

RESOLUTION NO. 53-08-20

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A LICENSE AGREEMENT WITH SEH LAKE PARK, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida (hereinafter "Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, The Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons; and

WHEREAS, Licensee and Town desire to enter into an Agreement whereby the Licensee is permitted to utilize certain Town owned property for parking purposes for the benefit of a restaurant known as Dunkin Donuts operated by the Licensee at 301 Federal Highway, Lake Park, Florida (the Property); and

WHEREAS, the Property is adjacent to property owned by the Town; and

WHEREAS, the Licensee has used and wants to continue to use the Property to provide for parking for its customers; and

WHEREAS, the Town and Licensee have agreed to the terms and conditions of a License Agreement which would enable the Licensee to continue to use the Property for parking.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The Commission hereby authorizes and directs the Mayor to execute the License Agreement for parking purposes between the Town of Lake Park and SEH Lake Park, LLC. The License Agreement is attached hereto and incorporated herein as Exhibit A.

Section 3. This Resolution shall be effective upon adoption.

The foregoing Resolution was offered by Vice - Mayor Glas-Castro who moved its adoption. The motion was seconded by Commissioner Flaherty and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	—
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	—
COMMISSIONER ERIN FLAHERTY	<u>/</u>	—
COMMISSIONER JOHN LINDEN	—	<u>/</u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	—

The Town Commission thereupon declared the foregoing Resolution No. 53-08-20 duly passed and adopted this 5 day of August, 2020.

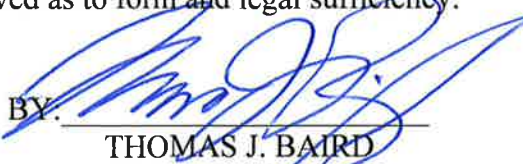
TOWN OF LAKE PARK, FLORIDA

BY: 
MICHAEL O'ROURKE
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY



LICENSE AGREEMENT

THIS LICENSE AGREEMENT (Agreement) is hereby entered into this 5 day of August, 2020, by the **Town of Lake Park**, Florida ("Town"), a municipal corporation organized and existing in accordance with the laws of the State of Florida, located at 535 Park Avenue, Lake Park, Florida 33403 and **SEH Lake Park, LLC**, a Florida Limited Liability Company, located at 848 1st Avenue North, Naples, Florida 34102 ("Licensee").

WHEREAS, Licensee and Town desire to enter into an Agreement whereby the Licensee is permitted to utilize certain Town owned property for parking purposes for the benefit of a restaurant known as Dunkin Donuts that Licensee operates on property at 301 Federal Highway, Lake Park, Florida which is adjacent to the Town property, to provide for parking for its customers and citizens of the Town; and

WHEREAS, the Town and Licensee have agreed to the terms and conditions of this License Agreement; and

WHEREAS for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Town agrees to permit the Licensee to use and occupy for parking purposes the Town property (the "Property") which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof subject to certain terms and conditions.

1. **TERM OF LICENSE AND COMPENSATION:** This Agreement shall commence on the 1st day of September 2020, ("Effective Date") following approval by the Town Commission, and shall continue through August 31, 2030. During the term, Licensee shall pay the Town annually in advance on the first day of each month beginning on the Effective Date an annual rent of \$10,247.85.

2. **EXTENT OF AGREEMENT:** This Agreement provides for the sole purpose of authorizing the Licensee's use of 9 parking spaces on the Property for the parking of vehicles by customers in connection with Licensee's use and operation of the Dunkin' Donuts restaurant which is owned and operated by a franchisee of Dunkin' Donuts Franchising LLC, an affiliate of the Licensee. This Agreement is for the Licensee and such franchisees use only and is not transferable without the written consent of the Town as set forth in Paragraph 6.

