000.00 aggregate.

10.2.2 **Errors and Omissions Insurance**. In a combined single limit of $1,000,000.00 aggregate.

10.3 Insurance Cancellation

The Consultant shall furnish to the City Certificates of Insurance specifically endorsed to grant the City the same notification rights that it provides to the first named insured as respects cancellation and nonrenewal. If the insurance policies expire during the terms of the Contract, a renewal certificate or binder shall be filed with the City fifteen (15) days prior to the renewal date.

10.4 City to be Named Additional Insured

The City shall be named as "additional insured" with regard to the coverage of General Liability policy of insurance as required under this contract in the amounts as provided herein or as further determined by the City.

10.5 Status of Claim

The Consultant shall be responsible for keeping the City currently advised as to the status of any claims made for damages against the Consultant resulting from services performed under this Contract. The Consultant shall send notice of claims related to work under this Contract to the City. Copies of the notices shall be sent by fax, hand delivery or regular mail to:

City Manager, City of Stuart
121 S.W. Flagler Avenue
Stuart, Florida 34994
FAX: (772) 288-5316

Section 11. Professional Standards

11.1 Other Agreements

Consultant is entering into this Contract with the understanding that the City has no agreements, either written or oral, for Consultant services relating to this specific Project which include any of those services within the Scope of Services defined herein.

11.2 Approvals Not Guaranteed

All work performed by Consultant will be in accordance with the highest professional standards and in accordance with all applicable governmental regulations.

11.3 Governmental Regulations

Consultant shall assure that work performed under this contract shall be in accordance with all applicable governmental regulations.

Section 12. Opinions of Cost

This section not used

Section 13. General Conditions

13.1 Venue in Martin County

Venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in the County Court or the Circuit Court in and for Martin County, Florida.

13.2 Laws of Florida

The validity, interpretation, construction, and effect of this Contract shall be in accordance with and governed by the laws of the State of Florida.

13.3 Attorney's Fees and Costs

In the event the Consultant defaults in the performance of any of the terms, covenants and conditions of this Contract, the Consultant agrees to pay all damages and costs incurred by the CITY in the enforcement of this Contract, including reasonable attorney's fees, court costs and all expenses, even if not taxable as court costs, including, without limitation, all such fees, costs and expenses incident to appeals incurred in such action or proceeding.

13.4 Mediation as Condition Precedent to Litigation

Prior to the initiation of any litigation by the parties concerning this Contract, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the CITY shall select the mediator who, if selected solely by the CITY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediation.

13.5 Contract Amendment

No modification, amendment or alteration in the terms or conditions contained in this Contract shall be effective unless contained in a written documents executed with the same formality and of equal dignity herewith. No verbal agreement by the CITY or the CITY's representative identified herein shall be binding or enforceable against the CITY.

13.6 Contractual Authority

By signing this Contract the Contractor swears or affirms, under penalty of perjury, that this is a valid act of the Contractor, and that no later claim shall be made by the CONTRACTOR that the Contract is invalid or an *ultra vires* act, by reason of a failure to have the

proper authority to execute the Contract. In the event that a court of competent jurisdiction later determines that the Contract is or would be null and void for failure of the signatory to have proper or complete authority, this Contract shall nonetheless be deemed valid under the theory of "apparent authority," or in the sole alternative of the City, shall be deemed to be the act of the signatory, as an individual, who shall be fully responsible for its complete performance.

Section 14. Exhibits

The following Exhibits are attached to and made a part of this Contract:

"**Exhibit A**" - "RFP as Submitted by Consultant and Accepted by City"

"**Exhibit B**" - "Original Request for Proposals as Issued by City"

"**Exhibit C**" - "Insurance and Indemnification"

IN WITNESS WHEREOF, the CITY and the Consultant have made and executed this Contract the day and year first above written.

ATTEST:

Cheryl White
City Clerk

APPROVED AS TO FORM
AND CORRECTNESS

Michael D. Durham
City Attorney

CITY

James A. Christie, Jr.
Mayor

WITNESSES:

(Signature) Jennifer Trost

(Signature)

CONSULTANT

Boyd Bradfield, Jr., CCIM, SIOR

Boyd G. Bradfield Jr.
(Printed Name & Title)

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**PinalGandhi-Savdas

Title of Item:

ORDINANCE No. 2348-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING A PARCEL OF LAND NORTH OF THE INTERSECTION OF NE SAVANNAH ROAD AND NE BAKER ROAD, CONSISTING OF 14.85 ACRES, SAID PARCEL BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES. (RC)

Summary Explanation/Background Information on Agenda Request:

Staff has received an application to annex a property located north of the intersection of NE Savannah Road and NE Baker Road. The parcel is owned by Werner Bols and is 14.85-acres in size and is undeveloped. The parcel is contiguous to the City, compact in from and will not create an enclave if annexed. The City Attorney finds the attached application to be in order and in compliance with Florida Statute Section 171.044. The property owner is not proposing a development plan or timetable for development at this time. The owner understands that City land use and PUD zoning designation will be applied for at a later date. In the meantime, Martin County's land use and zoning regulations remain in effect. As called for by Florida Statute, the Martin County BOCC has been notified of the proposed annexation by certified mail. A complete copy of tonight's agenda item was provided to the County's Growth Management Department on March 10, 2017.

In addition to the Development Department's review, the City Manager, City Attorney, Public Works and Financial Services Departments have reviewed the application without objection.

With regard to cost, annexing the subject properties will have a de minimum impact on City Services. When land use, zoning and specific development plans are proposed at a later date, a comprehensive fiscal impact analysis will occur. In the meantime, based on the as-is assessed value of the parcel ($614,310) the City's ad valorem revenues, at the current millage rate of 4.552, will be approximately $2,800.

ATTACHMENTS:

- Ordinance No. 2348-2017
- City Attorney Memorandum
- Staff Report and maps
- Annexation Application
- Martin County Notification
- Affidavit for sign posting on site/photos

Note: The Local Planning Agency unanimously recommended approval of this item on 3/16/17.

Funding Source:

N/A

Recommended Action:

Approve Ordinance No. 2348-2017 on first reading.

ATTACHMENTS:

Description	Upload Date	Type

🗋	Ordinance No. 2348-2017	2/28/2017	Ordinance add to Y drive
🗋	City Attorney Memorandum	3/6/2017	Backup Material
🗋	Staff Report and Maps	3/3/2017	Staff Report
🗋	Annexation Application	2/28/2017	Backup Material
🗋	Martin County Notification	2/28/2017	Backup Material
🗋	Affidavit	3/1/2017	Backup Material

Return to:

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

ORDINANCE No. 2348-2017

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING A PARCEL OF LAND NORTH OF THE INTERSECTION OF NE SAVANNAH ROAD AND NE BAKER ROAD, CONSISTING OF 14.85 ACRES, SAID PARCEL BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

******

WHEREAS, Petitioner, Werner Bols, constituting the fee simple title holder to the land north of the intersection of NW Savannah Road and NE Baker Road, consisting of 14.85 acres, more particularly described in **Exhibit "A"**, attached hereto and made a part thereof, has voluntarily requested the City of Stuart annex said land into the corporate limits of the City; and

WHEREAS, the City Commission, has considered the Petitioner's voluntary request for annexation, and has also considered the recommendation of the Stuart Local Planning Agency and City staff.

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

Section 1. Findings. The City Commission finds the above statements are true and correct, and serve as a basis for consideration of this ordinance; that said lands are contiguous with the

corporate limits of the City of Stuart, creates no enclaves, is reasonably compact, and that the City can effectively provide police, fire, and sanitary services to said land, all in compliance with the terms and requirements of Sec. 171.44, Florida Statutes, and the City of Stuart Code.

Section 2. Annexation. The City Commission has determined that development of said lands upon annexation shall be in accordance with the regulatory requirements of Martin County until such time as amendments to the City's Comprehensive Land Use Plan and Official Zoning Map become effective; and that the parcel of land more particularly described in **Exhibit "A"**, is hereby annexed into and shall be within the corporate limits of the City of Stuart, Florida, and that same shall henceforth be a part of said City as if said lands were originally a part of the City of Stuart.

Section 3. Directions to the City Clerk. The City Clerk shall cause the boundaries as set forth in the City's Charter to be amended and codified. The City Clerk shall submit such documentation as required by law to give effect to this ordinance to the Clerk of the Circuit Court, Board of County Commissioners Florida Statute 171.044(6) within 10 days prior to second reading adoption, the Chief Administrative Officer of Martin County, and the Florida Department of State within seven (7) days following adoption, in accordance with Section 171.044, Florida Statutes. Upon complete execution of this Ordinance, the City Clerk is directed to record a Certified Copy of the same in the Public Records of Martin County, Florida.

Section 4. Repeal of Conflicting Ordinances. All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by

a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance. The corporate boundary of the City shall be re-codified to include lands annexed.

Section 6. Effective Date: This ordinance shall be effective upon its adoption.

Passed on first reading the _____ day of _____, 2017.

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
THOMAS CAMPENNI, MAYOR			
TROY MCDONALD, VICE MAYOR			
JEFFERY KRAUSKOPF, COMMISSIONER			
KELLI GLASS-LEIGHTON, COMMISSIONER			
EULA CLARKE, COMMISSIONER			

ADOPTED on second and final reading this _____ day of _____, 2017.

ATTEST:

_____
CHERYL WHITE
CITY CLERK

_____
THOMAS CAMPENNI
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MIKE 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 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:

_____ By:_____

Print Name:_____ Werner Bols, Trustee

_____

Print Name:_____

OWNERS ACKNOWLEDGMENT

The above Acceptance and Agreement of Ordinance No. 2348-2017 was acknowledged before me this _____ day of _____, 2017, by Werner Bols, Trustee, of the parcel.

_____

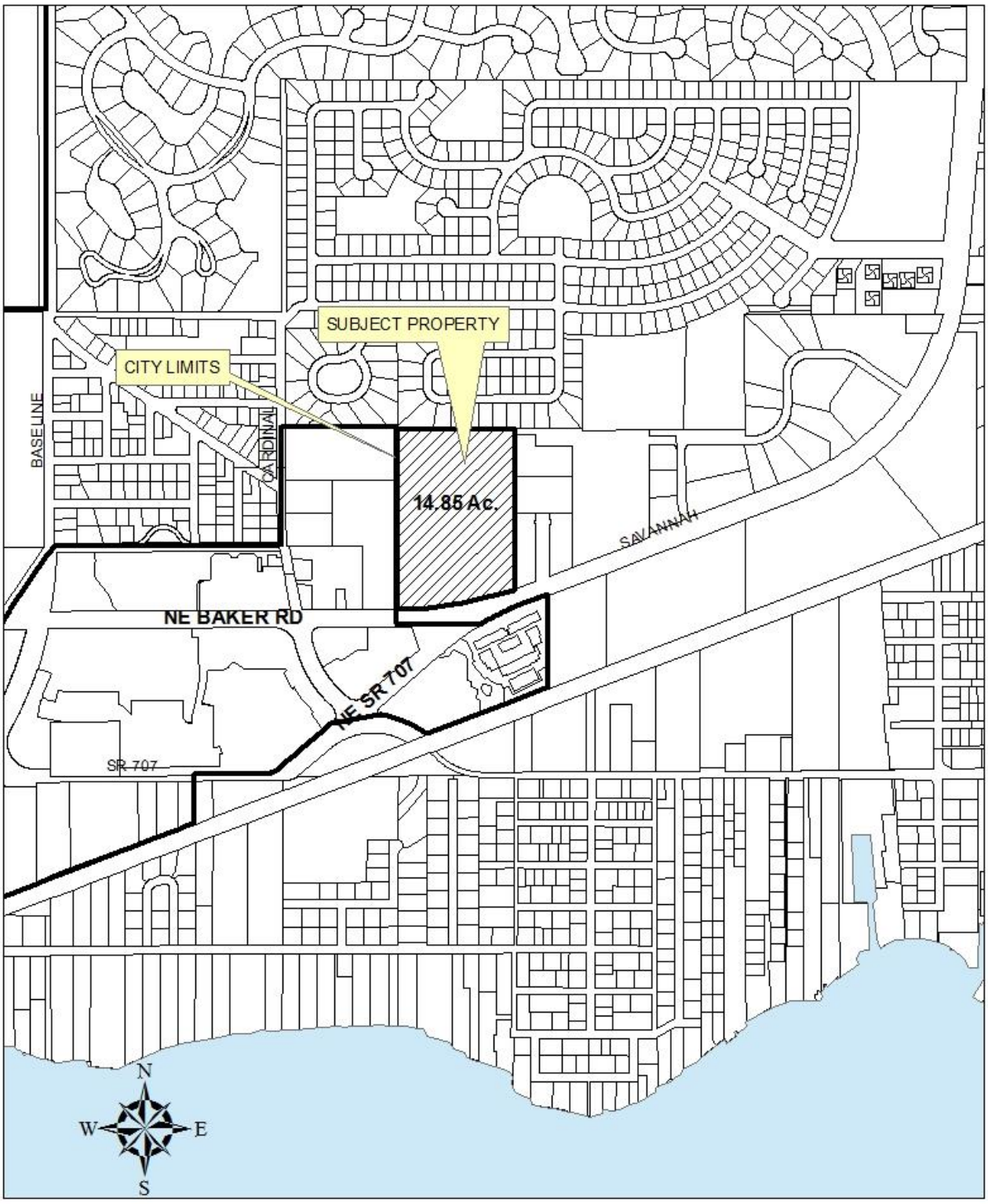
Notary Public, State of Florida
My Commission Expires:
Notary Seal

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

Exhibit "A"
Legal Description

Section 28, Township 37 South, Range 41 East; That portion of NE 1/4 of SE 1/4 of SW 1/4 lying Northerly of North right-of-way of NE Savannah Road and Northerly right-of-way Extension of Baker Road and SE 1/4 of NE 1/4 of SW 1/4 of Sec.

LOCATION MAP



CITY OF STUART
OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: TERRY O'NEIL, DEVELOPMENT DIRECTOR

SUBJECT: VOLUNTARY ANNEXATION OF A 14.85 ACRE PARCEL OF LAND ON N.E. SAVANNAH ROAD

CC: PAUL NICOLETTI, CITY MANAGER

DATE: March 6, 2017

ISSUE

I have reviewed an annexation request for a 14.85 acre parcel located on NE Savannah Road as depicted in Exhibit "A".

Voluntary annexations are governed by the standards of Section 171.044 Florida Statutes. The basic requirement is stated as follows:

> "(1) The owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality."

The statute contains four (4) general requirements. First, a petition for voluntary annexation must be unanimously signed by all property owners in the area to be annexed. Second, the property proposed to be annexed must be contiguous and reasonably compact. Third, the proposed annexation cannot produce an enclave. Finally, county charters which provide for an exclusive method of municipal annexation override the Florida Statute. Martin County is not a Charter county and therefore, the fourth criteria does not apply to an annexation in the City of Stuart, Florida.

1. **Signed by all property owners in the geographic area being annexed**. In the present

matter, the request for annexation has been executed Werner Bohls as Trustee for the property owner and therefore all owners have executed the application.

2. **Contiguous to the Municipality:** Pursuant to Section 171.044(1), F.S., "the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality." Property is deemed to be "Contiguous" under Section 171.031 (11), F.S., where a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous (sharing a common boundary) with a part of the boundary of the municipality. "Contiguous" has also been defined as "touching or adjoining in a reasonably substantial … sense." See City of Sanford v. Seminole County, 538 So. 2d 113 (Fla. 5th DCA 1989); May v. Lee County, 483 So. 2d 481 (Fla. 2d DCA 1986). The Sanford Court found that Section 171.031(11) F.S. only requires "that a substantial part of a boundary" touch municipal property as opposed to the entire perimeter of the property.

   Section 171.031(11) provides that:

> Separation of the territory sought to be annexed from the annexing municipality by a publicly owned right-of-way for a highway, road, railroad, canal or utility or a body of water, watercourse of other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such division does not, as a practical matter, present the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent inhabitants from fully associating and trading with each other socially and economically.

In the current application, a substantial part of the boundary is coterminous with the City of Stuart. Approximately 50 percent of the property seeking annexation is bordered by the City of Stuart. Therefore, the property meets condition one and deemed is contiguous to the City of Stuart.

3. Reasonably Compact

"Compactness is defined under subsection (12) of 171.031, F.S., to mean a concentration of a piece of property in a single area. The requirement for compactness precludes any action which would create enclaves, pockets, or ginger areas in serpentine patterns. The purpose of the compact and contiguous requirement is to assure creation of

geographically unified and compact municipalities, City of Sunrise v. Broward County, 473 So. 2d 1387 (Fla. 4th DCA 1985).

A review of the map and the application determines that this property is reasonably compact and meet Florida Statute 171.031(12). Given the configuration of the City as well as the property requesting annexation, the annexation will not create pockets of unincorporated areas or serpentine finger areas.

(1) No Enclaves

Subsection 5 of 171.044, F.S. Provides that "[l] and shall not be annexed through voluntary annexation when such annexation results in the creation of enclaves". The term "enclave" is defined under Section 171.031(13), F.S., as "any unincorporated improved or developed area that is bounded on all sides by a single municipality or any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality." A review of the map, Exhibit "A", clearly shows that annexation of the parcel would not create an area bounded on all sides by a single municipality, and there is no natural or manmade obstacle to vehicular traffic in close proximity to either parcel. Therefore, no enclaves are created.

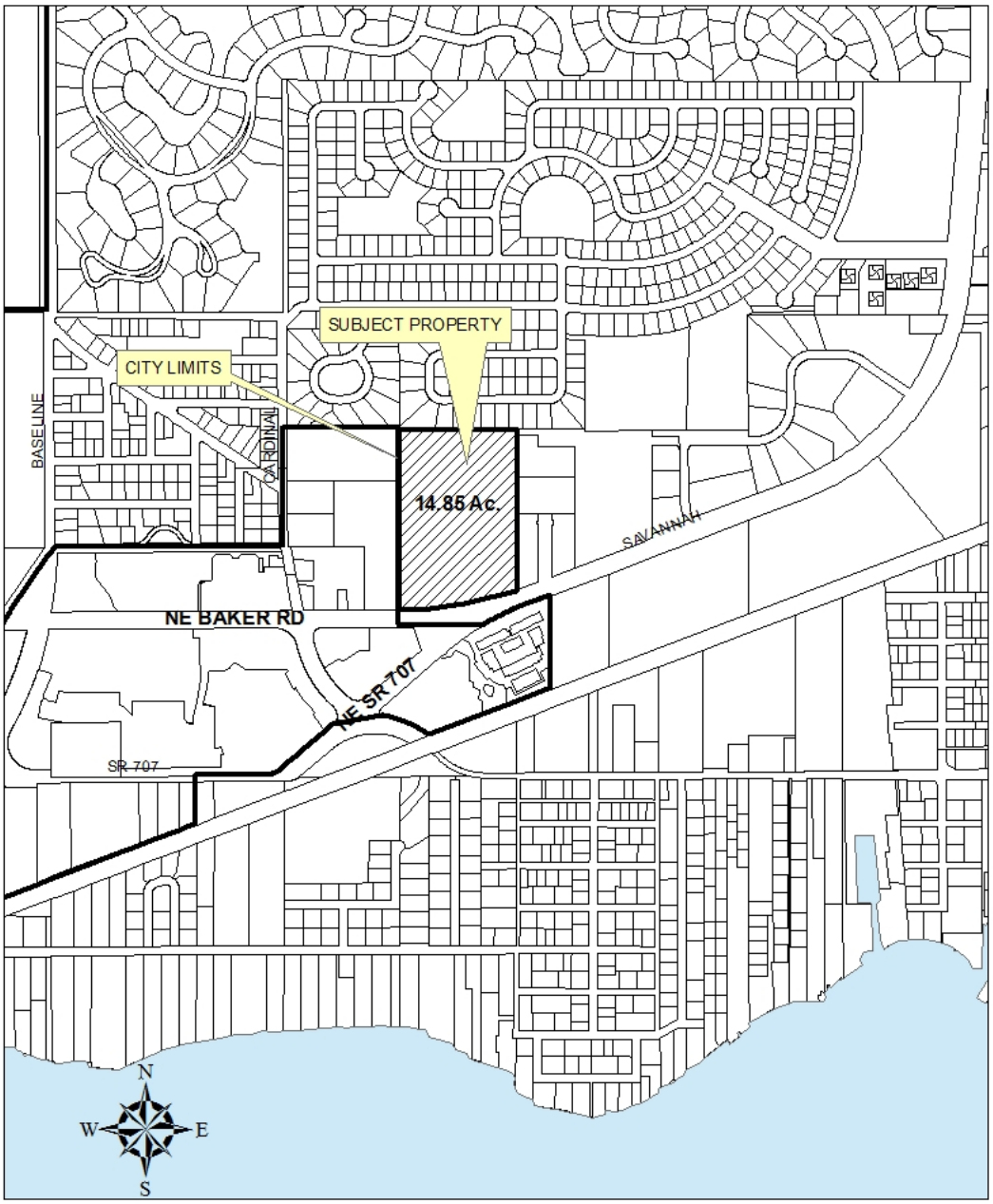
A review of the map clearly shows that an annexation of this parcel would not create an area bound on all sides by a single municipality, and there is no natural or manmade obstacle to vehicular traffic in close proximity to either parcel. Therefore, no enclaves are created.

Conclusion

Based upon the foregoing facts and analysis it is my opinion that the voluntary annexation of this parcel into the municipal boundaries of the City of Stuart comply with Florida Statute §171.044. This opinion is prepared solely at the request of and for the use of, the City of Stuart, and no other person or entity may rely on it for any purpose without the express written permission of the City of Stuart.

