

RESOLUTION NO. 2000- 54

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A LICENSE AGREEMENT AUTHORIZING USE OF A CERTAIN PUBLIC RIGHT-OF-WAY OF OLD DIXIE HIGHWAY.

WHEREAS, Fred A. Brinkoff and Marianne B. Brinkoff have requested a license authorizing use of a certain public right-of-way for a sign that has existed approximately fifteen years located in front of 1333 Old Dixie Highway; and

WHEREAS, the County has determined the licensed area is not presently necessary for exclusive County or public purposes and has agreed to grant the Brinkoffs temporary use of said right-of-way as set forth in License Agreement attached hereto as Exhibit "A", incorporated by reference and made a part hereof.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The Board hereby approves the terms of the License Agreement and authorizes the County Administrator to execute said Agreement.

Section 2. The Clerk is instructed to record the original License Agreement in the Official Records of St. Johns County, Florida, and mail executed copies of this Resolution and the Agreement to Mr. and Mrs. Brinkoff..

PASSED AND ADOPTED, this 18th day of April, 2000.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA.**

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Yvonne King
Deputy Clerk

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and executed this _____ day of _____, 2000, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095, hereinafter referred to as the County, and Fred A. Brinkhoff, Jr. and Marianne B. Brinkhoff, hereinafter referred to as the Licensee.

WHEREAS, the Licensee has requested this License authorizing use of a certain public right of way of Old Dixie Highway for sign existing approximately fifteen years, and

WHEREAS, a portion of Old Dixie Highway being a 100 foot right of way is located in front of 1333 Old Dixie Highway, and

WHEREAS, County has determined the licensed area is not presently necessary for exclusive county or public purposes, and

WHEREAS, in consideration of the respective agreements of the parties herein contained, the County, does hereby license, without warranty, to the Licensee, the temporary use of the right of way for sign location, more fully shown on attached Exhibit "A", by reference incorporated and made a party hereof, hereinafter the "Premises".

1. To use above described Premises for a term of ten (10) years, commencing on the first day of February, 2000, the Licensee paying therefore a rental of \$10.00 per year, payable annually, commencing February 1, 2000.
2. Although the Licensee may enter and use the subject Premises for an existing sign, the Licensee shall not be in possession of the Premises. The County shall possess and otherwise control all aspects of use of the Premises. The license shall be non exclusive and Licensee will allow the continuance of any use or access by the general public and the County which have become customary on the Premises. Moreover, Licensee agrees to allow the County to grant any easement it deems appropriate during the period of this license that burdens the same Premises, so long as such easement does not substantially prevent Licensee's intended use of the Premises for more than thirty (30) continuous days.
3. Licensee agrees to release the County from all liability and hold the County harmless for any and all zoning, building, use or other

Marianne B.

governmental restrictions which may frustrate the intention of this license.

4. Licensee shall have the right to assign this license, without written consent of the County, provided any assignment shall fully bind Assignee as a successor Licensee... *See Section B*
5. Licensee shall restore the Premises to its original condition upon destruction or termination or expiration of this license, or any renewals, thereof.
6. The Licensee shall make no improvement to the subject Premises, except routine maintenance and sign copy charges as may be required. The Licensee shall make no improvements to, or maintain the property, or rely on the use of this Premises in any way which would make this License irrevocable.
7. The Licensee shall not be permitted to make or suffer any waste or unlawful, improper or offensive use of Premises.
8. The County and its agents, servants and employees shall have an hereby reserve their right and privilege, all reasonable times during the term of this license, to enter said Premises, to examine and inspect the same. The Licensee shall not cause or permit any use of the licenses Premises for other than those uses specifically provided for in this license.
9. The Licensee, in consideration for the use of the Premises and the rate of payment herein provided for, does hereby release and discharge and further will indemnify and save harmless the County from any and all claims for personal injuries or property damages during the existence of this license, arising in any manner by virtue of the use or occupancy of such premises by the Licensee, that the Licensee does hereby further agree to indemnify and save harmless the County from liability for damage, injury or death to any person or persons arising out of the use of said property, or from the lack of keeping same in good repair and order, or from the negligent operation of same, or for any other cause for any nature whatsoever, provided such damage, injury or death is not due to County's own negligence.
10. The Licensee's sign shall conform to and comply with all laws, orders and regulations of the federal, state, county and municipal governments and all of their departments and bureaus. Licensee shall pay all public utility service bills as the same shall be incurred

and become due in connection with the sign during the term of this license, except as above stated.

