

ABSOLUTE NET, UNSUBORDINATED LEASE

City of Stuart and SHG Oyster-Stuart, LLC

THIS LEASE is made and executed as of the 15 day of February, 2013, by and between the **CITY OF STUART**, 121 SW Flagler Avenue, Stuart, Florida 34994, a Florida municipal corporation, hereinafter referred to as "LESSOR", and **SHG OYSTER-STUART, LLC**, Suite 205, 4550 PGA Boulevard, Palm Beach Gardens, Florida 33418, registered to do business in the State of Florida, and doing business using the registered fictitious name of **SPOTO'S OYSTER BAR**, hereinafter referred to as "LESSEE."

Section 1. Demise, Description and Use of Premises.

In consideration of the sum of Ten and No/100 Dollars (\$10.00) to it in hand paid this day, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor leases to Lessee and Lessee hires from Lessor upon the terms and conditions contained herein, for the purpose of conducting thereon an{ lawful business and for no other purpose, the following described real property located in Martin County, Florida, to wit:

All of the real property shown within the survey prepared by Lidberg Land Surveying, Inc., 675 West Indiantown Road, Suite 200, Jupiter, Florida 33458, Job No. 05-133-100, dated 08/02/05, a copy of which is Exhibit "A" hereto and which is made a part hereof, and which is on-file in the Office of the City Attorney.

As used herein, the term "Premises" refers to the real property described in **Exhibit "A"** and to any improvements located thereon from time to time during the term hereof. The usable building space has been calculated as 8,237 square feet of rentable space. The parties agree to this calculation. Seating is limited to 204 seats without special parking arrangements being obtained from the Lessor for off site parking to accommodate up to 260 seats. The Premises shall also include the three (3) parking spaces that are partially included within the survey and partially outside of the survey, but likewise on real property owned by the Lessor.

In addition, Lessee shall have the non-exclusive right to use all parking spaces located at the Stuart City Hall parking area during the following time periods:

- a. Monday through Friday (other than the two Mondays per month on which the Stuart City Commission meets at the City Hall); after 5:00 p.m.
- b. Saturday and Sunday: 11:30 a.m. to 11:30 p.m.

Section 2. Commencement and Term.

2.01. The term of this Lease shall commence on February 15, 2013 (the "Lease Commencement Date"). Rental payments due hereunder shall commence on October 1, 2013 (the "Initial Rent Commencement Date"), and as later provided herein.

2.02. The term of this Lease shall continue until February 14, 2023, unless earlier modified, extended or terminated, as provided herein. **Lessee specifically covenants and agrees that the total lease term, including any extensions, shall not exceed a total of ten (10) years, if then required by law, without the majority approval of the City of Stuart voters at a referendum election, as required by Section 9.05, Stuart City Charter, a copy of which is immediately below:**

Sec. 9.05. - Long term lease or conveyance of waterfront property; subject to approval at referendum.

The City Commission shall not convey or lease for more than 10 years (including options to renew) any interest in real property owned or controlled by the City, if it or any contiguous parcel has frontage on the St. Lucie River or on a tidal creek, unless the proposed conveyance or lease is first approved by public referendum using the procedure started in Charter section 9.04 for vacating public streets providing water access.

(Res. No. 195-06, § 1, 11-27-2006, ref. of 11-7-2006)

Section 3. Right to Modify or Extend Term.

3.01. *Modification.* The Lessee acknowledges that the Lessor is working on plans to redevelop some or all of the approximately 4 acres which encompass the existing City Hall property and the Premises (the "4 Acres"). In the event the Lessor seeks to redevelop the 4 Acres, and provided the Lessee is not in material default under any of the terms and conditions of this Lease, and provided the Lessee has faithfully performed all of its covenants and undertakings contained in this Lease, the Lessor shall give the Lessee written notice of its intent to do the same, and shall give the Lessee the right to review and comment to the Lessor on the redevelopment plans; and the Lessee shall have an option and a right of first refusal to operate a restaurant similar to Spoto's Oyster Bar that approximates the number of seats, square footage, and type of food and beverages already then served on the 4 Acres by the Lessee. Nothing herein shall prevent the parties hereto from negotiating on the provision of greater or lesser food and beverage services in the future. Lessee also acknowledges that this may mean successfully negotiating with a hotelier or other primary lessee of the 4 Acres, as required by the Lessor, and shall require an affirmative vote of the City of Stuart electors at a referendum election, if then required by law. Lessor agrees that Lessee shall not be required to suspend its restaurant operations in connection with relocation to the new development for a period of at least five (5) years from the Lease Commencement Date.

Lessee's option and right of first refusal to operate a restaurant in the new development shall be included in the Memorandum of Lease referenced in Section 11.04 C hereof.

3.02. *Extension by Referendum.* In the event that the Lessor does not seek to redevelop the 4 Acres, or a smaller part of the 4 Acres including the Premises, by January 1, 2021, and provided the Lessee is not in material default under any of the terms and conditions of this Lease, and provided the Lessee has faithfully performed all of its covenants and undertakings contained in this Lease, the Lessee with the written agreement of the Lessor, shall have the right and option to seek to extend the term of this Lease, upon terms and conditions then determined, one of which

shall be the mandatory affirmative vote of the City of Stuart electors at a referendum election, if then required by law. Written notice of intent to seek an extension to this Lease, shall be served upon the Lessor, by the Lessee, no later than April 1, 2021, and if then required by law, and upon the agreement of the parties to the terms and conditions of such extension, a referendum election shall be scheduled to coincide with the next available date for a citywide election. In the event that no election is held at the usual time, and a special election is required to resolve the issue, then the Lessee shall pay Seven Thousand and 00/100 Dollars (\$7,000) of the cost of such election.

Section 4. Initial Rent.

It is the purpose and intent of the Lessor and the Lessee that the rent shall be absolute net to the Lessor. Lessee hereby agrees to pay to Lessor rent for the leased Premises, the initial sum of which is \$2,094,075, as shown on the schedule prepared by NAI Southeast, a copy of which is attached hereto as Exhibit "B", and which is made a part hereof. [120 months of rent] ("Initial Total Rent").