Exhibit 'A'

LOCATION MAP

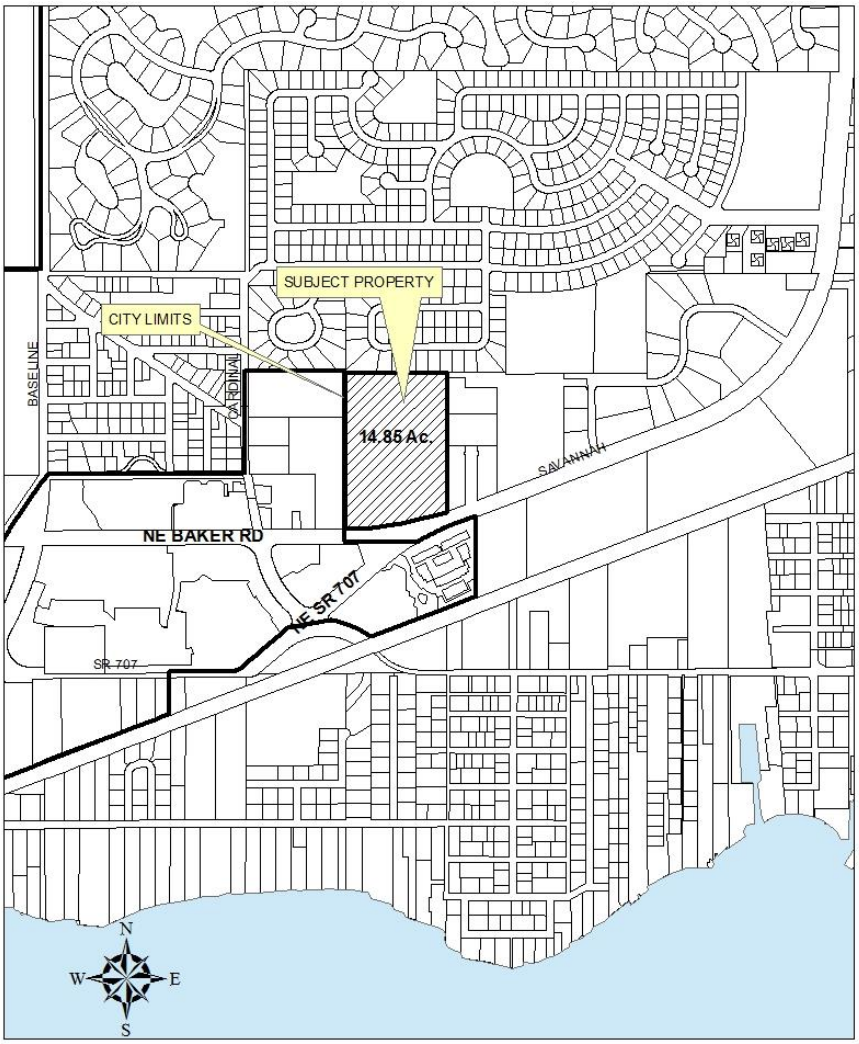


STAFF REPORT & MAPS

Background:

Staff has received an application to annex a single parcel on the north side of the intersection of NE Savannah Road and NE Baker Road. The 14.85 acre subject parcel owned by Werner Bols, Trustee, and is undeveloped.

The property is considered contiguous to the City, compact in form and will not create an enclave if annexed. The City Attorney finds the attached application to be in order and in compliance with Florida Statute Section 171.044. The property owner is proposing a development plan or schedule of development at this time and understands that City land use and PUD zoning designations will have to be applied for at a later date. In the meantime, Martin County's land use and zoning regulations remain in effect. As called for by Florida Statute, the Martin County BOCC has been notified of the proposed annexation by certified mail. A complete copy of tonight's agenda item was provided to the County's Growth Management Department on Friday, March 10, 2017.

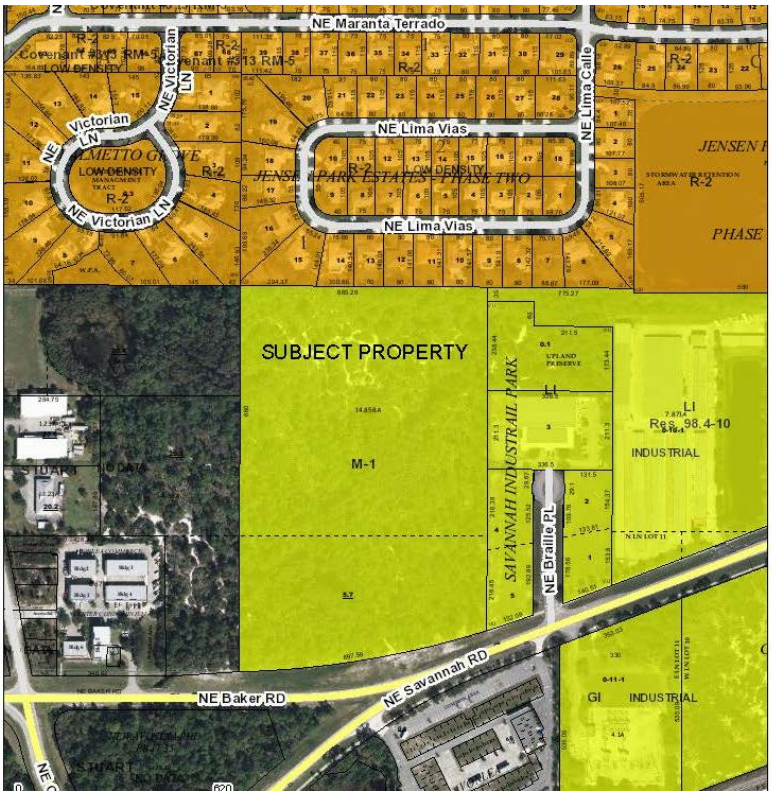


Parcel Information

	Size (Ac)	Status	County Land Use	County Zoning	City Land Use	City Zoning	Utilities
14.85 Acres NE Savannah Road	14.85	Vacant, undeveloped	Industrial	M-1 (Industrial)	TBD (Likely multi-family, limited commercial)	TBD (Likely R-PUD)	County to provide water & sewer service and City of Stuart to provide sanitation service

County Land Use

The parcel's land use is **Industrial** under the County's Comprehensive Plan, a designation which is "*land resources for existing and anticipated future industrial development needs. The allocation process gives high priority to industry's need for lands accessible to rail facilities, major arterials or interchanges, labor markets and the services of the Primary Urban Service District. Industrial development includes both Limited Impact and Extensive Impact Industries. Limited Impact Industries include research and development, light assembly and manufacturing. Extensive impact industries include heavy assembly plants, manufacturing/processing plants, fabricators of metal products, steam/electricity co-generation plants and uses customarily associated with airports."*



County Zoning

The property is zoned ***M-1 Industrial District*** on the County's official zoning map. *In this district, a building or structure or land shall be used for only the following purposes, subject to any additional limitations pursuant to section 3.402:*

M-1Industrial District

1. Any use permitted in the B-2 Business-Wholesale Business District that meets the standards prescribed in subsections (2)(a) through (j) of this subsection.
2. Light manufacturing plants that meet the following standards:
    a. All operations shall be conducted and all materials and products shall be stored within the buildings of the plant. All waste materials shall be stored while on the premises in a screened enclosure, which shall be counted as a part of the area allowed for occupation by buildings and structures.
    b. All machine tools and other machinery shall be electric powered. No forging, drop pressing, riveting or other processes involving impacts from other than nonpowered hand tools, or processes producing high frequency vibrations shall be permitted.
    c. No processes which result in the creation of smoke from the burning of fuels shall be permitted.
    d. No processes which emit an odor nuisance beyond the plant site shall be permitted. Where odors are produced an provisions for eradication within a building are provided, the burden of successful elimination of the odors shall rest on the manufacturer.
    e. Dust and dirt shall be confined within the buildings of the plant. Ventilating and filtering devices shall be provided, such being determined necessary by the building inspector.
    f. No processes which result in the escape of noxious gases or fumes in concentrations dangerous to plant or animal life or damaging to property shall be permitted.
    g. Operations creating glare shall be so shielded that the glare cannot be seen from outside the plant site.
    h. Where processes involve disposal of industrial sewage wastes, approval of proposed method of disposal by the County health officer shall be secured and presented to the director of zoning and building before a building permit shall be issued.
    i. Off-street parking for the motor vehicles of employees and visitors shall be provided on the basis of one space for each two employees. Off-street loading docks for the handling of all materials and products shall be provided in area treated to prevent dust, and shall be screened from view from outside the plant site. Such screening maybe 50 percent opaque shrubbery or fencing.
    j. Buildings and fences shall be painted, unless the materials are naturally or artificially colored. No signs, other than a single sign bearing the name of the manufacturer and product, limited in size to 40 square feet or one per cent of the area of the front elevation of the main building, whichever is greater, multiplied by one-fortieth of the setback in feet, shall appear on or be painted on any building or fence.

Manufacture of the following:

Brooms and brushes
Candy
Cigars, cigarettes or snuff
Cosmetics and toiletries, except soap
Clothing and hats
Ceramic products, electrically fired

Candles
Dairy products
Electronic devices
Ice cream
Jewelry
Leather goods and luggage
Optical equipment
Orthopedic and medical appliances
Pottery, electrically fired
Perfume
Pharmaceutical products
Precision instruments
Plastic products, except pyroxylin
Paper products and cardboard products
Silverware
Spices and spice packing
Stationery
Shoes
Televisions, radios and phonographs

Required lot area, width, and building height limits.

1. Lots or building sites in an M-1 Industrial District shall have an area of not less than 15,000 square feet, with a minimum width of 100 feet measured along the front property line. Not more than 40 percent of the lot area shall be occupied by structures or buildings. Buildings shall be limited to not more than 30 feet in height.
2. Where the lot abuts a residential or estates district, the minimum lot area shall be increased by the number of square feet necessary to provide a 50-foot-wide buffer area between the line of abutment and the nearest building.

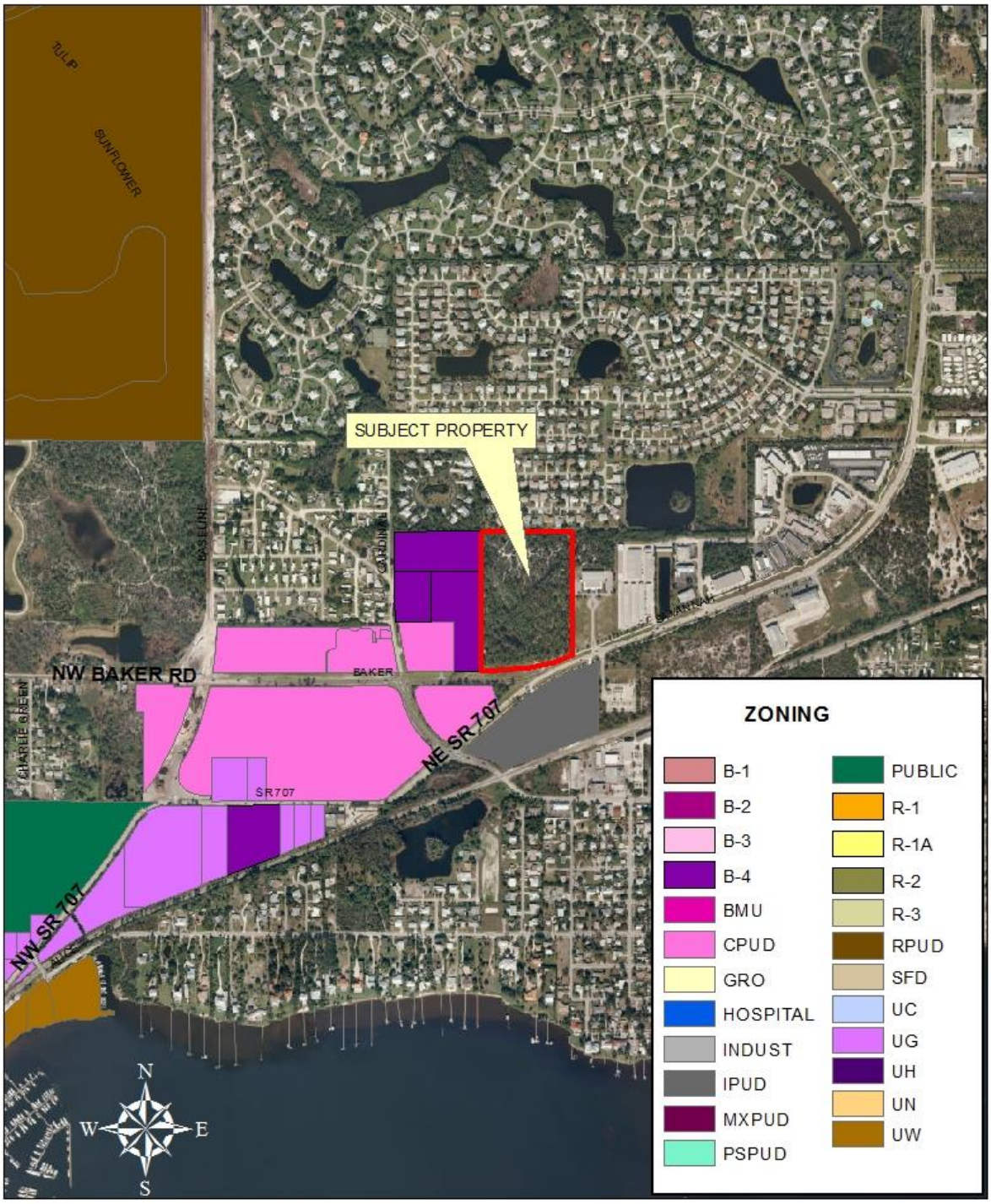
Minimum yards required.

1. *Front:* 50 feet, except an office building may be located within 20 feet of the front property line.
2. *Rear and side:*

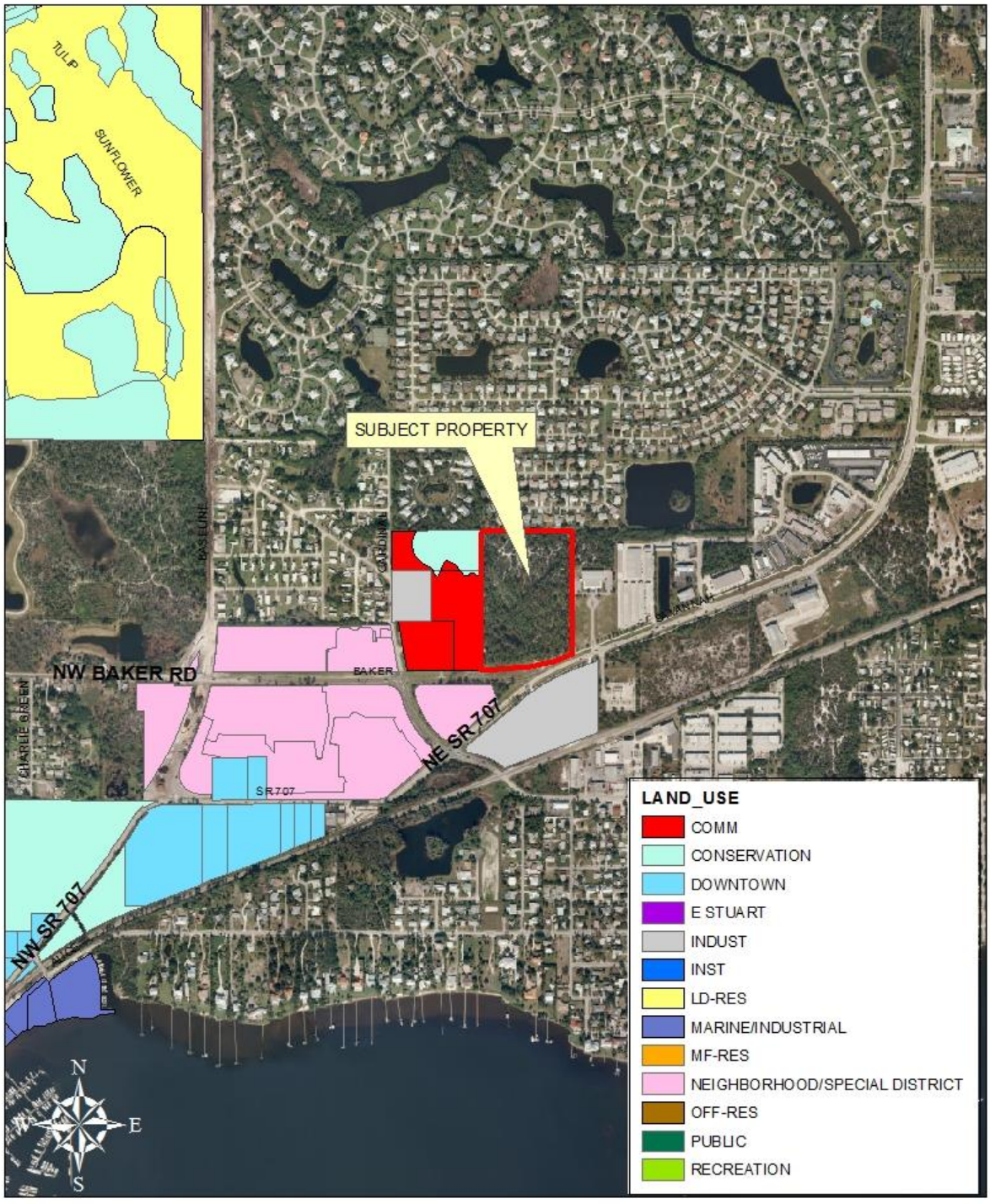
   1 story: 15 feet.
   2 stories: 15 feet.

3. No structure shall be built within 20 feet of the property line adjoining any public platted right-of-way not a designated through-traffic highway.
4. No structure shall be built within 40 feet of the property line adjoining a designated through-traffic highway.
5. No setback or yard shall be required adjacent to railroad spurs or sidings.
6. Where the lot abuts a residential or estates district, the yard requirements for the abutting sides or rear shall be increased to 50 feet, and planting shall provide for an evergreen hedge, uniformly colored masonry wall or board fence 6 feet high. Such screen shall be located on the sides and rear of the property.
7. Where the lot is separated from a residential or estates district only by a road, a landscaped planting shall provide for an evergreen hedge, uniformly colored masonry wall or board fence 6 feet high. Such screen shall be located on the sides and rear of the property.

CITY OF STUART
ZONING MAP



CITY OF STUART
FUTURE LAND USE MAP



City of Stuart
121 SW Flagler Ave.
Stuart, FL 34994
development@ci.stuart.fl.us
(772) 288-5326

Received by: _____
Reviewed by: _____
Approved by: _____

Annexation Application

Project ID# Z1702003
(Staff Entry)

Pre-App Conference Date:	Application Date:
Project Name: 14.9 acres Savannah Road	
Parcel ID# 28-37-41-000-000-00057-9	Project Address: NE Savannah Rd, Stuart, FL
Zoning/CRA Sub-district:	
Subdivision:	Lot(s):
Fee: $1,792.00 *(this does not include fees that may be charged as a result of application review by the City's consultants or any required recording fees)*	

Submittal Requirements:

A. Completed application form;
B. Payment of fees;
C. A concept plan;
D. An estimate of the direct public costs to provide capital facilities for City utilities and other municipal services required by the development;
E. An estimate of the ad valorem tax revenues to be generated by the subject property at the current millage rate both prior to and after development;
F. An estimate of the residential population increase of the City after development; and
G. Any other information as may be required by the City Development Director in order to do a thorough review of the request.
H. One (1) copy of all documents on a PDF formatted disc electronically signed and sealed.

(The data requirements for a concept plan are available at the Development Department)

Approving Authority: The Development Director is required to prepare a staff report and recommendation concerning this application. For a Major PUD amendment, the Local Planning Agency (LPA) is required to hold an advertised public hearing and formulate a recommendation to the City Commission. For both types of applications, the City Commission is required to hold an advertised public hearing after which it may approve, approve with conditions, or deny the application.

Justification: Please explain how the proposed annexation would further the relevant goals, objectives, and policies of the City's comprehensive plan *(include additional pages if needed).*

(over)

General Information

(Please Print or Type)

1. Property Owner, Lessee, Contract Purchaser, or Applicant (circle one):

Name: BOLS WERNER (TR)	City/State/Zip Code: PALM CITY FL 34991
Title: Trustee	Telephone Number: 772-283-8200
Company:	Facsimile Number:
Company Address: PO BOX 194	Email Address (optional): brianbols@hotmail.com

2. Agent of Record (if any): The following individual is designated as the Agent of Record for the property owner, lessee, or contract purchaser and should receive all correspondence related to the application review.

Name: Boyd Bradfield	City/State/Zip Code: Stuart, FL 34994
Title: President	Telephone Number: 772-286-6292
Company: Southcoast, Inc	Facsimile Number:
Company Address: 2055 Kanner Hwy	Email Address (optional): boyd@naisouthcoast.com

3. The Undersigned, as the Property Owner, Lessee, Contract Purchaser, or Applicant (circle one), acknowledges responsibility for all City expenses associated with the referenced application (s) including time spent by the City's consultants and further acknowledges that payment of consultant fees will be made prior to the receipt of the consultant comments.

Name: Werner Bols	City/State/Zip Code: PALM CITY FL 34991
Title: Trustee	Telephone Number: 772-283-8200
Company:	Facsimile Number:
Company Address: PO BOX 194	Email Address (optional): brianbols@hotmail.com

I hereby certify that all information contained herein is true and correct.