11. If the Licensee shall fail to pay to County the license rental or any part thereof herein specified, and the same shall remain unpaid for sixty (60) days, or if Licensee shall fail to comply with or abide by any of the other provisions or stipulations in this license on its part, and such default continues for sixty (60) days, the County may, at its option, exercise any one or more of the following remedies:
 - a. County may declare immediately due and payable the whole rent remaining unpaid for the entire term covered by this license, and the same shall thereupon become immediately due and payable, anything herein to the contrary notwithstanding.
 - b. County may terminate this license and terminate the Licensee's use of said Premises.
12. The waiver of County of any such breach hereof on the part of the Licensee, or the indulgence by County as to the payment or time of payment of any installment of rent, or any time or from time to time shall not be deemed, held or construed as a waiver of any subsequent breach, or imply any further indulgence.
- ~~13. In the event either party shall be required to resort to legal action to enforce or interpret this agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other relief granted.~~
14. Notwithstanding any other provision of this license, the licensee hereby releases any rights it has in regards to the coupling of this license with an interest, thus hereby allowing the County to revoke this license on sixty (60) days written notice to the Licensee, for any reason whatsoever, without further liability between the parties except as expressly and specifically provided for in this license. Upon such revocation the County shall repay to the Licensee all unused prorated portions of that year's license fee previously paid by its Licensee. The reasons for such cancellation may include, but are not limited to, increased public demand for use of the subject parking and/or disaster relief use of the space. Upon such revocation, Licensee shall remove said sign and support structures within said sixty day period, and

15. Licensee reserves the right to terminate this license by giving the County a sixty (60) day notice in writing.
16. The execution of this License Agreement shall not constitute a waiver by either party hereto of any right or claim of right to the subject lands or to use the subject lands.

MADE AND EXECUTED in duplicate the day and year first above written.

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

Witness
As to Board of County Commissioners

BY: _____

ATTEST: CHERYL STRICKLAND, CLERK

BY: _____
Deputy Clerk

Sarah Roberts

Witness
As to Fred A. Brinkhoff, Jr.

Samitha Spelman

Witness
As to Fred A. Brinkhoff, Jr.