3. **USE OF THE PROPERTY:** Licensee shall maintain the Property and the

access from the existing parking lot for Dunkin' Donuts which is located at 301 Federal Highway. Licensee agrees that in the event that the Town determines it is necessary to maintain, repair, remove or replace any asphalt located within the Property, and the work requires temporary and restrictive use of the Property and/or the removal and replacement of asphalt in or upon the Property, the removal and replacement may be done by the Town and/or its agents at the sole cost and expense of the Licensee. If Licensee fails to reimburse the Town for all costs associated with the improvement of the Property and the parking areas as described above, within 30 days from the date of receipt of an invoice from the Town, the Town may terminate this Agreement following the notice requirements hereunder. If Licensee's use of the Property is interrupted or discontinued by the Town, the monthly payments to be made shall be adjusted to reflect the number of days the Property was not available for use.

4. **INDEMNITY:** Licensee shall investigate all claims of every nature arising out of its use of the Property at its own expense and, shall indemnify, protect, defend, save and hold harmless the Town, its elected and appointed officers, and its agents or employees, from any and all damages, claims, demands, lawsuits, causes of actions of liability, cost and expense, including reasonable attorneys' fees, arising out of the Licensee's use of the Property at both the trial and all appellate levels, and in mediation, arbitration, or in any other administrative proceeding. Notwithstanding the foregoing, Licensee shall not be responsible to indemnify, protect, defend or save harmless the Town if any such damages, claims, demands, lawsuits, causes of actions of liability, cost and expense, including reasonable attorneys' fees are the result of the negligence or willful misconduct of the Town, its elected or appointed officers, or its agents or employees.

5. **HOLD HARMLESS:** Licensee shall indemnify and hold harmless the Town, its elected and appointed officials, and its consultants, agents, independent contractors, and employees, from and against, all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and costs of attorneys and other professionals, courts, and mediation) arising out of or resulting from the performance of construction, operation, use, maintenance or repair by the Licensee where any such claim, damage, loss or expense (a) is attributable to bodily

injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful or negligent act or omission of Licensee, or its subcontractors, or any person, agent, or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable. In the event the Town is sued, the Town reserves the right to select its own counsel to conduct any defense in any court proceedings and all reasonable costs and fees associated therewith shall be the responsibility of Licensee.

In any and all claims against the Town, its elected or appointed officials or any of its consultants, agents, independent contractors, or employees, by any employee of Licensee, or any subcontractor, any person or organization directly or indirectly employed by any of them, to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Licensee or any such subcontractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute Section 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that this Agreement hereby includes the foregoing indemnification and the "Specific Consideration" therefore.

6. **ASSIGNMENT AND SUBLETTING:** This Agreement shall not be assigned or sublicensed in whole or in part except with the prior written consent of the Town; provided, however, the Town acknowledges and agrees that the Licensee is permitted to allow the Dunkin' Donuts franchisee who is operating the Dunkin' Donuts restaurant located on the adjacent property to sublicense and use, for itself and its customers, the Property.

7. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Licensee shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the Property.

8. **BREACH/NOTICE TO CURE:** Should Licensee or Town breach any of the

covenants, terms or conditions of this Agreement, the non-breaching party shall give written notice to the other to remedy such breach within 10 days of receipt of such notice. In the event that either party fails to remedy the breach to the satisfaction of the other party within 10 days of the receipt of the written notice, the other party may terminate this Agreement immediately, provided, however, that if the breaching party commences such cure within such ten 10 day period and is diligently pursuing the cure to completion, the non-breaching party shall not be entitled to terminate this Agreement

9. **INSURANCE REQUIREMENTS:** During the term of this Agreement, Licensee shall procure and maintain such commercial general liability policies covering the Property in amounts not less than one million dollars (\$1,000,000.00) general aggregate, personal injury, death and property damage on the lands covered by this Agreement. The Town shall be named as an "additional named insured" on this general liability policy.

All policies of insurance shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least 30 calendar days written notice has been given to the Town by certified mail. The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+. All required insurance shall preclude any underwriter's rights of recovery or subrogation against the Town with the express intention of the parties being that the required coverages protect both parties as the primary insurance for any and all losses covered by the above described insurance.