4. Signed this 16th day of February, 2017.

Werner Bols

Signature of Property Owner, Lessee, Contract Purchaser or Applicant (circle one)

State of Florida, Martin County The foregoing instrument was acknowledged before me on this 16th day of February 2017 by Werner Bols who is personally known to me, or who has produced Personally Known as identification and who did/~~did not~~ take an oath.

Karyn Leopold

Notary Signature

Commission Expires

Notary Public State of Florida
Karyn Leopold
My Commission FF 015052
Expires 07/05/2017

MARSHA STILLER
CLERK OF CIRCUIT COURT
MARTIN CO., FL

RECORDED & VERIFIED
BY D.C.

01258404

97 OCT -8 PM 12:27

This Document Prepared By and Return to:
C. NORRIS TILTON, ESQ.
C. NORRIS TILTON, P.A.
1935 NE RICOU TERRACE
JENSEN BEACH, FL 34957

DOC-DEED $ 1411.20 MARSHA STILLER
DOC-MTG $ _____ MARTIN COUNTY
DOC-ASM $ _____ CLERK OF CIRCUIT COURT
INT. TAX $ _____ BY _____ D.C.

Parcel ID Number:
Grantee #1 TIN:
Grantee #2 TIN:

Warranty Deed

This Indenture, Made this 18th day of August, 1997 A.D., **Between** REN TILTON, and C. NORRIS TILTON, Individually and as Trustees

of the County of , State of Florida, **grantors,** and WERNER BOLS, individually and as trustee under Trust Agreement dated November 1, 1995

whose address is: PO BOX 194, Palm City,FL 34991

of the County of , State of , **grantee.**

Witnesseth that the GRANTORS, for and in consideration of the sum of ----------TEN DOLLARS ($10)---------- DOLLARS, and other good and valuable consideration to GRANTORS in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said GRANTEE and GRANTEE'S heirs, successors and assigns forever, the following described land, situate, lying and being in the County of MARTIN State of Florida to wit:

Section 28, Township 37 South, Range 41 East; That portion of NE 1/4 of SE 1/4 of SW 1/4 lying Northerly of North right-of-way of NE Savannah Road and Northerly right-of-way Extension of Baker Road and SE 1/4 of NE 1/4 of SW 1/4 of Sec.

This property is not Homestead being vacant land.

Full power and authority is granted by this deed to Trustee or his successors to deal in or with said property or any interest therein or any part thereof, to protect, conserve, sell, lease, encumber, convey, or otherwise to manage and dispose of the real estate or any part of it.

and the grantors do hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantors have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in our presence:

Holly M Stokes
Printed Name: HOLLY M STOKES
Witness

Martha I. Kratz
Printed Name: MARTHA I. KRATZ
Witness

Ren Tilton (Seal)
REN TILTON
P.O. Address: % 1935 NE Ricou Terrace
Jensen Beach,FL 34957

C. Norris Tilton (Seal)
C. NORRIS TILTON
P.O. Address: % 1935 NE Ricou Terrace
Jensen Beach,FL 34957

STATE OF Florida
COUNTY OF Martin

The foregoing instrument was acknowledged before me this 18th day of August, 1997 by REN TILTON, individually and as trustee and C. NORRIS TILTON, individually and as trustee

who are personally known to me or who have produced their Florida driver's license as identification.

MARTHA I KRATZ
My Comm Exp. 3/24/2001
Bonded By Service Ins
No. CC632351
[ ] Personally Known [ ] Other I.D

Martha I. Kratz
MARTHA I. KRATZ
Notary Public
My Commission Expires: 03/24/01

LAST PAGE

REN ORBK1265PG1061

© Display Systems, Inc., 1997 (941) 763-5555 Form FLWD-1

Development Department

City of Stuart

121 S.W. Flagler Avenue • Stuart • Florida • 34994

Phone: (772) 288-5326
Fax: (772) 288-5388

February 28, 2017

Via: Return Receipt
Mail

Chairperson Doug Smith & Commissioners
MC Board of County Commissioners
2401 SE Monterey Road
Stuart, Florida 34996

Re: Application for voluntary annexation

Dear Chairperson Smith & Commissioners,

Pursuant to Florida Statute Section 171.044 (6).attached please find a notice of proposed annexation which will be published in the Stuart News, once each week for two consecutive weeks, prior to the Stuart City Commission's final consideration of the item on April 10, 2017. A complete copy of the annexation ordinance and Local Planning Agency (LPA) agenda packet will be provided to County Growth Management Director, Nicki VanVonno, by March 10, 2017. If you have any questions regarding this letter, please do not hesitate to contact this office at (772) 288-5368.

Sincerely,

Terry O' Neil
City Development Director

cc: Taryn Kryzda, County Administrator
Nicki VanVonno, County Growth Management Director
Stuart City Commission
Paul Nicoletti, City Manager

Attached: Stuart News Advertisement

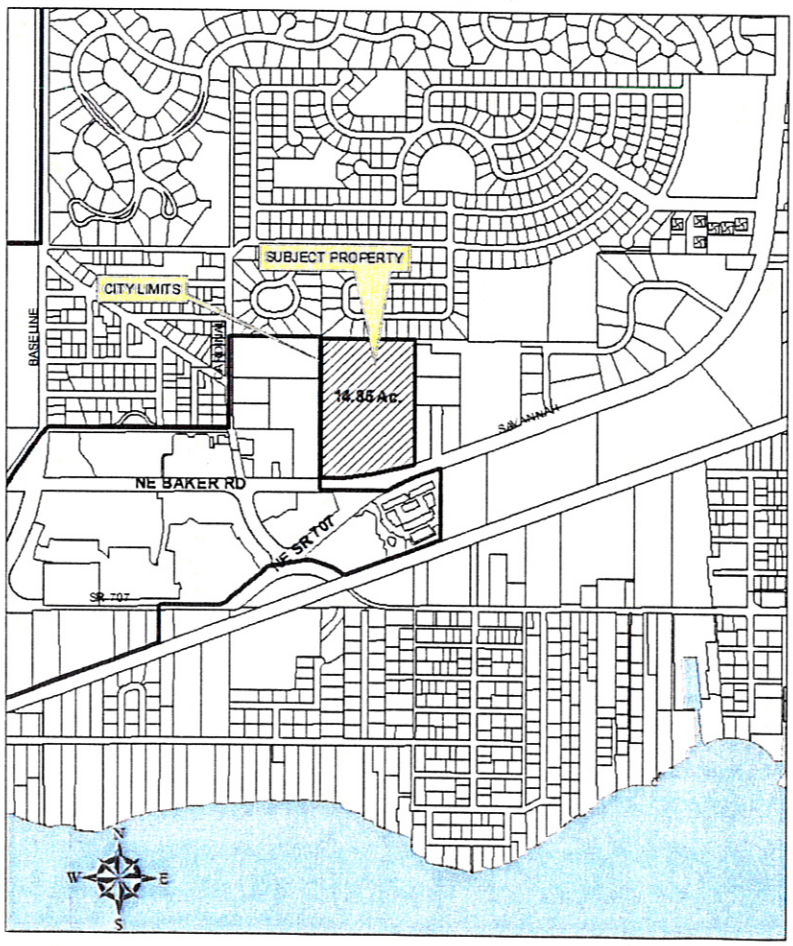
CITY OF STUART
NOTICE OF PUBLIC HEARING
ON THE ANNEXATION OF LAND

An ordinance (title shown below) to annex a single parcel (map shown below) will be considered by the Stuart Local Planning Agency (LPA) on Thursday, March 16, 2017 at 5:30 PM and by the Stuart City Commission on Monday, March 27, 2017 and Monday, April 10, 2017 at 5:30 PM. All hearings will take place at the Stuart City Hall Commission Chambers, 121 SW Flagler Avenue in Stuart. A complete legal description by metes and bounds and a complete copy of the ordinance may be obtained from the Office of the City Clerk or by calling (772) 288-5368.

ORDINANCE No. 2348-2017

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, ANNEXING A PARCEL OF LAND NORTH OF THE INTERSECTION OF NE SAVANNAH ROAD AND NE BAKER ROAD, CONSISTING OF 14.85 ACRES, SAID PARCEL BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; PROVIDING DIRECTIONS TO THE CITY CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

LOCATION MAP



Publish March 11, 2017 & March 27, 2017 & April 3, 2017

City of Stuart
Development Department
121 SW Flagler Avenue
Stuart, FL 34994
Ph. 772-288-5300
Fax 772-288-5388

AFFIDAVIT ATTESTING TO NOTIFICATION

Werner Bols, being first duly sworn, depose(s) and say(s):

That I am the owner(s) or petitioner(s) of the following described property which constitutes the location for which notification is required:

NE SAVANNAH RD, JENSEN BEACH
Legal Description: SEC 28-T37S-R41E; THAT PORTION OF NE 1/4 OF SE 1/4 OF SW 1/4 LYING NLY OF N R/W OF NE SAVANNAH RD & NLY R/W EXT OF BAKER RD & SE 1/4 OF NE 1/4 OF SW 1/4 OF SEC

That a photograph showing the placement of the notification sign is made a part of this Affidavit.

SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

SIGNED (PROPERTY OWNER / AUTHORIZED AGENT)

SWORN TO AND SUBSCRIBED before me this 27th day of FEBRUARY, 2017.

NOTARY PUBLIC, STATE OF FLORIDA:

My Commission Expires:

LAURIE KURNICK
MY COMMISSION # FF 953424
EXPIRES: January 29, 2020
Bonded Thru Notary Public Underwriters

NOTICE OF PUBLIC HEARING
PROPOSED ANNEXATION OF 14.85 ACRE (+/-) PARCEL INTO THE CITY OF STUART
Stuart Local Planning Agency, March 16, 2017
and the Stuart City Commission, March 27, 2017 and
April 10, 2017 at 5:30 P.M. at
STUART CITY HALL 121 SW FLAGLER AVE 772-288-5326 8:30 AM - 4:00 P.M.
VISIT WWW.CITYOFSTUART.US FOR MORE INFORMATION
772 286 6292
15 ACRES

NOTICE OF PUBLIC HEARING

PROPOSED ANNEXATION OF 14.85 ACRE (+/-) PARCEL INTO THE CITY OF STUART

Stuart Local Planning Agency, March 16, 2017 and the Stuart City Commission, March 27, 2017 and April 10, 2017 at 5:30 P.M. at

STUART CITY HALL 121 SW FLAGLER AVE 772-288-5328 8:30 AM - 4:00 P.M.
VISIT WWW.CITYOFSTUART.US FOR MORE INFORMATION

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**P NIcoletti

Title of Item:
(Continued to April 10, 2017) ORDINANCE No. 2351-2017; AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTIONS 4-1 THROUGH 4-4, INCLUSIVE OF THE CITY OF STUART, FLORIDA CODE OF ORDINANCES TO CLARIFY AND FURTHER REGULATE ALCOHOLIC BEVERAGES WITHIN THE CITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.(RC)

Summary Explanation/Background Information on Agenda Request:
Since September, 2016, with the request of 23 Master Mind LLC for a restaurant at the Post Office Arcade (23 Osceola St.) the city staff has struggled with the idea of considering the request, while being restricted by our current alcoholic beverage code which limits the sale or distribution of alcoholic beverages to 30% of the ground floor area in a defined downtown area.

As it turns out, when the original calculations were made, they did not include the square footage of the Lyric Theater, since it had a exemption. However, in hind sight, we should have included it, and then granted the exemption.

Taking that into consideration, we have recalculated the overall ground floor square footage and have added in the Lyric Theater. A copy of the spreadsheet is attached for your review.

At the same time, we have recognized the need to amend the existing ordinance, to clarify the procedures, and to simplify the way we deal with vacant space.

At the Regular City Commission Meeting of February 27th, the Commission asked that this ordinance be brought back for consideration at the next meeting.

If adopted by the City Commission (probably on March 27, 2017), the staff will likely wait to see if two (2) of the three outstanding grants of zoning approval from 2016, expire after 12 months without use. Those would be for Earthtones, and the upstairs of Fellowship Hall building. Those expire sometime in May, 2017. Once we know the outcome of that (or earlier, if the square footage is forfeited by the owners), the staff will advertise all available square footage and conduct a drawing for the space. As you will see in the new ordinance, the requirements are more specific, and require a dimensioned proposed floor plan, and building inspections along the way to re-opening.

Funding Source:
N/A

Recommended Action:
Continue Ordinance No. 2351-2017 on Second Reading to April 10, 2017

ATTACHMENTS:

	Description	Upload Date	Type
🗋	Ord. 2351-2017 Alcoholic Beverages	3/10/2017	Ordinance add to Y drive
🗋	Complete Downtown SF Spreadsheet	3/10/2017	Backup Material

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NO. 2351-2017

AN ORDINANCE OF THE CITY OF STUART, FLORIDA, AMENDING SECTIONS 4-1 THROUGH 4-4, INCLUSIVE OF THE CITY OF STUART, FLORIDA CODE OF ORDINANCES TO CLARIFY AND FURTHER REGULATE ALCOHOLIC BEVERAGES WITHIN THE CITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE

****

WHEREAS, the City Code of Ordinances, Section 4-1, et seq, is the regulation regarding the reasonable time, place and manner that alcoholic beverages may be sold, and distributed throughout the city; and

WHEREAS, the City Commission desires to amend the City Code to clarify certain provisions, and to further regulate establishments which sell or distribute alcoholic beverages.

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

SECTION 1: AMENDMENTS TO SECTIONS 4-1 THROUGH 4-4 INCLUSIVE, OF THE STUART CODE OF ORDINANCES. Sections 4-1 through 4-4 of the Stuart Code of Ordinances are hereby amended to read in their entirety as follows:

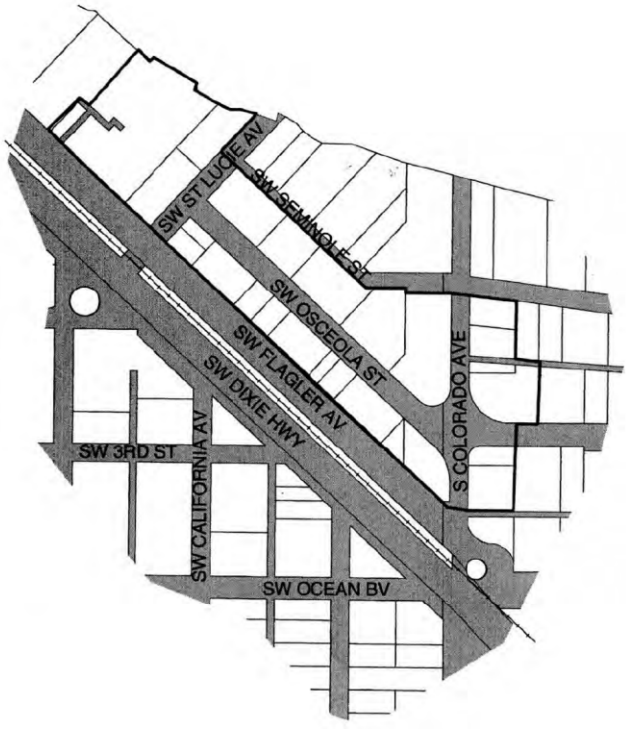
Sec. 4-1. – Statutory definitions adopted.

For the purposes of this chapter, the definitions contained in F.S. ch. 561 shall control except insofar as they are in conflict with the provisions of this chapter, and preempt the city by Florida law; otherwise, the most stringent provision shall prevail.

Sec. 4-2. – Definitions.

As used in this section, the following definitions shall apply:

Designated area means the "old downtown section," less any city-owned or city-controlled property, and as depicted in Map 4-2.



Map 4-2

Old downtown section means those real properties within the boundary of the centerlines of S.W. Seminole Street on the north, S.W. Flagler Avenue on the south, S. Colorado Street on the east, and S.W. St. Lucie Avenue on the west; plus the City Hall and City Hall Annex property west of and contiguous to S.W. St. Lucie Avenue, being Lot 36 according to the plat of The Feroe Subdivision recorded in the public records of Martin County, Florida, at Plat Book 2, Page 25, and Lots 3, 4, 5, 6, 7, 7A, 8, 9, and 9A according to the plat of Revised Danforth's Addition recorded in the public records of Martin County, Florida, at Plat Book 5, Page 69; and those properties located east of and contiguous to South Colorado Street, being Lots 8, 9, 12, and 24-28, Block 3, and Lots 19-23, Block 4, amended plat of Porter's Addition recorded in the public records of Martin County, Florida at Plat Book 2, page 75.

Entertainment means music, speech, or other sound, produced by a disc jockey, speaker, or musician(s), using electronic amplification, which is intended for an audience.

Establishment means any business location whose owner or operator holds a valid alcoholic beverage license for consumption on premises issued by the State of Florida, and also known as "licensed premises" as defined by Florida statutes.

Gross floor area means the sum of the enclosed ground floor areas of a building, including, but not limited to, rooms, halls, lobbies, arcades, stairways, elevator shafts, bathrooms, kitchens, storage rooms, equipment rooms, covered areas, enclosed porches, plus all outdoor areas used for beverage service, access, and storage, and including leased public rights of way, and as shown on Chart 4-2.

Chart 4-2

Parcel #	PCN	Gross Sq. Ft	COP Sq. Ft	Current Establishment*
1	538410040000022000000	2250	0	
2	538410040000022000000	1755	1755	Vine & Barley
		0	1755	Vine & Barley (2nd Floor)
3	538410040000022000000	8706	0	
4	538410040000024000000	3650	0	
5	538410040000025000000	1521	1521	Luna's Italian Cuisine
		1400	0	
6	538410040000026000000	5836	0	
		2952	2952	The Gafford
7	538410040000028000000	1998	0	
8	538410040000029000000	3651	0	
9	538410040000030000000	1944	1944	Osceola Street Café
		6561	0	
10	538410040000033000000	3817	0	
11	438410150050001000000	2472	2472	Maria's Café
		6568	0	
12	438410150040020000000	4302	0	
13	438410150040019000000	4445	4445	LouRonzo's
14	438410150030012000000	4959	0	
15	438410150030008000000	4210	4210	Sneaki Tiki
		714	0	
16	438410150030080000000	1650	0	
17	438410150020010000000	5614	5614	Duffy's
		2655	0	
18	538410230000001000000	3955	0	
19	538410230000002000000	1631	0	
20	538410230000003000000	2331	0	
21	538410230000004000000	5743	0	Post Office Arcade
22	538410040000014000000	15530	0	
			1199	EarthTones
23	538410300000101000000	1158	0	
24	053841030000102000000	1040	0	
25	053841030000103000000	731	0	
26	053841030000302000000	1092	0	
27	053841004000019090000	9238	6421	Riverwalk; Spritz; Black Marlin
	TOTAL =	**126079**	**34288**	
	Percent of COP =		**27.20%**	

Night club means an establishment that is a stand-alone bar, bottle club, or a restaurant which:

(1) Serves or allows the consumption of alcoholic beverages on the premises; and

(2) Provides or permits entertainment later than 11:00 P.M. at least one evening per week.

Saturation level means an establishment floor area of not greater than 30 percent of the gross ground floor area in the designated area.

State means the State of Florida, or its political subdivisions.

Walk-up window means any window, doorway or other opening from a building or structure to the outside of any establishment from which there is the sale or distribution of alcoholic beverages.

Sec. 4-3. – Citywide; regulations. The following regulations shall apply everywhere in the city, unless and except for the provisions of the designated area, which when applicable, shall supersede these provisions:

(1) *No walk-up windows.*

The sale of alcoholic beverages shall not be permitted from a walk-up window.

(2) *Interval distance between establishments, houses of worship, and schools.*

a. No establishment where alcoholic beverages are sold for consumption on the premises shall be established within 300 feet of any other such establishment, except as elsewhere provided in this chapter. The interval distance requirement specified herein shall be measured in a straight line on the official city map located within the building department between the main entrances of the establishments.

b. No alcoholic beverages shall be sold within 200 feet of any house of worship, or within 500 feet of the real property that comprises a public or private school offering kindergarten, elementary, middle, or secondary school grades, unless the city commission makes a finding that such use promotes the public health, safety, and welfare of the community, and approves the same by resolution.

(3) *Exemptions for certain establishments:* The interval distances in (2) above shall not apply to the operation of the following types of establishments:

a. A chartered or incorporated club with an 11C license issued by the state; or

b. A special live performance theater with an 11PA license issued by the state; or

c. An establishment for the sale of beer only, or beer and wine only with a 1APS, 2 APS, 1COP, or 2COP license issued by the state; or

d. A hotel or motel with a COP SH license issued by the state; which does not include any package sales; or

e. A restaurant with a 4COP SRX license issued by the state; or

f. Any establishment within the *designated area*, as further regulated in this chapter.

(4) *Hours of operation regulated.*

The sale, service, and delivery of alcoholic beverages shall be limited to the hours of 7:00 a.m. until 2:00 a.m. the following day, seven days a week. No person, including a wholesale or retail distributor or vendor covered by any license, shall sell, give, serve or deliver any alcoholic beverage to any person for consumption on or off the premises between the hours of 2:00 a.m. and 7:00 a.m. on any day of the week.

