



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 71-2019**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA TO AUTHORIZE THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF STUART AND THE PELICAN CAFÉ, LLC FOR THE PROPERTY LOCATED AT 351 SW FLAGLER AVENUE, STUART; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

WHEREAS, the City owns the building located at 351 SW Flagler Avenue in the City of Stuart, more commonly known as "The Pelican Café," and

WHEREAS, Paul Daly as Managing Partner of The Pelican Café, LLC seeks to execute a lease agreement with the City of Stuart for the building; and

WHEREAS, the City Commission finds that it is befitting to lease the building formerly known as the "Coast Guard Auxiliary Building" located at 351 SW Flagler Avenue to Paul Daly, Managing Partner of The Pelican Café, LLC

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

SECTION 1: The Mayor and City Clerk are hereby authorized and directed to execute a lease agreement between the City of Stuart and The Pelican Café, LLC for a period of ten (10) years with the option of two (2) additional five (5) year renewals. Copies of the Leases are on file in the Office of the City Clerk.

SECTION 2: This resolution shall take effect upon adoption.

Res.71-2019  
Lease for The Pelican Café, LLC

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

REBECCA S. BRUNER, MAYOR  
EULA R. CLARKE, VICE MAYOR  
KELLI GLASS LEIGHTON, COMMISSIONER  
MERRITT MATHESON, COMMISSIONER  
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN
Y			
Y			
Y			
Y			
Y			

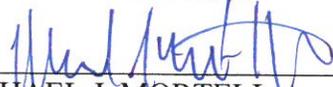
ADOPTED this 28th day of October, 2019.

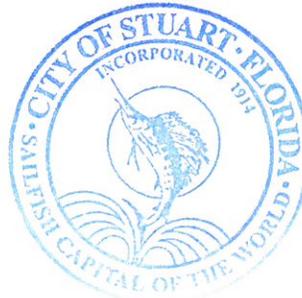
ATTEST:

  
\_\_\_\_\_  
MARY R. KINDEL  
CITY CLERK

  
\_\_\_\_\_  
REBECCA S. BRUNER  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
\_\_\_\_\_  
MICHAEL J. MORTELL  
CITY ATTORNEY





## LEASE AGREEMENT

**THIS LEASE AGREEMENT** made and entered into as of Oct. 28, 2019, by and between the City of Stuart, Florida, whose principal address is 121 South Flagler Avenue, Stuart, Florida 33494 its successors or assigns ("Landlord") and The Pelican Café, LLC., 351 Flagler Avenue, Stuart, Florida, 34996, doing business as the "The Pelican Café, LLC." ("Tenant").

**WITNESSETH:**

### ARTICLE I - GRANT AND TERM

1.01 Leased Premises: Landlord, for and in consideration of the covenants, conditions, agreements and stipulations contained in this lease agreement ("Lease") does hereby lease unto Tenant and Tenant does hereby take and hire from Landlord that certain building known as the "Coast Guard Auxiliary Building", 351 SW Flagler Avenue, Stuart, Florida, now existing ("Building") located at the northwesternmost end of Flagler Park ("Land") particularly described in **Exhibit "A"**, attached hereto. The Building and Land being leased hereunder are hereafter collectively referred to as the "Leased Premises."

1.02 Term: This Lease shall constitute a binding contract and agreement as of this date. The term, obligations to pay rent, rights to occupy and the other provisions concerning the Leased Premises, except where expressly stated otherwise, shall commence on the day and year the Leased Premises is first occupied by Tenant and shall continue for a period of ten (10) years. This Lease may be renewed for two (2) additional five (5) year period(s) provided both Tenant and Landlord mutually agree in writing.

1.03 Regulatory Approval: This Lease and Tenant's obligations hereunder are contingent upon Tenant obtaining such approvals, permits and consents as are legally required from those regulatory agencies, building permitting agencies or other bodies having jurisdiction over the Building and Landlord agrees to assist in connection therewith to the extent that it is legally allowed without providing special benefit to the lessee. Tenant affirms that it will acquire all permits necessary to construct the enclosure which is a condition of this lease.

### ARTICLE II - RENT & MAINTENANCE

2.01 Rent:

A. Base Rent: Commencing on the first day of the first month after Lease signature by Tenant, rent payments shall commence. Throughout the term of this Lease, Tenant shall pay to Landlord, at the address set forth for notices under this Lease or at such other address as Landlord shall from time to time designate by notice given to Tenant as hereinafter provided as rental for the Leased Premises, in lawful money of the United States of America, a monthly rent payable in advance in the amount of One Thousand nine Hundred sixty five and 00/100 Dollars (\$1,965.00) plus applicable state sales tax or any other tax as may be hereinafter enacted and applicable to the rental revenue of this lease. The rent shall be adjusted on April 1 each year using the Consumers' Price Index for All Items in Miami-Fort Lauderdale (Series CUURA320SA0) for the month of

**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

December each year as promulgated by the Bureau of Labor Statistics of the United States Department of Labor using December, 2005 as a base.