John D. Bailey

Witness
As to Marianne B. Brinkhoff

Samitha Spelman

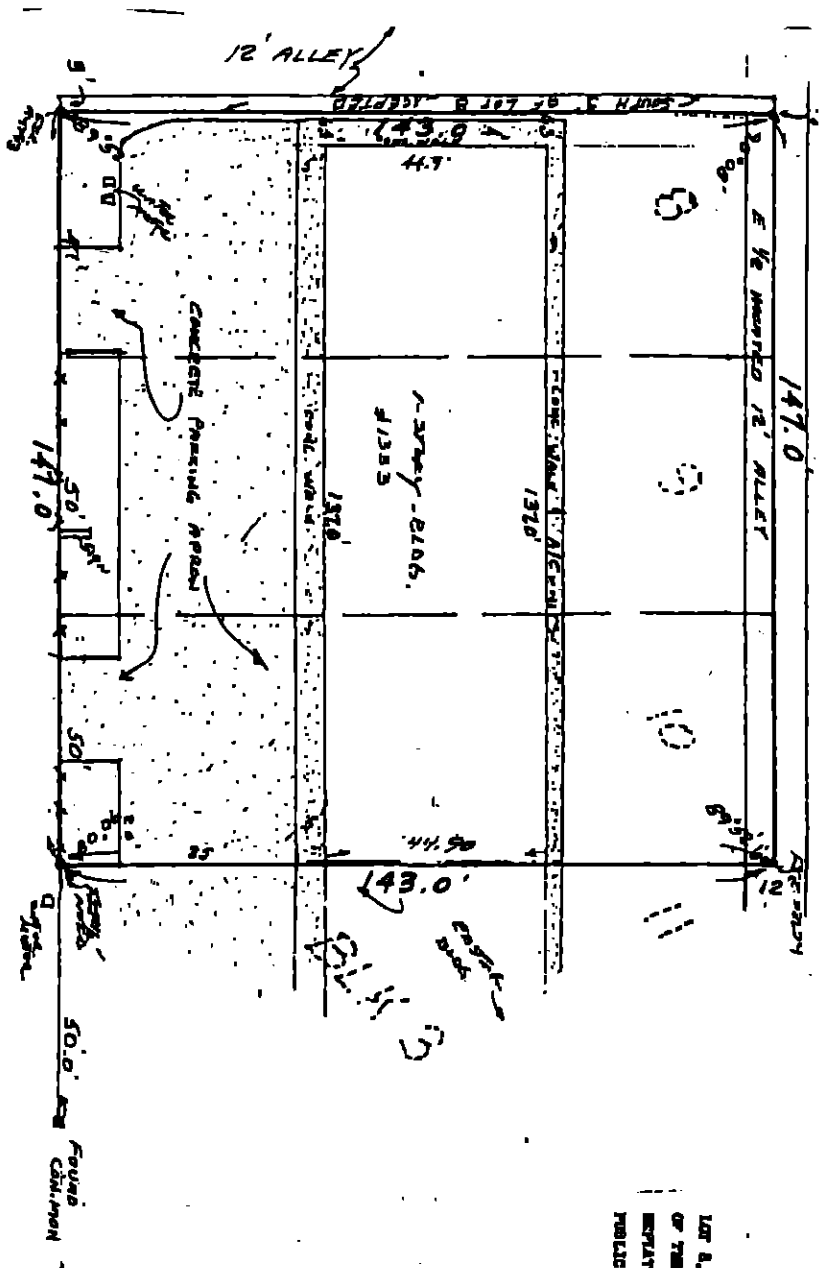
Witness
As to Marianne B. Brinkhoff

Fred A. Brinkhoff, Jr.
Fred A. Brinkhoff, Jr.

Marianne B. Brinkhoff
Marianne B. Brinkhoff

MAP SHOWING SURVEY OF

LOT 8, EXCEPT THE NORTH 3 FEET THEREOF, ALL OF LOTS 9 & 10, AND THE EAST 1/2 OF THE WANTED ALLEY LATER WEST OF SAID LOTS 6, 9, & 10, ALL IN BLOCK 3, REPART OF HORTONVILLE SUBDIVISION AS RECORDED IN DEED BOOK 52, PAGE 167, PUBLIC RECORDS OF ST. JAMES COUNTY, FLORIDA.



CONVERTED TO: FRED BRUNNHOFF

- LEGEND:**
- 0 F.I.P. - FOUND IRON PIPE/PIVOT
 - 1 F.I.P. - FOUND IRON PIPE
 - 2 F.I.P. - FOUND IRON PIPE (L.A. 5072) 5/4"
 - 3 F.I.P. - FOUND CONCRETE MONUMENT
 - 4 F.I.P. - FOUND CONCRETE MONUMENT
 - 5 F.I.P. - FOUND CONCRETE MONUMENT
 - 6 F.I.P. - FOUND CONCRETE MONUMENT
 - 7 F.I.P. - FOUND CONCRETE MONUMENT
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 - 9 F.I.P. - FOUND CONCRETE MONUMENT
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 - 94 F.I.P. - FOUND CONCRETE MONUMENT
 - 95 F.I.P. - FOUND CONCRETE MONUMENT
 - 96 F.I.P. - FOUND CONCRETE MONUMENT
 - 97 F.I.P. - FOUND CONCRETE MONUMENT
 - 98 F.I.P. - FOUND CONCRETE MONUMENT
 - 99 F.I.P. - FOUND CONCRETE MONUMENT
 - 100 F.I.P. - FOUND CONCRETE MONUMENT

TYPE: PLAT

DATE: 10-18-71

JOB NO: 96-1033

SCALE: 1" = 50'

DEVIÑO & Associates, Inc.
 ENGINEERS & SURVEYORS
 3505 U.S. 1 SOUTH, SUITE 43
 ST. AUGUSTINE, FLORIDA 32086
 904-787-1867 FAX 904-787-2048

CERTIFICATIONS: I HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF FLORIDA. My Commission Expires 12/31/77. My Commission No. 412027. Florida Statutes Section 403.08.

