



CITY OF FORT PIERCE

PLANNING DEPARTMENT

REBECCA GROHALL, AICP, PLANNING MANAGER
COMPREHENSIVE PLANNING ♦ DEVELOPMENT REVIEW
HISTORIC PRESERVATION ♦ URBAN DESIGN ♦ URBAN FORESTRY ♦ ZONING

TO: Robert J. Bradshaw, City Manager

FROM: Kori Benton, Senior Planner

SUBJECT: **Backus Museum Expansion**
Cultural Facility Grant Opportunity

DATE: June 2, 2015

ISSUE(S): Request for a letter of support for the Backus Museum Expansion and Cultural Facility Grant Application

SUMMARY:

- The Backus Museum operates a 5,120 sq. ft. art and cultural facility, within the City's Veteran's Memorial Park, which provides programming, production, presentation, and exhibition of art, primarily of local and significance through a foundation upon renowned artist A.E. "Beanie" Backus.
- The Department of State administers a Cultural Facilities Expansion Program to coordinate and guide the State of Florida's support and funding of renovation, construction, or acquisition of cultural facilities.
- The City of Fort Pierce extended its partnership and support for the Backus Museum in 2010 with the authorization of a lease and expansion agreement for the subject facility.
- The previous expansion plan incorporated a phased development schedule which included the construction of multiple support structures and outdoor display area, however economic factors have hindered the success of the previous expansion plan.
- A revitalized and reorganized plan seeks a modest expansion of the existing structure and the development of support amenities to expand the programs and services offered by the museum.
- Support funding for the expansion plan is available through the Department of State in the form of a Cultural Facility Grant, which the Backus Museum is requesting a letter of support from the City Commission.

FISCAL IMPACT: None

ATTACHMENTS: Draft Letter of Support, Proposed Expansion Plans, Site & Landscape Plan, 2010 Lease Agreement, Previously Proposed Plans

City of Fort Pierce



Office of the Mayor and City Commission

City Hall, 100 North US 1
P.O. Box 1480 Fort Pierce, FL 34954-1480
(772) 467-3025 • www.CityOfFortPierce.com

June 1, 2015

Division of Cultural Affairs
R.A. Gray Bldg
500 South Bronough Street
Tallahassee, FL

RE: Florida Cultural Facilities Grant – A.E. “Beanie” Backus Museum

Dear Florida Council on Art & Culture Grant Panel,

On behalf of the City of Fort Pierce, it is my pleasure to submit this letter of support for the A.E. “Beanie” Backus Museum’s Florida Cultural Facilities grant application. The proposed facility and program expansion will further the development and augmentation of our community’s embrace of art and cultural through the expansion of civic interface, appreciation, and enjoyment of art and local history.

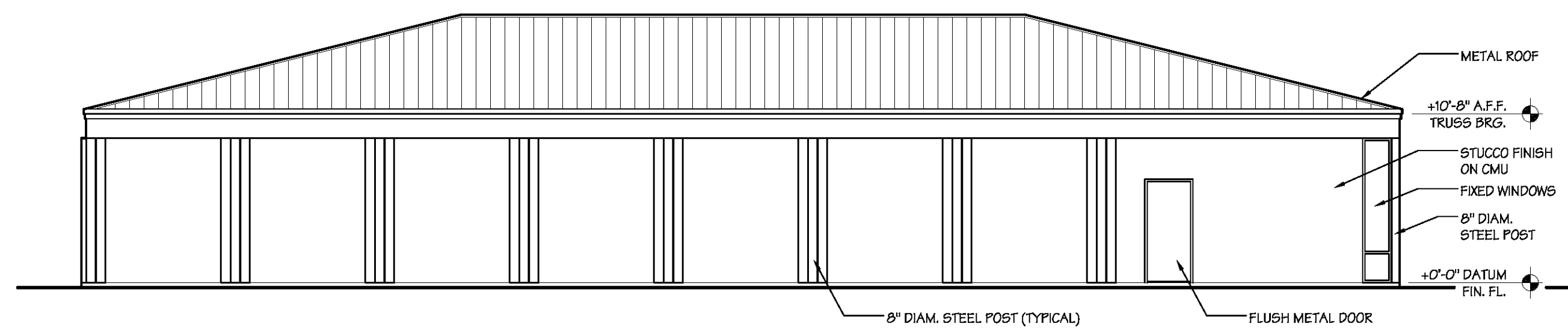
The City of Fort Pierce has rich history and culture which encompass the remarkable aspects of our attractive coastal town, in the heart of Florida. The late A.E. “Beanie” Backus, and the esteemed Backus Museum have embodied these facets through their work and mission. Art and culture are imperative to our community, enhancing the quality of life and appeal to residents and visitors alike. The Backus Museum continues to further the valiant mission of enhancing art education, exhibitions, public outreach, and widespread collaboration with local government, organizations, and schools to ensure promotion and prominence.

This opportunity provides the capacity to expand this marvelous destination, partnerships, and unique environment which promotes art and culture to audiences of all ages and backgrounds to ensure amplification of our community’s embrace of art and culture.

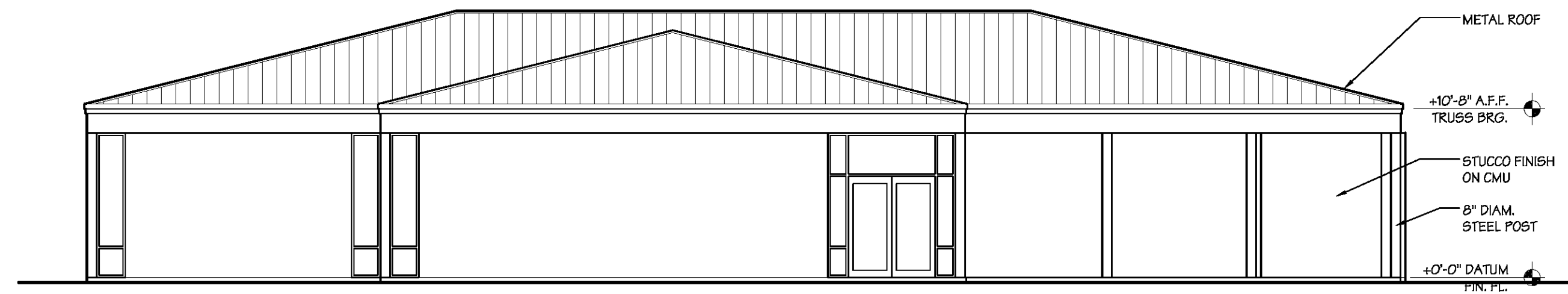
The proposed facility expansion and enhancements will ensure the development of additional programs and activities to support growth of local jobs, tourism, and access to this exceptional experience for residents and visitors. Thank you for the opportunity to present support and encouragement for this request.

