RESOLUTION NO. 21-08-15

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING RESOLUTIONS 20-05-10, 40-11-11, 09-06-12, 41-10-13 AND 03-01-15 EXTENDING A TEMPORARY PERMIT ISSUED TO COMMERCIAL INVESTMENTS, LLC AUTHORIZING EARL STEWART TOYOTA'S TEMPORARY USE OF ITS PROPERTY TO STORE VEHICLES ; PROVIDING FOR THE CONTINUED MAINTENANCE OF A TRAILER ON THE PROPERTY AS A USED VEHICLE SALES OFFICE DURING THE DURATION OF THE PERMIT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Commercial Investments, LLC, d/b/a Earl Stewart Toyota (Applicant) acquired the properties formerly known as the Journey's Inn hotel and the El Colonial restaurant (the Property); and

WHEREAS, in May of 2010, the Applicant requested permission to demolish the hotel and restaurant buildings on the Property; and

WHEREAS, the Applicant also sought permission to use the Property for the temporary storage of the Applicant's used vehicle inventory, and to place a *temporary* sales trailer thereon; and

WHEREAS, the Town Commission has approved a demolition permit authorizing the Applicant to demolish the hotel and restaurant buildings on the Property; and

WHEREAS, pursuant to Resolution 20-05-10, the Town Commission authorized the Applicant to use the Property for the temporary storage of its used vehicle inventory; and

WHEREAS, pursuant to Resolution 40-11-11, the Applicant was authorized to place and maintain a trailer on the Property for its use as a temporary used vehicle sales office; and

WHEREAS, the legal description of the Property is: KELSEY CITY LTS 1 TO 11 INC /LESS W 20 FT RD R/W/ & LTS 12 TO 22 INC BLK 121. PCN 36-43-42-20-01-121-0010 (the subject property); and

WHEREAS, as a condition to the approval of Resolution 20-05-10, the Applicant was required to plant 18 trees around the perimeter of the Property; and

WHEREAS, as a condition to the approval of Resolution 20-05-10, the Applicant was required to fill the Property with crushed asphalt and grade it; and

WHEREAS, the Applicant has met the two conditions imposed on it by Resolution 20-05-10 authorizing the temporary uses on the Property; and

WHEREAS, Resolution 20-05-10 provided that the Property could only be used for the temporary storage of vehicles until April 30, 2012; and

WHEREAS, Resolution 40-11-11 provided that the temporary uses of the Property were authorized only until April 30, 2012; and

WHEREAS, pursuant to Resolution 40-11-11, the continued use of the Property for the temporary uses was conditioned upon the Applicant submitting an application for a site plan detailing the uses on the Property as part of the expansion of Earl Stewart Toyota on or before April 30, 2012; and

WHEREAS, the Applicant did not submit an application for a site plan on or before April 30, 2012 as required by Resolution 40-11-11; and

WHEREAS, the Applicant requested additional time to submit a site plan which would detail the uses on the Property as part of the proposed expansion of Earl Stewart Toyota; and

WHEREAS, the Commission adopted Resolution 09-06-12 authorizing an extension of the temporary uses of the Property until October 1, 2013, provided the Applicant submitted a site plan

which detailed the uses on the Property as part of the proposed expansion of Earl Stewart Toyota; and

WHEREAS, the Applicant did not submit the application for a site plan within the time period set forth in Resolution 09-06-12; and

WHEREAS, the Applicant requested a second extension of the temporary uses of the Property; and

WHEREAS, the Commission adopted Resolution 41-10-13 extending the temporary use of the Property to January 30, 2015, provided the Applicant submitted a complete site plan application by March 31, 2014;

WHEREAS, as a condition of the approval of Resolution 41-10-13, the Applicant was required to submit a $30,000 cashier's check as a liquidated damages provision in the event the site plan application was not timely submitted; and

WHEREAS, the Applicant submitted a complete site plan application package by March 31, 2014 together with the $30,000 cashier's check to the Town; and

WHER3EAS, the Applicant requested a third extension of the time period within which it was required to receive the approval of a site plan; and

WHEREAS, pursuant to Resolution 03-01-15 the Commission approved a third extension of the temporary use of the Property for the uses set forth in the previously adopted Resolutions provided the Applicant obtained site plan approval and removed the temporary sales office trailer by January 31, 2016; and

WHEREAS, the Applicant has requested a fourth extension of the temporary use of the Property until May 31, 2016.