B. Additional Monthly Compensation: In addition to the base rental set forth above in paragraph 2.01A, Tenant shall be responsible to pay Landlord additional rent equal to three percent (3%) of Tenant's gross sales, not including Florida Sales and Use Taxes collected, if any, derived from the Leased Premises. Said gross sales shall be determined on a monthly basis and shall be due and payable to Landlord on or before the fifteenth day of the following month. Along with the rent payment, the Tenant shall furnish a fully executed copy of the monthly Sales and Use Tax Return (DR-15CS), as submitted to the Florida Department of Revenue.

C. Late Fee: The base rent is due no later than the first day of each month. Any base rent not tendered by the lessor by 5:00 pm on the fifth day of the month is deemed late. A late fee of 10% of the monthly base amount will be payable as a late fee when rent is paid after the fifth day of each month.

**2.02 Maintenance:**

A. Landlord and Tenant Maintenance: Landlord covenants to maintain, at its cost and expense, the exterior, structural and foundation components of the Building. Such maintenance shall specifically include the repair and replacement, if necessary, of the roof. Landlord shall not provide the repairs to the air conditioning, electrical and plumbing systems in the Building. Tenant's maintenance shall specifically include, but shall not be limited to the grease trap, all fixtures installed by the Tenant, all interior walls, ceilings, cabinets, and any built-in bars, exhaust fans, interior lighting, interior painting, air conditioning, restaurant appliances and equipment, tables, chairs, and other seating. Tenant shall promptly repair or replace all items that are the responsibility of the Tenant. Landlord's maintenance shall specifically include the paving, curbing and repair of all sidewalks, parking areas and driveways. Tenant shall promptly notify Landlord of any needed repairs to the Building systems or its structure that are the responsibility of Landlord hereunder. Landlord shall thereafter promptly commence and diligently pursue such repair work. In the event of an emergency, Tenant shall be reimbursed for the cost of making such emergency repairs which actually would have been the responsibility of Landlord.

B. Adjacent Areas of Flagler Park: The Leased Premises and areas immediately adjacent to the Leased Premises including adjacent park grounds within 30 feet of the building shall be maintained by the Tenant. Tenant shall also empty the trash cans in the immediate vicinity of the building and shall maintain good order in the park immediately adjacent to the Leased Premises. These areas shall be kept clean and orderly by the Tenant as though part of the Leased Premises. Any damage to Flagler Park, whether it be vandalism, weather related or brought about by any other cause shall be reported immediately to the Landlord.

C. Tenant Maintenance: Tenant covenants to keep in good order and maintain all portions of the Leased Premises which are not the responsibility of the Landlord.

**ARTICLE III - INSURANCE**

**3.01 Tenant's Insurance:**



Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.

Tenant is required to provide the following insurance coverage, and shall not commence any work in connection with this agreement until it has obtained all of the following types of insurance and such insurance has been approved by Landlord, nor shall the Tenant allow any contractor or subcontractor to commence work on this facility until all similar insurance required of those contractors or subcontractors has been obtained and approved. All policies shall be with insurers qualified and doing business in the State of Florida.

A. Loss Deductible Clause: Landlord shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Tenant and any contractor or subcontractor providing such insurance.

B. Worker's Compensation Insurance: Tenant shall obtain and maintain during the life of this contract, Worker's Compensation Insurance for all of its employees connected with the work of this project and, in case any work is sublet, the Tenant shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Tenant. Such insurance shall fully comply with the Florida Worker's Compensation Law. Any class of employee engaged in hazardous work under this contract who is not protected under the Worker's Compensation statute, shall be provided, and cause each subcontractor to provide adequate insurance, satisfactory to the Landlord for the protection of its employees not otherwise protected.

C. Commercial General Liability Insurance: Tenant shall maintain, and prior to the commencement of this contract, provide the City with evidence of Commercial General Liability insurance to include: 1) Premises/Operations, Products/Completed Operations and Personal/Advertising injury, with limits of not less \$1,000,000 per occurrence; 2) Fire Damage with limits of not less than \$100,000 per occurrence; 3) medical payments with limits not less than \$5,000.00 per person and 4) a General Aggregate limit of not less than \$2,000,000.00. In the alternative, the Tenant may substitute an All Risk Policy with not less than than \$2,000,000.00 in coverage.

The Tenant shall require each of its subcontractors to procure and maintain during the life of this subcontract, insurance of the type specified above or insure the activities of his subcontractors in its policy, as specified above.

E. Tenant's Insurance: In addition to the foregoing, the Tenant will be required to maintain Fire & Casualty Insurance in the amount sufficient to cover the Tenant's contents, owned property and any improvements and betterments made to the building.

F. Liquor Liability Insurance: Tenant shall obtain and maintain Liquor Liability Insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

G. Certificates of Insurance: the Tenant upon notice of award will furnish the Landlord with a Certificate of Insurance Form. These shall be completed by the authorized Resident Agent and returned to the City Attorney's Office. This certificate shall be dated and show:



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

The name of the insured Tenant, the specified job by name and job number, the name of insurer, the number of the policy, its effective date, and its termination date.

Statement that the Insurer will mail notice to the Landlord at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.

The City of Stuart shall be named or additional named insured on all Insurance certificates.