Sincerely,

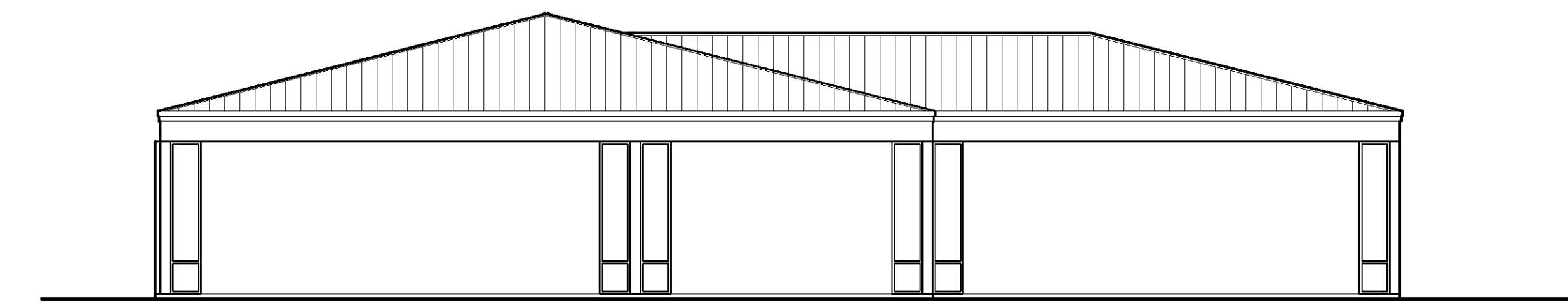
Linda Hudson
Mayor, City of Fort Pierce



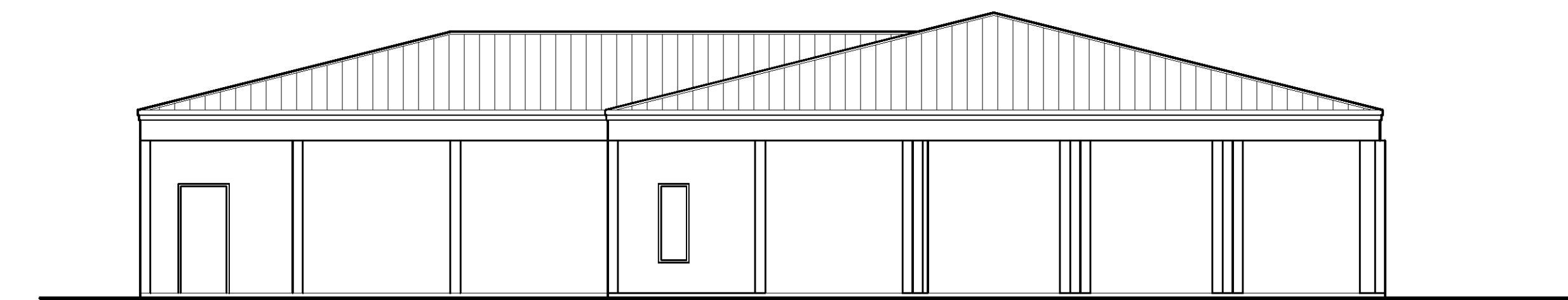
01 EXISTING NORTH ELEVATION
SCALE: 1/8" = 1'-0"



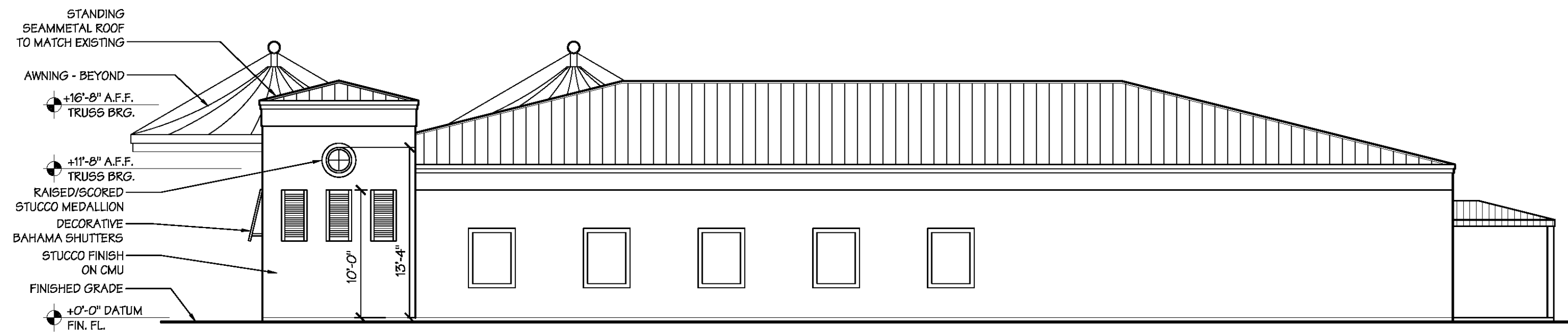
02 EXISTING SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



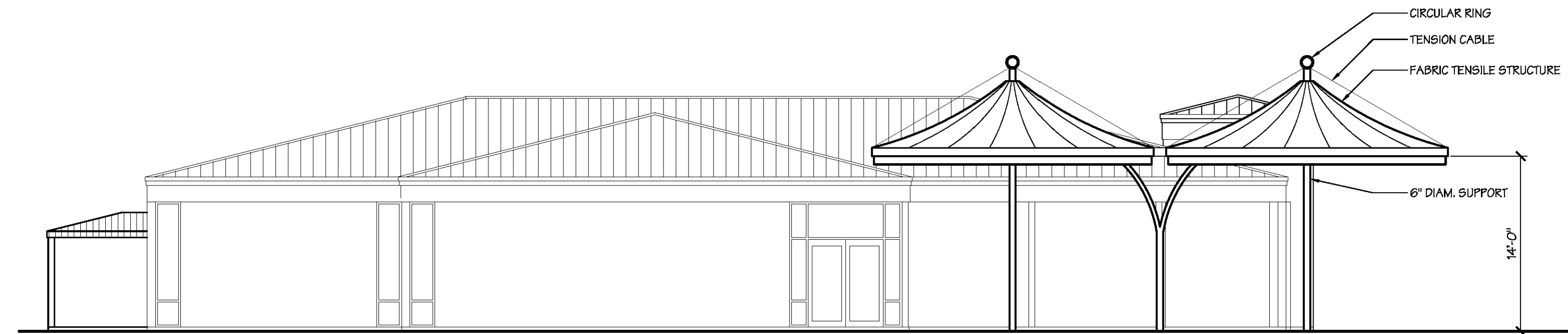
03 EXISTING WEST ELEVATION
SCALE: 1/8" = 1'-0"