The parties acknowledge and agree that provided for herein are: 1) Rent Escalation; 2) Percentage Rent; and 3) together with Rent Credits extended to the Lessee, the net amount of which is all payable, solely for the convenience of Lessee, in monthly installments as described in Section 5 of this Lease ("Initial Base Rent") and payable on the first (1st) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any extension terms, subject to adjustments as hereinafter set forth.

All of Lessee's payments shall be made in the form of an electronic transfer (ACH) and shall be made to whomever the Lessor designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason, other than a default hereunder by Lessor which impairs the operation of the business conducted on the Premises.

Section 5. Percentage Rent, Rent Credits and Rent Escalation.

5.01 Percentage Rent. For all Lease years (February through January) in which the Lessee reports four million (\$4,000,000) dollars, or more, of "Taxable Amount" on its Florida Sales and Use Tax Returns, the Lessee shall pay to the Lessor additional rent in the amount of One (1%) percent of that amount in excess of four million (\$4,000,000) dollars of the "Taxable Amount" paid to the State of Florida. No later than February 20th of each year, the lessee shall furnish to the Lessor a complete and accurate copy of all monthly Sales and Use Tax Returns filed with the Florida Department of Revenue for the prior Lease Year, along with a payment to lessor evidenced by an electronic transfer receipt (ACH) for the amount required herein.

5.02 Rent Credits. Lessee shall take possession of the Premises on or about the Lease Commencement Date, and shall thereafter perform those improvements described in Exhibit "C" in an expeditious manner, prior to opening for business:

The Lessor agrees that in consideration of the satisfactory completion of the items on Exhibit "C", it shall:

- (1) Collect the base rent on the 4,737 square feet of the upstairs space at the rate of \$25.00 per square foot on October 1, 2013 ("Initial Rent Commencement Date"); and
- (2) Collect the base rent on the 3,500 square feet of the lower bar area at the rate of \$25.00 per square foot on October 1, 2014, or upon the date that a Certificate of Occupancy is issued for the lower floor bar area, whichever is earlier; and
- (3) Provide the Lessee with a Rent Credit in the amount of **\$120,001**, creditable as one-half (1/2) the calculated base rent per month, commencing October 1, 2013, until such time as the entire Rent Credit is used up.

5.03 *Rent Escalator*. Lessee acknowledges that the rent schedule shown as Exhibit "B" reflects a 3% escalation in annual rent.

Section 6. Taxes.

6.01. *Payment of Property Taxes*. Beginning on the Lease Commencement Date and throughout the term of this Lease thereafter, including any extension terms, Lessee shall pay, as additional rent hereunder, before they become delinquent, all taxes. "Taxes" as used herein, means all real property taxes, rates, duties and assessments, local improvement taxes and assessments, whether general or special, that are levied, rated, charged or assessed against the Premises or any part thereof and any rents due Lessor therefrom from time to time by any lawful taxing authority, whether federal, state, county, city, 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 Lease Commencement Date.

6.02. *Tax Notices*. Lessor shall promptly forward to Lessee all notices, bills or invoices Lessor receives requiring payment for any of the items set forth immediately above. Written proof of prompt and timely payment shall be furnished to the Lessor as soon as the same is made by the Lessee.

6.03. *Ad Valorem Property Tax Calculation*. All taxes for the beginning and ending years of the term hereof, from date hereof, including any extension terms, shall be prorated between Lessor and Lessee based upon the respective periods in which they hold possession of the Premises. The initial pro-rata share payment shall be based upon the taxes paid by the former commercial owner (Lehn Dombrose, Inc.) for the year 2009 which was \$44,622.13, but shall nonetheless be based upon the actual amount of taxes determined by the Martin County Tax Collector, this amount shall be re-prorated.

6.04. *Contest of Real Property Assessment*. Lessee may contest any property assessment, tax or assessment payment, it is required to pay and may file protests or otherwise proceed in the name of Lessor. No contest may be filed for the first year's taxes. Thereafter, any contest must be made by depositing with an escrow agent satisfactory to both Lessor and Lessee sufficient collateral, in a form reasonably satisfactory to Lessor, to protect the Lessor against loss of the property by tax certificate or sale or other tax collection procedure. Lessor may use the collateral at any time Lessor determines in good faith, that such a loss is imminent.

6.05. *Sales, Use and Excise Taxes.* All Federal or State sales and use taxes or taxes similar in nature imposed upon payments made by a Lessee to a Lessor or upon this lease whether on the rents, additional rent or the lease or leasing privilege shall be paid in full by Lessee promptly when due or upon demand therefore.

6.06. *Failure to Pay Taxes.* A failure to pay any or all required Taxes in a timely manner shall be a breach of this Lease. The Lessor shall have the option, but not the obligation, to pay any delinquent Taxes, in which case they shall become Additional Rent.

Section 7. Permitted Uses.

7.01. Permitted Uses.

- A. A. Lessee shall develop and operate the entire Premises only for use as a Restaurant, with accessory retail sales, and vehicle parking. Lessor shall not interfere with Lessee's efforts to so develop and operate the Premises, except that all improvements collectively costing \$10,000 or more to the Premises shall be subject to the written approval of the Lessor's city manager, which approval shall not be unreasonably withheld or delayed. B. All exterior improvements and signage shall require the city manager's prior written approval. A commercially suitable sign package shall require the approval of the City's Development Director, and Lessee shall be responsible for the payment of any and all costs incurred in connection with the development of the Premises including the preparation of any applications, plans, surveys or other documents and all impact fees and development incurred in connection with development of the Premises.
- B. C. Any outdoor food and beverage service on the Premises shall require the Lessee to use either non-disposable or completely biodegradable service items.
- C. D. Lessee shall have the Premises open for business at its normal operating hours of 11:30 AM to 10:00 PM, Sunday through Thursday, and 11:30 AM to 11:00 PM on Friday and Saturday, per week at all times throughout the year. In the event that Lessee is not open for business for more than any thirty (30) day period, without an Unavoidable Delay (See Sec. 32) having occurred, the Lessor shall be free to cancel the Lease, and re-take the Premises, without requiring any court action. Under these circumstances the Lessee shall not prevent or complain about any "self-help" actions taken by the Lessor in this regard.