H. Indemnification: Tenant hereby binds himself or itself to indemnify and save harmless Landlord from or on account of any injuries or damages, received or sustained by Tenant or any person or persons during or on account of the construction of this work; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of any act-of omission of the said party of the second part or his or its agents, servants or employees. Said indemnity to be covered by and limited to the amount of Comprehensive General Liability Insurance.

In case of injury to persons, animals or property by reason of failure to erect or maintain proper and necessary barricades, safeguards and signals, or by reason of any negligence of any Contractor, subcontractor, or any of the Contractor's agents, servants, or employees during the performance of the work before the estimates have become due under this contract, the Owner may, through its officials, withhold such payments, so long as may seem necessary for the indemnity of the Owner, provided that the failure to pay the same shall not be construed or considered as a waiver of the indemnity as above set forth.

**ARTICLE IV - TAXES**

4.01 Ad Valorem Taxes: Tenant shall pay ad valorem real or personal property taxes by November 30<sup>th</sup> each year, if any, and all other taxes and special assessments which may be levied against the Leased Premises during Tenant's occupancy thereof.

**ARTICLE V - CONSTRUCTION, DELIVERY AND TENANT IMPROVEMENTS**

5.01 Landlord's Improvements: Landlord warrants the premises to be free and clear of all liens for claims by mechanics and materialmen for and on account of labor and materials furnished in connection with any construction. Such warranty shall continue in full force and effect for the entire term hereof.

5.02 Tenant's Right to Enter: After the date hereof, Landlord shall afford Tenant reasonable access to the Leased Premises prior to Tenant's possession thereof for the purpose of inspection, measuring and installing or arranging for the installation of fixtures. By affording such prior access to Tenant, Landlord shall not be entitled to any rent nor shall any rent be accrued by reason of such access. Acceptance of possession by Tenant shall conclusively establish that Tenant has inspected the Leased Premises and accepts same as is.

5.03 Tenant Improvements: Tenant agrees to perform all improvements, at its own cost and expense, which are necessary to make the Building conform with Tenant's plans ("Tenant Improvements") as set forth in the plans and specifications approved by the Landlord and attached



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

hereto as **Exhibit "B"**. The tenant is authorized to remove the external A/C compressor at tenants expense and give the Landlord \$6,500.00 at the time of removal for the replacement of the unit.

The Tenant shall complete all "Tenant Improvements" construction and shall obtain a certificate of occupancy therefor on or before December 31, 2020. This Lease will terminate on March 31, 2021 if construction of the tenant Improvements are not completed by December 31, 2020. Landlord shall cooperate and assist Tenant in connection with the issuance of all necessary permits and approvals for Tenant.

All alterations, decorations, partitions, awnings, additions and improvements, including any equipment vaults installed or made by Tenant, shall remain the property of Tenant during the term of this Lease provided, however, that at the termination hereof such alterations, decorations, additions and improvements which have not been permanently affixed to the Leased Premises may at Tenant's option either become the property of and belong to Landlord or Tenant may remove such from the Leased Premises, provided that Tenant restores the Leased Premises to a condition reasonably satisfactory to Landlord.

**ARTICLE VI - RIGHTS, DUTIES AND LIABILITY OF TENANT AND LANDLORD**

6.01 Utilities: Tenant shall pay all charges related to the use of gas, heating oil, sewer, water, electric, stormwater, collection and disposal of solid waste and other utility services and shall make all deposits for all utilities used on the Leased Premises. Tenant shall pay all costs and charges to hookup all utilities.

6.02 Delivery to Landlord Upon Termination: Tenant shall deliver up and surrender to Landlord possession of the Leased Premises upon the expiration of this Lease or its earlier termination under the terms hereof. The Leased Premises are to be in as good a condition and repair at the time of such surrender as at the rent commencement date of the term hereof (loss by fire, casualty, act of God, and ordinary wear and tear excepted).

6.03 Damage or Destruction of Leased Premises: In the event that the Leased Premises are damaged or destroyed by fire, windstorm, flood or other casualty, Landlord shall, within one hundred eighty (180) days after such casualty, fully restore the Leased Premises. If the Leased premises cannot be so restored within one hundred eight (180) days, then Tenant may terminate this Lease by notifying Landlord in writing. .

In the event the Lease is not terminated, during any time that the Leased Premises are untenable due to causes set forth in this section, the Rent shall be abated until such time as the Leased Premises are once again fully restored. Insurance proceeds received by Landlord shall be applied to meet its obligation hereunder to an extent sufficient to restore the Leased Premises. The obligation of the Landlord to restore the Leased Premises shall be limited to the amount of the insurance proceeds received by the Landlord. In all cases of restoration by Landlord under this section, the Leased Premises shall be restored to substantially the prior existing condition, subject to such changes as Tenant may request, subject to Landlord's approval, provided that any such changes which increase the cost of restoration shall be at the sole cost and expense of Tenant.



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

6.04 Covenant of Quiet Enjoyment: For so long as Tenant pays all of the Rent and other charges required in this Lease and is not in material default under any of its obligations hereunder, Landlord agrees that Landlord will not permit the disturbance of nor interference with Tenant's peaceful and quiet possession and enjoyment of the Leased Premises during the term hereof.