(5) *Zoning approval requirements; revocation.*

a. Every establishment owner or operator seeking an alcoholic beverage license from the state shall be required to obtain administrative zoning approval on the form required for completion by the Florida Alcoholic Beverage and Tobacco Division for the allowable use, based upon code compliance, including without limitation, location, proper zoning, proof of occupancy (by producing a properly executed or recorded lease, memorandum of lease, deed, contract for sale and purchase, or other acceptable instrument), interval distance, sufficient parking, ingress, and egress, and compliance with the saturation level, where applicable.

b. Where zoning approval is being sought by a tenant, both the tenant and the property owner (landlord) shall be a party to the application, and must jointly agree to be bound by the approval.

c. An application fee for administrative zoning approval may be established by resolution of the city commission from time to time.

d. Zoning approval may be revoked by the city manager for good cause, including violations of this chapter, excessive calls for police service, underage drinking violations, or noise violations. A decision by the city manager to revoke zoning approval shall be appealable to the city commission, which shall conduct a hearing on the appeal as provided elsewhere in the code. Any zoning revocation shall be reported to the Florida division of alcoholic beverages and tobacco.

(6) *Additional regulations for special restaurant (SRX) licensees.*

a. A restaurant with a special restaurant alcoholic beverage (SRX) license issued by the state shall only be located within a zoning district where such use is permitted. Such restaurant shall not sell alcoholic beverages in containers for consumption off the premises.

b. The sale or service of alcoholic beverages, by an establishment with a special restaurant alcoholic beverage license, shall be prohibited when the restaurant is not open for the sale or service of food.

4-4. Designated area regulations. In addition to any applicable provision(s) of Sec. 4-3, above, the following regulations shall apply within the designated area:

(1) *Application of the saturation level.*

The gross floor area of establishments which hold valid 1COP, 2COP, 4COP, or 4COP SRX state alcoholic beverage licenses, within the designated area shall not exceed the saturation level adopted by the city commission. The saturation level provision supersedes and replaces the interval distance requirement within the designated area. All establishments on real property within the designated area, open for business on May 1, 2017, and holding a valid alcoholic beverage license issued by the state of Florida are deemed to be "grandfathered" to the extent that they are not required to reapply for the use of the space, even though they fall within the ambit of the saturation level provided for in this section.

(2) *Regulations for certain types of establishments:* The following establishments within the designated area shall be exempt from the saturation level regulations:

a. Certain 1COP and 2COP license establishments. Notwithstanding the saturation level requirements, an establishment may be granted zoning approval by the city development director to obtain a 1COP or 2COP license from the state, provided the establishment meets the following additional conditions:

The establishment shall:

i. Have not fewer than 25 seats and not more than 75 seats, including bar and outside seating; and

ii. Generate at least 51 percent of the business' gross receipts from the sale of food; and

iii. Cease the sale of alcoholic beverages by 11:00 p.m.

b. The saturation level shall not apply to chartered or incorporated club 11C licensees; and special live performance theater 11PA licensees.

(3) *No package sales.*

No retail sale of package goods shall be permitted, except as an accessory use. This regulation shall not apply to the sale of package beer and wine only.

(4) *No nightclubs.*

No establishment in the designated area shall be operated as a nightclub.

(7) *Once saturation level is achieved; drawing lots.*

a. Once the saturation level has been reached by establishments in the designated area, no further establishments, or expansion of existing establishments, shall be permitted, except:

i. Upon the sale, transfer or relocation of an establishment, and proper application for zoning approval, the city development director, shall review the proposed location for compliance with the city codes, and make a determination regarding the issuance of zoning approval, prior to approving the payment of the local business tax.

ii. In the event that an establishment been sold, transferred, or when the alcoholic beverage license has been revoked or has expired, the owner of the affected real property shall do the following:

(a) Lease, or convey the establishment to a new tenant or owner with a valid alcoholic beverage license, and reopen the establishment for business within 90 days, unless such time is extended by the city manager for good cause shown.

iii. In the event that an establishment is relocated within the designated area, the owner of the establishment shall do the following:

(a) Provide the city with a recorded memorandum of lease, or deed, and a copy of a valid and complete alcoholic beverage license application. Upon proper application and payment of fees by the owner of the establishment, the city development director shall review the proposed location for compliance with the city codes, and make a determination regarding the issuance of zoning approval, prior to approving the payment of the local business tax. Thereafter, the establishment owner shall be opened for business within 90 days following the approval, unless such time is extended by the city manager for good cause shown.

iv. If an existing building is being renovated, or a new building built, or a building addition constructed, the owner or operator shall have a complete building permit application filed with the city development department, including the payment of all fees, for the renovation, or construction of the establishment.

Thereafter, such applicant must actively pursue completion of the work, by obtaining and passing progressive building inspections at least every 90 days, and obtain a certificate of occupancy, and be open for business within 12 months of the date the building permit is available for issuance by the city, unless such time is earlier terminated or extended by the city manager for good cause shown.

v. In the event the owner of a building in which there was a valid establishment fails to comply with the provisions of subsection (7)a.ii, iii, or iv, or in the event that the area allotted is forfeited, the process to permit a new establishment shall be as follows:

(a) The city development director shall notify the property owner in writing of the forfeiture of the establishment's use for the sale of alcoholic beverages; and

(b) The city development director shall publically advertise the amount of gross floor area which is available for use as an establishment within the designated area, including a response time of not less than 10 days for interested parties to make application to the city development director for use of the available space; and

(c) In the event there is more than one response to the advertisement, the city development director shall have the applicants draw lots to determine which applicant(s) shall be permitted to open an establishment.

(d) No applicant shall be awarded more space than is needed to fit within a designated location. The applicant shall furnish a detailed and dimensioned floor plan drawing of the space; along with a contingent or actual lease or memorandum of lease, or contract for sale and purchase, or a deed in the applicant’s name or business name, demonstrating the ability to control and use the space.

(e) Thereafter, if the applicant satisfies, or demonstrates the ability to satisfy, all other applicable code requirements and conditions as provided in subsection 7.a above, along with the payment of the fee, the city development director shall conduct the administrative zoning review, and upon approval the applicant shall comply with the provisions of subsection 7.a above, regarding the opening of the business as an establishment.

(f) An owner of real property upon which an establishment has been granted an allotment of area, or is grandfathered by prior use (“Subject Property”) may forfeit the area allotted or grandfathered by submitting a writing to that effect, which bears the signature of all the owners of the Subject Property, and which is witnessed by 2 attesting witnesses, and acknowledged by a notary public.

(8) Express intent regarding development rights.

It is the express intent of the city commission that zoning approval and permitting rights for establishments in the designated area, shall be administered only by the city. There shall be no private sale or transfer of development rights or other distribution of square footage resulting therefrom, except by and through the city. In the event an applicant loses the ability to control the area allotted because of a loss of a lease, or its use other than as an establishment, or any other action or inaction which causes loss of the area allotted by such applicant, the area previously allotted shall be forfeited as a matter of fact and law. Upon such determination, the city development director, shall advise the applicant in writing of the forfeiture of the area lost.

SECTION 2: CONFLICTS REPEALED. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3: SEVERABILITY. If any section, sentence, clause, phrase or word of this ordinance is for any reason declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance and the remaining portions shall be deemed and held to be valid.

SECTION 4: CODIFICATION. The provisions of Section 1 of this ordinance shall be codified.

SECTION 5: EFFECTIVE DATE. This ordinance shall take effect immediately upon adoption.

PASSED on First Reading this ___ day of March, 2017.

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
THOMAS CAMPENNI, MAYOR				
TROY MCDONALD, VICE MAYOR				
KELLI GLASS LEIGHTON, COMMISSIONER				
JEFFREY KRAUSKOPF, COMMISSIONER				
EULA R. CLARKE, COMMISSIONER				

ADOPTED on Second Reading this _____day of _____, 2017.

ATTEST:

_____
CHERYL WHITE
CITY CLERK

_____
THOMAS CAMPENNI
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
CITY ATTORNEY

Chart 4-2
Designated Gross Floor Space Calculations

Parcel #	PCN	Gross Sq. Ft	COP Sq. Ft	Current Establishment*
1	538410040000022000000	2250	0	
2	538410040000022000000	1755	1755	Vine & Barley
		0	1755	Vine & Barley (2nd Floor)
3	538410040000022000000	8706	0	
4	538410040000024000000	3650	0	
5	538410040000025000000	1521	1521	Luna's Italian Cuisine
		1400	0	
6	538410040000026000000	5836	0	
		2952	2952	The Gafford
7	538410040000028000000	1998	0	
8	538410040000029000000	3651	0	
9	538410040000030000000	1944	1944	Osceola Street Café
		6561	0	
10	538410040000033000000	3817	0	
11	438410150050001000000	2472	2472	Maria's Café
		6568	0	
12	438410150040020000000	4302	0	
13	438410150040019000000	4445	4445	LouRonzo's
14	438410150030012000000	4959	0	
15	438410150030008000000	4210	4210	Sneaki Tiki
		714	0	
16	438410150030080000000	1650	0	
17	438410150020010000000	5614	5614	Duffy's
		2655	0	
18	538410230000001000000	3955	0	
19	538410230000002000000	1631	0	
20	538410230000003000000	2331	0	
21	538410230000004000000	5743	0	Post Office Arcade
22	538410040000014000000	15530	0	
			1199	EarthTones
23	538410300000101000000	1158	0	
24	053841030000102000000	1040	0	
25	053841030000103000000	731	0	
26	053841030000302000000	1092	0	
27	053841004000019090000	9238	6421	Riverwalk; Spritz; Black Marlin
	TOTAL =	**126079**	**34288**	
	Percent of COP =		**27.20%**	

Updated 3.3.2017

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**Michael Mortell

Title of Item:

Discussion re: 2375 S. Kanner Highway (7-Eleven)

Summary Explanation/Background Information on Agenda Request:

The City of Stuart was a party to a long term lease with 7-11 which expired on June 30, 2016. Pursuant to the lease agreement, 7-11 had an option to extend the lease for an additional 5 years. On January 6, 2017, 7-Eleven contacted the Procurement Office with notice of its desire to extend the lease. However, instead of just accepting the terms of the lease, 7-Eleven expressed concerns about the newly opened WaWa Market.

According to its representative, the following terms were requested for renewal:

1. The current lease expiration date of 06/30/17 shall be extended to 06/30/22.
2. Base rent during the renewal term, effective 07/01/17 through 06/30/22, shall be $15,920.00 per month.
3. Two months of base rent abatement beginning 07/01/17.
4. Two five years option. Base rent for the first five year option beginning 07/01/22 shall be $17,512.00 per month. Base rent for the second five year option beginning 07/01/27 shall be $19,265.00 per month.

Procurement was negotiating with 7-Eleven regarding the lease renewal terms. However, on February 16, 2017 - before any renewal agreement was executed - 7-Eleven notified the City that it "will not be exercising it's option to renew its lease at S. Kanner Highway in Stuart, Fl."

Pursuant to the terms of the lease, the City can require the tenant to remove the tanks that are in the ground as part of the termination. However, the decision to remove the tanks is related to any future use. If it is the intent of the Commission to maintain the site as a gas station, then maintaining the tanks might be a better decision.

Funding Source:

N/A

Recommended Action:

Provide direction to staff regarding termination of lease and future use of site.

ATTACHMENTS:

	Description	Upload Date	Type
🗋	Appraisal	3/21/2017	Attachment
🗋	Lease Agreeement	3/22/2017	Attachment

AN APPRAISAL
REPORT OF A 57,046 SF RETAIL PARCEL WITH A 3,248 SF GAS/CONVENIENCE STORE

LOCATED AT
2375 SOUTH KANNER HIGHWAY
STUART, FLORIDA 34994

AS OF
MARCH 8, 2017

FILE NUMBER DKD-2017-002

PREPARED FOR

LENORA S. DARDEN, CPPB
PROCUREMENT MANAGER
CITY OF STUART
PROCUREMENT & CONTRACTING SERVICES DIVISION
121 SW FLAGLER AVENUE
STUART, FLORIDA 34994-2172

PREPARED BY

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March 20, 2017

Lenora S. Darden, CPPB
Procurement Manager
City of Stuart
Procurement &Contracting Services Division
121 SW Flagler Avenue, Stuart, FL 34994-2172

RE: Market Value of a 3,248 SF
Gas/Convenience Store
Stuart, Florida 34994
Our File #DKD-2017-002

Dear Ms. Darden:

As requested, to provide an opinion of the market value of the above-cited subject property, we have inspected the property, the economic environment and surrounding neighborhood, researched and inspected sales and offers of similar properties, and studied all other pertinent factors.

The **purpose** of this assignment has been to develop an opinion of the value of the Fee Simple Estate of the subject property, as of March 8, 2017. The **function** of this report, or its intended use, is for your use in decision-making. The opinions and conclusions have been developed solely with consideration, therefore, for that function and do not address requirements for any other use or by any other party. Please refer to the assumptions and limiting conditions in this regard.

This is a summary appraisal report in accordance with all the exercises, procedures, and analyses necessary therefore and stipulated by USPAP Std. 1. The report is intended to conform to the appropriate and pertinent rules and regulations for appraisal as promulgated by USPAP, the Appraisal Institute, the State of Florida, and the Appraisal Foundation and associated Standards Board. A report is provided, intended to comply with the USPAP guidelines therefore -- Std. 2-2[b] – wherein the data and analyses inherent to the complete appraisal are summarized with no excessive or extraneous discussions.

Ms. Darden
March 20, 2017

There is a large outdoor advertising sign on the southern boundary of the property, and we were directed by our client that it not be included in our valuation. However any future owner or lessee likely will have to allow the same access and maintenance easement currently in place and incorporate the easement in their land planning.

Based on all pertinent information, the investigation, and analyses, we have concluded the following market value of the fee simple estate for the subject property, as of March 8, 2017:

$1,430,000

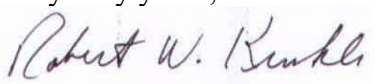
The preceding statement of value is predicate upon any and all assumptions and limiting conditions contained within this appraisal report.

The scope of this assignment includes analyzing a reasonable exposure time for the subject property, which is stated at the end of this report under *Reconciliation*. In regard to compliance with the Competency Provision of the USPAP, we have been appraising these types of properties in this area for more than 35 years.

Enclosed is an appraisal report, which describes the property appraised, and shows the valuation procedures used in arriving at the preceding value conclusion.

We appreciate the opportunity to have been of service to you. If you have any questions, please call.

Very truly yours,



Robert W. Kunkle
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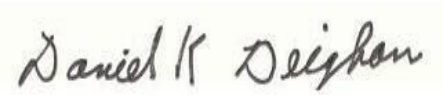

Daniel K. Deighan, MAI
Cert. Gen. #244

rk/dkd
Enclosure

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CERTIFICATION

We certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.

2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.

3. We have no present or prospective interest in the property which is the subject of this report, and no personal interest with respect to the parties involved.

4. We have no bias with respect to the property which is the subject of this report, or to the parties involved with this assignment.

5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.

6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value which favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

7. Our analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice [USPAP].

8. Daniel K. Deighan, MAI, and Robert W. Kunkle, made a full personal inspection of the property, which is the subject of this report.

9. Other than the undersigned, no one has provided significant professional assistance in the analyses, conclusions and opinions of real estate values, as set forth in this appraisal report, except as may be specifically set forth elsewhere herein.

10. The Appraisal Institute conducts a voluntary program of continuing education for its designated members. MAI's who meet the minimum standards of this program are awarded periodic educational certification. As of the date of this report, Daniel K. Deighan, MAI, has completed the requirements of the continuing education program of the Appraisal Institute.

11. A list of Assumptions and Limiting Conditions is shown elsewhere in this appraisal report and is made a part hereof by reference thereto and these "Assumptions and Limiting Conditions" are a part of the valuable consideration between appraiser and client for this report.

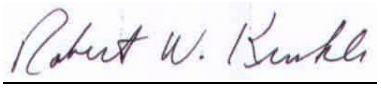
12. A list of definitions including the definition of the term Market Value is included elsewhere herein and this list of definitions is made a part hereof by reference thereto.

13. Deighan Consultants has not had any professional assignments concerning this parcel in the past three years.

14. Based upon our independent appraisal and exercise of our professional judgment, we conclude the market value of the fee simple estate of the subject property, as of March 8, 2017, to be:

$1,430,000

Date: March 20, 2017



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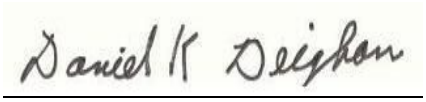


Daniel K. Deighan, MAI
Cert. Gen. #244

ASSUMPTIONS AND LIMITING CONDITIONS

The following assumptions and limiting conditions apply to the attached appraisal report, our file #DKD-2017-002:

HYPOTHETICAL ASSUMPTIONS **None**

EXTRAORDINARY ASSUMPTIONS

There is a large outdoor advertising sign on the southern boundary of the property, not included in our valuation, that is has a lease with the City of Stuart. The new owners or lessees likely will have to allow the same or similar access and maintenance easement currently in place and incorporate the easement in their land planning.

ORDINARY ASSUMPTIONS & LIMITING CONDITIONS

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.

2. Legal access to the site is available unless otherwise stated.

3. It is assumed that all licenses, certificates of occupancy, consents, or other legislative or administrative authority from local, state or national government, or private entity or organization, have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

4. Only limited legal descriptions or surveys were furnished, so the appraiser used the county tax plat to ascertain the physical dimensions and acreage of the property. Should a survey prove these characteristics inaccurate, it may be necessary for the appraisal to be adjusted.

5 Any proposed improvements are assumed to have been completed unless otherwise stipulated; any construction is assumed to conform to building plans, if any, referenced in this report.

6. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct; however, no responsibility for accuracy of such items furnished to the appraiser can be assumed by the appraiser.

7. The property is appraised free and clear of any or all liens or encumbrances, unless otherwise stated.

8. Responsible ownership and competent property management are assumed.

9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conformity has been stated, defined and considered in the appraisal report.

10. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions, if any.

11. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report.

12. This analysis has been prepared by the appraisers during the normal course of their inspection of the property and resulting preparation of a real estate appraisal report. Only a visual observation of the property has been made. Any form of environmental audit is both beyond the scope of this assignment and the particular expertise of the appraisers, who have not searched title, interviewed the current or prior owners of the site, or researched the property *beyond* the scope normally associated with the appraisal process, unless otherwise stated herein. The appraiser is neither trained nor qualified to identify and/or quantify any existing or potential environmental problems. The presence of hazardous waste or materials on the site and/or in any improvements thereon may affect the value of the property. The value conclusions and other related opinions expressed in this report are based, therefore, upon the assumption that the site and improvements, if any, are clean and free of any and all forms of contamination. Any statements made in this report, relative to the existence of or potential for existence of contamination or any other environmental problems, are made only to assist the users in their own determination as to whether the site requires further investigation by an appropriate environmental expert/professional. The appraisers cannot be held liable for lack of detection and/or identification of possible environmental problems.

13. The *Americans with Disabilities Act* [ADA, effective Jan. 26, 1992] requires that the subject structure conform to minimum specifications for accessibility and/or utility for or by physically disabled persons. We have not conducted a specific compliance survey and/or analysis of this property to ascertain whether or not it conforms to the various, detailed requirements of the ADA, and we are not qualified to do so. It is possible that a compliance survey of the property, together with a detailed analysis of ADA requirements, could reveal that the subject property is not in compliance with one or more of said requirements. At this time, based on our inspection of the subject property, and our understanding of the criteria stipulated by ADA, and as we have no direct evidence relative to the issue of non-compliance, we have **not** considered the potential therefore in concluding a value for the subject. However, should information be presented that the structure is not in compliance; the value concluded in this appraisal report may require modification. Further, if questions arise as to the property's conformance, we recommend consultation with an architect or other professional resource to ascertain, through a formal compliance survey, the property's status in this regard.

14. Where the value of the various components of the property is shown separately, the value of each is segregated only as an aid to better estimate the value of the whole; the independent value of the various components may, or may not, be the market value of the component. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

15. Any value estimates provided in the report apply to the entire property and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.

16. This appraisal report covers only the property described, and any values or rates used are not to be construed as applicable to any other property, however similar the properties might be. Further, it is assumed that the utilization of the land and improvements is within the boundaries of the property lines of the property described and that there is no encroachment or trespass, unless noted in the report.

17. Any sketch in the report may show approximate dimensions and is included to assist the reader in visualizing the property. The appraiser has made no survey of the property.

18. The forecasts, projections, or operating estimates contained herein are based upon current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes in future conditions.

19. Disclosure of the contents of the appraisal report is governed by the By-laws and Regulations of the professional appraisal organizations with which the appraisers are affiliated.

20. The contents of this appraisal are for the exclusive use and reliance upon by the client for whom it has been prepared and to whom it has been certified. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraiser, professional designations, reference to any professional appraisal organizations or the firm with which the appraiser is connected) shall be used for any purpose by anyone but the client specified in the report, without prior written consent of the appraiser; nor shall it be conveyed by anyone to the public through advertising, public relations, news, sales, or other media, without the prior written consent of the appraiser.

21. If the appraiser is required to give testimony of any nature whatsoever because of having made the appraisal with reference to the property in question, arrangements for payment of fees for the appraiser's services as an expert witness must be made in advance of such testimony.

22. The appraisal expresses the opinion of the signers and is not contingent upon a predetermined value. Neither the employment to make the appraisal nor the compensation in any way determined the amount of the valuation reported.

23. The contract for this appraisal of the property legally described herein is fulfilled by the signer upon delivery of this appraisal.

24. This appraisal report, including format, style, spreadsheet and tabular data, as well as Addenda, is the property of Deighan Consultants and no portion of the report may be reproduced without their express written permission.