Section 8. Non-Subordination of Real Property Interest and Encumbrances of Lessee's Leasehold Interest.

8.01. *No Subordination.* Nothing contained herein shall be construed to require Lessor to execute any document or instrument, which would create any financial liability upon the Premises, or to alter or impair Lessor's rights under this Lease. **The Lessor is prohibited by Florida law from burdening any part of or all of the fee interest of the Premises, or to grant or agree to any such encumbrance or to any obligation which will burden the property**

beyond the Lease term. Lessor shall not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

8.02. *Leasehold Encumbrance.* Lessee shall not, without obtaining Lessor's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. Such encumbrance shall not be unreasonably withheld or delayed by the Lessor, but may require the Lessee to furnish satisfactory evidence of the commercial viability of the debt, the loan, and the mortgage terms.

8.03. *Notice and Cure of Lessee's Default.* Lessor further agrees, in connection with Lessee's efforts to obtain financing for the development of the Premises, to provide any Mortgagee of whom Lessor has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default Lessor sends to Lessee hereunder and prior to terminating this Lease as a result of any default by Lessee, Lessor shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, Lessor shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the Mortgagee curing Lessee's default.

8.04. *Estoppel Letter.* Lessor shall from time to time, within ten (10) days after Lessee shall have requested it, execute, enseal, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to Lessor with the request.

Section 9. Assignment and Sublease.

Lessee may not assign all or any portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by Lessor or other portions of the Premises for any purpose without the consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any assignment or sublease may be conditioned by the Lessor on the commercial suitability, the good reputation in the community, and the financial strength and solvency of the proposed assignee or sub-tenant, all or any of which may be require suitable proof thereof. In the event that the proposed use by an assignee or subtenant shall increase the value of the Premises, the proposed assignee or subtenant may be required by the Lessor to pay additional rent, not otherwise contemplated herein. Notwithstanding any assignment or sublease, the Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof. No sub-lease shall extend beyond the existing term of this Lease. No sub-lease shall alter the terms of this Lease.

Section 10. Uses Prohibited.

10.01. *Specific Uses Prohibited.*

- A. The Lessee shall not operate the Premises as a Night Club, regardless of the type of liquor license it holds from the State of Florida. The definition of Night Club follows:

Night Club means any stand-alone bar, bottle club, restaurant or other establishment which:

- (1) serves or allows the consumption of alcoholic beverages on the premises without the full service of food; and
- (2) has live or recorded music, entertainment, or dancing, or any combination thereof; and
- (3) which is open for business later than midnight at least one evening per week, as long as full service of food is provided.

- B. *Littering Prohibited.* The Lessee shall not permit its staff or patrons to litter the Premises or the adjacent St. Lucie River, and the Lessee shall be responsible for the collection and containment of all solid waste, including service items and recyclables, such that no trash, garbage, recyclables, or other disposable or non-disposable items are allowed to accumulate on the outdoor portion of the Premises or enter into the St. Lucie River. Any accidental or purposeful dumping of any items into the St. Lucie River shall result in the items being promptly collected and properly disposed of by the Lessee.

- C. If the event that the restaurant desires to stay open later than midnight, the LESSEE agrees to file for a Special Events Permit, which the City may permit s up to four times annually.

10.02. *General Uses Prohibited.* Lessee shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose or purposes, nor shall Lessee maintain a nuisance on the Premises or use or permit the use thereof for immoral or adult entertainment purposes. The Premises may not be used as a toxic waste dump or storage facility, a solid waste disposal site or any use which could have a harmful effect on the land itself, or upon the St. Lucie River. The Lessee shall not commit waste. No construction, improvement or use may be made of the Premises which would impair the right to collect rental adjustments called for herein.

10.03. *Outdoor Sound Regulated.* Lessee shall not use or have any amplified sound on the outdoor portion of the Premises, without the express written approval of the city manager, which approval may be conditioned as to reasonable location(s), sound pressure level(s), and time of operation, in the sole determination of the city manager.

Section 11. Improvements, Repairs, Additions, Replacements to the Real Property.

11.01. Throughout the term of this Lease, the Lessee shall have the right (but not the duty) to construct, erect, or reconstruct any and all manner of improvements upon the Premises as are permitted by this Lease, and applicable codes and laws of the city and state.

11.02. Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in good repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

11.03. Lessor shall not be required to furnish any services or facilities or to make any repairs, improvements or alterations in or to the Premises during the term of this Lease, it being understood that the Lessee takes the Premises in an "AS IS" condition, having made all of the inspections it chose to make, prior to entering into this Lease, and that the Lessee is satisfied with the condition of the Premises.

11.04. Lessee's rights and obligations, as set forth in this Section 11, shall be subject to the following conditions:

- A. The cost of any construction, or of any change, alteration or improvements shall be borne and paid for by Lessee.
- B. The Premises shall, at all times, be kept free of mechanics' and materials men's liens.
- C. The parties shall enter into a Memorandum of Lease, in recordable form, in form and content acceptable to Lessor, and the same shall be recorded prior to the commencement of any work on the premises. The Lessee agrees to execute such further agreements as may be necessary, from time to time, to preserve the leased premises from the imposition of liens. The Lessee shall provide in any contracts and shall require any General Contractor to provide in all sub-contracts and sub-sub-contracts that the parties thereto must look solely to the Lessee for payment and that no liens shall be filed against the land itself. **It is understood by the parties that as a Florida municipality, the City of Stuart is not subject to the mechanic's lien laws of the State of Florida, and therefore liens shall not be permitted to attach to city-owned property.**
- D. The Lessee acknowledges that the Lessor has personal property in the form of fixtures, furniture and equipment ("Lessor's FF&E"), including kitchen equipment, and a copy of the inventory thereof is attached hereto **as Exhibit "D."** The Lessee shall be responsible and liable for the normal use, of the Lessor's FF&E, fair wear and tear excepted. The Lessee shall only be responsible for repair and replacement of the Lessor's FF&E when the same shall become missing, or irreparable due to intentional damage, and the Lessee shall notify the Lessor in writing that any such of Lessor's FF&E is missing, or irreparable within five (5) days of such occurrence. The Lessor's FF&E shall not transfer to the Lessee, and shall continue to be owned by the Lessor throughout the term of the Lease, unless later agreed upon by the parties in writing. However, the Lessee shall insure the FF&E, as if it were then owned by the Lessee.
- E. During the term of the Lease, or any extended term, Lessee shall not demolish or remove any building or improvements located on the premises. At the end of

term hereof, all improvements located on the Premises will become the property of Lessor and at Lessor's option, Lessor can require Lessee to remove all or any part of the improvements and to place the Premises in their original condition.