6.05 Termination of Utilities and Services: Landlord shall not be liable to Tenant for the interruption of utility services for the Leased Premises except where such interruption is the result of Landlord's unreasonable delay in the making of necessary repairs or improvements or the result of the negligence, misconduct or default under this Lease of Landlord or of any agent of Landlord.

6.06 Assignment or Subletting: Lease assignment shall require the consent of the Landlord. Any sublease of any portion of the Leased Premises shall be first approved by the Landlord which will not be unreasonably withheld or delayed so long as the tenant improvements which are a material condition of this lease have begun. A prospective new tenant shall not qualify for the benefits of this lease based solely on the fact that it doesn't have any negative history. The Commission shall have the right to review the entirety of the circumstances when making its decision. A proposed assignment may be disapproved by the City in its sole discretion if not in the best interests of the City.

Landlord agrees that it will not unreasonably withhold its approval to any Transfer of the demised premises; the limited liability company or any part thereof, provided such Transfer shall be subject to all of the terms and conditions of the lease.

Any of the following acts shall constitute a transfer and shall require the Landlord's approval:

(A) Transfer the demised premises or any portion thereof to any "affiliate company." An "affiliate company" shall mean, any corporation, partnership or other business entity or individuals under common control and ownership with the Tenant, or with the parent or any subsidiary of the Tenant.

(B) Merge into or consolidate with any corporation, limited liability company or individual.

(C) Transfer the demised premises or shares of the current LLC, or any portion thereof, to any buyer of the business operations of Tenant.

(D) Transfer the leased premises to any franchisee or licensee of the Tenant.

(E) Any sale of all or any of the shares of Tenant shall be considered as a transfer or assignment of this lease which shall require the approval of Landlord.

In the event that a transfer or assignment occurs, Tenant agrees that Landlord shall immediately have the right to renegotiate the rent which shall be defined as the going rate that

**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

rental properties in a specific area can be expected to rent for when compared to other properties of similar size, condition, and amenities. The rent renegotiation will take place in a timely manner.

Any other 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 this lease unless specifically agreed to in writing by Lessor. Any assignment or sublease shall be subject to all the terms and conditions of this lease.

6.07 Tenant's Liability for Defense of "Clear Title" and Landlord's Right to Reimbursement: Tenant has no authority to create any mechanic's lien for labor or material against the Land, Building or the Leased Premises. All persons contracting with Tenant who furnish any materials or services to the Leased Premises and all materialmen, contractors and laborers are hereby charged with notice that they must look to Tenant personally for payment for any such work done or material furnished during the term of this Lease. The Tenant shall hold the Landlord harmless and defend any such lien which may be filed and further, shall within ten (10) days of the filing of the lien transfer said lien to a bond pursuant to Chapter 713, Florida Statutes.

6.08 Governmental Laws, Regulations and Requirements: Tenant agrees, at its own cost an expense and through the term of this Lease, to comply promptly with all orders, rules, regulations and requirements of every kind and nature relating to compliance with the use or occupancy of the Leased Premises now or hereafter in force and effect, of federal, state, municipal or other governmental authorities.

6.09 Environmental Regulations: Both the landlord and the tenant are aware that the Commission is currently contemplating regulations regarding the use of plastics and other single use items on City Property. The parties to this agreement agree that any regulations adopted by the City Commission as part of the City Code Article IX. Expanded polystyrene and plastics regulation shall become a part of this lease and shall be enforceable. Both parties agree that the lease is not scheduled to be renewed until October 31, 2021 and therefore, any regulations adopted by the City Commission as they pertain to City owned property that are adopted prior to October 31, 2021 shall become a part of this agreement and shall have full force and effect. The Tenant agrees that it will not claim that these regulations were entered after the execution of the lease as the parties desire to enter the lease extension early and as such the tenant agrees to be bound by



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

all ordinances and policies adopted by the City prior to October 31, 2021, pertaining to City Owned property.

**6.10 Default and Remedies:**

A. If Tenant defaults in the payment of rent or any other item to be paid by Tenant hereunder or in the performance of any other term, covenant, or condition of this Lease and such default shall not have been cured within thirty (30) days after receipt of written notice thereof by Landlord to Tenant, Landlord may reenter and take possession of the Leased Premises, terminate this Lease or pursue such other rights and remedies as are available to Landlord at law in equity.

B. If Landlord defaults by failure to perform as required under the terms and conditions of this Lease and such default is not cured within thirty (30) days of notice thereof, Tenant shall be entitled to seek any remedy available to it at law or equity for the satisfaction of said breach including the right to terminate this Lease to recover damages and incidental costs arising from said breach or the right to seek specific performance of Landlord of the terms and conditions as herein stated.

**6.10 Landlord's Right of Entry:** Landlord or any of its agents shall have the right to enter the Leased Premises upon reasonable advance notice during all reasonable hours to undertake such maintenance and to make such repairs, additions and alterations as are required of it, provided that such entries are made in full compliance with Tenant's security procedures and further, provided that Landlord shall refrain from performing such maintenance or making such repairs, additions or alterations as are required of Tenant until Tenant has failed to perform or make the same after twenty (20) days prior notice of the need and propriety thereof. Tenant also grants Landlord the right to enter the Leased Premises at any time in the event of an emergency to correct an emergency condition. In the event of any such emergency, Landlord shall observe and comply with Tenant's security practices. If Landlord becomes aware of any such emergency prior to Tenant's realization of such, Landlord shall give Tenant prompt notice of any emergency condition occurring on the Leased Premises. The Landlord shall have the right to show the property to prospective tenants during the final sixty (60) days of the lease.