APPRAISAL OVERVIEW

Owner of Record:	City of Stuart
Property Type:	Commercial building, gas/convenience store
Property Inspection(s):	Daniel K. Deighan, MAI, made an inspection on March 8, 2017 at which time he was unaccompanied.
Land Area:	1.31 acres from the Property Appraiser's card
Improved Area:	3,248 SF
Client/Intended User:	City of Stuart
Area Appraised:	1.31 acres with 3,248 SF building
Tax Folio No:	09-38-41-000-000-00690-0
Property Rights Appraised:	Fee simple
Land Use and Zoning:	Commercial and B-2, Business General
Utilities Available:	Telephone, electric, water and sewer.
Highest & Best Use:	
As Vacant	Commercial use
As Improved	Gas/convenience store
Valuation:	$1,430,000
Date of Value	March 8, 2017
Reasonable Exposure Time:	9 to 12 months

INTRODUCTION

Location/Address: 2375 S Kanner Highway, Stuart. The northeast corner of Kanner Highway, Monterey Road, and Seville Street.

Legal Description: South 260' of west 310.5' of the SW 1/4 of the SW 1/4 of Section 9

Property Inspection: Daniel K. Deighan, MAI, made an inspection on March 8, 2017 at which time he was unaccompanied.

Type of Property: Gas/convenience store with 3,248 SF under air, as it now exists.

History of the Property:

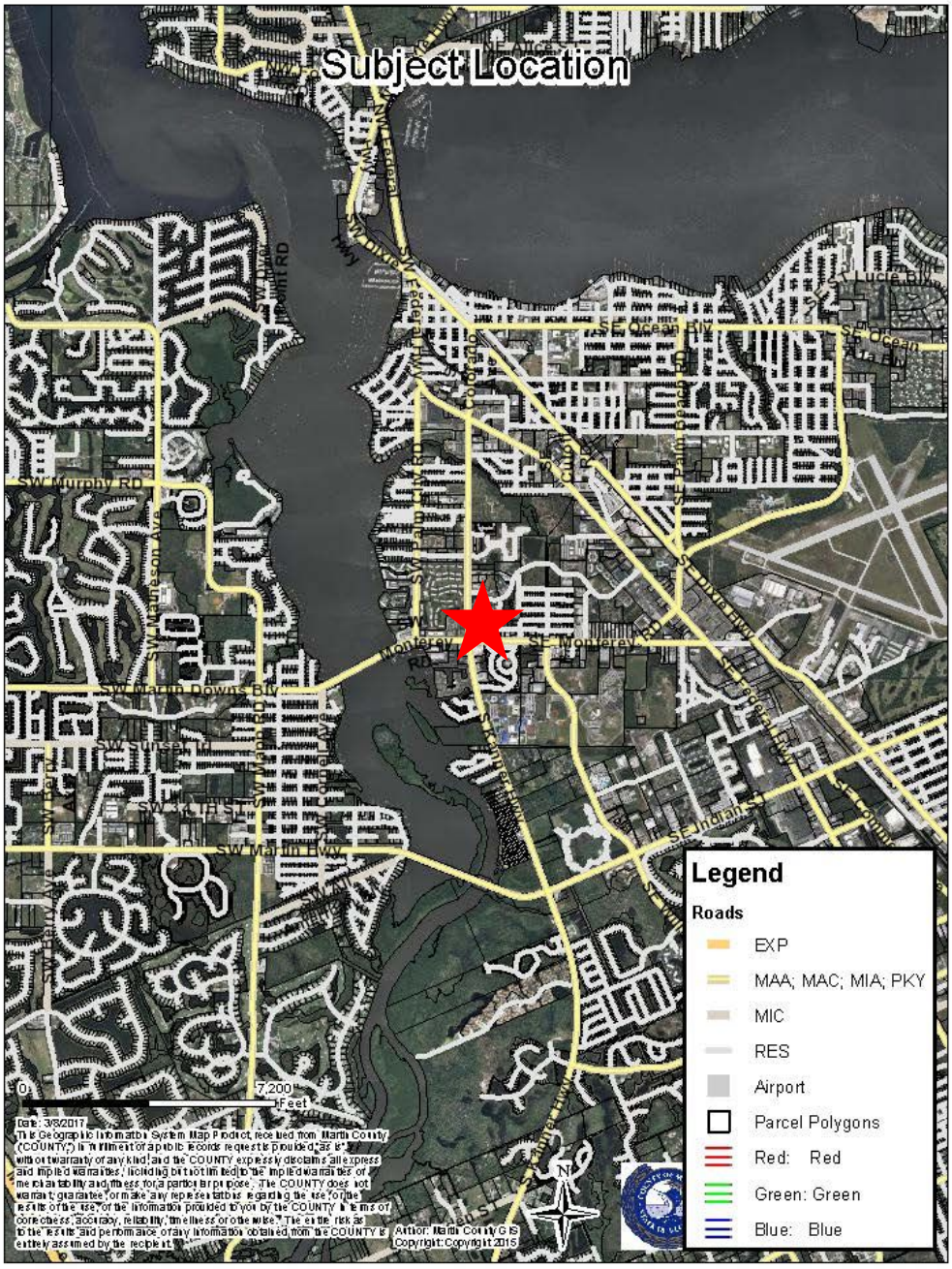
The property has been owned by the City of Stuart for over 50 years. The building was constructed in 1988.

The current lease between the City of Stuart and the Southland Corporation began in 1987 and ends September 30, 2017. Southland has informed the City they will not renew the lease. At the end of the lease the City can require Southland to remove all improvements except the building, which includes the gas pumps and underground storage tanks, furniture, fixtures, and equipment, which are moveable personal property installed and owned by Southland. The property must be filled and graded to the satisfaction of the City. The lease rate began at $50,000 annually and increased according to a schedule for 10 years. After that time the formula was a 2% increase plus one-half of the difference between the CPI and 5.5%. Using only the 2% annual increase we calculated the current rent to be over $88,823.

SUBJECT AERIAL

Red outline for descriptive purposes only.

SUBJECT LOCATION



Subject location indicated by red star.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by March 8, 2017 by Daniel K. Deighan, MAI.

Intersection of Kanner Highway and Monterey Road

Taken at north property line on Seville Street, facing east.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by March 8, 2017 by Daniel K. Deighan, MAI.

Showing location of underground storage tanks (UST's).

Monterey Road to the right, advertising sign in center which is not included in the appraisal and gas pump canopy to the left.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by March 8, 2017 by Daniel K. Deighan, MAI.

View of gas pumps with 7-Eleven in the background.

View of 7-Eleven with concrete block wall on the right which is the east property line.

PHOTOGRAPHS OF THE SUBJECT PROPERTY

All photographs taken by March 8, 2017 by Daniel K. Deighan, MAI.

Interior view facing front entrance.

Interior view showing floor, wall and ceiling finishes.

DESCRIPTION OF THE PROPERTY

LAND:

Sewer	Yes	Public water	Yes
Septic tank	No	Well	No
Electricity	Yes	Other water supply	No
Telephone	Yes	Curbs	Yes
Public sidewalks	Yes	Paved street	Yes

Size: 1.31 acres.

Shape: The subject parcel is rectangular in shape.

Ingress/Egress: The subject has 221 feet of frontage on Kanner Highway, 252 feet of frontage on Monterey Road, and 268 feet of frontage on Seville Street.

Utilities: Telephone, electricity, water, sewer.

Topography: Generally level at road grade

Drainage: Appears adequate.

Soils: Paola-urban land. This is described in the addenda.

Flood Plain: Zone A (flood elevation undetermined), from Map Panel 12085C0142G, revised 3/16/2015

Site Improvements: 3,248 SF gas/convenience store.

Easements: Typical peripheral utility easements.

Encroachments: None noted.

Environmental: No signs of environmental contamination were noted during inspection.

ZONING/LAND USE/CONCURRENCY

The land use designation is Commercial with a zoning of B-2, Business General. This designation allows numerous income generating uses including a gas/convenience store, and nearly all other types of retail stores.

Land Use/Zoning Authority:	City of Stuart
Land Use/Zoning:	Commercial and B-2, Business General.
Uses Allowed:	See Table 3 in Section 2.02.03 of the Land Development Code.
Subject Conforms:	Yes.
Concurrency:	Subject is concurrent. Central water and sewer are connected.
Future Zoning Change:	None foreseen for the near future.

ASSESSED VALUE AND TAXES

Taxing Authority: Martin County

Tax Folio No: 09-38-41-000-000-00690.0

Current Assessment: $1,192,668

Current Taxes: $23,668.00

Special Assessments: None

Public and Private Restrictions: None noted.

Property Interest Appraised: **Fee Simple Estate -** absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Sixth Edition)

Appraisal Purpose, Function, and Problem: The **purpose** of this assignment has been to develop an opinion of the market value of the fee simple estate of the subject property, as of March 8, 2017. The **function** of this report, or its intended use, is for your use in internal decision-making.

SCOPE OF ASSIGNMENT/APPRAISAL PROBLEM

The subject is a 1.310-acre parcel on the northeast corner of Kanner Highway and Monterey Road. It is improved with a 3,248 SF gas/convenience store constructed in 1988.

The appraisal problem involves developing an opinion of the market value of the fee simple estate for the subject property, as it now exists. To that end, the format of the analysis follows that stipulated by USPAP.

In concluding the opinion of market value, we have considered and analyzed sales, contracts, and offers of similar uses/tracts, occurring in this market since July 2014 in the Sales Comparison Approach. The Income Approach was not used as the Highest and Best Use was determined to be vacant land. The Cost Approach is not used due to the age of the subject improvements, and the fact they do not contribute to the Highest and Best Use. The environmental laws have changed considerably (dual wall tanks, etc.) since the subject was built.

The scope of the appraisal has involved inspection of the subject property. Note that we have inspected all the comparable properties relied upon herein if possible, and are cognizant of their physical characteristics and in selecting the data for analysis have relied upon those deemed most comparable to the subject property. All the sales, listings, contracts, and other comparable data relied upon herein have been verified, unless otherwise stated herein.

The Sales Comparison Approach has been used for concluding an opinion of value for the subject property. This is explained in the Addenda. The sources for these data typically include public records, MLS, our in-house databases, interviews and discussions with knowledgeable brokers active in this market, discussions with the Property Appraiser's office, personnel in the county utilities and growth management departments, and the tax office. Demographics from the overall market, zoning trends, and the like are considered in determining highest and best use.

The scope of this appraisal does not include any form of environmental audit of the subject property. Upon physical inspection of the property, the appraiser makes note of any existing uses or conditions on the immediate site and on adjacent sites, which could have the potential for or could have caused contamination. This observation is made in the normal course of inspection, and the reader's attention is directed to the appraiser's lack of expertise in this field. A statement regarding environmental hazards or contamination if any, observed in the course of inspection, has been presented under the site description.

HIGHEST AND BEST USE

Highest and best use is defined in the Addenda. Our conclusions as to highest and best use for the subject property are based on the following criteria which summarize the four tests inherent in Highest and Best Use analyses:

1. **Legal uses.**
2. **Physically possible uses**
3. **Financially feasible uses**
4. **Maximally productive uses**

Highest and Best Use as Vacant: **Commercial use**
Highest and Best Use as Improved: **Demolition, rebuild**

As Vacant Reasoning:

1) The highest and best use concluded and identified above is legally permissible. The parcel has a land use designation of Commercial and a zoning of B-2, General Commercial.

2) The subject site is of appropriate size, shape and topography, and has adequate access/exposure to accommodate the highest and best use concluded. The site is 1.31 acres which allows for any type of traffic pattern on the site. Access is from Kanner Highway, Monterey Road, and Seville Street. All utilities are available.

3) Commercial properties surround the subject at a major signalized intersection. A commercial enterprise would benefit from clients attracted to the area by other businesses.

4) A commercial property would not require a land use change, is consistent with the immediate neighborhood uses, and would not require extensive capital investment before actual construction.

In summary, the highest and best use of the subject site is for commercial use. This use is legally permissible, physically possible, appropriately supported in the market, and maximally productive.

As Improved Reasoning:

1) The highest and best use concluded and identified above is legally permissible. The parcel has a land use designation of Commercial and a zoning of B-2, General Commercial

2) The subject site is of appropriate size, shape and topography, and has adequate access/exposure to accommodate the highest and best use concluded. The site is 1.31 acres which allows for any type of traffic pattern on the site. Access is from Kanner Highway, Monterey Road, and Seville Street. All utilities are available. The current lease states the lessor can require the lessee to restore

the property to its previous state, vacant land. This includes removal of underground storage tanks but not the building. Demolition of the building costs can be offset by the current use as the lease extends to September 2017 and income can be set aside by the lessor for demolition. Should the building remain, a 3,248 SF building on a 1.31-acre parcel (17.6 land to building ratio) is an underutilization of the property. This would clear the way for a new lessee to build to suit. The current lease has a rental rate based on a 2% increase plus one-half of the amount greater than the CPI of 5.5%. If the CPI was 6%, the increase would be 2% plus one-half of 0.5% or 2.25%. This calculation started in 1997 when the base rent was $59,775 annually. Without a CPI added on, the rent would be $88,823 annually. We have other rents of gas/convenience stores that have triple net lease rates of $168,000 annually.

3) The current business of a gas/convenience store is not financially feasible. 7-Eleven, a highly experienced nation-wide operator, has decided not to extend their lease. New construction at that intersection includes a Wa-Wa gas/convenience store and a Speedway gas/convenience store. These are nationally known brands, as is 7-Eleven. The competition from these two stores caused the current tenants to leave. Another gas/convenience store is unlikely to purchase the property because of the competition. If 7-Eleven cannot stay in business, a locally owned and operated business could not either. Another type of retail business would benefit from the commercial nature of the area.

4) A commercial property would not require a land use change, is consistent with the immediate neighborhood uses, and a new build-to-suit property would not have the competition of Wa-Wa and Speedway.

In summary, the highest and best use of the subject site as improved is for commercial use as vacant land. This use is legally permissible, physically possible, appropriately supported in the market, and maximally productive.

APPRAISAL PROCESS

We are using the Sales Comparison Approach for the vacant land. The techniques and methods used in appraising the subject property are described and explained in the Addenda. The Income Approach is not used as the subject is considered equivalent to vacant land and there is insufficient land lease data to accurately determine a valuation. The Cost Approach is not used, as explained previously.

SALES COMPARISON APPROACH

As stated earlier the highest and best use is as vacant land.

The area of the subject is 1.310 acres (57,064 SF). We have chosen comparable sales in the neighborhood.

Unit of Comparison The most prevalent indicator of value for commercial land in this type of market is $/SF. This indicator will be used as it reflects the behavior of the typical buyer and seller in this market.

Adjustments The limited number of sales of the subject's type and lack of uniformity within its market prevent direct extraction of all adjustments from the market. Where adjustments have not been obtainable, we apply general analysis, reflective of market behavior, to determine which comparable sales are superior or inferior to the subject. Thus, the comparable sales have been analyzed based on the following factors of difference:

Changing Market Conditions The comparable sales used in direct analysis for the subject all sold within the last thirty-two months. Commercial land sales have depreciated and appreciated during this time. We have analyzed commercial land sales in the City of Stuart for the past five years. We will consider this aspect in the reconciliation.

Size The subject is 1.31 acres, 57,064 SF, from the Property Appraisers card. Sales research in this market has shown that, with all other value factors held equal, a larger parcel will generally sell for less per unit than a smaller parcel with a similar highest and best use. One reason is that a larger acquisition typically involves a greater capital outlay. Moreover, larger parcels have generally sold for less per SF due to the economies of scale and extended planning periods.

Our analyses have indicated that economies of scale are recognized in the market, however, the precise basis for an adjustment is not identifiable due to the non-linear nature of the adjustment, and the level of sophistication in the market relative to these types of parcels.

Sales 1 and 2 are similar at 53,856 SF and 53,143 SF respectively. Sales 3 and 4 are inferior at 76,666 SF and 83,635 SF.

Location The subject is in Stuart, in the heart of the commercial district. Sales 1, 2, and 3 are across the street from the subject and are similar. Sale 4 is in Tradition, in the heart of a rapidly growing commercial area. All sales are similar in location.

Topography The subject and all sales are cleared and leveled with drainage systems incorporated into the street. All are similar.

Access/Exposure The subject has access from frontage on Kanner Highway, Monterey Road, and Seville Street. Traffic counts are 26,000 AADT for Kanner south of Monterey and 29,500 AADT for Monterey west of Kanner. Sale 1 is similar as it is on the corner across from the subject. Sales 2 and 3 are next to Sale 1 and only have Kanner Highway frontage. There also is a 25’ wide access easement across the parcels to allow customers to traverse parking lots. They are inferior. Sale 4 has access from Tradition Parkway and Village Parkway, but the traffic counts are lower than the subject. It is inferior.

Utilities The subject and all sales have central water and sewer and are similar.

Zoning The subject tract has a zoning of B-2, Business General. Sales 1, 2 and 3 are also B-2 and are similar. Sale 4 is MPUD, Mixed Use Planned Unit Development. This is considered similar as this part of the PUD is designated as commercial.

Following is a grid analysis of the sales considered in this valuation, followed by a correlation of the data and conclusion of value for the subject property.

COMPARABLE SALES GRID

	SUBJECT	SALE 1	SALE 2	SALE 3	SALE 4
SALE PRICE		$1,300,000	$785,000	$860,000	$1,710,400
ORB/PG.		2730/2815	2889/2596	2830/2797	3757/2224
GRANTOR		PNC Bank	16 Kanner LLC	2014 Monterey Stuart	Tradition FL
GRANTEE		2014 Monterey Stuart	BB Management	Stuart 24 Assoc.	2015 Tradition Assoc.
PROP RIGHTS	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
FINANCING		Cash	Cash	Cash	Cash
CONDS OF SALE		Arm's Length	Arm's Length	Arm's Length	Arm's Length
ADJ. SALE PRICE		$1,300,000	$785,000	$860,000	$1,710,400
DATE OF SALE		July 2014	November 2016	June 2015	June 2015
COMPARISON		Similar	Similar	Similar	Similar
TIME ADJUSTED $/SF		$24.14/SF	$14.77/SF	$11.22/SF	$20.45/SF
SIZE	57,064 SF	53,856 SF	53,143 SF	76,666 SF	83,635 SF
Comparison		Similar	Similar	Inferior	Inferior
LOCATION	Stuart	Stuart	Stuart	Stuart	Port St. Lucie
Comparison		Similar	Similar	Similar	Similar
TOPOGRAPHY	Level @ grade	Level @ grade	Level @ grade	Level @ grade	Level @ Grade
Comparison		Similar	Similar	Similar	Similar
ACCESS / EXPOSURE	Monterey Rd., Kanner Hwy.	Monterey Rd., Kanner Hwy.	Kanner Hwy.	Kanner Hwy.	Tradition Pkwy, Village Pkwy.
Comparison		Similar	Inferior	Inferior	Inferior
UTILITIES	TEWS	TEWS	TEWS	TEWS	TEWS
Comparison		Similar	Similar	Similar	Similar
ZONING	B-2	B-2	B-2	B-2	MPUD
Comparison		Similar	Similar	Similar	Similar
OVERALL COMPARISON		Similar	Inferior	Inferior	Inferior

SUMMARY OF SALES - TIME ADJUSTED

SALE #	SIZE	$/SF	WEIGHTING
1	53,856	$24.14	High
2	53,143	$14.77	Low
3	76,666	$11.22	Low
4	83,635	$20.45	Moderate

CORRELATION

Estimate of Value:

Sale #1 is the July 2014 sale of a 53,856 SF parcel for $1,300,000 or $24.14/SF. This is across the street to the south from the subject, on the corner, and is the site of a Wa-Wa gas/convenience store. It is similar in all aspects and is given high consideration in the analysis, indicating a value of **$24.14.00/SF.**

Sale #2 is the November 2016 sale of a 53,143 SF parcel for $785,000 or $14.77/SF. It is next to the Wa-Wa parcel along Kanner Highway. It will be the site of a Culver's restaurant. The access and exposure is highly inferior as it does not have Monterey Road frontage. It is similar in all other aspects and is given low consideration in the analysis, and indicates the subject would sell for **something more than $14.77/SF.**

Sale #3 is the June 2015 sale of a 76,666 SF parcel for $860,000 or $11.22/SF. It is next to the Culver's parcel along Kanner Highway and is improved with Waters Edge Dermatology. The size is an inferior aspect. The access and exposure is highly inferior as it does not have Monterey Road frontage. It is similar in all other aspects and is given low consideration in the analysis, and indicates the subject would sell for **something more than $11.22/SF.**

Sale #4 is the June 2015 sale of an 83,635 SF parcel for $1,710,400 or $20.45/SF. It is in Port St. Lucie, in the Tradition development, on Tradition Parkway and Village Parkway. A new Wa-Wa gas/convenience store just opened on this parcel. The size is an inferior aspect. The access and exposure is inferior as it does not have high traffic counts like the subject. It is similar in all other aspects and is given moderate consideration in the analysis, and indicates the subject would sell for **something more than $20.45/SF.**

Based upon the preceding analyses, we accord greatest weight to Sale 1, with lesser weight to Sale 4, and least weight to Sales 2 and 3. It is our opinion Sale #1 would have appreciated somewhat since July 2014. Therefore, we conclude a value for the subject property would fall slightly above the indicated $11.22/SF to $24.14/SF range. Thus, I have concluded a value for the subject property, with a Highest and Best Use of vacant land, as of March 8, 2017, to be:

$25.00/SF x 57,064 SF = $1,426,600

$1,430,000 (R)

RECONCILIATION

Cost Approach:	N/A
Income Approach:	N/A
Sales Comparison Approach	$1,430,000 (R)