NICHOLAS H. FRANKLIN
 Professional Land Surveyor U.S. #4920
 FOR DEVIÑO AND ASSOCIATES L.B. #0172

Version 12

UPCHURCH, BAILEY AND UPCHURCH, P. A.

ATTORNEYS AT LAW
ESTABLISHED 1925

760 NORTH PONCE DE LEON BOULEVARD
SAINT AUGUSTINE

PLEASE REPLY TO
POST OFFICE DRAWER 3007
SAINT AUGUSTINE, FLORIDA 32085-3007

TELEPHONE (904) 829-9066
FAX (904) 825-4862

HAMILTON D. UPCHURCH
FRANK D. UPCHURCH, JR.
OF COUNSEL

FRANK D. UPCHURCH
(1894-1986)

JOHN D. BAILEY, JR.
FRANK D. UPCHURCH, III
TRACY WILSON UPCHURCH
SIDNEY F. ANSBACHER
KATHERINE GAERTNER JONES
MICHAEL A. SIRAGUSA
STEPHEN A. FAUSTINI

April 11, 2000

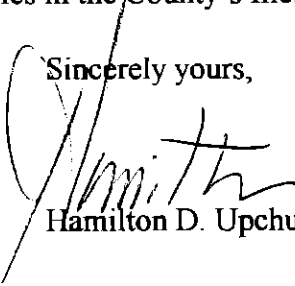
Daniel G. Bosanko, Esquire
Assistant County Attorney
St. Johns County Administration Building
Post Office Drawer 349
St. Augustine, Florida 32085-0349

Re: Pole Sign at 1333 Old Dixie Highway (Lots 8, 9, and 10)
Our File No. 7-99-364

Dear Dan:

Enclosed is my letter to the County Commission in support of the license agreement between the County and Mr. and Mrs. Brinkhoff which you and I discussed on the telephone last week.

With reference to your question about paragraph 3 of page 1, I find the following was deleted in the final draft "other governmental restrictions which may frustrate the intention of this license". This is on your or the real estate department's computer. Please redo and substitute on the two signed copies in the County's file.

Sincerely yours,

Hamilton D. Upchurch

HDU/nam
Enclosure

Version A

UPCHURCH, BAILEY AND UPCHURCH, P. A.

ATTORNEYS AT LAW
ESTABLISHED 1925

780 NORTH PONCE DE LEON BOULEVARD
SAINT AUGUSTINE

PLEASE REPLY TO
POST OFFICE DRAWER 3007
SAINT AUGUSTINE, FLORIDA 32085-3007

TELEPHONE (904) 829-9066
FAX (904) 825-4862

HAMILTON D. UPCHURCH
FRANK D. UPCHURCH, JR.
OF COUNSEL

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(1894-1986)

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FRANK D. UPCHURCH, III
TRACY WILSON UPCHURCH
SIDNEY F. ANSBACHER
KATHERINE GAERTNER JONES
MICHAEL A. SIRAGUSA
STEPHEN A. FAUSTINI

April 11, 2000

BY HAND DELIVERY

Board of County Commissioners
St. Johns County
St. Johns County Administration Building
St. Augustine, Florida 32095

Re: Pole Sign at 1333 Old Dixie Highway (Lots 8, 9, and 10)
Our File No. 7-99-364

Dear Lady and Gentlemen:

I have been requested by your legal department to set forth in this letter the position of Mr. and Mrs. Brinkhoff with reference to the license agreement that is before you for approval. This agreement was prepared by your staff and legal department with input from me. It has now been agreed to and signed by Mr. and Mrs. Brinkhoff.

During 1999, Mr. and Mrs. Brinkhoff were cited by the Code Enforcement Board for a set back violation and they retained me as counsel. I made an effort to collect the facts of the controversy and researched what I deemed to be appropriate law. From my understanding of the facts, I believe the following to be accurate:

1. Mr. Brinkhoff inherited the subject property approximately fifteen years ago. Before this time his father had operated a gasoline and auto repair business for many years on one of the three subject lots.
2. Approximately fourteen years ago Mr. Brinkhoff raised the old building on Lot 8 and constructed a ten unit commercial strip center on the subject property (Lots 8, 9 and 10).
3. The various businesses in the strip center are identified by one sign in front of the property on Old Dixie Highway which serves to identify each tenant's business.