Section 12. Liability Insurance.

12.01. 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 protecting Lessee against any liability whatsoever, occasioned by accident on or about the demised premises or any appurtenances thereto. Such policy shall be approved by Lessor, shall name the City of Stuart as an Additional Insured, shall be written by a company rated not less than "AAA", by Best's Register, in an amount not less than One Million Dollars (\$1,000,000) to cover the claim of damage from any single person, and not less than Two Million Five Hundred Thousand Dollars (\$2,500,000) to cover more than a single claim which may arise from a single action, and in the sum of Five Hundred Thousand Dollars (\$500,000) in respect to claims for 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, liquor liability 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.

12.02. Lessee shall see to it that the Lessor shall at all times be in possession of a valid Certificate of Insurance, naming the City of Stuart as an additional insured. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to Lessor an original or duplicate original of all such policies, together with evidence of payment of premium thereon, upon the beginning date of this Lease, and from time to time thereafter as premiums shall fall due. Lessor may require an increase in the limits of coverage or extent or coverage at any time such increase is deemed commercially reasonable by Lessor. Lessor may increase the amounts of required insurance coverage provided the same is commercially reasonable.

12.03. All insurance coverage called for under the Lease shall contain provisions stating the Insurer will grant the City the same notification rights that it provides to the first named insured regarding cancellation and nonrenewal. Copies of the policies, and all replacement policies and declaration pages, shall be promptly furnished to Lessor.

12.04. All hazard insurance policies carried by the Lessee covering its property located on the Premises will provide that the Lessor is an additional named insured, as its interest may appear. Lessee shall have an affirmative duty to insure the Lessor's FF&E to the full extent of its value.

Section 13. Indemnification of Lessor.

13.01. In consideration of said Premises being leased to Lessee, and based upon separate consideration the amount, receipt, and sufficiency of which is acknowledged by the parties, the Lessee agrees that Lessee, at all times, will indemnify and hold Lessor harmless from all losses, damages, liabilities and expenses, which may arise or be claimed against Lessor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of

any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Lessee, or consequent upon or arising from any acts, omissions, neglect or fault of Lessee, its agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Lessee's failure to comply with any laws, statutes, ordinances, codes or regulations as herein provided. Lessor shall not be liable to Lessee or any damages, losses or injuries to the persons or to property of Lessee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations, and Lessee will indemnify and keep harmless Lessor from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against Lessor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises as a result of the negligence of Lessee, his agents, employees, servants, licensees, visitors, customers, patrons and invitees.

13.02. All personal property placed or moved into the Leased Premises by the Lessee shall be at the sole risk of Lessee or the owners thereof, and Lessor shall not be liable to Lessee or any third party for any damages to said personal property. Lessee shall maintain at all times during the term of this Lease an insurance policy or policies in an amount or amounts sufficient to indemnify Lessor and to pay Lessor's damages, if any, resulting from any matters set forth hereinbefore in this Paragraph 13. Lessee's insurance policies shall contain a waiver of the right of subrogation as against the Lessor.

Section 14. Time.

It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants and conditions of this Lease.

Section 15. INTENTIONALLY DELETED

Section 16. Requirements of Public Authority.

16.01. During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (collectively "regulations") of the Federal, State, County, and City Governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force on the Lease Commencement Date or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 16. If such regulations shall so restrict the use or development of the Premises so as to render the development of the Premises unfeasible in the discretion of Lessee, Lessee shall have the option to terminate this Lease upon thirty (30) days written notice to Lessor.

16.02. Lessee shall have the right to contest by appropriate legal proceeding, diligently conducted in good faith in the name of the Lessee, without costs, liability or expense to Lessor, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (A) of this Section and, if by the terms of any such law, ordinance, order,

rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceedings. Nothing herein shall delay the payment of all sums due to Lessor herein required to be paid.

Section 17. Lessor's Title/Possession.

Lessor covenants that as of the Lease Commencement Date:

- A. Lessor has the fee simple title to the Premises, with full right and authority to make and enter into this Lease;
- B. The Premises are free and clear of all liens, easements, restrictions, leases and encumbrances, except for **easements shown on survey, if any.**
- C. Lessee has received a copy of the survey of the property and has accepted the state of the survey.
- D. Lessee shall be delivered possession of the Premises; and
- E. Lessee shall have quiet and peaceful possession and enjoyment of the Premises and of all appurtenances thereunto belonging during the term of this Lease including all extension terms.

Section 18. Care of Premises.

Lessee shall in nowise violate any of the zoning or other governmental restrictions now or hereafter placed upon the said real property. Lessee shall, at its sole expense, pay for any alterations, improvements, machinery or equipment, including replacement of Lessor's FF&E, which may be required by any applicable governing body now or at any time during the term of this Lease. Lessee will replace "furniture" (tables and chairs) that are lost, stolen, or damaged for any reason. Lessee will be responsible for replacing Lessor's equipment that becomes irreparable due to normal wear and tear.

Section 19. Conditional Limitations – Lessee Default Provisions.