**6.11 Use of Leased Premises:** Tenant shall use the Leased Premises for a small eating and drinking Café serving a limited menu, beer, wine and liquor. Tenant shall abide by all Federal Laws, State Statutes and Local Ordinances pertaining to the serving and sale of beer and wine beverages. Tenant shall assume all responsibility for any permits, licenses and fees pertaining to the operation of the Café.

Tenant shall not perform any acts or engage in any practices which may injure or damage the Leased Premises. The hours of operation shall be sunrise to sunset daily seven days per week. Changes to the normal hours of operation may be approved at the discretion of the City Manager.

Tenant specifically agrees not to have any live or recorded music or other noise that exceeds 60 DbA at a distance of 100' feet from its source, and to otherwise fully cooperate with



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

the Landlord should the Landlord receive complaints regarding noise emanating from the Lease Premises.

6.12 Signs: Landlord agrees that Tenant shall have the right, at Tenant's cost and expense, to erect and maintain Tenant's standard signage advertising its business on the exterior of the Leased Premises provided that all such signs shall be erected and maintained in compliance with the requirements of all governmental departments having jurisdiction over the Leased Premises.

**ARTICLE VII - EMINENT DOMAIN**

7.01 Total Condemnation of Leased Premises: If the whole of the Leased Premises shall be taken or condemned by eminent domain or other condemnation proceedings, then the term of this Lease shall cease and terminate without further obligation for either party as of the date of such condemnation or eminent domain. In the event of such condemnation, the parties reserve their respective rights to claim their proportionate share of the proceeds.

7.02 Partial Condemnation of Leased Premises: In the event of a material condemnation of any part the Leased Premises which renders the Leased Premises unsuitable for the business of Tenant, the Tenant may terminate this Lease as of the date of such proceeding or remain in such portion of the Leased Premises as remains after such condemnation or taking.

In such cases, where the Leased Premises are not rendered unsuitable, Rent shall be reduced prorata based on the number of square feet remaining in the Leased Premises after such condemnation until such time as the Lease is terminated.

**ARTICLE VIII - MISCELLANEOUS**

8.01 Entire Agreement: This Lease contains the entire agreement between the parties hereto. It may be modified only by an agreement in writing signed by both Landlord and Tenant.

8.02 Address for Notice and Rent: Notices to Tenant under this Lease shall be addressed to Tenant and mailed or delivered to The Pelican Cafe, LLC., c/o Paul Daly, Managing Partner, 351 SW Flagler Ave. Stuart, Florida 34994. Notice to Landlord under this Lease shall be addressed to Landlord and mailed or delivered to the City Manager, City of Stuart, 121 South Flagler Avenue, Stuart, Florida 34994. All Rent due under this Lease delivered to Landlord at the above address and all notices under this Lease shall be given by registered or certified mail, return receipt requested, at the addresses set out above (unless the party to receive such sums or such notice has given the other party prior written notice of a new address for such purpose, in which case the new address shall be used). In the case of notices, the date of such registry shall be considered the date of the giving of notice.

8.03 Landlord and Tenant Defined: The terms Landlord and Tenant as herein contained shall include the singular and/or plural, the masculine, feminine and/or neuter, and heirs, representatives and/or assigns wherever the context so requires or admits.



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

8.04 No Waiver: No waiver by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall be deemed to imply or constitute a waiver of such term, covenant or condition or of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent or other amounts due hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount and no such payment by Tenant of any rents due hereunder shall be deemed a waiver of any preceding breach by Landlord. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord to Tenant unless such waiver be in writing. The rights and remedies created by this Lease are cumulative and are not intended to be exclusive. The use of one remedy under this Lease shall not be taken to exclude or waive the right or use of another and each party shall be entitled to pursue all remedies generally available under the laws of the State of Florida.

8.05 Costs: If either party shall at any time be in default hereunder and if the other party shall in its discretion deem it necessary to engage an attorney to enforce any rights and obligations hereunder, the prevailing party to the action will be reimbursed for all reasonable expenses incurred, including but not limited to court costs and attorney's fees at both the trial and appellate levels.

8.06 Force Majeure: In the event that either party to this Lease shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, natural disaster causing damage that prohibits use, war or other reason of a like nature which is not the fault of the party so delayed in performing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period of the performance of any such delay act shall be extended for a period equivalent to the period of such delay. As a result of extensive physical damage to premises the Landlord may choose not to repair resulting in a termination of Lease.

8.07 Examination of Lease: Submission of this instrument for examination or signature by Tenant constitutes neither a reservation of, nor an option for, a lease and this instrument shall not become effective as a lease (or otherwise) until execution and delivery by both Landlord and Tenant.

8.08 Captions and Section Numbers: The article numbers, captions and section numbers appearing in this Lease are inserted only as a matter of convenience and shall in no way be interpreted to define, limit, construe or describe the scope or intent of any of the articles, captions or sections of this Lease nor in any way affect this Lease.