4. The original sign deteriorated after fourteen years in place, thus requiring replacement in 1999.
5. Mr. Brinkhoff retained a commercial sign contractor i.e. Glenn A. Maurer, Sr., d/b/a Signs That Say Hello, license number ST3875, who applied on January 26, 1999 (application number 190779) to the appropriate county officer for building permit to construct and install a replacement sign.
6. Plans and specifications for the new sign showing its location were approved and construction permitted by the County.
7. During construction a county inspector was on site and measured the hole that had been dug for placement of the poles and concrete and same was likewise approved.
8. Construction of the sign was concluded in 1999.
9. There are some fourteen business location signs or other development in this immediate area of Old Dixie Highway that purport to encroach over the right of way line.

It was our plan to contest the code enforcement citation on the following several grounds:

- a. In view of the foregoing facts as applied to Florida law, it was our opinion that St. Johns County would be estopped to deny applicant's sign location and should permit the subject sign to remain as and where constructed. Florida law holds that the doctrine of estoppel may be effectively applied against the State under exceptional circumstances upon showing the following elements:
 - i) A representation as to a material fact that is contrary to a later asserted position.
 - ii) The County approved the application and inspected the site.
 - iii) Applicant, Brinkhoff, and his duly licensed contractor relied on the County's representation i.e. sign permitted and site inspected.

Board of County Commissioners

April 11, 2000

Page Three

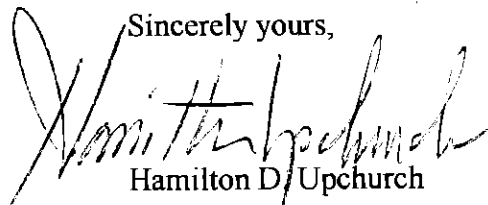
- iv) A change in position detrimental to the applicant was caused by the representation of the County and reliance thereon by the applicant. Applicant relied on his issued permit and subsequent site inspection and proceeded to have the sign constructed as located on the application at substantial expense.

In addition, it was our intention to raise another defense being that the center line of the then existing Old Dixie Highway could not now be determined. Although, I did not personally make the inquiry, I understand that maps and surveys to establish this centerline are no longer available through the Department of Transportation.

When it appeared to the County attorney's office and the County's real estate department that this right of way issue not only involved the Brinkhoffs but would involve a number of other property owners and should the County insist on their right of way and required set backs in this area it would result in substantial litigation and the resulting expense thereof. In order to avoid court action the parties negotiated the license agreement before you at this time. This document has been mutually agreed between by your counsel and real estate department, as well as the undersigned as counsel for Mr. and Mrs. Brinkhoff.

In my judgment this is a unique situation and will not establish a precedent should other set back encroachment issues be raised in other parts of the county. Your favorable action on the proposed license agreement is respectfully requested.

Sincerely yours,



Hamilton D. Upchurch

HDU/nam

xc: Mr. and Mrs. Fred Brinkhoff, Jr.

Version B

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and executed this _____ day of _____, 2000, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095, hereinafter referred to as the "County", and Fred A. Brinkhoff, Jr. and Marianne B. Brinkhoff, hereinafter referred to as the "Licensee".

WHEREAS, the Licensee has requested this License authorizing use of a certain public right of way of Old Dixie Highway for sign existing approximately fifteen years, and

WHEREAS, a portion of Old Dixie Highway being a 100 foot right of way is located in front of 1333 Old Dixie Highway, and

WHEREAS, in consideration of the respective agreements of the parties herein contained, the County, does hereby license, without warranty, to the Licensee, the temporary use of the right of way for sign location, more fully shown on attached Exhibit A, by reference incorporated and made a party hereof, hereinafter the "Premises".