19.01. This lease and the term hereof are subject to the limitation that if, at any time during the term of this Lease, any one or more of the following events (herein called an "event of default") shall occur, that is to say:

- A. If Lessee shall make an assignment of this Lease for the benefit of its creditors;
or
- B. If any petition shall be filed against Lessee in any court, whether or not pursuant to any Statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, and if any such proceedings

shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be so filed by Lessee; or

- C. If Lessee shall fail to pay any installment of the rent, or any part hereof, when the same shall become due and payable, and such failure shall continue for thirty (30) days; or
- D. If Lessee shall fail to pay when due any other charge required to be paid by Lessee hereunder, and such failure shall continue for thirty (30) days after written notice thereof from Lessor to Lessee; or
- E. If Lessee shall fail to perform or observe any other requirement of this Lease (not hereinbefore in this Section 20 specifically referred to) on the part of Lessee to be performed or observed, and such failure shall continue for thirty (30) days after written notice thereof from Lessor to Lessee, unless Lessee shall have commenced to cure any such default as is referred to in this sub-section E. within said thirty (30) day period and diligently pursues such cure to completion;

19.02. Then upon the happening of any one or more of the aforementioned events of default, and the expiration of the period of time for remedying the same, Lessor may:

- A. Give to Lessee a notice hereinafter called (“Notice of Termination”) of intention to end the term of this Lease and the term hereof, as well as all of the right, title and interest of the Lessee hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date originally specified herein for the expiration of this Lease had arrived and the Lessee shall then quit and surrender the Premises to Lessor, and
- B. Lessor may at any time after an event of default re-enter the Premises and remove Lessee therefrom, and all or any of its property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, and
- C. It is expressly and specifically covenanted and agreed that the entire unpaid balance of the basic rental shall at the sole option of the Lessor, immediately become due and payable, which amount shall be reduced to present value, and
- D. All of the right, title, estate and interest of Lessee (i) in and to the improvements, all changes, additions, alterations therein, and all renewals and replacements thereof, and (ii) all rents, sub-leases, issues and profits of the Premises, or any part thereof, whether then accrued or to accrue, shall automatically pass to, vest in, and belong to Lessor, without further action on the part of either party, free of any claim thereto by Lessee.
- E. Lessor shall have any other remedy provided by Florida law.

Section 20. Lessor's Defaults.

If Lessor fails to perform or observe any requirements or covenant of this Lease to be performed and observed by Lessor and such default continues for a period of thirty (30) days after written notice thereof from Lessee to Lessor, Lessee shall have the option of terminating this Lease upon thirty (30) days written notice to Lessor without waiving any other legal rights hereunder or in the alternative, Lessee shall have the right of specific performance.

Section 21. Waivers.

Failure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provisions of this Lease or a consent to any subsequent breach of the same of any other provisions. No acceptance by Lessor of any partial payment shall constitute an accord and satisfaction, but shall only be deemed a partial payment on account.

Section 22. Notices, Etc.

All notices, consents, demands and requests which are required or desired to be given by either party to the other shall be in writing. All such notices, consents, demands and requests shall be 1) Hand delivered; or 2) Delivered by overnight courier; or 3) sent by United States certified mail, return receipt requested, postage prepaid, and addressed to the other party as follows:

TO THE LESSOR: Delivered to City Hall or mailed to:

City Manager - with a scanned copy, emailed to: pnicoletti@ci.stuart.fl.us
121 SW Flagler Avenue
Stuart, FL 34994

WITH A COPY TO:

City Attorney- with a scanned copy, emailed to: mdurham@ci.stuart.fl.us
121 SW Flagler Avenue
Stuart, FL 34994

TO THE LESSEE: Delivered to the Premises or mailed to:

Mr. John Spoto - with a scanned copy, emailed to: john.spoto@gmail.com

SHG OYSTER-STUART, LLC
4550 PGA Boulevard, Suite 205
Palm Beach Gardens, FL 33418

or at such other place as may from time to time be designated in writing to the other party given pursuant to the provisions of this Section. Notices, consents, demands and requests which are served upon Lessor or Lessee in the manner aforesaid, shall be deemed to have been "served" for

all purposes hereunder on the third (3rd) business day next following the date on which such notice, consent, demand or request shall has been mailed as aforesaid, or upon the actual date received, as ascertained by a receipt from the serving company or person, whichever is the earlier date. Emailed copies shall not be deemed "served."

Section 23. Governing Law.

This Lease and the performance of the covenants and terms thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida.

Section 24. Partial Invalidity.

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 25. Sales and Use Taxes on Lease

Lessee shall promptly pay to the Lessor, all sales or similar type taxes imposed upon the various amounts of money payable as rent hereunder. In the event it is subsequently determined that any amount required to be paid hereunder was miscalculated or demand is made by the State of Florida for additional or uncollected tax, Lessee shall promptly pay the same and any penalties and interest payable thereon.

Section 26. Covenants Binding the Respective Parties.

Except as herein expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, successors and assigns.

Section 27. Disposition of Improvements on Termination of Lease.

On termination of this Lease for any cause, Lessor shall become the owner of any building or other improvements made by the Lessee on the Premises. If Lessee is not in default, Lessee shall however have the right to remove any furniture, fixtures, equipment (other than Lessor's FF&E), or other things which may be removed from the premises without changes to any of the buildings or improvements hereinafter located on the Premises.

Section 28. Broker's Commission.

The parties represent and warrant to the other, that the Lessor has engaged Boyd G. Bradfield, Jr., President, NAI Southcoast, P.O. Box 3059, Stuart, FL 34995 (the "Broker") who shall be entitled to a total Brokerage Commission for assisting the Lessor, . **Said fee shall be paid by the Lessor as provided in that separate agreement by and between NAI Southcoast and the City of Stuart.** Upon the payment of the Brokerage Commission, and in the event that the

Lessee shall quit the Premises, for any reason other than mutual agreement of the parties, or for no reason, prior to the end of the Lease Term, then the Brokerage Commission above shall be pro-rated to the date that Lessee shall have quit the Premises, and said amount remaining shall become additional rent to be paid by the Lessee.

Section 29. Attorney's Fees and Costs.

In connection with any litigation arising out of this Lease, the prevailing parties shall be entitled to recover all costs incurred, including reasonable attorneys' fees and costs through and including any and all appellate actions.

Section 30. Lessee's Attornment.

In the event of a transfer of Lessor's interests in the Premises or the purchase of the Lessor's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or the purchase, pursuant to a power of sale contained in any mortgage, then in any such events, Lessee shall, at Lessor's request, attorn to and recognize the transferee or purchaser of the Lessor's interest, as the case may be, as Lessor under this Lease, for the balance then remaining of the term and thereafter this Lease shall continue as it is directly between such person as "Lessor" and "Lessee", it being agreed that no such transferee shall have the right to disturb Lessee's tenancy hereunder so long as Lessee shall not be in default under the terms hereof.