8.09 Brokers: Landlord and Tenant represent and warrant each to the other that it has dealt with no broker, agent or other person in connection with this leasing transaction and that no broker, agent or other person brought about this leasing transaction other than as set out below and each agrees to indemnify the other against and to hold harmless from any and all claims by any other broker, agent or other person claiming a commission (or other form of compensation) by virtue of



**Lease Agreement - City of Stuart, Florida and The Pelican Café, LLC.**

having dealt with Landlord or Tenant with regard to this leasing transaction. The provisions of this section shall survive the termination of this Lease.

8.10 Invalidity of a Portion of Lease: If any clause or provision of this Lease is or becomes illegal, unenforceable or otherwise invalid because of present or future laws or any rule or regulation of any governmental body or entity effective during its term, then the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby.

8.11 Terms Binding on Successors in Interest: The respective rights and obligations hereunder shall inure to and be binding upon the respective heirs, distributees, devisees, legal and personal representatives, assigns, grantees and successors in interest of Landlord and shall also inure to and be binding upon the permitted assigns and successors in interest of Tenant.

8.12 Exclusive Use of Leased Premises: The City shall not lease the property described herein to any other party except Tenant for the term of this agreement.

**ARTICLE IX - OPTION TO RENEW**

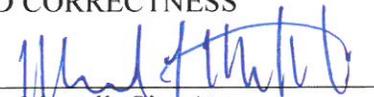
9.01 Option to Renew: The Landlord and Tenant may mutually agree to an extension of the term of this Lease. In such event the rent shall be subject to the mutual negotiations of the parties.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Lease in two (2) counterparts on the day and year first above

ATTEST:

  
Mary Kindel, City Clerk

APPROVED AS TO FORM  
AND CORRECTNESS

  
Mike Mortell, City Attorney



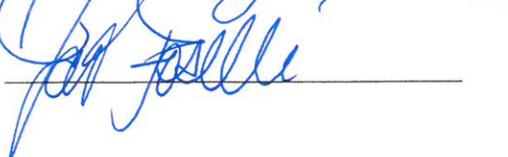
**LANDLORD**  
CITY OF STUART, FLORIDA

  
Rebecca Bruner, Mayor

**TENANT**  
THE PELICAN CAFÉ, LLC,  
a Florida corporation

By:   
Paul Daly, Managing Partner

WITNESSES:

October 15, 2019



# EXHIBIT A - SITE BOUNDARY

STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET, STUART, FLORIDA 34994 EMAIL: SJBINC@BEJ.SOUTH.NET (772) 288-7176

## LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN A PORTION OF LOT 2, BLOCK 1. PLAT OF KITCHING'S ADDITION, AS RECORDED IN PLAT BOOK 2, PAGE 86, PUBLIC RECORDS OF PALM BEACH (NOW MARI-ON) COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF GOVERNMENT LOT 2, SEC170N 5, TOWNSHIP 38 SOUTH, RANGE 41 EAST AND THE NORTHEAST LINE OF A 185 FOOT WIDE FLORIDA EAST COAST RAILWAY RIGHT OF WAY AS SHOWN ON SAID PLAT OF KITCHING'S ADDITION AND ALSO BEING THE SOUTHWEST LINE OF A 20 FOOT WIDE COUNTY ROAD RIGHT OF WAY AS SHOWN ON SAID PLAT; THENCE N47°00'41"W, ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 337.44 FEET, TO THE POINT OF BEGINNING.

THENCE SOUTH 45°55'51" WEST, FOR A DISTANCE OF 6.80 FEET; THENCE NORTH 41°09'21" WEST, FOR A DISTANCE OF 40.14 FEET; THENCE SOUTH 49°27'25" WEST, FOR A DISTANCE OF 2.51 FEET; THENCE NORTH 40°41'48" WEST, FOR A DISTANCE OF 40.28 FEET; THENCE SOUTH 49°11'54" WEST, FOR A DISTANCE OF 5.26 FEET; THENCE NORTH 88°33'44" WEST, FOR A DISTANCE OF 21.39 FEET; THENCE NORTH 00°25'11" EAST, FOR A DISTANCE OF 19.88 FEET; THENCE SOUTH 89°02'55" EAST, FOR A DISTANCE OF 29.02 FEET; THENCE NORTH 79°01'35" EAST, FOR A DISTANCE OF 20.31 FEET; THENCE NORTH 52°01'15" EAST, FOR A DISTANCE OF 11.16 FEET; THENCE NORTH 88°40'21" EAST, FOR A DISTANCE OF 15.99 FEET; THENCE NORTH 59°20'07" EAST, FOR A DISTANCE OF 29.27 FEET; THENCE NORTH 10°54'25" EAST, FOR A DISTANCE OF 12.42 FEET; THENCE SOUTH 44°07'19" EAST, FOR A DISTANCE OF 25.51 FEET; THENCE SOUTH 45°01'07" WEST, FOR A DISTANCE OF 44.12 FEET; THENCE SOUTH 32°52'48" EAST, FOR A DISTANCE OF 30.08 FEET; THENCE SOUTH 45°55'51" WEST, FOR A DISTANCE OF 40.58 FEET, TO THE AFORESAID POINT OF BEGINNING.