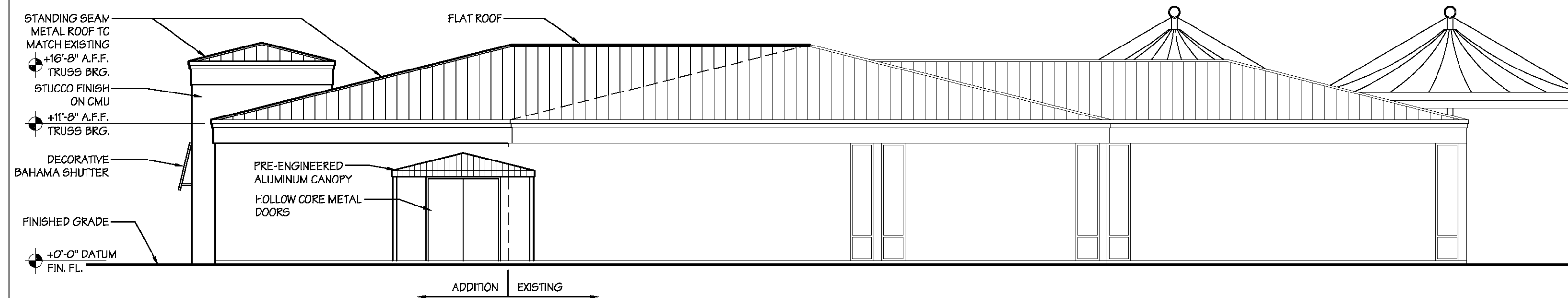
04 EXISTING EAST ELEVATION
SCALE: 1/8" = 1'-0"



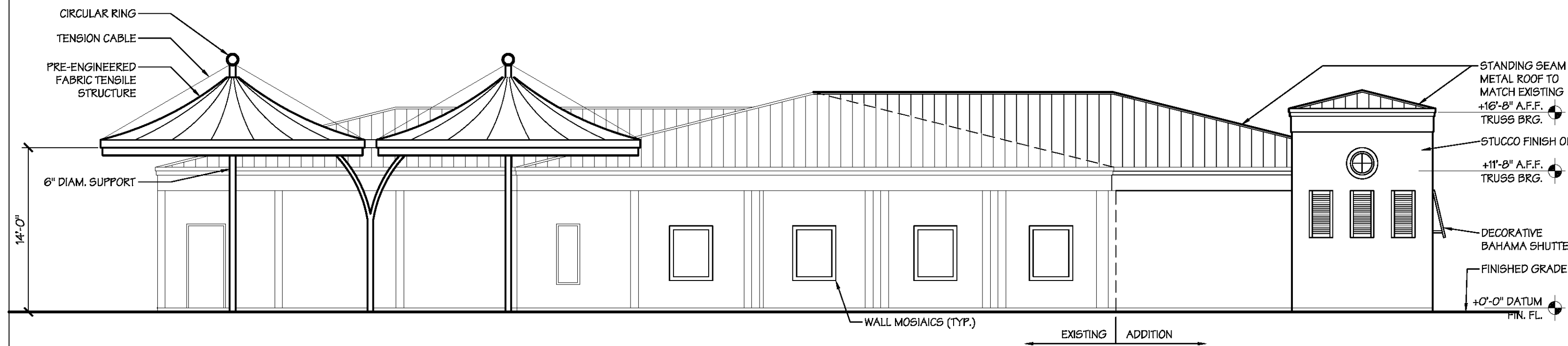
05 PROPOSED NORTH ELEVATION
SCALE: 1/8" = 1'-0"



06 PROPOSED SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



07 PROPOSED WEST ELEVATION
SCALE: 1/8" = 1'-0"



08 PROPOSED EAST ELEVATION
SCALE: 1/8" = 1'-0"

Project:
PROPOSED IMPROVEMENTS
FOR:

THE
BACKUS
GALLERY

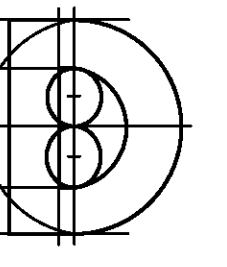
FT. PIERCE, FLORIDA

Key Plan:

Issues:

No.:	Date:	Description:
A.	09/23/14	CLIENT REVIEW
B.	05/06/15	CLIENT REVIEW
C.	05/12/15	CLIENT REVIEW
D.	05/29/15	BLDG. PERMIT ISSUE

Architect:



DONADIO
& Associates, Architects P.A.

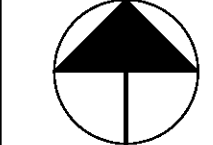
809 17th Street
Vero Beach, FL 32980
Tel: 772-394-0399
Fax: 772-562-2600
License No. AA0002256
www.donadio-arch.com

Consultant:

Drawing Title:

ELEVATIONS

Reference North

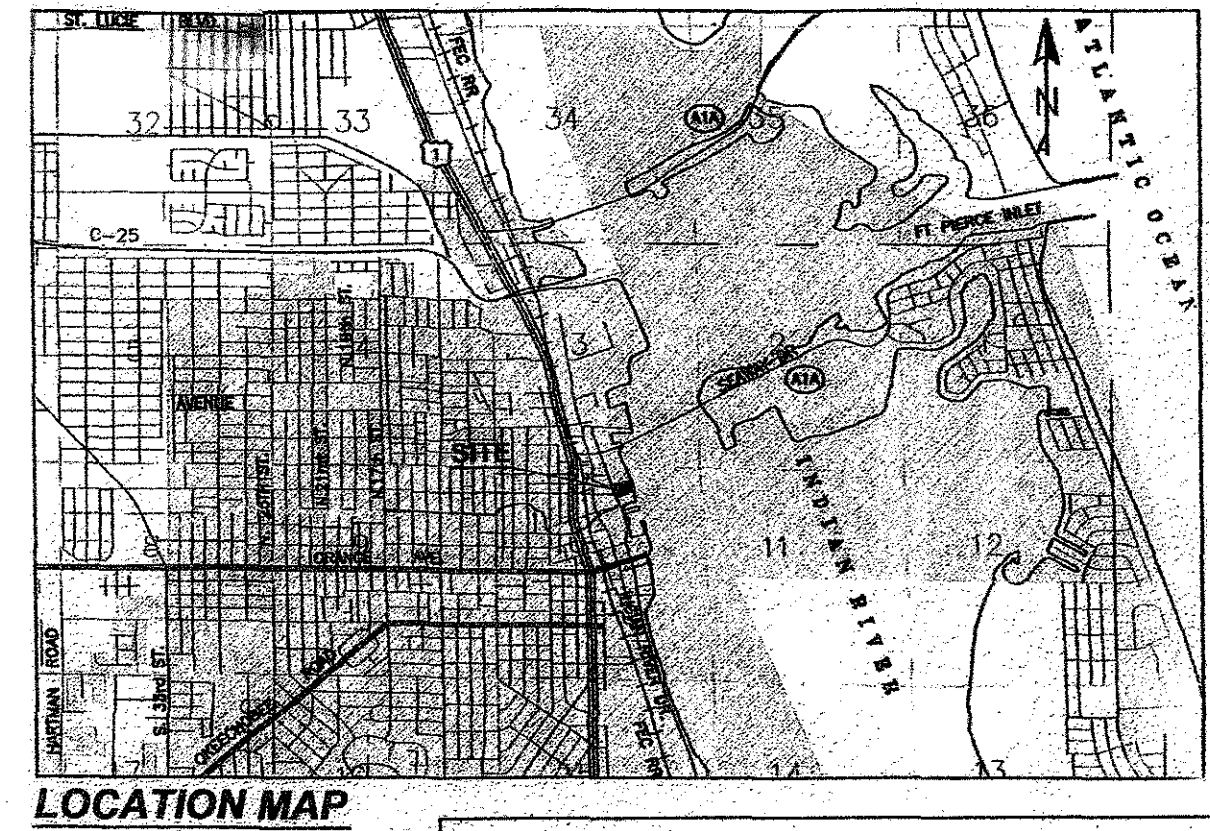
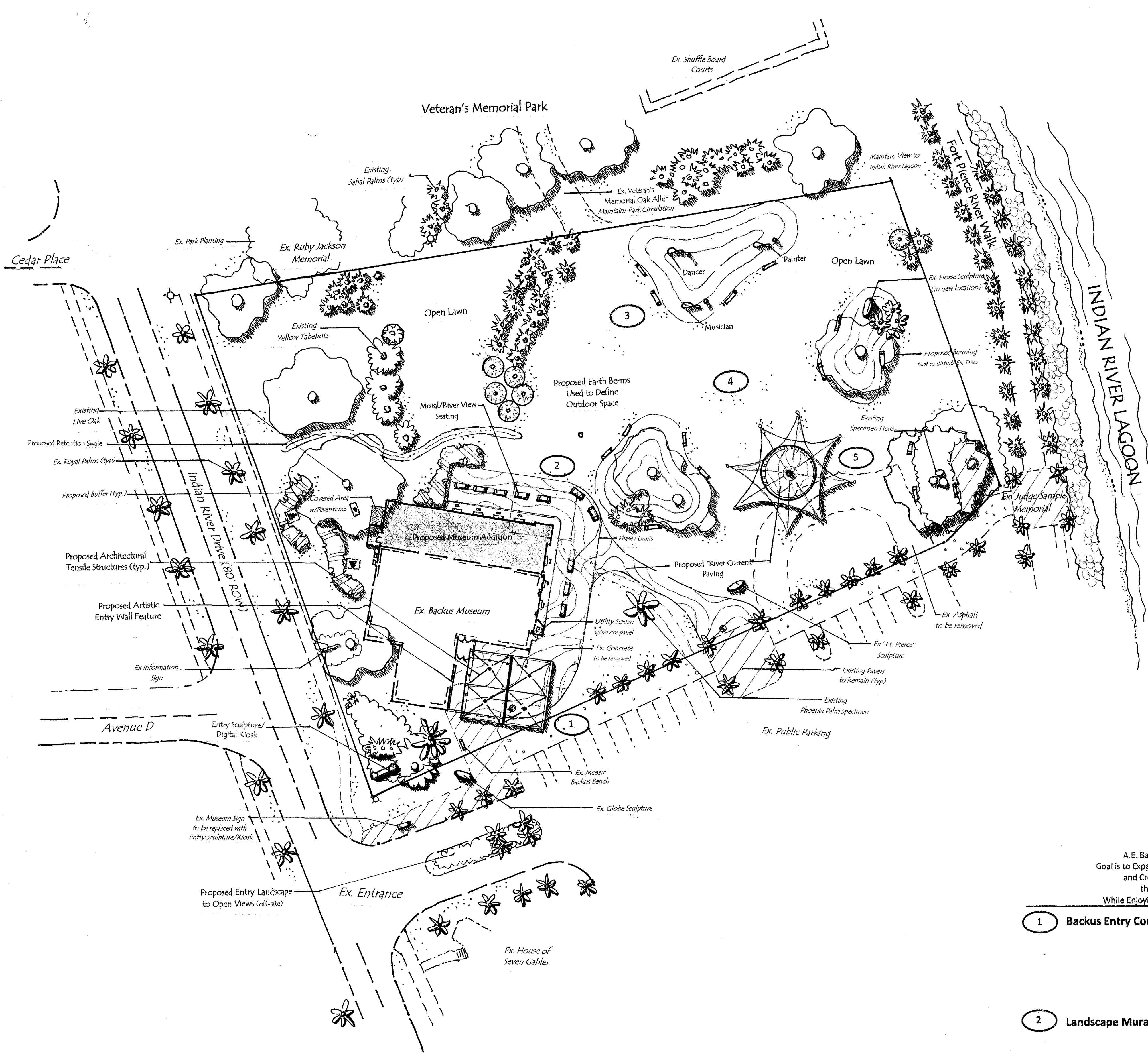


Dwg. File:	MT
XREF File:	
Plot File:	AJD
Project No.:	2014-53
Sheet No.:	

Cert. No.: 12456

Date Signed:

A3.10



LOCATION MAP

SITE DATA	
PROJECT NAME:	A.E. BACKUS MUSEUM & GALLERY
TYPE OF PROJECT:	MUSEUM EXPANSION AND RENOVATION, PHASE I
SITE ADDRESS:	500 N. INDIAN RIVER DRIVE FORT PIERCE, FL 34950 2403-801-0026-000-0
TAX ID#:	2403-801-0026-000-0
APPLICANT:	A.E. BACKUS MUSEUM & GALLERY 500 INDIAN RIVER DRIVE FORT PIERCE, FL 34950
ARCHITECT:	DONADIO & ASSOCIATES, P.A. 609 17 TH STREET, VERO BEACH, FL 32960 OFFICE: 772-794-2929 FAX: 772-562-8600 License No. AA0002238 www.donadio-arch.com
LANDSCAPE ARCHITECT/SITE DESIGN:	LISA R NELSON, RLA 5120 OLEANDER AVE, FORT PIERCE, FL 34982 OFFICE: 772-370-6776 FAX: 772-465-2790 lsarnelson@bellsouth.net GREG BOGGS, RLA (Govt. Coord.) gblplans.com PB COBB BLDG., SUITE 2E FORT PIERCE, FL OFFICE: 772-577-6473
ENGINEER:	DANNY RETHERFORD, P.E. ENGINEERING DESIGN & CONSTRUCTION, INC. (EDC) 1594 TUCKER COURT FORT PIERCE, FL 34950-3954 PHONE: 772-462-2455 FAX: 772-462-2454 dannyrethford@edc-inc.com
SURVEYOR:	ROLAND E. ROLLINS PROFESSIONAL LAND SURVEYOR 3221 SW CRUMPACKER ST, PSL, FL 34953 OFFICE: 772-873-4700
GENERAL CONTRACTOR:	JACQUIN & SONS, INC. P.O. BOX 4343 FORT PIERCE, FL 34948-4343 OFFICE: 772-465-2475 FAX 772-466-2806 www.jpsj.com
REQUIRED & PROVIDED PARKING:	ALL PARKING PROVIDED BY THE CITY OF FORT PIERCE
UTILITIES:	ALL UTILITIES INCLUDING WATER, SEWER, NATURAL GAS, SOLID WASTE AND ELECTRIC IS PROVIDED BY FPUA.
STORMWATER MANAGEMENT:	SITE'S EXISTING STORMWATER MANAGEMENT SYSTEM WHICH CONSISTS OF AN ONSITE DRY RETENTION & SWALE SYSTEM, WILL CONTINUE WATER QUALITY AND STORM ATTENUATION. THE STORMWATER MANAGEMENT SYSTEM COMPLIES WITH CITY OF FORT PIERCE ENGINEERING DEPARTMENT'S AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) STANDARDS AND SPECIFICATIONS AND ARE PROPOSED TO REMAIN IN PLACE. ANY PROPOSED ADDITIONAL DRY RETENTION NECESSARY WILL COMPLY WITH SFWMD & FPUA.

LEGAL DESCRIPTION
A PART OF PROPOSED CITY PARK, INDIAN RIVER VETERANS MEMORIAL PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 36, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA AND THE LAND LYING EAST OF PROPOSED CITY PARK AND THIS TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPOSED CITY PARK, THENCE NORTH 18°44'20" WEST, ALONG THE WEST LINE OF SAID PROPOSED CITY PARK AND THE EAST RIGHT OF WAY LINE OF INDIAN RIVER DRIVE, A DISTANCE OF 367.47 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND, THENCE NORTH 18°44'20" WEST, ALONG THE WEST LINE OF SAID PROPOSED CITY PARK AND THE EAST RIGHT OF WAY OF SAID INDIAN RIVER DRIVE, A DISTANCE OF 790.00 FEET TO A POINT, THENCE NORTH 82°01'57" EAST, A DISTANCE OF 387.85 FEET TO A POINT ON THE EAST LINE OF SAID PROPOSED CITY PARK, THENCE SOUTH 18°44'13" EAST, ALONG THE EAST LINE OF SAID PROPOSED CITY PARK, A DISTANCE OF 176.43 FEET TO A POINT, THENCE SOUTH 47°25'56" WEST, A DISTANCE OF 65.03 FEET TO A POINT, THENCE SOUTH 67°24'18" WEST, A DISTANCE OF 340.59 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.10 ACRES OF LAND MORE OR LESS.

FLOOD ZONE:
THIS PROPERTY LIES IN FLOOD ZONE(S) "X", "AE ELEVATION 5" AND "VE ELEVATION 8", ACCORDING TO FLOOD INSURANCE RATE MAP (FIRM) PANEL 12111C0179 G, MAP REVISED NOVEMBER 4, 1992.

ZONING: C-6
LAND USE: OSR - RECREATION OPEN SPACE

SETBACKS & DIMENSIONAL CRITERIA:
FRONT = 25'
SIDE = 10'
REAR = 15'
MAX. BLDG. HEIGHT = 45'
MAX BLDG. COVERAGE = 50%

Site Existing (Pre-Development) 2.10 ac. (91476 sf) Total Site Area (100%)
Bldgs = 4611 SF .11 ac 5% of site
Parking/Sidewalk/Concrete/Paver/Asphalt = 7972 SF .18 ac 9% of site
Total Impervious: 12583 SF .29 ac 14% of site
Total Pervious: 78,893 SF 1.81 ac 86% of site

Proposed Site (Post-Development) 2.10 ac. Total Site Area (100%)
Bldgs = 7215 SF .17 ac 7.9% of site
Parking/Sidewalk/Concrete/Paver/Asphalt = 8684 SF .20 ac 9.1% of site
Total Impervious: 15899 SF .36 ac 17% of site
Total Pervious: 75577 SF 1.74 ac 83% of site

SITE ELEMENT LEGEND

- Proposed Light Fixture
- Proposed Artistic Sculpture/Feature
- Proposed Tensile Structures
- Proposed Outdoor Seating
- Proposed Brick Paving
- Proposed "River Current" Concrete Paving
- Proposed Museum Building Addition
- Existing Electric Transformer
- Existing Electric Service
- Existing Light Pole
- Existing Pull Box
- Existing Palm Tree
- Existing Shade Tree
- Existing Tree/Palm Relocated
- Existing Artistic Sculpture
- Existing Building

NOTE: All other proposed elements are noted and labeled individually on site plan. Relocation or removal of plant materials will be marked in the field clearly by LA prior to construction.