Section 31. Waiver of Trial by Jury.

It is mutually agreed by and between Lessor and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee and Lessee's use of or occupancy of the Premises. Lessee further agrees that it shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based upon nonpayment of rent or any other payment required of Lessee hereunder.

Section 32. Delays.

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 the Unavoidable Delay, all except for the Term of this Lease, which shall not be extended without the majority approval of the City of Stuart voters at a referendum election, as required by Section 9.05, Stuart City Charter, if then in effect. "Unavoidable Delay" shall 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 Chapters 73 and 74, Florida Statutes, restoration in connection with any of the foregoing 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.

Section 33. Good Faith and Fair Dealing.

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.

Section 34. Additional Terms and Conditions.

- A. **FAILURE TO PAY WHEN DUE.** If the Lessee fails to pay any sum when due for taxes, insurance or other sums required to be paid under the Lease, the Lessor may, at Lessor's option and without waiving its right to dispossess Lessee, pay such sum and such sum shall immediately become due and payable as additional rent.
- B. **INTEREST ON RENT.** All rents due under the Lease, and remaining unpaid beyond the period set forth in Section 19.01 C hereof, shall bear interest at the rate provided under Florida law for the payment of interest on money judgments.
- C. **UPON TERMINATION.** In the event of judicial or mutual termination of this Lease, Lessee shall provide Lessor with a Release and Surrender Agreement with two witnesses, in recordable form, to remove the Memorandum of Lease as a cloud on the title within seven days of written demand therefore.
- D. **FAILURE TO MAINTAIN.** In the event that the Lessee fails to maintain the Premises in a condition free of federal, state, county or city code violations, the Lessor shall have the right, but not the obligation, to enter onto the Premises and repair or replace any items not in code compliance. Thereafter, the actual cost, plus five (5%) percent administrative charge shall be additional rent, to be paid by the Lessee upon the next time that rent is due hereunder.
- E. **RADON GAS.** Section 404.056, Florida Statutes requires that the following notification be given for real estate transactions of this type: "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."
- F. **COMPLETE AGREEMENT.** 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.

- G. **NON-DISCRIMINATION.** 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.
- H. **BENEFITS OF THE LEASE.** The parties agree that this lease shall benefit only the parties hereto and is not intended to benefit any third party whatsoever.

Section 35. Contractual Authority.

By signing this Lease the Lessee swears or affirms, under penalty of perjury, that this is a valid act of the Lessee, and that no later claim shall be made by the Lessee that the Lease contract is invalid or an *ultra vires* act, by reason of a failure to have the proper authority to execute the Lease. In the event that a court of competent jurisdiction later determines that the Lease is or would be null and void for failure of the signatory to have proper or complete authority, this Lease 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.

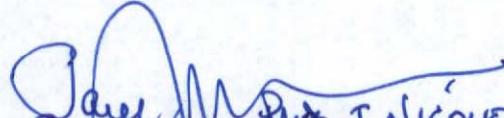
Section 36. Sovereign Immunity.

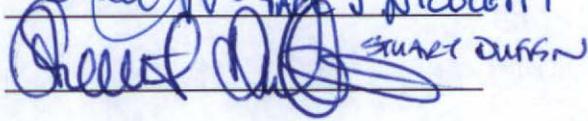
Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits granted to the Lessor as established under chapter 768.20 Florida Statutes, as amended from time to time.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals of the date shown below.

Witnesses:

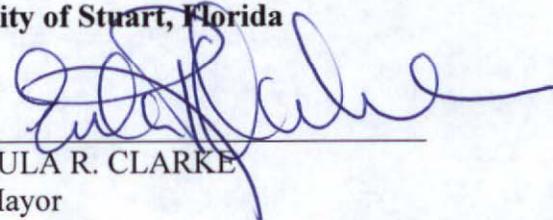


Paul J. Nicoletti


Stuart Durbin

LESSOR:

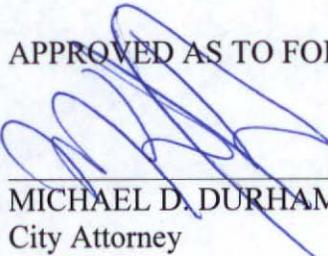
City of Stuart, Florida



EULA R. CLARKE
Mayor

2/15/2013
Date

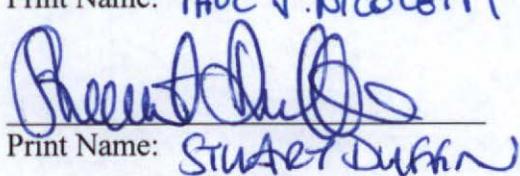
APPROVED AS TO FORM AND CORRECTNESS:



MICHAEL D. DURHAM
City Attorney

Witnesses:



Print Name: PAUL J. NICOLETTI


Print Name: STUART DURBIN

LESSEE:

SHG Oyster-Stuart, LLC



BY: John Sporo

Its: Managing Member

ABSOLUTE NET, UNSUBORDINATED LEASE
City of Stuart and SHG Oyster-Stuart, LLC

Exhibit B

Net Rent Payments

	Annual	Monthly	Square Ft	Price per SF
Feb 15 to Oct 1st 2013	\$ -	\$ -	4,737	\$ -
Oct 1.2013 to Sept 30.2014	\$ 118,425.00	\$ 9,868.75	4,737	\$ 25.00
Oct 1.2014 to Sept 30.2015	\$ 212,102.75	\$ 17,675.23	8,237	\$ 25.75
Oct 1.2015 to Sept 30.2016	\$ 218,465.83	\$ 18,205.49	8,237	\$ 26.52
Oct 1.2016 to Sept 30.2017	\$ 225,019.81	\$ 18,751.65	8,237	\$ 27.32
Oct 1.2017 to Sept 30.2018	\$ 231,770.40	\$ 19,314.20	8,237	\$ 28.14
Oct 1.2018 to Sept 30.2019	\$ 238,723.51	\$ 19,893.63	8,237	\$ 28.98
Oct 1.2019 to Sept 30.2020	\$ 245,885.22	\$ 20,490.43	8,237	\$ 29.85
Oct 1.2020 to Sept 30.2021	\$ 253,261.78	\$ 21,105.15	8,237	\$ 30.75
Oct 1.2021 to Sept 30.2022	\$ 260,859.63	\$ 21,738.30	8,237	\$ 31.67
Oct 1.2022 to Jan 31.2023	\$ 89,561.80	\$ 22,390.45	8,237	\$ 32.62
	\$ 2,094,075.73			

