

RETAINER AGREEMENT

THIS RETAINER AGREEMENT is entered into this 25th day of May, 2016, by and between **MARTIN COUNTY, FLORIDA**, a political subdivision of the State of Florida, (the "County") and **WENDY WERB, ESQ.** (the "Special Magistrate").

WITNESSETH:

WHEREAS, the County requires an attorney to serve as a special magistrate to conduct code enforcement hearings; and

WHEREAS, the Special Magistrate continues to be a current member in good standing of The Florida Bar; and

WHEREAS, the County has appointed the Special Magistrate to provide services pursuant to this Agreement, as authorized by Martin County Codes and Florida Statutes.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

I. General Scope of Services

All proceedings and duties of the Special Magistrate are authorized pursuant to Martin County Codes and Florida Statutes; including, but not limited to, Chapter 1, Article 4, General Ordinances, Martin County Code, and Ch. 162, Florida Statutes. The Special Magistrate shall schedule and conduct all hearings in accordance with Martin County Codes and/or Florida Statutes. At the conclusion of the hearings, the Special Magistrate shall issue an order containing finding of fact, based on the evidence of record, and conclusions of law, and shall order proper relief consistent with the powers granted in Martin County Codes and/or Florida Statutes.

The Special Magistrate's services are non-exclusive. The choice of Special Magistrate for any particular month or hearing is at the sole discretion of the County. Nothing herein shall be understood or interpreted by the Special Magistrate as guaranteeing the Special Magistrate a defined number of hours per month or annually, if any.

II. Compensation

The Special Magistrate shall be compensated for work completed at the rate of one hundred dollars (\$100.00) per hour for hearings, legal research services, and preparation of orders.

III. Billing

A statement for legal services rendered shall be provided on a regular basis and at least monthly. The Special Magistrate will structure the billing to identify the hours billed for each

task or issue. The County agrees to pay all invoices within forty-five (45) days, in accordance with the Local Government Prompt Payment Act. Service statements shall be sent to:

Martin County Board of County Commissioners
Building Department – Code Enforcement Division
900 SE Ruhnke Street
Stuart, FL 34994

IV. Indemnification and Hold Harmless Agreement

The Special Magistrate shall indemnify and hold the County harmless from any and all claims, liability, losses and causes of action which may arise out of the actions of negligence, in whole or in part of the Special Magistrate, its agents, employees or assigns, in the fulfillment of this Agreement. The Special Magistrate shall pay all claims and losses of any nature whatever in connection therewith, including all costs and judgments which may issue thereon. The Special Magistrate acknowledges and agrees that the compensation paid pursuant to this Agreement includes consideration for such indemnification. However, the amount the Special Magistrate shall be obligated to pay, if any, for indemnification shall be limited and not exceed the amount Special Magistrate is paid in compensation.

V. Professional Independence of the Special Magistrate

It is understood and agreed that the Special Magistrate is not an employee of the County. The Special Magistrate is, and shall remain, an independent professional with respect to all services performed under this Agreement. No partnership relationship between the County and the Special Magistrate is created or intended by this Agreement.

VI. Assignment

This is an Agreement for unique personal services and the Special Magistrate's obligation hereunder is not assignable. The Special Magistrate shall not assign, transfer, pledge, hypothecate, surrender, or otherwise encumber or dispose of any of its rights under this Agreement, or any interest in any portion of same, without the prior written consent of the County.

VII. Conflicts

In the event a conflict arises between clients of the Special Magistrate and the County, the Special Magistrate shall immediately advise the County of such conflict, resign from such conflicting representation, and assist the conflicting clients in obtaining other counsel.