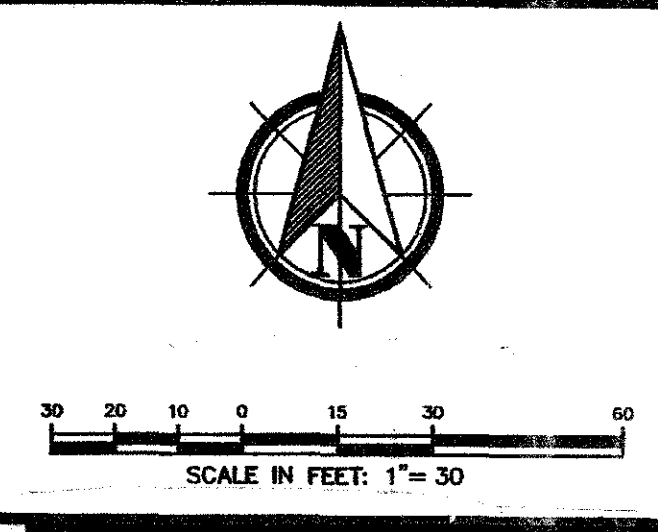
PROPOSED SITE FEATURES

A.E. Backus Gallery & Museum Proposed Building Expansion and Site Improvements
Goal is to Expand the Collection of Nationally Recognized American Landscape Artist 'Bear' Backus and Create an Increase of Public Use for All Ages to Our Community by Emphasizing the Beauty & Value of Arts to Saint Lucie County and the City of Fort Pierce
While Enjoying the Beautiful Indian River Lagoon Waterfront and Our Veteran's Memorial Park

- 1 Backus Entry Court - PHASE I**
Includes (4) Architectural Tensile Structures
"River Current" Concrete Paving w/Integral Color
Artistic Entry Wall Feature Ushering Guest to Enter Museum
Outdoor Speakers Featuring New Genre of Instrumental Music each Week
Information Panels of Upcoming Events w/Hours of Operation
Seating for Art Classes and Outdoor Events
Entry Sculpture w/Digital Kiosk Sign (to replace ex. Sign)
Expansion of Existing Museum Exhibit Building
- 2 Landscape Mural Plaza - PHASE I**
Featuring a 2-3 yr. Revolving Exterior Exhibit of Florida Landscape Subjects Provided on 4' x 8' Vertical Mural Panels
Existing Court Benches to be used for Mural & River Viewing
"River Current" Concrete Paving w/Integral Color
Free Wi-Fi Provided for Public Use
Night Lighting for Featured Murals
- 3 Plein Air Vista - PHASE I & III**
An Open Air Vista of Indian River Lagoon Provided on Proposed Landscape Berm - PHASE I
Open Space for Local Artists & Public to Sketch and Design - PHASE I
Features Silhouette Sculptures of "Musician", Painter, & Dancer - PHASE III
Easel Pedestals to be used for Public Sketching, Painting or as Music Stands - PHASE III
- 4 Open 'Event Lawn' - PHASE I**
Simply Open Space for Museum and Public Events
Defined by Proposed Earth Berms, Drought Tolerant Lawn and Landscape Planting
- 5 Public Musical/Entertainment Venue - PHASE II & III**
A Raised Circular Stage is Featured for Performances w/ "River Current" Paving - PHASE II
Open Lawn and Park Benches for Seating - PHASE II
Stage is Concrete with "River Current" Paving - PHASE II
Stage includes Electrical Power Source - PHASE II
(performances are weather permitting due to open space venue for Phase II)
Architectural Tensile Structure to Provide Shade and Shelter for Stage and Seating - PHASE III



PROJECT:
PROPOSED IMPROVEMENTS FOR:
THE A.E. BACKUS GALLERY & MUSEUM
FORT PIERCE, FLORIDA



Issues:

No.	Date	Description
1	5/6/15	Draft Sketch
2	5/23/15	Complete Site Plan for Submission

Architects:
DONADIO & Associates, Architects P.A.
609 17th Street
Vero Beach, FL 32960
Tel: 772-794-2929
Fax: 772-562-8600
License No. AA0002238
www.donadio-arch.com

LANDSCAPE ARCHITECTURAL SERVICES DONATED BY:
LISA R. NELSON, RLA
DESIGNER & ON-SITE FIELD COORDINATOR
5120 OLEANDER AVE, FT. PIERCE, FL 34982
PH 772-370-6776 FAX 772-465-2750
FLORIDA LICENSE # LA00011757

GREG BOGGS, RLA
GOVERNMENT/MUNICIPALITY COORDINATOR

DRAWING TITLE:

SITE PLAN

DRAWN BY: LRN DATE: 5/22/15 30 SCALE



FINAL SURVEY REQUIREMENT:
Per SLC requirements prior to final construction documentation a final survey will be required representing the Revised Flood Plain Elevations recently adopted by SLC. Construction Documents will be revised as necessary to represent the final survey. Location of Existing and Proposed Utilities shall be clearly marked on site per most recent survey prior to any construction.
Prior to any digging, all existing and new utilities must be located above and underground. All utilities on site must be clearly marked and regarded upon placement of any and all site improvements during the duration of the project.

LEASE AGREEMENT

Between

The City of Fort Pierce

And

The A.E. "Bean" Backus Gallery and Museum, Inc.

This LEASE AGREEMENT ("Agreement") is made and entered into this 2nd day of June, 2010, by and between the **CITY OF FORT PIERCE, FLORIDA**, ("City" or "Landlord") whose address is 100 North US Highway #1, Fort Pierce, Florida, 34950; and the **AE 'BEAN' BACKUS GALLERY AND MUSEUM, INC.**, a Florida non-profit corporation, whose address is 500 North Indian River Drive, Fort Pierce, Florida, 34950 ("Tenant").

RECITALS

WHEREAS, Indian River Memorial Park ("Park Property") is owned by the City of Fort Pierce; and

WHEREAS, Policy 7.6.3 of the City of Fort Pierce Comprehensive Plan, adopted May, 2007, states that the City of Fort Pierce shall maintain cooperative relationships and seek to develop partnerships with both public and private agencies, groups, individuals, organizations and facilities that currently or may potentially offer recreation opportunities to City residents; and

WHEREAS, the City Commission has determined that the lease of an approximately 2.1 acre portion of Indian River Memorial Park to A.E. "Bean" Backus Gallery and Museum, Inc. for the expansion of the existing gallery into a museum, with the long range goal of accreditation by the American Association of Museums, constitutes a valid public purpose and will encourage utilization of Indian River Memorial Park; and

WHEREAS, the Tenant proposes to redevelop the Premises, hereinafter defined, with generally the same amenities as were proposed under the 2006 Veteran's Park redevelopment master plan; and