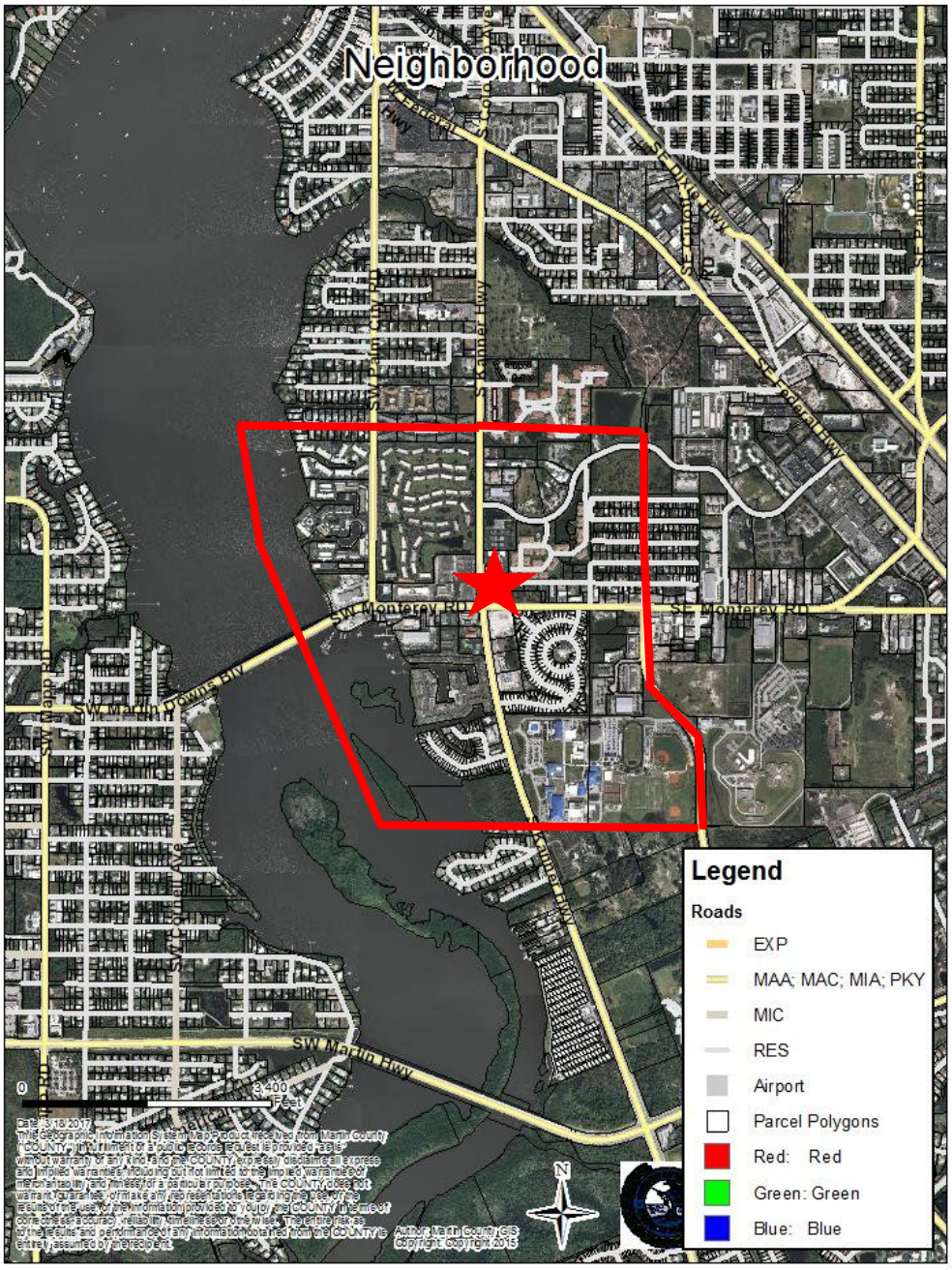
As only the Sales Comparison Approach was used we conclude the following value of the fee simple interest for the subject property, with a Highest and Best Use of vacant land, as of March 8, 2017:

ONE MILLION FOUR HUNDRED THIRTY THOUSAND DOLLARS ($1,430,000)

Reasonable Exposure Time and Reasonable Marketing Period: Based on our analyses, and upon the definitions of these concepts [supplied in the Addenda], we would conclude a reasonable exposure time for the subject of 9 to 12 months, which is also representative of the reasonable marketing period.

ADDENDA

NEIGHBORHOOD MAP



NEIGHBORHOOD DESCRIPTION

USPAP requires inclusion of a neighborhood and area description in appraisal reports. The *Regional Analysis* has been relegated to the Addenda. Following is a brief neighborhood description pertaining to the subject of this report.

Neighborhood Data

The neighborhood boundaries are considered to be:

North:	One-half mile north of Monterey Road
South:	One-half mile south of Monterey Road
East:	Willoughby Boulevard (extended north)
West:	St. Lucie River

The neighborhood consists of commercial, residential and institutional uses. Kanner Highway and Monterey Road are major commercial corridors with 6 and four lanes respectively. This intersection sees approximately 45,500 cars daily.

The intersection has the Monterey Shopping Center at the northwest corner, a Speedway gas/convenience store at the southwest corner, a Wa-Wa gas/convenience store at the southeast corner and the subject at the northeast corner. Also on the southeast corner next to Wa-Wa is new construction for a Culver's restaurant and a new Waters Edge Dermatology office.

North of Monterey Road, to the east and west of Kanner Highway, are residential areas including the Villabella Central Park condominiums, and the King Mountain Condominiums. The Estates at Stuart, Tierra Verde, and Park Square are other condominiums in the area. There are single family homes mostly on the west side of the neighborhood.

South of Monterey Road is the Leisure Village Mobile Home park, behind the Wa-Wa and Culver's restaurant. The De La Bahia condominiums are to the west. At the southeast corner of the neighborhood is the Martin County Detention Center and Martin County High School. Fisherman's Hideaway is a single family residential development along the west side of the neighborhood, along the St. Lucie River.

Monterey Road to the east is a mix of different family owned businesses while to the west it crosses the St. Lucie River into Palm City.

In summary, this area is a mix of new businesses and older businesses. The commercial corridors border large residential areas with institutional uses also in the neighborhood. With the new construction, further growth in the neighborhood is expected.

Regional Map

REGIONAL ANALYSIS –MARTIN COUNTY

Size: 555.7 square miles land area, 197.2 square miles water area

Population: 150,062 in April 2015 as estimated by the Office of Economic and Demographic Research. Florida population is 19,815,183. Stuart has 16,110 residents while 131,047 residents live in unincorporated Martin County.

Location: Martin County, Treasure Coast Region, along the east coast of South Florida, between St. Lucie and Palm Beach counties, east of Okeechobee County.

MSA: Port St. Lucie Metropolitan Statistical Area [MSA], which includes Martin County.

County Seat: Stuart

Ocean Front: The mainland is separated from the Atlantic Ocean by barrier islands and the Indian River, which runs the length of the tri-county area, offering three inlets to the Atlantic Ocean.

Median Income: The per capita income was $55,866 in 2014 (Florida Demographics by Cubit). The Florida per capita income was $46,021.

Employment: In June 2016 there were 66,484 non-agricultural employees, with 69,913 total employees for an unemployment rate of 4.9%, per the Florida Department of Economic Opportunity.

Housing: June 2016 median sale prices for homes in Martin County were up 15.9% over June 2015 at $335,000 but the number of homes sold was down 10.0% at 252 units. The inventory of homes for sale was up 8.8%. Condominium sales for June 2016 were down 5.0% at a median sale price of $140,000, up 5.7% year over year. (Florida Realtors).

DEFINITIONS AND EXPLANATIONS

Property Rights Appraised: **Fee simple estate**, which is absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Permanent Easement – a** (perpetual) interest in real property that conveys use, but not ownership, of a portion of an owner's property. Or: An easement conveyed in perpetuity. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Property Interest Appraised: **Temporary Construction Easement –** this is an easement granted for a specific purpose and applicable for a specific time period, that is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner. (Source: The Dictionary of Real Estate Appraisal, Fifth Edition)

Definition of Reasonable Exposure Time: Reasonable exposure time is one of a series of conditions in most definitions of market value and is always presumed to **precede** the effective date of appraisal. it may be defined thus: "The estimated length of time the property interest being appraised would have been offered on the market, prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events, assuming a competitive and open market." It is noted that the concept encompasses adequate, sufficient and reasonable time [on the market], as well as adequate, sufficient and reasonable effort [to expose said property to the market].
[Source: USPAP, 2010]

Definitions of Value:
Market Value -- The most probable price which a property should bring in a competitive and open market, under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars, or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Uniform Standards of Professional Appraisal Practice, 2010, The Appraisal Foundation.)

Neighborhood Definition A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises. [*The Dictionary of Real Estate Appraisal*, Fifth Ed.] Byrl N. Boyce, ed., *Real Estate Appraisal Terminology*, explains further - A portion of a larger community, or an entire community, in which there is a homogeneous grouping of inhabitants, buildings, or business enterprises. Inhabitants of a neighborhood usually have more than a casual community of interests. Neighborhood boundaries may consist of well-defined natural or man-made barriers, or they may be more or less well defined by a distinct change in land use or in the character of the inhabitants.

Highest and Best Use Highest and best use is defined as "the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and which results in the highest value." [The Appraisal of Real Estate, 12th. Ed.]

When the purpose of an appraisal is the estimation of market value, the Highest and Best Use of the subject must be determined to identify the most profitable, competitive use to which the property can be put. Highest and best use is shaped by competitive forces within the subject market. As the Cost Approach requires valuation of the property as if vacant, the highest and best use of the property, as if vacant, must be identified. Many appraisals include an allocation of value between the land and its associated improvements, also requiring the determination of highest and best use as if vacant. Land value, therefore, depends upon the uses to which the property can be put.

The highest and best use of a property as improved is determined to identify a projected (or present) use that will produce the highest capital return to the property, and to identify and use comparable properties in valuation procedures.

The highest and best use concept is based on traditional appraisal theory and reflects the attitudes of typical buyers and sellers who recognize that value is predicated on future benefits. This theory is based on the wealth maximization of the owner, with consideration to community goals. A use which does not meet public needs, will not meet the above highest and best use criteria.

APPRAISAL PROCESS/DESCRIPTION OF VALUATION METHODS

In any estimation of value, the local market is researched for sales and offerings of properties and contracts similar to the subject, rentals of similar properties and their operating expenses, current rates of return on investments, construction costs and factors of depreciation, demand for property types similar to the subject, and general economic conditions. The cost, sales comparison, and income capitalization approaches are used to process these data into a final estimate of value. The three approaches are interdependent, requiring that data and assumptions from all three are reciprocal. Generally, however, insufficient market data render varying value conclusions that must be reconciled into a final estimate of value.

The sales comparison approach compares recent transactions of similar, competitive properties on the basis of various units, including land and improvements, as well as

gross income. This approach directly reflects the actions of buyers and sellers in the open market.

Flood Zone Zone AE is an area between limits of the 100-year flood and 500-year flood, or certain areas subject to 100-year flooding with depths of less than one foot or contributing drainage area is less than one square mile, or areas protected by levees from the base flood.

Soils

Paola-Urban Land Complex Paola sand is about 45-65% of the area and is a nearly level soil that is excessively drained and located on the coastal ridge. Depth of the water table is more than 72 inches. Permeability is very high. Natural fertility and organic matter levels are very low. The soil is not suited to cultivated crops, and only has fair value for pasture grasses. Urban land makes up about 25-35% of the area. It is land that has been developed and is impervious. Other minor soil types may be present.

(Source: U.S. Department of Agriculture)

DANIEL K. DEIGHAN, MAI
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #RZ244
PROFESSIONAL QUALIFICATIONS

Professional Designations

MAI American Institute of Real Estate Appraisers [now known as the Appraisal Institute]
Daniel K. Deighan has completed the requirements of the continuing education program of the Appraisal Institute including all ordinary, normal and required courses and seminars.

Professional Experience

State-Certified General Appraiser, Florida, #RZ244; Member of the Appraisal Institute

2004-Present	Deighan Consultants, Stuart, Florida
1982-2004	Licensed Broker and Owner of Deighan Appraisal Associates, Inc., Stuart, Florida
1980-1982	Broker-Salesman and Appraiser, Geisinger Realty, Inc., Stuart, Florida
1971-1981	President, Deighan Real Estate, Inc., Lake Placid, New York
1967-1971	Chief Appraiser, John M. Wilkins, MAI, Lake Placid, New York
1966-1971	Review Appraiser, NY State Dept. of Mental Hygiene
1965-1966	Staff Appraiser, NY State Dept. of Transportation

Qualified as Consultant Appraiser with the Following Agencies/Authorities and Utilities

FL Dept. of Environmental Protection and FL Communities Trust; South Florida Water Management District; FL Dept. of Revenue; FL Dept. of Transportation; FHA; US GSA [General Services Admin.]; Veterans Admin.; Martin County; St. Lucie County; Palm Beach County; Florida Power & Light; US Bureau of Census; FL Turnpike Authority; BellSouth; Cities of Stuart, Port St. Lucie, and Fort Pierce; Treasure Coast Regional Planning Council

Private-Industry Appraisal Clients [Partial List]

Local – First Peoples Bank; Riverside National Bank; First National Bank & Trust; Coldwell Banker Co.; Bank of Indiantown; Wachovia; Harbor Federal; Palm Beach Bank & Trust; Martin Memorial Hospital

National -- American Oil Company; McDonald's Corp.; Mobil Oil Company; Walgreen's; Shell Oil Company; Texaco, U.S.A.

Property Types Appraised [Partial List]

Automobile dealerships, citrus groves, gas stations, power centers, mini-power centers, all forms of commercial space including restaurants and banks, all forms of residential uses including subdivisions, apartment complexes, mobile home parks, and condominiums, hospitals, resorts and hotels/motels, mines, numerous easements including conservation and power line, wetlands, batch plants and other heavy industrial uses, industrial subdivisions, schools, leasehold interests, and riparian rights.

Expert Witness Testimony: Circuit Courts of Volusia, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties, Florida; New York State Court of Claims and Supreme Court; and before various Commissioners on tax assessment cases.

Educational Background

- Bachelor of Arts Degree, Siena College, Loudonville, NY, 1965
- All required and necessary continuing education courses to achieve and maintain MAI.
- Taught Real Estate Principles, Practices and Law (REE 1000) course at Indian River Community College, Ft. Pierce, Florida.
- Guest Lecturer, University of Florida
- Guest Lecturer, Florida Association of Realtors

Professional Association

- MAI
- Licensed Real Estate Broker in Florida and New York
- Former Chairman, Grievance Committee, Stuart Board of Realtors.
- Past President, Economic Development Council of Martin County

º Past President, Tri-County Tec, Martin County

ROBERT KUNKLE, CGA
FLORIDA STATE-CERTIFIED GENERAL APPRAISER #3185

PROFESSIONAL QUALIFICATIONS

EDUCATION:

Associate of Arts, Indian River Community College, June 2000
Certified General Appraiser, May 2008

CONTINUING EDUCATION SEMINARS & COURSES:

Florida Law and Regulations
USPAP
Manufactured Housing
FHA Standards
Cost Approach
Income Approach
Mortgage Fraud
Hotel Valuation
Apartments Valuation

PROFESSIONAL EXPERIENCE:

- Real Estate Appraisal Research – Florida Property Consultants Group, June 1997 to March 2000
- Real Estate Appraisal – Deighan Consultants, January 2002 to Present

HAS APPRAISED:

Commercial Space	Restaurants	Office Buildings
Residential Subdivisions	Vacant Land	Industrial Buildings
Gas Stations	Condominiums	Leasehold Interests
Easements	Homes	Churches
Multi-Family Housing	Marinas	Road Right-of-Way
Riparian Rights	Airport Hangar	

PARTIAL LIST OF APPRAISAL CLIENTS

Martin County	St. Lucie County	City of Stuart
City of Port St. Lucie	Gulfstream Bank	Core Communities
Independent Bank	City of Fort Pierce	Trust for Public Land
Florida Communities Trust	Law Firms	Private Individuals

City of Stuart

Sailfish Capital of the World

6

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 73-07

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A LEASE EXTENSION AGREEMENT BETWEEN THE CITY OF STUART AND THE 7-ELEVEN COMPANY FOR A CITY-OWNED PROPERTY AT THE NORTHEAST CORNER OF SR-76 AND MONTEREY ROAD; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

Section 1: The Mayor and City Clerk are hereby authorized to execute a lease extension agreement (Exhibit A attached) with 7-Eleven for a city-owned property at the northeast corner of SR-76 and Monterey Road. A copy of the agreement is on file in the office of the City Clerk.

Section 2: This resolution shall take effect upon adoption.

Resolution 73-07

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

	YES	NO	ABSENT
MARY HUTCHINSON, MAYOR	–		
JEFFREY KRAUSKOPF, VICE-MAYOR	–		
CAROL WAXLER, COMMISSIONER	–		
MICHAEL MORTELL, COMMISSIONER	–		
JAMES A. CHRISTIE, COMMISSIONER	–		

ADOPTED this 14th day of May, 2007.

ATTEST:

CHERYL WHITE
CITY CLERK

MARY L. HUTCHINSON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

PAUL J. NICOLETTI
CITY ATTORNEY

CITY OF STUART · FLORIDA · INCORPORATED 1914 · SAILFISH CAPITAL OF THE WORLD

Cheryl A. White
City Clerk

AMENDMENT NO. 1

PROPERTY NO. 27729

On the 25th day of February, 1987, 7-Eleven, Inc. formerly known as The Southland Corporation, as LESSEE, and City of Stuart, as LESSOR, entered into a Lease Agreement (herein "Lease Agreement"), covering the property known as 2375 S. Kanner Highway at Monterey Road, Stuart, Martin County, Florida and more fully described on Exhibit "A" attached hereto and made a part hereof.

LESSOR and LESSEE presently desire to amend said Lease Agreement. Now therefore, in consideration of the premises and $10.00 paid to the other, receipt of which is hereby acknowledged, said Lease Agreement shall be and is hereby amended as follows:

The current term of this Lease Agreement will expire on September 30, 2007. In anticipation of this expiration, and a mutual desire to implement the new terms, this Lease Amendment No. 1 shall become effective prior to the expiration of the existing lease, at which time the new lease term set forth in this amendment will commence, including the terms as follows:

1. Article 4.0 Term. LESSOR and LESSEE agree that LESSEE is hereby granted an additional term of ten (10) years, commencing July 1, 2007, and two (2) successive options to extend the term of the Lease Agreement for five (5) years for each such option upon the same covenants and conditions as provided in the Lease Agreement, except regarding the amount of the rent.

2. Exhibit B, Rent Rider. LESSOR and LESSEE agree to add the following language to amend the Rent Rider, as follows:

   A. The term "Lease Year" shall be the twelve month period beginning July 1st of each year.

   B. Rent payable during the Initial term, and each Extension Period:

   Commencing July 1, 2007 the rent shall be $150,000.00 per year payable in twelve (12) equal monthly installments of $12,500.00 each, plus applicable taxes. For every year of the Lease, including any option periods, if any, the rent shall be adjusted as follows:

   C. Rent Escalator. The minimum rent provided herein shall be the then existing annual rent, increased each year by the percentage increase, if any, in the average of the monthly Consumer Price Index For All Urban Consumers, all U.S. City Average ("CPI") prepared by the Department of Labor of the United States for the twelve (12) months prior to the ~~commencement of each~~ next ensuing lease year and including any optional extension period. Notwithstanding the CPI, the rent shall never decrease. If at the expiration of any lease year, including any optional extension period, the CPI is no longer published, then another index generally recognized as

authoritative shall be substituted by agreement, but if the parties do not agree, the substitute index shall be selected by the majority determination of three arbitrators appointed for the purpose, one being appointed by the LESSOR, one by the LESSEE and a third by the two arbitrators appointed by the LESSOR and LESSEE.

D. This paragraph of the Rent Rider shall be deleted and of no further force and effect.

3. The Premises as defined herein, shall not include a parcel of land (not larger than 7' x 7') and generally located within the legal description of Exhibit "A," but otherwise excluded from the Lease, (the "Excepted Property") and, subject to a future affirmative vote of the Stuart City Commission, may be used specifically for the purpose of erecting and maintaining an electronic billboard and related structures, which billboard may extend into the air over the Premises, but which shall be constructed in a manner that allows for safe operation of vehicles below, and which shall be further subject to specific location determination by the LESSOR, so as not to interfere with the use of the Premises by the LESSEE.

4. LESSOR agrees that it shall not permit on the said billboard any advertisement of a nature objectionable and/or detrimental to the existing business occupying the site or to the merchandise offered for sale by the existing business.

5. LESSOR will indemnify, defend, and hold harmless from and against any and all damages, claims, losses, suits and causes of action, including claims for injury to persons and damage to property, arising out of or related to the construction, maintenance, or existence of the billboard.

6. Notwithstanding the foregoing provisions in paragraph 5, above, and in addition thereto, the LESSOR agrees to be responsible to the LESSEE for any direct first party injury to the LESSEE as a result of the placement, use and maintenance of a billboard on the Excepted Property. In this context, "direct first party injury" shall mean any injury sustained to LESSEE's leased Premises, including any and all improvements thereon.

7. Article 3. Construction, is amended to include "any and all structures, signs (but excluding billboards), paving, underground pipes, concrete, buildings," as improvements that are subject to removal by the LESSEE at the LESSOR's discretion.