VIII. Term; Termination

This Agreement shall be for a term of two years, from June 1, 2016 to May 31, 2018, unless terminated earlier by the Board of County Commissioners for misfeasance, malfeasance or nonfeasance in office, upon seven (7) calendar days' prior written notice by certified mail, return receipt requested. If this Agreement is terminated, the Special Magistrate shall be paid for work performed up to the date of termination that does not involve misfeasance, malfeasance or nonfeasance in office. The Special Magistrate shall have the right to terminate this Agreement by giving notice in writing to the County sixty (60) days prior to the intended termination date. This Agreement shall automatically renew under the same terms and conditions for additional terms of two years. All notices shall be given at the following addresses, unless amended in writing:

For County to: Building Department Director
900 SE Ruhnke Street
Stuart, FL 34994

With copy to: County Attorney
2401 SE Monterey Road
Stuart, Florida 34996

For Special
Magistrate to: Wendy Werb, Esq.
2 St. Lucie Court
Stuart, Florida 34996

IX. Audit

The Special Magistrate shall retain all public records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, the County reserves the right to have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon five (5) days prior written notice. Public records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the County and the Special Magistrate.

X. Non-Discrimination

The Special Magistrate shall assure that no person shall, on the grounds of race, color, creed, national origin, handicap, or sex, be excluded from participation in, denied the

benefits of, or otherwise subjected to discrimination in any activity under this Agreement. The Special Magistrate shall take all measures necessary to effectuate these assurances.

XI. Compliance with Laws

The Special Magistrate, its employees, and subcontractors shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.

XII. Amendment

This Agreement may be amended only with the written approval of the parties.

XIII. Waivers

Failures or waivers to enforce any covenant, condition, or provision of this Agreement by the parties, shall not operate as a discharge or, invalidate such covenant, condition, or provision, or impair the enforcement rights of the parties.

XIV. Complete Agreement

This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Special Magistrate recognizes that any representations, statements or negotiations made by the County staff do not suffice to legally bind the County in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized County representative.

XV. Situs; Venue

This Agreement shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit in Martin County for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

XVI. Mediation

In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Martin County. *The fee of the mediator shall be shared equally by the parties.* To the extent allowed by law, the mediation process shall

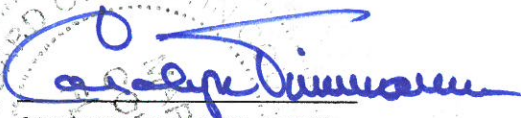
be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue.

XVII. Contract Management

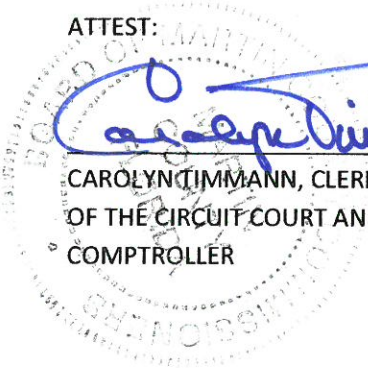
The Special Magistrate shall be responsible for the management and enforcement of the terms of this Agreement on behalf of the Special Magistrate. The Building Department Director or designee shall be responsible for the management and enforcement of the terms of this Agreement on behalf of the County.

IN WITNESS WHEREOF, the parties hereto have executed this document on the date first above written.

ATTEST:



CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER

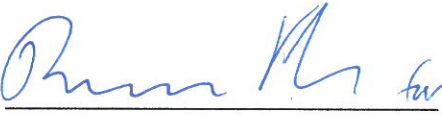


MARTIN COUNTY BOARD OF COUNTY
COMMISSIONERS



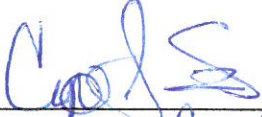
ANNE SCOTT, CHAIR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

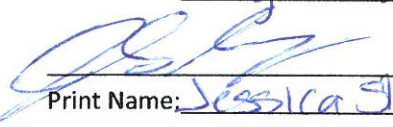


MICHAEL D. DURHAM
COUNTY ATTORNEY

WITNESSES:




Print Name: Cynthia Slogter



Print Name: Jessica Slogter

SPECIAL MAGISTRATE



Print Name: Wendy H Werb