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

Section 1. The whereas clauses are hereby incorporated herein as true and correct.

Section 2. The Town Commission hereby agrees to a fourth extension of the temporary use of the Property as authorized by the previous Resolutions adopted by the Commission. The trailer being used as a temporary used vehicle sales office shall be removed **on or before May 31, 2016**.

Section 3. The continued temporary use of the Property until May 31, 2016 is subject to the following conditions:

A. **The Applicant shall execute the Agreement attached hereto as Exhibit "A", permitting the Town to keep the $30,000 Cashiers' check in the event the Applicant fails to meet any of the conditions pertaining to the temporary use of the Property.**

B. Advertising. The Applicant specifically agrees that Earl Stewart Toyota shall only advertise its vehicle dealership's location as being in the Town of Lake Park. There shall be no advertisements stating or implying that Earl Stewart Toyota is located in North Palm Beach or Northern Palm Beach (County). Any violation of this condition shall be treated as an irreparable and irreversible violation as set forth in § 162.09 (2)(a), Fla. Stat. and subject to the maximum fine set forth therein.

Section 3. This Resolution shall take effect upon adoption.

The foregoing Resolution was offered by Commissioner Rapoza 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 JAMES DUBOIS	✓	
VICE-MAYOR KIMBERLY GLAS-CASTRO	✓	
COMMISSIONER ERIN FLAHERTY	✓	
COMMISSIONER MICHAEL O'ROURKE	✓	
COMMISSIONER KATHLEEN RAPOZA	✓	

The Town Commission thereupon declared the foregoing Resolution NO. 21-08-15 duly passed and adopted this 19 day of August, 2015.

TOWN OF LAKE PARK, FLORIDA

BY: _____
JAMES DUBOIS
MAYOR

ATTEST:

_____
VIVIAN MENDEZ
TOWN CLERK

TOWN OF LAKE PARK SEAL FLORIDA
(TOWN SEAL)

Approved as to form and legal sufficiency:

BY: _____
THOMAS J. BAIRD
TOWN ATTORNEY

EXHIBIT "A"

First Amendment to the Agreement to Authorize the Temporary Use of the Property

This First Amendment to the *Agreement to Extend the Temporary Uses of Property Without Site Plan Approval* is entered into this __day of August 2015 between the Town of Lake Park, Florida (Town), and Commercial Investments LLC, aka Earl Stewart Toyota (Owner) on October 23, 2013 and now being re-entered into this __day of August, 2015.

WITNESSETH

WHEREAS, the Town is a municipal corporation of the state of Florida with such power and authority as conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, by Resolution, the Town and the Owner previously agreed that the Owner may make certain temporary uses of its property legally described as:

KELSEY CITY LTS 1 TO 11 INC /LESS W 20 FT RD R/W/ & LTS 12 TO 22 INC BLK 121
(the Property)

WHEREAS, the temporary use of the Property was subject to the Owner obtaining a Development Order for a Site Plan; and

WHEREAS, the Owner and Town entered into the Agreement to Extend the Temporary Uses of the Property Without Site Plan Approval (the Agreement) on October 23, 2013; and

WHEREAS, pursuant to the Commission's adoption of a Resolution authorizing the temporary use of the Property until May 31, 2016, the parties agree as follows:

1. The persons signing this Agreement have the authority to enter into it and bind the respective parties to the terms contained herein.
2. Pursuant to Resolution 21-08-15, the Owner has been authorized to maintain its used vehicle sales office on the Property until May 31, 2016. Thereafter, the Property shall be developed consistent with the site plan approved by the Commission pursuant to Resolution 14-05-15.
3. If the Applicant fails to timely comply with any of the obligations of Resolution 21-08-15, the Owner hereby agrees that the Town shall be entitled to keep the $30,000 deposited into the Town's PNC bank account, and authorizes PNC Bank to release the funds free of any restrictions to the Town.
4. This Agreement may be enforced by either party, and in such case, the prevailing party shall be entitled to recover its attorney fees and costs.

Town of Lake Park
535 Park Avenue
Lake Park, Florida 33043

_____
James Dubois, Mayor

Commercial Investments LLC
1025 U.S. Highway-1
Lake Park, Florida 33403

_____
Earl D. Stewart, Manager