8. LESSEE agrees that it shall be solely responsible and solely liable for all clean-up and prevention measures associated with the underground petroleum storage tanks and pumping facilities ("motor fuels equipment") on the Premises in accordance with the directives and in a manner approved by the appropriate governmental authorities. LESSEE assumes the sole responsibility for the condition, operation and repair of the motor fuels equipment and will protect, defend, hold harmless and indemnify LESSOR from and against any and all expenses, claims, actions, liabilities, attorneys' fees, damages, losses, penalties, fines and interest of any kind whatsoever (including without limiting the foregoing, death of or injury to persons and damage to property), actually or allegedly and directly or indirectly resulting from the omission or commission of any LESSEE or its agents or employees, whether or not such act is within the scope of the employment of such agents or employees, or from leaks, seepages, spills or other loss of motor fuels or other toxic pollutants from the motor fuels equipment resulting from or in connection with the operations of Tenant on the Property. In addition, and without limitation, the LESSEE shall be fully and solely responsible for compliance with all governmental requirements and laws, and all liability for claims of third parties, related to the use, handling, storage, discharge, contamination, or clean-up of motor fuels by LESSEE, on the Premises or for motor fuels that emanate from the Premises in connection with LESSEE's operations.

9. Paragraph 28.0 "Notice" of the original lease agreement is amended as follows:

LESSOR: City of Stuart, Florida
Attention City Manager
121 SW Flagler Avenue
Stuart, Florida 34994

LESSEE: 7-Eleven, Inc.
Attn: Real Estate Services
1722 Routh Street, Suite 1000
Dallas, TX 75201-2506

With a copy to:
7-Eleven, Inc.
Attn: Real Estate
1300 Lee Rd.
Orlando, FL 32810

All other terms and conditions of said Lease Agreement, Exhibit "B" attached, shall remain unchanged.

This Amendment No. 1 is to be effective the 20th day of July, 2007.

In all other respects said Lease Agreement is hereby ratified and reaffirmed.

Executed this 6th day of August, 2007.

ATTEST:

by Mary Nash
MARY NASH, Deputy City Clerk

by
PAUL J. PICCOLETTI

LESSOR: CITY OF STUART

Mary L. Hutchinson, Mayor

ATTEST:

by
Assistant Secretary
Marijan Smith

LESSEE: 7-ELEVEN, INC.

by
~~Vice President /~~ Attorney-in-Fact
DAVID HOLLAND

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 260 FEET OF THE WEST 310.5 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 38 SOUTH, RANGE 41 EAST, LESS ROAD RIGHT-OF-WAYS.

Being more particularly described as follows:

Beginning at a Point on a Curve on the East Right-of-Way of State Road No. 76, (100 foot Right-of-Way) and the North Right-of-Way of Monterey Road (80 foot Right-of-Way); thence South 89°11'49" East, along the North line of Monterey Road, a distance of 251.80 feet, to a point; thence North 00°19'16" East, a distance of 220.00 feet, to the South line of Seville Street (50 foot Right-of-Way); thence North 89°11'49" West, along said Right-of-Way, a distance of 268.95 feet, to a Point on a Curve and the East Right-of-Way of State Road No. 76, said Curve being concaved to the West, having a Radius of 9772.09 feet, a Central Angle of 01°17'40"; thence in a clockwise direction along the Arc of said Curve, a distance of 220.81 feet, to the Point and Place of Beginning.

Exhibit B

PREPARED BY:
STEPHEN NAVARRETTA, ESQ.
WARNER, FOX & SEELE
ATTORNEYS, P.A.
514 S.E. Port St. Lucie Blvd.
Suite 514-A
Port St. Lucie, FL 33452

LEASE AGREEMENT

1.0 PARTIES. This LEASE AGREEMENT is between the City of Stuart, Florida, a municipality, herein referred to as LESSOR, and THE SOUTHLAND CORPORATION, a Texas corporation, herein referred to as "LESSEE".

2.0 PREMISES. Lessor hereby leases to Lessee and Lessee leases from Lessor, for the term and upon the terms and conditions hereinafter set forth, all that certain tract of land described in Exhibit A, which has been initialed by the parties and is attached hereto and made a part hereof, together with all rights and appurtenances thereto belonging or in any wise incident or appertaining thereto, hereinafter referred to as the "premises" or "leased premises".

3.0 CONSTRUCTION. Lessee agrees at its expense promptly to make application for all permits necessary for the construction on the leased premises of a building, signs, parking lot, and driveway entrances strictly in accordance with the uses specified in Section 6.0 of this lease. Lessor agrees to cooperate with Lessee in obtaining said permits, and in the event Lessee is unable prior to six (6) months from the date hereof to obtain any of the necessary permits, Lessee shall have the right to declare this lease cancelled and terminated, in which event, Lessor and Lessee shall be released and relieved of any further obligation hereunder. All improvements to the property other than trade fixtures and equipment shall become the property of Lessor upon termination or cancellation of this lease. Upon cancellation and termination of the lease pursuant to this provision or any other provision of this lease any underground motor fuel storage tanks (herein tanks) installed by Leasee shall become the property of Lessor provided, however, that Lessor may at its sole option require Lessee at Lessee's sole expense to remove any such tanks and at Lessee's sole expense restore, fill and grade the land to Lessor's reasonable satisfaction and upon completion of the removal of the tanks and restoration of the land Lessor shall abandon and release Lessor's interest in the tanks. Nothwithstanding any language herein to the contrary, it is the affirmative obligation of Lessee to apply for and obtain all licenses, permits and other authorizations set forth in this Article, and Lessee warrants that it will use all reasonable efforts to obtain said licenses, permits and authorizations within six (6) months after the execution of this lease. If there is an unreasonable delay in Lessee obtaining said licenses, permits and authorizations, which in no event shall be more than one (1) year after the commencement of the initial term of this lease, either party may terminate this Lease Agreement without further obligation or liability to the other. In connection with any construction undertaken by Lessee, Lessee shall be required, prior to the commencement of such construction, to obtain from the contractor a payment and performance bond with a surety insurer authorized to do business in Florida as a surety, and to provide to Lessor proof that such a bond satisfying the terms of this Article has been obtained. Such bond shall be conditioned that the contractor perform the contract in the time and manner prescribed in the contract and promptly make payments to all persons defined in Florida Statute §713.01 whose claims derive directly or indirectly from the prosecution of the work provided for in the contract.

4.0 TERM. The term of this lease shall commence on the first day of the first calendar month following Lessee's obtaining the necessary permits licenses and authorizations as contemplated by Article 3.0, above, and shall continue for a period of ten (10) years thereafter, unless sooner terminated or extended as hereinafter provided. Lessee shall have and is hereby granted a total of two (2) successive options to extend the term of this lease for any period of time not exceeding five (5) years for each such option upon the same covenants

and conditions as herein provided. If Lessee shall elect to exercise one or more of such options, it shall do so by giving Lessor written notice at least 90 days prior to the expiration of the primary term or of the then current extension and in such notice Lessee shall state the date to which it elects to extend the term. See Schedule X attached hereto and made a part hereof.

5.0 RENT. The payment of rent shall commence on the first day of the first calendar month following: (a) the date that Lessee or its assigns shall first be open for business to the public as a convenience store, or (b) six (6) months after the commencement of the lease term as set forth in Article 4.0, whichever event occurs first. Lessee agrees to pay Lessor or its designee a rental in accordance with the provisions of the Rent Rider attached hereto as Exhibit B. If rental is set forth in an annual amount, such annual rental shall be divided by 12 and paid monthly in advance on or before the fifth day of each month (unless such rental shall be abated or diminished as provided hereinafter). Monthly rental payments may be paid by check and sent to Lessor by ordinary first class mail. At the time of paying such rent, Lessee shall also pay Lessor the privilege tax levied under Section 212.031, Florida Statutes, in the amount that may be required by that law from time to time, the current amount being 5% of the total rent charged for the premises and such other taxes that may hereinafter be imposed upon any interest created by this lease.

6.0 USE. The premises may be used for the retail sale of merchandise customarily sold at grocery stores of the type commonly called supermarkets, including but not limited to groceries, produce, meat, dairy products, beer, wine and alcoholic beverages, gasoline and petroleum products and sundries and for any other lawful purpose. Lessee agrees promptly to apply for an "offsale" beer and wine license for the premises. If Lessee finds that such a license is not obtainable, Lessee may terminate this lease at any time within forty (40) days after the date of execution of this lease, but if Lessee fails to terminate this lease within such period, thereafter Lessee shall not have any right to terminate this lease because such a license is not obtained. If Lessee terminates this lease under this provision, Lessee agrees to reimburse Lessor for all reasonable expenses incurred by Lessor.

Subject to the provisions of this lease, including without limitation Article 3.0, captioned "CONSTRUCTION" and Article 12.0, captioned "ALTERATIONS", Lessee shall have the rights, at Lessee's expense: to enter the premises, at any time after the date of this lease for the purposes of making investigations and surveys; to clear from the property any and all structures, personal property and debris; to construct and install on the premises a convenience grocery store and any additional improvements and equipment that Lessee may desire; and to make any alterations that Lessee may desire in the premises and the building, improvements and equipment at any time located thereon.

Further use restrictions in regard to Lessee's premises or its sublessees and assigns are set forth in Exhibit C attached hereto.

7.0 UTILITIES. Lessee agrees to pay before delinquency all charges for gas, electricity, and water used by it, including all service charges, monthly service fees, impact fees and connection fees for trash service, wastewater service, sewer service and water.

8.0 TAXES. Lessee agrees to pay all taxes levied upon personal property, including trade fixtures and inventory, kept on the leased premises, as well as all taxes levied against the

land and the building and improvements situated thereon during the term of this lease, after presentation to Lessee by Lessor of statement(s) from the taxing authority(ies).

Lessor agrees that Lessee will not be liable for and Lessor will forfeit all rights to recover said real estate taxes if presentation of statement(s) is not made to Lessee prior to the date of delinquency. Lessor may, however, direct the taxing authority(ies) to send the statement(s) directly to Lessee. Lessor further agrees that Lessee, in the name of Lessor but at Lessee's sole expense, may protest any assessment before any taxing authority or board or maintain any necessary legal action in reference to said assessment or for the recovery of any taxes paid thereon.

9.0 LESSEE TO INSURE OWN PROPERTY. Lessee, at Lessee's expense, shall take out and maintain fire, extended coverage and vandalism insurance covering its personal property, the buildings, and all improvements installed on the premises by Lessee in an amount equal to the full insurable value thereof, or provide adequate proof of self-insurance.

9.1 LIABILITY INSURANCE. Lessee shall procure, keep in force, and pay for comprehensive public liability insurance indemnifying Lessor and Lessee against all claims and demands for injury to or death of persons or damage to property which may be claimed to have occurred upon the premises in amounts which shall be (at the time Lessee and/or its contractors enter the premises in accordance with Article 6.0 of this Lease) not less than $1,000,000.00 combined single limit for property damage and death to one or more persons. Such policy shall insure Lessee and Lessor against any liability that may accrue against them or either of them, on account of any occurrence on or to the premises on and following the date Lessee and/or its contractors enter the premises pursuant to Article 6.0 hereof and during the term thereof, resulting in personal injury, death, property damage, or any other liability whatsoever; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense.

Certificate of ins. (including underground) City as additional insured Storage tanks

Such insurance shall be effected with financially responsible insurers authorized to do business in the State of Florida under valid and enforceable policies, and such policies shall name Lessor and Lessee as the insured, as their respective interests appear. Such insurance shall provide that it shall not be canceled without at least ten (10) days prior written notice to each insured named therein. Upon receipt of written request from Lessor Lessee shall provide certificates of such policies setting forth in full the provisions thereof and issued by such insurers together with the provisions thereof and evidence satisfactory to Lessor of the payment of all premiums for such policies, shall be delivered by Lessee to Lessor and certificates as aforesaid of such policies shall upon request of Lessor be delivered by Lessee to the holder of any mortgage affecting the premises. Lessor may require an increase in the limits of coverage or extent of coverage at any time such increase is deemed commercially reasonable by Lessor and Lessee. In the event of Lessee's failure provide such insurance, Lessor may but shall not be required to obtain, such insurance and collect the cost thereof as a part of the rent herein reserved.

10.0 INDEMNIFICATION. In consideration of the premises being leased to Lessee, Lessee agrees that Lessee at all times will indemnify and hold harmless Lessor from all loss, damage, liability and expense that may arise or be claimed against Lessor and be in favor of any person, firm, or corporation, for any injuries or damage to the person or property of any person, firm, or corporation, related to or arising from the use or occupancy of the premises by Lessee or related to or arising from any acts, omissions, neglect, or fault of Lessee,

his agents, servants, employees, licensees, customers, or invitees; or related to or arising from Lessee's failure to comply with any law, statute, ordinance or regulation. Further, Lessee agrees that Lessor shall not be liable to Lessee for any damages, losses or injuries to the person or property of Lessee which may be caused by the acts, neglect, omissions, or faults of any person, firm, or corporation (except for Lessor's negligence), and that Lessee will indemnify and keep harmless Lessor from all damage, liability, loss, injury, or expense which may arise or be claimed against Lessor and be in favor of any person, firm, or corporation, or any injuries or damage to the person or property of any person, firm, or corporation, where such injuries or damage arose about or upon the premises.

11.0 MAINTENANCE. Lessee agrees to keep up the improvements at any time located on the premises in good repair, casualty damage and reasonable wear and tear excepted.

12.0 ALTERATIONS. Lessee may make such alterations, but not additions, from time to time in the improvements at any time located on the leased premises as Lessee may desire, which alterations will be made by Lessee in a good, workmanlike manner without cost to the Lessor. No additions to the leased premises shall be made without the specific prior written approval of Lessor which shall be either granted or denied upon application by Lessee and the submission of specific plans and specifications for said additions. All alterations and additions shall become the property of Lessor.

13.0 TRADE FIXTURES. Lessee may install or cause to be installed such equipment and trade fixtures as are reasonably necessary for the operation of its business. Such equipment and trade fixtures shall remain personal property, and title thereto shall continue in the owner thereof, regardless of the manner in which same may be attached or affixed to the leased premises. In the event such equipment and trade fixtures are subject to a lien or title retention instrument, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein.

14.0 CASUALTY DAMAGE. If, in the opinion of Lessee, the leased premises are rendered substantially unfit for the occupancy or use herein contemplated by any casualty or peril insured against in a standard fire and extended coverage insurance policy of the type then commonly purchased by Lessee (such a casualty or peril being hereinafter referred to as an insurablecasualty or peril) and the primary term or the then current extension of the term shall have at least two (2) years to run, Lessee at its option may promptly and diligently restore the leased premises to the condition existing prior to the occurrence of the insurable casualty or peril or may release and turn over to Lessor the insurance proceeds as a result thereof and cancel and terminate this lease. If, in the opinion of Lessee, the leased premises are rendered substantially unfit for the occupancy or use herein contemplated by any casualty or peril other than an insurable casualty or peril, or by any casualty or peril whatever when the primary term or the then current extension of the term shall have less than two (2) years to run, Lessee may either restore the leased premises at its expense as above provided or Lessee may terminate this lease effective as of the date of occurrence of the casualty or peril. If, in the opinion of Lessee, the leased premises are not thereby rendered substantially unfit for the occupancy or use herein contemplated, Lessee shall promptly and diligently restore the leased premises at Lessee's expense to the condition existing prior to the occurrence of the casualty or peril. Since Lessee has agreed to restore the leased premises in the event of casualty damage and since Lessee has numerous other properties as to which it is self-insured, Lessee may be a self-insurer as to the leased premises; provided, that on the written request

of Lessor, Lessee shall procure and maintain fire and extended coverage insurance on the building of the type then commonly purchased by Lessee to at least 80% of its insurable value, naming Lessor as an additional assured and containing a standard mortgage clause, if requested.

15.0 COMPLIANCE WITH LAWS. Lessee will promptly comply with all applicable and valid laws, ordinances and regulations of federal, state, county, municipal or other lawful authority pertaining to the use and occupancy of the leased premises.

16.0 ASSIGNMENT, SUBLETTING, SUBORDINATION AND ATTORNMENT. Any assignment of this lease or any right or interest hereunder, voluntarily or by operation of law, or any subletting of the premises or any part thereof, shall be void and in such event Lessor may, at Lessor's option, terminate this lease. The assignment or sublease shall be valid, however, and Lessor shall have waived such option to terminate if, before the assignment or sublease, Lessor and the person or entity to which the premises or any part thereof is to be assigned or subleased reach agreement in writing that the character, credit and business of such person or entity is acceptable to Lessor under commercially reasonable standards and that the rent payable during the balance of the term under this lease with regard to the premises or that part thereof to be assigned or subleased shall be an amount equal to rents then being charged for usage comparable to the premises in size and location. A consent to any assignment of this lease, voluntarily or by operation of law, or to any subletting of premises shall apply only to the specific instance covered thereby. In any event, any assignment, subordination or attornment, even if consented to in writing by Lessor, shall not relieve Lessee from its primary liability under this lease for the payment of rent or any other duty or obligation of, including without limitation the duties and obligations set forth in Sections 9.0, 9.1 and 10.0, of this lease, Lessee unless specifically agreed to in writing by Lessor. Any assignment or sublease shall be subject to all the terms and conditions of this lease.

17.0 BANKRUPTCY. Should Lessee make an assignment for benefit of creditors, or be adjudicated bankrupt, such action shall constitute a breach of this lease for which Lessor, at its option, may terminate all rights of Lessee or its successors in interest under this lease.

18.0 EMINENT DOMAIN. If a portion of the premises shall be taken, entered upon or possessed for public or quasi-public use preliminary to condemnation proceedings or otherwise, and such taking, etc. shall preclude Lessee's use of the property as set forth in Article 6.0, captioned "Use", or seriously diminish Lessee's level of operations on the premises, Lessee's sole remedy as to Lessor shall be to terminate this lease upon not less than thirty (30) days notice to Lessor, which notice must be given within thirty (30) days after Lessee shall be required to surrender possession of the part of the premises so taken. The termination of this lease as above provided shall not operate to deprive Lessee of the right to make claim against the condemning authority for any damages suffered by Lessee, but Lessee shall have no right to make any claim against Lessor because of such termination.

19.0 EXPENSE OF ENFORCEMENT. Lessee shall pay to Lessor all costs and expenses, including reasonable attorneys' fees and attorneys' fees on appeal, incurred by Lessor in enforcing any of Lessee's promises or agreements contained in this lease, in remedying any breach of any term, covenant or provision hereof, in recovering possession of the premises or any part thereof, in collecting any delinquent rent, taxes or other charges payable by the Lessee as herein provided, in

terminating this lease for a breach thereof, or in connection with any litigation, other than condemnation proceedings, commenced by or against Lessee to which Lessor shall become a party.

21.0 DEFAULT. In the event Lessee shall default in the payment of the monthly rent as provided herein, Lessor shall promptly so notify Lessee in writing, and failure of Lessee to cure such default within twenty (20) days after receipt of such notice shall, at the option of the Lessor, work as a forfeiture of this lease, or Lessor may enforce performance in any manner provided by law, and Lessor's agent or attorney shall have the right without further notice or demand to re-enter and remove all persons from Lessor's property without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or breach of covenant, or Lessor's agent or attorney may resume possession of the property and relet the same for the remainder of the term at the best rental such agent or attorney can obtain for the account of Lessee, who shall pay any deficiency, and Lessor shall have a lien as security for such rental upon the fixtures and equipment belonging to Lessee which are on the leased premises. In the event Lessee shall default in the performance of any of the terms or provisions of this lease other than the payment of monthly rent, Lessor shall promptly so notify Lessee in writing. If Lessee shall fail to cure such default within twenty (20) days after receipt of such notice, or if the default is of such character as to require more than twenty (20) days to cure and Lessee shall fail to commence to do so within the twenty (20) days after receipt of such notice, and thereafter fail to diligently proceed to cure such default, then in either such event Lessor may either (a) cure such default and such expenses shall be added to the rent otherwise due; or (b) seek injunctive relief to enforce the terms and provisions of this lease with all damages, attorneys' fees and costs to be paid by Lesee; or (c) terminate this lease.

In the event Lessor shall default in the performance of any of the terms or provisions of this lease, Lessee shall promptly so notify Lessor in writing. If Lessor shall fail to cure such default within twenty (20) days after receipt of such notice, or if the default is of such character as to require more than twenty (20) days to cure and Lessor shall fail to commence to do so within twenty (20) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either such event Lessee may cure such default and such expense shall be deducted from the rent otherwise due or cancel and terminate this lease.

22.0 RIGHT OF FIRST REFUSAL. If during the term of this Lease, or any extension thereof, Lessor shall receive a bona fide offer to purchase the leased premises which offer is acceptable to Lessor, Lessor agrees that Lessee shall have and is hereby granted an option to purchase the leased premises upon the same terms and provisions. Lessor agrees immediately after receipt of such offer to give Lessee notice in writing of the terms and provisions thereof, and that Lessee may exercise its option to purchase said property at any time within twenty (20) days after such notice is received by Lessee. If Lessee shall elect to exercise such option it shall do so by giving notice in writing to Lessor within such twenty (20) day period and a contract of sale shall be executed by the parties and title closed within a reasonable time thereafter. It is expressly provided and agreed between the parties hereto, however, that Lessee shall not have the foregoing option to purchase if the offer to purchase or any proposed sale of the leased premises is in connection with or in furtherance of a public purpose, the determination of which shall be made by Lessor in Lessor's sole discretion, or contemplates a conveyance of the leased premises to any federal, state, county or municipal governmental authority or subdivision of government or agency thereof.