1. To use above described Premises for term of ten (10) years, commencing on the first day of February, 2000, the Licensee paying therefore a rental of \$10.00 per year, payable annually, commencing February 1, 2000.
2. Although the Licensee may enter and use the subject Premises for an existing sign, the Licensee shall not be in possession of the Premises. The County shall possess and otherwise control all aspects of use of the Premises. The license shall be non-exclusive and Licensee will allow the continuance of any use or access by the general public and the County which have become customary on the Premises. Moreover, Licensee agrees to allow the County to grant any easement it deems appropriate during the period of this license that burdens the same Premises, so long as such easement does not substantially prevent Licensee's intended use of the Premises for more than thirty (30) continuous days.
3. Licensee shall have the right to assign this license, with written consent of the County (which consent shall not be unreasonably denied), provided any assignment shall fully bind Assignee as a successor Licensee.
4. Licensee shall restore the Premises to its original condition upon destruction or termination or expiration of this license, or any renewals, thereof.

5. The Licensee shall make no improvement to the subject Premises, except routine maintenance and sign copy charges as may be required. The Licensee shall make no improvements to, or maintain the property, or rely on the use of this Premises in any way which would make this License irrevocable.
6. The Licensee shall not be permitted to make or suffer any waste or unlawful, improper or offensive use of Premises.
7. The County and its agents, servants, and employees shall have and hereby reserve their right and privilege, all reasonable times during the term of this license, to enter said Premises, to examine and inspect the same. The Licensee shall not cause or permit any use of the Premises for other than those uses specifically provided for in this license.
8. The Licensee, in consideration for the use of the Premises and the rate of payment herein provided for, does hereby release and discharge and further will indemnify and save harmless the County from any and all claims for personal injuries or property damages during the existence of this license, arising in any manner by virtue of the use or occupancy of such premises by the Licensee, that the Licensee does hereby further agree to indemnify and save harmless the County from liability for damage, injury or death to any person or persons arising out of the use of said property, or from the lack of keeping same in good repair and order, or from the negligent operation of same, or for any other cause for any nature whatsoever, provided such damage, injury or death is not due to County's own negligence.
9. The Licensee's sign shall conform to and comply with all laws, orders and regulations of the federal, state, county and municipal governments and all of their departments and bureaus. Licensee shall pay all public utility service bills as the same shall be incurred and become due in connection with the sign during the term of this license, except as above stated.
10. If the Licensee shall fail to pay to County the license rental or any part thereof herein specified, and the same shall remain unpaid for sixty (60) days, or if Licensee shall fail to comply with or abide by any of the other provisions or stipulations in this license on its part, and such default continues for sixty (60) days, the county may, at its option, exercise any one or more of the following remedies:
 - a. County may declare immediately due and payable the whole rent remaining unpaid for the entire term covered by this license, and the same shall thereupon become immediately due and payable, anything herein to the contrary notwithstanding.

- b. County may terminate this license and terminate the Licensee's use of said Premises.
- 11. The waiver of County of any such breach hereof on the part of the Licensee, or the indulgence by County as to the payment or time of payment of any installment of rent, or any time or from time to time shall not be deemed, held, or construed as a waiver of any subsequent breach, or imply any further indulgence.
- 12. Notwithstanding any other provision of this license, the Licensee hereby releases any rights it has in regards to the coupling of this license with an interest, thus hereby allowing the County to revoke this license on sixty (60) days written notice to the Licensee, for any reason whatsoever, without further liability between the parties except as expressly and specifically provided for in this license. Upon such revocation the County shall repay to the Licensee all unused prorated portions of that year's license fee previously paid by its Licensee. The reasons for such cancellation may include, but are not limited to, increased public demand for use of the subject parking and/or disaster relief use of space. Upon such revocation, Licensee shall remove said sign and support structures within said sixty (60) day period, and
- 13. Licensee reserves the right to terminate this license by giving the County a sixty (60) day notice in writing.
- 14. The execution of this license Agreement shall not constitute a waiver by either party hereto of any right or claim of right to the subject lands or to use the subject lands.

MADE AND EXECUTED in duplicate the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

Witness
As to Board of County Commissioners

BY: _____

ATTEST: CHERYL STRICKLAND
COUNTY CLERK

BY: _____
Deputy Clerk

Witness
As to Fred A. Brinkhoff, Jr.

Witness
As to Fred A. Brinkhoff, Jr.

Fred A. Brinkhoff, Jr.

Witness
As to Marianne B. Brinkhoff

Witness
As to Marianne B. Brinkhoff

Marianne B. Brinkhoff