The Rent Credit shall be applied to the Rent during the first two (2) years of the Lease, with the following adjustment in the Annual Rent during those years:

October 1, 2013 to September 30, 2014: \$ 59,212.00 Payment includes \$59,213 rent credit

October 1, 2014 to September 30, 2015: \$151,314.75 Payment includes \$60,788 rent credit

Net Rent after 10 year period is \$2,094,075.73 - \$120,001 = \$1,974,074.73

Net Rent Payments with Rent Credits

	Annual NET Rent with Credits	Monthly NET Rent	Square Ft	NET SF Rent
Feb 15 to Oct 1st 2013	\$ -	\$ -	4,737	\$ -
Oct 1.2013 to Sept 30.2014	\$ 59,212.00	\$ 4,934.33	4,737	\$ 25.00
Oct 1.2014 to Sept 30.2015	\$ 151,314.75	\$ 12,609.56	8,237	\$ 25.75
Oct 1.2015 to Sept 30.2016	\$ 218,465.83	\$ 18,205.49	8,237	\$ 26.52
Oct 1.2016 to Sept 30.2017	\$ 225,019.81	\$ 18,751.65	8,237	\$ 27.32
Oct 1.2017 to Sept 30.2018	\$ 231,770.40	\$ 19,314.20	8,237	\$ 28.14
Oct 1.2018 to Sept 30.2019	\$ 238,723.51	\$ 19,893.63	8,237	\$ 28.98
Oct 1.2019 to Sept 30.2020	\$ 245,885.22	\$ 20,490.43	8,237	\$ 29.85
Oct 1.2020 to Sept 30.2021	\$ 253,261.78	\$ 21,105.15	8,237	\$ 30.75
Oct 1.2021 to Sept 30.2022	\$ 260,859.63	\$ 21,738.30	8,237	\$ 31.67
Oct 1.2022 to Jan 31.2023	\$ 89,561.80	\$ 22,390.45	8,237	\$ 32.62
	\$ 1,974,074.73			

Exhibit 'C'

1. Remove (2) sailfish from roof to include mounts
2. Pressure clean the entire exterior (to include lower garage)
3. Fresh coat of paint on exterior
4. Replace awnings throughout exterior
5. Resurface parking lot with clear lines and handicap parking required
6. Remove all debris from previous tenant throughout (to include lower level)
7. Dumps required to remove above debris.
8. "Clean out" or "Initial" extermination of exterior and interior (rodents & pests)
9. Snake all drains from main restaurant to grease trap and all other drains required
10. Grease trap to meet any requirements or changes
11. Clean out of grease trap
12. Pressure clean hood system from roof to main kitchen
13. Pressure clean all kitchen equipment, coolers and storage.
14. Repair all exterior windows that are not water tight (lower and small dining rooms)
15. Provide rated hurricane shutters for all exterior glass windows and doors
16. Replacement of damaged/draped east wall
17. Fire sprinkler system repaired and brought up to code

EXHIBIT

D

City of Stuart
 Dockside Restaurant
 131 SW Flagler Ave, Stuart, FL 34994
 2/8/2013

Qty	Description	Barcode
1	Deep Fryer Jade	52832
1	Six burner stove warmer on side) with conventional oven with double shelves	52833
1	36 inch double drawer refrigerator with salamander (over griddle grill) and a 24 inch griddle	52834
1	36 inch double drawer refrigerator with 3 burners with top refrigerator compartments double shelf	52835
1	6 burner stove with convention oven with double shelf	52836
1	36 inch char boiler	52837
1	12 inch condiment built-in cabinet	52838
1	6 burners with conventional oven with salamander (over burnergrill)	52839
1	Double deep fryer	52840
1	The following are all one unit: 4 foot salad prep station with 2 drawers, 1 door refrigerator Custom built 6 foot steam table with sink and plate warmers 5 foot ice bin with 4 refrigerated drawers 4 foot salad prep station with 2 doors Custom built shelving over chef's cold station	52842
1	Dishwasher counters (excluding dishwasher - leased item)	52843
1	3 Compartment sink	52844
1	Hand sink	52845
1	16 feet prep work table	52850
1	6 by 8 foot walk-in refrigerator	52847
1	4 lid ice cream freezer with dip well	52848
1	6 by 6 foot walk in freezer	52849
1	18 inch by 20 feet 3 shelf compartments - Stainless steel with 2 built-in soup warmers and 2 built-in plate warmers	52846
1	24ft Hood with Ansil System	52851

This instrument prepared by:
Michael D. Durham
City Attorney
121 SW Flagler Avenue
Stuart, FL 34997

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is made as of the 15 day of February, 2013, by and between **CITY OF STUART, FLORIDA**, a Florida municipal corporation ("**Lessor**"), and **SHG OYSTER-STUART, LLC**, a Florida Limited Liability Company ("**Lessee**").

WITNESSETH

WHEREAS, the Lessor is the owner in fee simple of the real property located in Martin County, Florida, which is more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by reference (the "**Leased Property**"); and

WHEREAS, Lessee and Lessor have entered into that certain Absolute Net - UnSubordinated Ground Lease ("**Lease**"), dated the date hereof, with respect to the Leased Property, which provides that Lessor shall lease the Property to Lessee and Lessee shall make certain improvements thereon, all in accordance with the terms, covenants and conditions set forth in the Lease; and

WHEREAS, Lessor and Lessee desire to enter into this Memorandum to give notice of said Lease and all of its terms, covenants and conditions to the same extent as if the same were fully set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, Lessee and Lessor hereby agree as follows:

1. The above recitals are true and correct and are hereby incorporated into this Memorandum by this reference. All terms used but not defined herein shall have the meaning ascribed to them in the Lease.

2. The initial term of the Lease shall commence on the Lease Commencement Date (February 15, 2013) and shall terminate on the February 14, 2023.