The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as they appear in any policy of insurance in which the Town is named as an additional insured shall not apply to the Town. Licensee shall not commence use of the Property until it has obtained all of the minimum insurance required herein. Violation of the terms of this Paragraph and its sub-parts shall constitute a material breach of the Agreement and the Town, at its sole discretion, may cancel the Agreement if the Licensee fails to provide the Town with evidence that such insurance is in place within 10 days or written notice to Licensee from the Town, and all rights, title and interest of Licensee shall thereupon cease and terminate.

10. **TAXES:** To the extent and in the event ad valorem or other taxes are levied against the Property, the Licensee shall be responsible for the payment or reimbursement of the Town for each and every year said taxes maybe be levied during the term. Failure to pay such taxes after applicable notice and cure periods have expired shall be a default of the license which shall entitle the Town to immediate possession of the Property and termination of the Agreement.

11. **TERMINATION:** This Agreement may be terminated for any breach of the terms of this Agreement in accordance with paragraph 8. Upon termination of this Agreement and written notice by the Town the Licensee shall, contract for the removal of any asphalt placed upon the Property, and the Licensee shall be responsible for requiring that the work shall be accomplished within a commercially reasonable time frame, failing which, the Town may cause the work to be completed and charge the Licensee the full amount of all fees and costs associated therewith, including loss of use expenses and costs and reasonable attorney's fees and other costs.

12. **NOTICE:** All notices given under this Agreement shall be in writing and shall be served by certified mail, including, but not limited to, notice of any violations served to the last address of the party to whom the notice is to be given as designated by such party in writing. Licensee and Town hereby designate their addresses as follows:

TOWN

Town of Lake Park
Attn: Town Manager
535 Park Avenue
Lake Park, Florida 33403

LICENSEE

SEH Lake Park, LLC
848 1st Avenue North
Naples, FL 34102

13. **PARTIAL INVALIDITY-SEVERABILITY:** If any term, covenant, condition or provision of this Agreement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

14. **NO WAIVER OF BREACH:** The failure of Town to insist on any one or more instances or upon the strict performance of any of the covenants, terms and conditions of this Agreement, shall not be construed as a waiver of such covenants, terms and conditions, and the same shall continue in full force and effect. No waiver of the Town of any of the provisions hereof shall in any event be deemed to have been made unless the

waiver is set forth in writing and signed by an authorized agent of the Town.

15. **COMPLIANCE WITH LAWS:** Licensee shall comply with all applicable permits, regulations, ordinances, rules and laws of the State of Florida, the United States, the Town, or any political subdivision or agency which has legitimate jurisdiction authority regarding the Property.

16. **GOVERNING LAW:** This Agreement shall be governed by and interpreted according to the laws of the State of Florida; venue for the enforcement of this Agreement shall be Palm Beach County, Florida.

17. **DUPLICATE ORIGINALS:** This Agreement is executed in duplicate originals, each of which shall be considered an original for all purposes.

18. **ENTIRE UNDERSTANDING:** This Agreement sets forth the entire understanding between the parties and shall only be amended with the prior written consent of both parties.

19. **ATTORNEY'S FEES** In the event that legal action is taken to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, including attorney's fees at trial and all appellate levels, and other costs and disbursements associated with the enforcement of the Agreement, in addition to any other relief to which the prevailing party is entitled.

20. **RENEWAL OPTIONS** Licensee shall have two 10 year renewal option periods provided that Licensee is not in default under this License Agreement and provides the Town with 180 days written notice of its intention to exercise the option(s). Rent for each option period shall increase by the greater of 10% or the increase in the CPI for the period. "CPI" shall mean the Consumer Price Index for all Urban Consumers, All Items, U.S.A. Area, 1982-1984 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor (U.S. City Average). If such index is discontinued, CPI shall then mean the most nearly comparable index published by the Bureau of Labor Statistics or other office agency of the United States Government as determined by Town. However, in no case shall the rent for the option period increase more than 20%.