WHEREAS, the Tenant, a 501 C-3 non-profit corporation organized for, and dedicated to the purposes of, fostering a greater appreciation of fine arts within the community, is successor by merger to the Fort Pierce Arts League, Inc., and, as such, is currently vested with possession, custody, control and supervision of the existing museum building and grounds, generally depicted on Exhibit "A" (3

pages), for a term of fifty (50) years, pursuant to Memorandum of Agreement between City and Tenant dated November 22, 1960, and sub-lease from St. Lucie County, dated April 20, 1979, made following the blanket master lease of the Park Property from City to St. Lucie County dated December 14, 1976; and

WHEREAS, the St. Lucie County Master Lease of the Park Property is no longer in effect; and

WHEREAS, over a period exceeding 48 years, Tenant has constructed, expanded, maintained, and operated the A. E. "Bean" Backus Gallery & Museum on the portion of Park Property depicted on Exhibit "A", at no cost to City, St. Lucie County, State of Florida, or other subdivision or agency of government, and has provided a Museum of the Arts for the cultural advancement, betterment and enjoyment of local residents and area visitors, advancing to a national level appreciation of the art works of local artists and recognized groups of artists, including, but not limited to, A. E. "Bean" Backus, The Highwaymen, and The Indian River School; and

WHEREAS, Tenant has requested, and City has determined it fit, proper and in keeping with its dedications made of the Park Property, to support the proposed expansion of Museum by this Agreement designating and committing to the demise for a term of years to Tenant the hereinafter described parcel of Park Property, upon satisfaction of certain terms and conditions subsequent.

NOW, THEREFORE, for and in consideration of the premises above set forth and the covenants and agreements herein contained, it is mutually agreed by City and Tenant as follows;

AGREEMENT

ARTICLE 1

DEFINITIONS

The following words and phrases, when capitalized and unless the context requires otherwise, shall have the meanings specified in this Section. The meanings specified in this Section shall apply throughout this Agreement, including the Exhibits to this Agreement, unless an Exhibit explicitly defines the word or phrase differently, in which case the different meaning will apply throughout such Exhibit. Whenever the singular of a word is defined below, the definition shall include the plural where appropriate, and *vice versa*; and the words of any gender shall include the other gender where appropriate. The words "herein," "hereof," and "hereunder" and other words of similar import refer to the relevant document as a whole and not to any particular part or subdivision thereof.

1.1 **Agreement.** "Agreement" means this Lease Agreement, including Exhibits hereto, between Landlord and Tenant.

1.2. **Art.** "Art" means and refers to fine arts, including painting, sculpture, dance, music, and drama.

1.3 **Article.** "Article" means and refers to an article in this Agreement. Generally, an Article is the largest type of subdivision in this Agreement and is numbered with a single numeral, for example, "2".

1.4 **City.** "City" means and refers to the City of Fort Pierce, Florida, and is used interchangeably in this Agreement with "Landlord."

1.5 **Commencement of Construction.** "Commencement of Construction is defined in Section 4.6.

1.6 **Commencement Date.** "Commencement Date" means the date the Museum initially opens for business following completion of construction Phase 1 of the Museum Improvements as defined in this Agreement.

1.7 **Effective Date.** "Effective Date" means the date that this Agreement is made and entered into.

1.8 **Initial Term.** "Initial Term" is defined in Article 3.

1.9 **Landlord.** "Landlord" means and refers to the City of Fort Pierce, Florida, and is used interchangeably in this Agreement with "City."

1.10 **Material Default.** "Material Default" means a default by Tenant under this Agreement that amounts to a material and substantial failure of consideration hereunder.

1.11 **Museum.** "Museum" is defined in Article 5.

1.12 **Museum Improvements.** "Museum Improvements" is defined in Article 6.

1.13 **Open Space Improvements.** "Open Space Improvements" means that part of the Premises not covered by a structure. These improvements shall initially include improved lawn sod and landscaping, and, in time, shall include but not be limited to: sculpture garden, terrace seating,

sidewalks, green space, water features, and furnishings such as tables, chairs and benches. Such Open Space Improvements shall be open to the public at all times of normal park operation hours, unless such areas are being utilized for a special event or rental function. Open Space Improvements shall be completed as part of a future phase of construction by October 1, 2026. This definition generally relates to Section 22-59(5) of the City of Fort Pierce Code of Ordinances, Design Review: Streetscape Improvements.

1.14 Operations Plan and Commitments. The Operations Plan and Commitments for the Museum and Museum Improvements is best evidenced by the consistent Museum operation methods demonstrated over many years of operation. There are appended to this Agreement as Composite Exhibit "B", in five (5) pages the (i) Plan of means by which the facility will be maintained and operated; (ii) General Budget for Phase I Expansion; (iii) Timeline for the commencement of substantial construction; and (iv) Commitments for the operations of the Museum. Composite Exhibit "B" evidences the Operations Plan and Commitments which shall be amended, supplemented, or expanded from time to time during the Initial Term or Renewal Term with copies furnished to Landlord. _

1.15 Original Condition. "Original Condition" means the condition or state of the Premises on the Effective Date. The existing amphitheater in place as of effective date shall not be considered part of the Original Condition.

1.16 Park Property. "Park Property" means the Indian River Memorial Park as platted in 1954 and dedicated by the City to be enjoyed by the public as a park and pleasure ground for the purpose of public amusement and recreation. It is assigned a Parcel Identification number by the Saint Lucie County Property Appraiser of 2403-801-0026-000/0, totaling 13.49 acres.

1.17 Party. "Party" means Landlord or Tenant. "Parties" means both Landlord and Tenant.

1.18 Premises. "Premises" means all of the area generally depicted on the attached Composite Exhibit "C" and legally described in a document to be provided by Tenant within 90 calendar days of the Effective Date, which shall be deemed incorporated herein by reference. The premises may comprehend a parcel of up to 2.1 acres, located generally to the east of Indian River Drive, to the north of the Indian River Memorial Parking Lot and boat ramps, to the west of the Indian River Lagoon, roughly bounded to the north by the northern slope of the existing amphitheater. The Premises includes all real property and fixed assets currently situated thereon.

1.19 **Project.** "Project" means Tenant's proposed analysis, financing, development, construction, and operation of the Museum.

1.20 **Renewal Term.** "Renewal Term is defined in Article 3.

1.21 **Section.** "Section" means and refers to a section of this Agreement. Generally, a Section is the second largest type of subdivision in this Agreement and is numbered with a double numeral, for example, "2.2".

1.22 **Subsection.** "Subsection" means and refers to a Subsection in this Agreement. Generally, but not always, a Subsection is the most specific type of subdivision in this Agreement, and is numbered with a letter, for example "B" but referred to as a double numeral and letter, for example, 2.2.A".