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 (i) the Lessee's (or Lessee's successors and/or assigns) Leasehold Interest in the Leased Property by a Lender or a Leasehold Mortgagee, or (ii) the subleasehold interest of any Space Tenant or Land

Tenant (or their successors and/or assigns) in the Leased Property by a Lender or 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.

4. The Lease provides that Lessor may, at a later date, develop the Leased Property, and adjacent property, as a commercial development (the "New Development"). Lessor has granted the Lessee the option, and the right of first refusal, to operate a restaurant similar to Spoto's Oyster Bar in the New Development in the event that the New Development is undertaken by Lessor.

5. The purpose of this Memorandum is to give notice of said Lease and all its terms, covenants and conditions to the same extent as if the same were fully set forth herein and also to set forth the Lessee's option and right of first refusal to operate a restaurant in the new development, in accordance with law. The Lease contains certain other rights and obligations in favor of Lessor and Lessee which are more fully set forth therein.

6. The terms, covenants and conditions contained in the Lease shall (i) be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns, for the entire term of the Lease and any extensions thereof, and (ii) run with the Leased Property described in Exhibit "A" attached hereto.

[NO FURTHER TEXT ON THIS PAGE.]

IN WITNESS WHEREOF, Lessee and Lessor have caused this Memorandum to be executed as of the day and year first above written.

Executed and delivered
in the presence of:

Attest:

Alice Lyons

Alice Lyons

(Print Name) Deputy City Clerk

Shane Duffin

Shane Duffin

(Print Name)

Executed and delivered
in the presence of:

Shane Duffin

Shane Duffin

(Print Name)

Paul J. Nicoletti

PAUL J. NICOLETTI

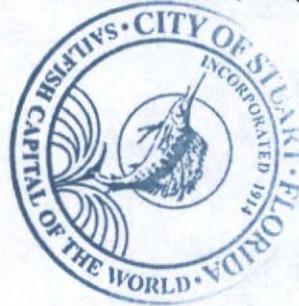
(Print Name)

Lessor:

CITY OF STUART, FLORIDA and
STUART COMMUNITY
REDEVELOPMENT AGENCY

By: Eula R. Clarke

Eula R. Clarke, Mayor and Chair



Lessee:

SHG Oyster-Stuart, LLC
a Florida Limited Liability Company

By: John Spoto

Name: John Spoto

Title: Managing Member

STATE OF FLORIDA

COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 15 day of February, 2013, by EULA R. CLARKE and ALICE LYONS, Mayor and Deputy City Clerk, respectively, of the City of Stuart, Florida, and the Chair and Board Secretary, respectively, of the Stuart Community Redevelopment Agency. They are personally known to me or have produced valid Florida drivers' licenses as identification.

(SEAL)



Nina Dooley
Printed/Typed Name:
Notary Public-State of Florida
Commission Number:

STATE OF FLORIDA

COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 15 day of February, 2013, by JOHN SPOTO, Manager of SHG OYSTER-STUART, LLC, a Florida Limited Liability Company. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)



Nina Dooley
Printed/Typed Name:
Notary Public-State of Florida
Commission Number



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/15/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance Office of America - JUP Abacoa Town Center 1200 University Blvd, Suite 200 Jupiter, FL 33458	CONTACT NAME: PHONE (A/C, No, Ext): (561) 776-0660 FAX (A/C, No): (561) 776-0670 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED Spotos Hospitality Group LLC 4550 PGA Blvd., #205 Palm Beach Gardens, FL 33418	INSURER A : National Trust Insurance Company 20141	
	INSURER B : FCCI Insurance Group	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		GL00096934	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY			CA00172513	1/1/2013	1/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (PER ACCIDENT) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS						
B	UMBRELLA LIAB	X		UMB00100244	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 5,000,000
	EXCESS LIAB						AGGREGATE \$
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N/A				WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L DISEASE - EA EMPLOYEE \$
							E.L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
SHG Oyster-Stuart, LLC
The City of Stuart is included as Additional Insured in respects to 131 SW Flagler Avenue Stuart, FL 34994

CERTIFICATE HOLDER City of Stuart 121 SW Flagler Stuart, FL 34994	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>C. Ray Dalseg</i>



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

RESOLUTION No. 19-2013

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN CITY OF STUART AND SHG OYSTER-STUART, LLC. FOR LEASE OF THE PROPERTY AT 131 SW FLAGLER AVENUE FOR A PERIOD OF TEN YEARS, TO FEBRUARY 14, 2023; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

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

SECTION 1: The City Commission of the City of Stuart, Florida approves the execution of a Lease Agreement between SHG Oyster-Stuart, LLC and the City of Stuart for the former Dockside Restaurant located at 131 SW Flagler Avenue for a period of ten years, to February 14, 2023.

SECTION 2: This resolution authorizes the Mayor and City Clerk, the City Manager and any other City official necessary, to execute the Lease Agreement and Memorandum of Lease upon review and approval of the City Attorney. The Clerk is directed to record the Memorandum of Lease in the Public Records of Martin County.

SECTION 3: This resolution shall take effect upon adoption.

Resolution No. 19-2013
Lease Agreement with SHG Oyster-Stuart, LLC

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:

EULA R. CLARKE, MAYOR
TROY A. McDONALD, VICE MAYOR
KELLI GLASS LEIGHTON, COMMISSIONER
JEFFREY A. KRAUSKOPF, COMMISSIONER
JAMES A. CHRISTIE, Jr., COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

ADOPTED this 15th day of February, 2013.

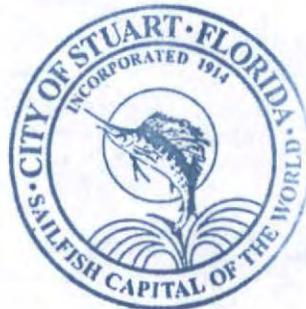
ATTEST:

Alice Lyons
~~CHERYL WHITE~~ Alicelyons
CITY CLERK - Deputy

Eula R. Clarke
EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

Michael D. Durham
MICHAEL D. DURHAM
CITY ATTORNEY



1.

Memo of Lease, page 23.

Resolution 19-2013, page 29.

Liability Ins. page 28.