[Signatures appended on the following 2 pages]

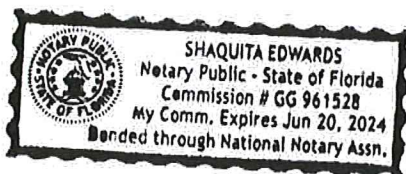
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

<p>X <u>Vivian Mendez</u> Witness Printed Name: <u>Vivian Mendez</u></p> <p>X <u>Janet Miller</u> Witness Printed Name: <u>Janet Miller</u></p> <p>APPROVED AS TO FORM AND LEGAL SUFFICIENCY</p> <p>By: <u>[Signature]</u> Thomas J. Baird, Town Attorney</p>	<p>Town of Lake Park, a Florida Municipal Corporation</p> <p>By: <u>[Signature]</u> Michael O'Rourke, Mayor</p>
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State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this 8/6/20 day of [Month, Year], by Michael O'Rourke, Mayor of the Town of Lake Park, a Florida municipal corporation, on behalf of the Town [] who is/are personally known to me or [] who have produced _____ as identification.

[Signature]
Notary Public
Commission Expiration Date:



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

X Witness Printed Name: <u>Joseph R. Locker</u>	SEH Lake Park, LLC , a Florida Limited Liability Company
X Witness Printed Name: <u>Rebbie Weber</u>	By: <u>[Signature]</u> <u>[Signature]</u> , Manager

State of Florida

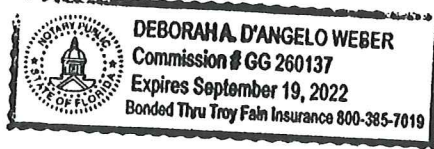
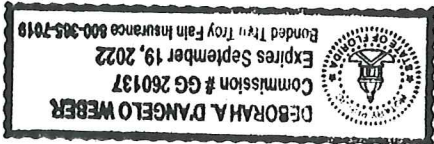
County of Collier

The foregoing instrument was acknowledged before me by means of physical presence or [] online notarization this 10th day of 08th month, Year 2021 by Kousan Asker, 8/10/2021 Manager of **SEH Lake Park, LLC**, a Florida Limited Liability Company on behalf of the company who is/are personally known to me or [] who have produced _____ as identification.

Deborah A. D'Angelo Weber

Notary Public

Commission Expiration Date:



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EXHIBIT A
SHEET 1 OF 2

PROPOSED LICENSE AGREEMENT PARCEL:

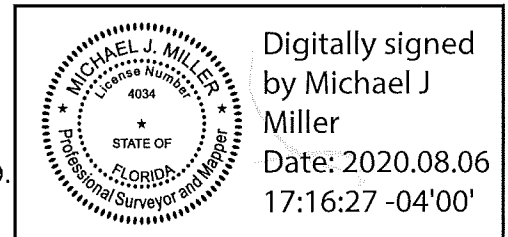
The South 25 feet of Lot 6, Block 115, less the West 20 feet thereof, together with the South 25 feet of the West 70 feet of Lot 17, Block 115, KELSEY CITY (NOW LAKE PARK), according to Plat thereof recorded in Plat Book 8, Pages 15 and 23, of the Public Records of Palm Beach County, Florida.

Containing 3,750 square feet.

CERTIFICATE:

THIS IS TO CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.07, FLORIDA STATUTES.

REGISTERED LAND SURVEYOR, FLORIDA CERTIFICATE NO.
MICHAEL J. MILLER #4034



SCALE:	1" = 20'
DRAWN BY:	PICARD
FIELD WK:	M.M. / B.M.
DATE:	08/06/2020

MILLER LAND SURVEYING
1121 LAKE AVENUE
LAKE WORTH, FLORIDA 33460
PHONE: (561) 586-2669 - FAX: (561) 582-0151
www.millersurveying.com
e-mail: office@millersurveying.com

REF:	V30/73
PREV. JOB NO'S.	Y150323
JOB NO.	Y200703
S - 48,940	