SAID PARCEL LYING IN THE CITY OF STUART, AND CONTAINING 6,272.07 SQUARE FEET, 0.14 ACRES, MORE OR LESS.

### NOTES:

ALL BEARINGS ARE REFERENCED TO THE EASTERLY LINE OF GOVERNMENT LOT 2, CALCULATED AS N 47°00'41" W.

THIS LAND DESCRIPTION SHALL NOT BE VALID UNLESS IT IS PROVIDED IN ITS ENTIRETY, CONSISTING OF 2 SHEETS, WITH SHEET 2 BEING THE SKETCH OF THE DESCRIPTION.

FILE:

JOB #:	443- 24-01
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	05/08/2019
SCALE:	N/A
SHEET:	ONE OF TWO

*Poe*

# -STEPHEN J. BROWN, INC.

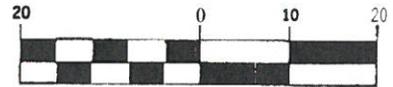
LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET, STUART, FLORIDA 34994 EMAIL: SJBINC@BEI.J.SOUTH.NET (772) 288-7176

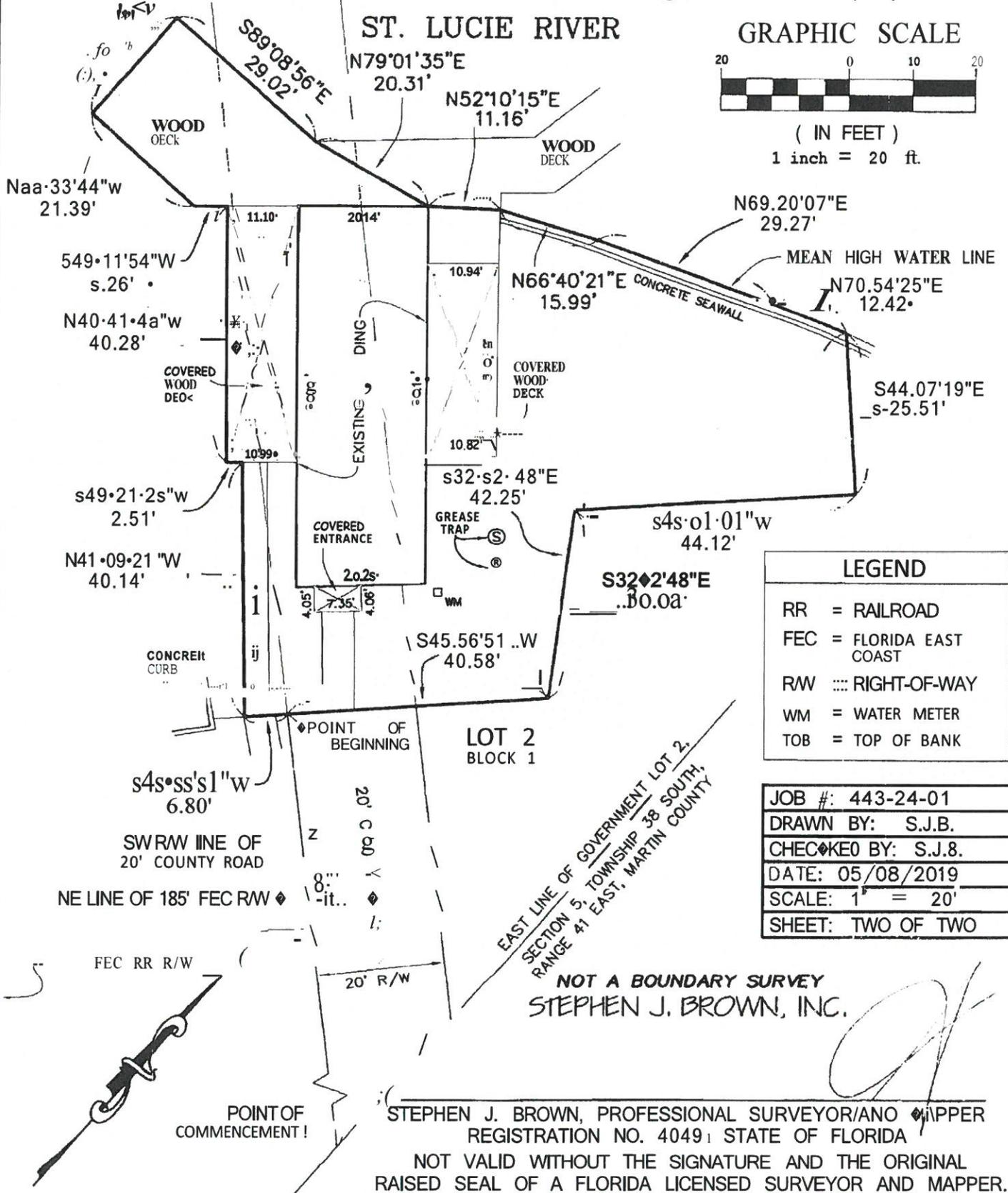
## ST. LUCIE RIVER

### GRAPHIC SCALE



( IN FEET )

1 inch = 20 ft.