23.0 LESSOR'S COVENANTS. Lessor covenants that it has good and marketable title to the leased premises in fee simple absolute and that the same is subject to no leases, tenancies, agreements, encumbrances, liens, restrictions and defects in title affecting the leased premises or the rights granted Lessee in this lease; that there are no restrictive covenants, zoning or other ordinances or regulations applicable to the leased premises which will prevent Lessee from conducting its usual business; and that in the event the leased premises are in an area where the sale of beer for off-premises consumption is permitted by law, there are no restrictive covenants applicable to the leased premises which will prevent Lessee from selling beer for off-premises consumption.

24.0 QUIET ENJOYMENT. Lessee, upon paying the rent and performing the covenants and agreements of this lease, shall quietly have, hold and enjoy the leased premises and all rights granted Lessee in this lease during the term thereof and extensions thereto, if any.

25.0 LEASEHOLD TITLE POLICY. If the permits contemplated in Article 3.0 hereof are obtained, Lessor agrees to furnish Lessee at Lessor's expense, a leasehold title policy issued by a title company acceptable to Lessee.

26.0 LIENS. Lessee shall at all times have the right to encumber, by mortgage or deed of trust, or other proper instrument in the nature thereof, as security for any actual bona fide debt, its leasehold estate hereby created, or any portion thereof, together with its leasehold right and interest in and to all buildings and improvements and its interest in any equipment located on the leased premises.*

Lessee shall keep the premises free and clear of any liens arising out of work performed or caused to be performed by Lessee and shall indemnify, hold harmless and defend Lessor from any liens and encumbrances arising out of any work performed or materials furnished to or at the direction of Lessee. If any lien is filed, Lessee shall do all acts necessary to discharge such lien within thirty (30) days of receipt of notice of its filing, or if Lessee desires to contest any lien, then Lessee shall deposit with Lessor security, in cash or U. S. Government securities, equal to 200% of the amount of the lien claimed to insure payment of the claim, interest, attorneys' fees and costs. If Lessee shall fail to pay any lien claim when due or shall fail to deposit the security with Lessor, then Lessor shall have the right to expend all sums necessary to discharge the lien claim and Lessee shall pay as additional rent when the next rental payment is due all sums expended by Lessor in discharging any lien, including attorneys' fees and costs.

Such mortgagee or trustee may, at its option, at any time before the rights of the Lessee shall have been forfeited to the Lessor as herein provided, pay any of the rents due hereunder or do any other act or thing required of or permitted to the Lessee by the terms of this lease, to prevent the forfeiture or termination of this lease, and all payments so made and all things so done and performed by or for any such mortgagee or trustee shall be as effective to prevent a forfeiture of the rights of the Lessee hereunder as the same would have been if done and performed by Lessee.

**No such mortgagee or trustee of the rights and interest of the Lessee hereunder shall be or become liable to the Lessor as an assignee of this lease or otherwise unless it expressly assumes the liability of the Lessee and no assumption shall be inferred from or shall be the result of foreclosure or other appropriate proceedings in the nature thereof or shall be the result of any other action or remedy provided for by such mortgage or deed of trust.

27.0 NOTICE REGARDING LIENS. Anything to the contrary contained in this lease notwithstanding, with regard to any labor, services or materials furnished for the improvement of the premises:

(a) All persons are put upon notice of the fact that Lessee does not have the power to subject the interest of Lessor in the premises to any mechanic's or other liens of any kind.

(b) All persons who hereafter, during the term of this lease, furnish work, services or materials to the premises upon the request of Lessee or any person claiming under, by or through Lessee must look only to the interest of Lessee and not to that of Lessor.

(c) Lessee shall use its best efforts to not permit or suffer to be filed or claimed against the interest of Lessor in the premises during the continuance of this lease any claim of lien or liens of any kind by any person claiming under, by, through or against Lessee. Lessee shall indemnify and hold Lessor harmless from any mechanic's or materialmen's lien filed against the leased premises, or the building of which the same forms a part, for work performed for, or materials furnished to Lessee. Lessee shall have the right to contest in good faith the validity or amount of any such lien.

28.0 NOTICES. Any notices required or permitted hereunder shall be in writing and delivered either in person to the other party or the other party's authorized agent, or by United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses set forth hereinafter, or to such other address as either party may designate by 10 days prior notice, in writing and deliver as herein provided. Unless otherwise provided in this lease, all such notices that are mailed in accordance with this Article shall be deemed to have been given or served as of the date of such mailing.

LESSOR: City of Stuart
P. O. Drawer 599
Stuart, Florida 33495

LESSEE: The Southland Corporation
Attn: Real Estate Department
2828 North Haskell Avenue
Dallas, Texas 75204

29.0 RECORDATION. Memorandum of Lease attached hereto as Exhibit D shall be executed by Lessee and Lessor and recorded for public record.

30.0 COVERED BY FLORIDA LAW. This lease shall be governed and interpreted by the laws of the State of Florida then in force. Each number, singular or plural, as used in this lease shall include all numbers and each gender shall be deemed to include all genders.

31.0 TIME OF THE ESSENCE. Time is of the essence of this lease and of each and every portion hereof. All of the terms, covenants and conditions contained in this lease to be performed by Lessee, if Lessee shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies granted to Lessor by law shall be cumulative and nonexclusive of any other remedy.

32.0 COMPLETE AGREEMENT. This lease contains a complete

expression of the agreement between the parties and there are no promises, representations or inducements except such as are herein provided.

This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

1986 EXECUTED by Lessor this 11th day of November,

WITNESS

CITY OF STUART

BY: James A. Christie, Jr.
MAYOR

(Corporate Seal)

ATTEST: Betty H. Kenny
City Clerk

Approved as to form

BY: Thomas E. Warner
Asst. City Attorney

EXECUTED BY LESSEE THIS 25th day of February,
~~1986.~~ 1987

WITNESSES

THE SOUTHLAND CORPORATION

BY: ~~President~~ Corporate Real Estate Manager
Attorney-in-Fact

(Corporate Seal)

ATTEST:

Secretary

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 11th day of November, 1986, by James A. Christie, Jr. Mayor and Betty H. Kenny, City Clerk of the City of Stuart on behalf of the City of Stuart.

Notary Public

My Commission Expires: Notary Public, State of Florida
My Commission Expires Dec. 14, 1987.

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me

this 25th day of February, 1987, by Penny Hawkins, ~~President~~ Attorney-in-Fact and Robin Bryant Assistant Secretary of The Southland Corporation on behalf of said corporation.

Robin Bryant
Notary Public

My Commission Expires:

ADDENDUM TO LEASE BETWEEN
SOUTHLAND CORPORATION AND CITY OF STUART

In addition to the terms set forth in Paragraph 3.0 of this lease, the parties agree to the following terms which are incorporated in Paragraph 3.0 of this lease as if fully set forth therein:

Upon cancellation and termination of this lease pursuant to this provision or any other provision of this lease, any underground motor fuel storage tanks and related lines, pumps, dispensers and motor fuel islands (herein the "Motor Fuels Equipment") installed by Lessee shall, upon election of the city at its sole discretion, become the property of Lessor, provided however, upon cancellation and termination of this lease and election by the city to assert ownership of the Motor Fuels Equipment, Lessor hereby acknowledges that:

(i) inflammable gases and/or toxic materials may be present in the Motor Fuels Equipment; and

(ii) Lessee MAKES NO WARRANTY OR REPRESENTATION of any kind or nature whatsoever as to the condition of the Motor Fuels Equipment INCLUDING BUT NOT LIMITED TO THE WARRANTIES OR MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE and Lessor thereby accepts the Motor Fuels Equipment in an AS IS, WHERE IS, condition, WITH ALL FAULTS. Lessor covenants and warrants that it will not utilize the Motor Fuels Equipment except in the manner for which it was designed and intended. Lessor assumes the sole responsibility for the condition, operation and repair of the Motor Fuels Equipment and will protect, defend, hold harmless and indemnify Lessee, its directors, officers, shareholders, agents and employees from and against any and all expenses, claims, actions, liabilities, attorney's fees, damages, losses, penalties, fines and interest of any kind whatsoever (including without limiting the foregoing, death of or injury to persons and damage to property), actually or allegedly and directly or indirectly resulting from or connected with the Motor Fuels Equipment or from the omission or commission of any such related or connected act, lawful or unlawful, by Lessor or its agents or employees, whether or not such act is within the scope of the employment of such agents or employees, or from leaks, seepage, spills or other loss of motor fuels or other toxic pollutants from the Motor Fuels Equipment.

Attached to and forming part of the Lease Agreement dated _____, 1987, by and between the City of Stuart, Florida and The Southland Corporation, covering certain premises situated in Stuart, Florida.

Initialled for Identification
for The Southland Corporation

BY: _____

Initialled for Identification
for the City of Stuart, FL

BY: _____

SCHEDULE X

CONDITIONS PRECEDENT. Lessor hereby acknowledges that Lessee is leasing the premises for the purpose of erecting and operating thereon a retail convenience store including self-service motor fuel installation with the location of the improvements, including but not limited to buildings, signs, landscaping, parking, paving, curb breaks, motor fuel dispensing and underground facilities to be strictly in accordance with the uses specified in Section 6.0 of this lease (herein the 'IMPROVEMENTS'). Therefore, this lease is subject to the satisfaction or waiver of the conditions precedent and covenants set forth below, the nonsatisfaction or non-waiver of any of which shall allow Lessee to terminate this lease no later than six (6) months from the date of execution and delivery of this lease:

(a) The premises being so zoned as to permit the construction and operation of the business specified above, said zoning to be applied for and obtained by and at the expense of Lessor.

(b) The approval of all public or governmental authorities of all matters relating to requisite subdivision, lot splits, special use permits development approvals, building permits or similar requirements, and the issuance to Lessee of the related permits, licenses, and approvals, satisfactory to Lessee.

(c) The City of Stuart shall make available water and sewer service through a twelve (12") inch water line and a six inch (6") sewer force main which are located across Monterey Road from the premises. Lessee must pay all costs of bringing the service to the premises and connection to said water or sewer lines and must pay all appropriate water and sewer availability or connection fees. If the City of Stuart fails to provide the service set forth in this paragraph prior to the commencement of the fixed term of this lease, then Lessee, at its sole option, may cancel this lease without penalty.

(d) There being no covenant, restriction, or ordinance which would prohibit the use of the leased premises for the sale of:

i. alcoholic beverages, groceries or ready-to-eat food for consumption off the premises;

ii. retail auto parts and accessories.

iii. motor fuels and automotive lubricants.

(e) There being no easement or restriction which would adversely affect Lessee's intended construction or use of the leased premises.

(f) A sign permit in accordance with city and county ordinances for the installation of building, pole, and pricing signs for motor fuels of the type customarily installed by Lessee having been issued by the appropriate authorities, said permit to be applied for and obtained by and at the expense of Lessee.

(g) The appropriate alcoholic beverage licensing authority having issued an off-premises beer and wine sales permit or, if such permit cannot be issued prior to forty (40) days after the date of execution and delivery of this lease, Lessee having satisfied itself that such permit will be available.

(h) The approval of the Stuart City Commission of the plans and specifications of the IMPROVEMENTS as proposed to the City of Stuart by Lessee as may modified, amended and

conditioned during the approval process by thecity of Stuart and the location of the IMPROVEMENTS, as shown on the plans and specifications proposed (submitted) to and approved by the city of Stuart, having been obtained and a building permit having been issued for the construction of the IMPROVEMENTS, said approval and permit to be applied for and obtained by and at the expense of Lessee.

(i) The survey reflecting conditions which will permit Lessee to construct the IMPROVEMENTS in a manner and at a cost acceptable to Lessee. If the survey shows any variation from the description set forth on the plans and specifications submitted to and approved by the City of Stuart and Lessee then Lessee shall have the option (1) to terminate this lease without further liability, or (2) to accept the description as disclosed by the survey.

(j) Test borings, percolation and other soil and ground water tests (including but not limited to, testing for hydrocarbons, hazardous wastes, toxic pollutants and other contaminants) being obtained by and at the expense of Lessee showing underground conditions satisfactory to Lessee.

(k) The obtaining of any ingress/egress and access rights contemplated on the plans and specifications (submitted) proposed to and approved by the City of Stuart and Lessee.

Lessor hereby covenants and agrees to use due diligence and good faith in procuring all necessary approvals for which Lessor is responsible and to execute such documents, make such appearances, and do such other things as may be reasonable necessary to satisfy the aforementioned conditions.

Notwithstanding anything to the contrary in this Agreement, if Lessee intends to use the subject property for a self-service motor fuel operation, then Schedule X, Items (a) through (k) will apply. However, if a self-service motor fuel operation is not to be used, all items in Schedule X not specifically related to gas pumps will still be and remain a contingency factor. In any event Schedule X shall have no relation to and shall not be applied or considered in connection with any matters arising from proposed changes, additions modifications, alterations and reconfigurations in the plans and specifications that are approved by Lessor within the first six months after execution and delivery of this lease.

Attached to and forming part of Lease Agreement dated November 11, 1986, 1986 by and between the City of Stuart, Florida, and The Southland Corporation, covering certain premises situated at Stuart, Florida.

Initialed for identification for the Southland Corporation

BY: _____

Initialed for identification for the City of Stuart

BY: _____

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 260 FEET OF THE WEST 310.5 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 38 SOUTH, RANGE 41 EAST, LESS ROAD RIGHT-OF-WAYS.

Being more particularly described as follows:

Beginning at a Point on a Curve on the East Right-of-Way of State Road No. 76 (100 foot Right-of-Way) and the North Right-of-Way of Monterey Road (80 foot Right-of-Way); thence South 89°11'49" East, along the North line of Monterey Road, a distance of 251.80 feet, to a point; thence North 00°19'16" East, a distance of 220.00 feet, to the South line of Seville Street (50 foot Right-of-Way); thence North 89°11'49" West, along said Right-of-Way, a distance of 268.95 feet, to a Point on a Curve and the East Right-of-Way of State Road No. 76, said Curve being concaved to the West, having a Radius of 9772.09 feet, a Central Angle of 01°17'40"; thence in a clockwise direction along the Arc of said Curve, a distance of 220.81 feet, to the Point and Place of Beginning.

Attached to and forming part of Lease Agreement dated May 11, 1986, by and between the City of Stuart, Florida, and The Southland Corporation, covering certain premises situated at Stuart, Florida.

Intialed for identification for the Southland Corporation

BY: _____

Initialed for identification for the City of Stuart

BY: _____

EXHIBIT B
RENT RIDER

A. 'Lease Year' Defined: For purposes of this Rent Rider, the first 'lease year' shall mean the day of the first calendar month following: (i) the date that Lessee or its assigns shall first be open for business to the public as a convenience store, or (ii) six months after the commencement of the lease term as set forth in Article 4.0, whichever event occurs first, and ending on the date 12 months thereafter; and succeeding lease years during the term of the lease and any renewal thereof shall commence and end on the dates corresponding to those on which the first lease year begins and ends.

B. Rent Payable During Initial Ten Year Term:

Commencing on the first day of the first lease year, the annual rent shall be $50,000.00 payable in 12 equal monthly installments of $4,166.07 each.

2. Commencing on the first day of the second lease year, and in lieu of the rent provided for in the immediately preceding subparagrah 1, the annual rent shall be $51,000.00 payable in twelve equal monthly installments of $4,250.00 each.

3. Commencing on the first day of the third lease year, and in lieu of rent provided for in the immediately preceding subparagraph 2, the annual rent shall be $52,020.00, payable in twelve equal monthly installments of $4,335.00 each.

4. Commencing on the first day of the fourth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 3, the annual rent shall be $53,060.40, payable in twelve equal monthly installments of $4,421.70 each.

5. Commencing on the first day of the fifth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 4, the annual rent shall be $54,121.61, payable in twelve equal monthly installments of $4,510.13 each.

6. Commencing on the first day of the sixth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 5, the annual rent shall be $55,204.04, payable in twelve equal monthly installments of $4,600.34 each.

7. Commencing on the first day of the seventh lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 6, the annual rent shall be $56,308.12, payable in twelve equal monthly installments of $4,692.34 each.

8. Commencing on the first day of the eighth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 7, the annual rent shall be $57,434.28, payable in twelve equal monthly installments of $4,786.19 each.

9. Commencing on the first day of the ninth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 8, the annual rent shall be $58,582.97, payable in twelve equal monthly installments of $4,881.91 each.

10. Commencing on the first day of the tenth lease year, and in lieu of the rent provided for in the immediately preceding subparagraph 9, the annual rent shall be $59,754.63, payable in twelve equal monthly installments of $4,979.55 each.

C. Rent Payable During Extension of Term of Lease. If Lessee shall exercise its option to extend the term of the lease in accordance with Article 4.0, captioned "Term", the following shall apply in the eleventh lease year and all lease years subsequent to the eleventh lease year:

Commencing on the first day of the eleventh lease year or any lease year subsequent to the eleventh lease year, the annual rental shall be equal to the sum of the annual rental applicable to the lease year immediately preceding such lease year plus an amount equal to two (2.0%) per cent of the annual rent applicable to the lease year immediately preceding such lease year, payable in twelve (12) equal monthly instalments.

D. Additional Rent. In addition to the regular monthly rent provided for in Paragraphs B and C of this Rent Rider, Lessee agrees to pay Lessor as and for additional rent over and above the sums specified in Paragraphs B and C as follows:

If the Cost of Living Index shall increase by more than five and one-half (5 1/2%) percent during the most recent twelve (12) month period for which such Cost of Living Index has been published on a date 30 days prior to the first day of the next succeeding lease year, then and in such event the applicable monthly rent for the next succeeding lease year shall be increased by a percentage equal to fifty (50%) percent of the excess over five and one-half (5 1/2%) percent of such increase in the Cost of Living Index, such rent increase to be effective as of the first day of the said next succeeding lease year.

For purposes of this Paragraph D, the Cost of Living Index shall refer to the "Consumer Price Index for Urban Wage Earners and Clerical Workers" "(1967 = 100)" specified for "All Items," relating to Miami, Florida, and issued by the Bureau of Labor Statistics of the United States Department of Labor. If such Index shall be discontinued with no successor or comparable successor Index, the parties shall attempt to agree upon a substitute formula, but if the parties are unable to agree upon a substitute formula, then the matter shall be determined by arbitration in accordance with the rules of American Arbitration Association then prevailing.

E. Payment of the monthly installments referred to in this Rent Rider shall be made in advance on or before the fifth day of each month.

F. Tax. At the time of paying rent, Lessee shall also pay Lessor the privilege tax levied under Florida Statutes §212.031, in the amount that may be required by that law from time to time, the current amount being 5% of the total rent charged for the premises and such other taxes that may hereinfter be imposed upon any interest created by this lease.

Attached to and forming part of Lease Agreement dated as of November 11, 1986, covering certain premises situated in Stuart, Florida.

Initialed for identification for the Southland Corporation

BY: _____

Initialed for identification for the City of Stuart.:

BY: _____

EXHIBIT C

NONE

Attached to and forming part of Lease Agreement dated November 11, 1986, by and between the City of Stuart, Florida, and The Southland Corporation, covering certain premises situated at Stuart, Florida.

Intialed for identification
for the Southland Corporation

BY: _____

Initialed for identification
for the City of Stuart

BY: _____

RETURN TO:

WARNER, FOX & SEELEY
ATTORNEYS, P.A.
514 S.E. Port St. Lucie Blvd.
Suite 514-A
Port St. Lucie, Fl. 33452

CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
CITY COMMISSION

Meeting Date:3/27/2017 **Prepared by:**Michael Mortell

Title of Item:

Discussion Concerning the Possible Filing of a Lawsuit Against Michael Gorman, Owner of the Property at 105 SE Seminole Street, for Residential Use of a Commercial Building on the Property; and Possible Dangerous Conditions Resulting from Hurricane Matthew.

Summary Explanation/Background Information on Agenda Request:

Discuss possible actions pertaining to residential use of commercial property with City Commission.

105 Seminole St. is listed as a vacant office shell on the Property Appraiser web site. It is owned by the Mr. and Mrs. Gorman. In 2013, their tenant, Waters' Edge sued the City alleging a violation of the ADA for not recognizing its clients as a single family and providing a "reasonable accommodation". The City has maintained all along that it would treat the clients of Waters' Edge as a single family. Unfortunately, the landlord (Gormans) refuse to bring the building into compliance for the Florida Residential Building Code.

In addition to the Federal matter filed by the Tenant, the landlord has recently filed a "malicious prosecution" case against three staff members individually but did not name the City in the suit. All of the employees were acting within the scope of their employment and the case appears to be intended to harass and intimidate them.

In any event, the tenant has been occupying a commercial business for residential purposes in violation of the Florida Building Code. Essentially this is a "life safety" matter as it appears that several of the rooms being used as bed rooms do not have proper ingress and egress which places the habitants lives in danger. Since October, there has been a flood which could have threatened lives as well as a fire last week. During the response to the fire, it was evident that there were people residing in rooms that had no windows or exit doors in violation of the Florida Building Code. It also appeared that the residents had "medication schedules" posted as if they were receiving treatment at this location as well.

Because of the dangerous conditions, it appears that the City must file a declaratory action in Circuit Court seeking an immediate injunction to remove all residential activity from the property until such time as the landlord has obtained a change of use from Commercial to Residential.

Funding Source:

In event direction is provided to file suit, the costs for same are available in Attorney Budget.

Recommended Action:

Provide direction to staff regarding 105 Seminole