LEGEND	
RR	= RAILROAD
FEC	= FLORIDA EAST COAST
RW	... RIGHT-OF-WAY
WM	= WATER METER
TOB	= TOP OF BANK

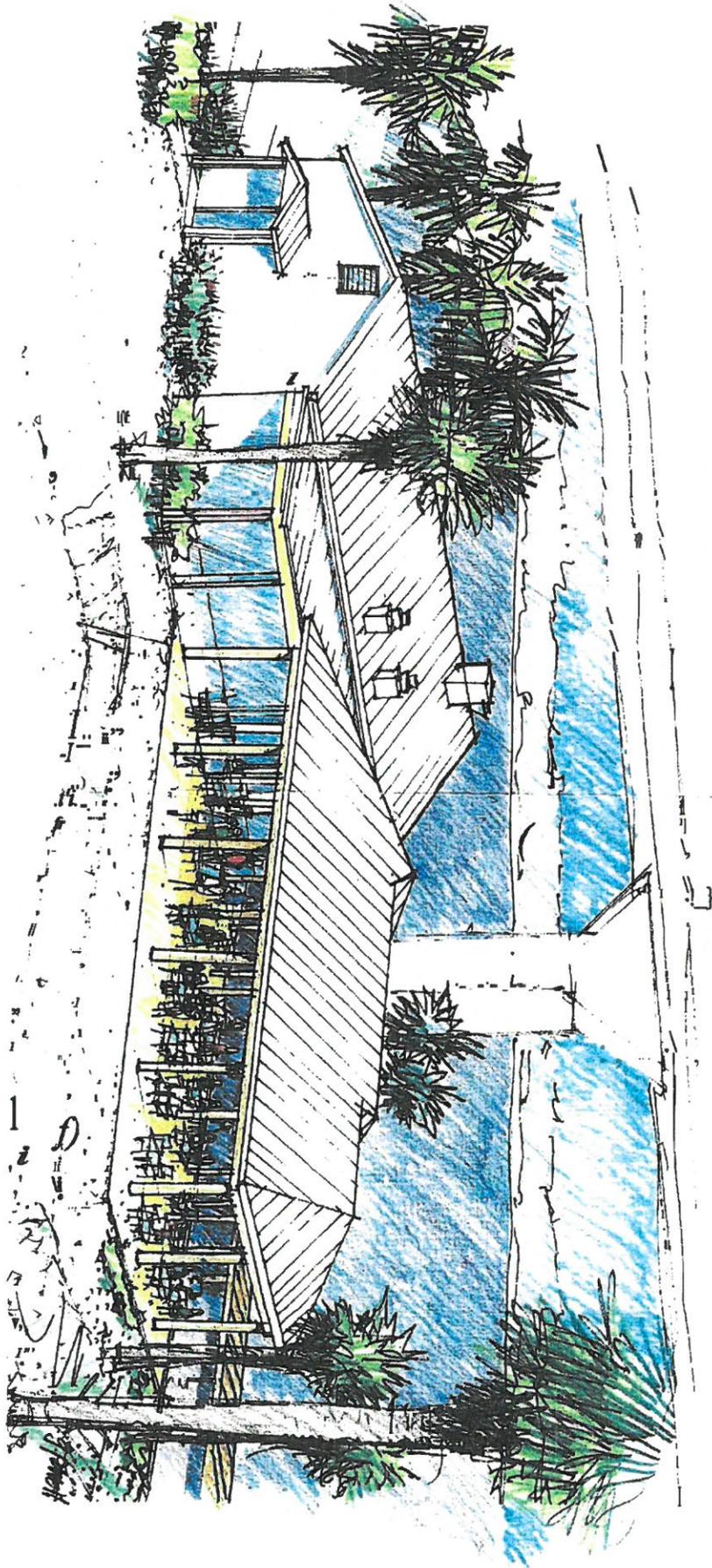
JOB #:	443-24-01
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	05/08/2019
SCALE:	1" = 20'
SHEET:	TWO OF TWO

EAST LINE OF GOVERNMENT LOT 2,  
SECTION 5, TOWNSHIP 38 SOUTH,  
RANGE 41 EAST, MARTIN COUNTY

NOT A BOUNDARY SURVEY  
STEPHEN J. BROWN, INC.

STEPHEN J. BROWN, PROFESSIONAL SURVEYOR/MAPPER  
REGISTRATION NO. 4049, STATE OF FLORIDA  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

EXHIBIT B - IMPROVEMENT PLANS AND SPECIFICATIONS



PA

Exhibit B - Continued

The new building will be a single story detached structure, rectangular shape, primary function to provide cover for the entire outdoor beach seating area on the East side of Pelican Cafe. Preliminary details are isolated Spread footers to carry columns, beams and engineered roof structure. Roof covering will be metal and similar in appearance to other structures in Flagler Park as pictured above. Floor would remain sand. Lighting and fans will be on the interior of the roof structure. All construction would follow State, Federal Codes, Laws, Ordinances, regulations, applicable Florida Codes 2017 and coordinated through the City Development, Building, Planning and Zoning Departments.

*AGC*