1.23 **Tenant.** "Tenant" means the A.E. "Bean" Backus Gallery and Museum, Inc., a Florida non-profit corporation, formerly known as the Fort Pierce Arts League, Inc.

ARTICLE 2

DEVELOPMENT AGREEMENT AND AGREEMENT TO LEASE

Subject to the terms and conditions set forth herein, Landlord hereby agrees to lease the Premises defined herein to Tenant, subject to satisfaction of Conditions Precedent to Lease as specified in Article 4. Upon the Commencement Date, the present Memorandum of Agreement shall be automatically terminated and of no further force and effect.

ARTICLE 3

TERM

3.1 **Initial Term.** The initial term of this Lease shall be fifty (50) years commencing with the Commencement Date and ending at midnight on the last day of the calendar month in which the fiftieth (50th) anniversary of the Commencement Date occurs (the "Initial Term"), unless sooner terminated as provided herein.

3.2 **Renewal Term.** At the beginning of the 47th year of the Term, Landlord and Tenant will review the Museum improvements and operations and mutually agree whether to renew the term of

the Lease for an additional forty-nine (49) years(the "Renewal Term"). If renewed, the Renewal Term shall be under the same terms as were in effect during the Initial Term unless the parties otherwise agree. Tenant's renewal is subject to the agreement of both parties. In its review for renewal, Landlord shall not be unreasonable, arbitrary or capricious. Landlord shall review whether Tenant's performance under its Project Scope (as defined in 4.5) and Operations Plan and Commitments is satisfactory, and providing a public benefit consistent with Tenant's original intent to foster a greater appreciation of fine arts, including painting, music, sculpture, dance, poetry and architecture among the residents of and visitors to the Indian River area.

ARTICLE 4

CONDITIONS PRECEDENT TO LEASE

Notwithstanding anything to the contrary contained herein, either Party, unless otherwise indicated in this Article, shall have the unilateral right to terminate this Agreement, and thereby cause the Agreement to be null and void and of no further force and effect, if one of the following conditions precedent has not been met. A Party's decision to terminate this Agreement under the provisions of this Article shall not be effective until the non-terminating Party receives notice from the terminating Party of the terminating Party's decision to terminate the Agreement. If the condition on which the terminating Party is basing its decision to terminate the Agreement is met prior to receipt of the terminating Party's decision to terminate, it shall be of no effect and this Agreement shall continue in full effect.

4.1 **Project Feasibility.** As of the Effective Date, Tenant in good faith believes that the development of the first phase of the Museum is feasible and that sufficient funding will be available. Within 90 calendar days of the Effective Date, Tenant shall furnish a boundary survey with a new legal description of the Premises. Within the same 90 day period, Tenant shall have the opportunity to perform other due diligence to determine if any environmental or other potential hazards exist on site, at Tenant's sole expense. If, during this 90 day due diligence period, Tenant determines that the project is not feasible, the Tenant shall give notice to the Landlord of termination of this Agreement. In the event of such termination by Tenant, Tenant shall have no further obligation to construct the Museum, in which case each Party will bear the costs it has expended through the date of termination relating to this Agreement and the present lease and occupancy of tenant shall continue as before.

4.2 **Site Plan Reviews and Approvals.** Tenant shall submit on a phase by phase basis all applications required by the City of Fort Pierce Code of Ordinances for new construction of the type and size intended for Phase 1 and each future phase of construction to the City of Fort Pierce Planning Division. Applications for construction phase 1 shall be submitted within one (1) year of the Effective Date. Landlord shall waive all fees due the City for the project, including Site Plan Application fees, Design Review fees, and Impact fees due the City. Unless otherwise waived by this Section, Tenant is responsible for obtaining all permits and paying all fees required under the scope of work for Phase 1 and all future phases of this Project.

4.3 **Fundraising Goal.** Prior to commencement of construction of phase 1 and any future phase(s), Tenant shall have demonstrated to Landlord's reasonable satisfaction that eighty percent (80%) of the total costs of the project phase has been raised or pledged. The availability of the 80% of costs must be reasonably substantiated by Landlord before construction may commence,.

4.4 **Commencement of Construction.** Tenant shall have obtained all necessary site plan approvals and permits and substantially commenced construction of the Museum Improvements for Phase 1 on or before the second (2nd) anniversary of the Effective Date. If failure to meet this condition is the basis for the termination of this Agreement, Landlord may require Tenant to restore the Premises to their Original Condition. The entire Phase 1 of the Project together with initial Open Space Improvements must be complete, open to the public and in full operation no later than three (3) years from the issuance of the building permit for construction phase 1 of the Museum. The remainder of the Open Space Improvements shall be completed as part of a following construction Phase 3.

4.5 **Project Scope.** In consideration of the duration of the Initial Term and Renewal Term, Tenant incorporates and adopts as its Project scope subsequent to Phase 1, the Phased Development Plan appended to this Agreement as Exhibit "D".

4.6 **Accreditation and Standards.**

A. During the Initial Term, Tenant shall pursue with reasonable diligence and seek to receive accreditation through the American Association of Museums, located in Washington, DC. This accreditation and the standards it requires that are consistent with the Operations Plan and Commitments of the Museum, shall be a matter for review prior to commencement of the Renewal Term.

B. Tenant shall seek at all times to operate the Museum at a regional level of quality for such facilities. The Operations Plan and Commitments of the Museum shall define and describe the Museum mission. This Operations Plan and Commitments, as amended from time to time, shall serve as a benchmark for Museum performance during the term of this Agreement. A material and substantial adverse deviation from the Operations Plan and Commitments shall be cause for termination of this Agreement if not corrected within a reasonable time following written notice to the Museum by City.

ARTICLE 5

USES

5.1 **Use of Premises by Tenant.** The Premises shall be used solely for the construction and operation of a museum and related open space amenities pursuant to the terms of this Agreement. The Tenant is granted the right to use the Museum for the following activities:

A. Permitted Uses :

- Art Exhibitions, Permanent Collections and Rotating Exhibits
- Juried Art Competitions
- Art Classes for adults and children
- Art Lectures and Meetings

B Accessory Uses, consistent with the mission and programming of Tenant:

- Administrative support and storage for Tenant
- Retail sale of memorabilia, novelties and art products
- Operation of food service
- Receptions and Dinners
- Annual Art Festival
- Occasional rental of Museum and Open Space Improvements for use by others at such times as the Museum is not being used by the Tenant. Such use by any third party shall be in conformance with all laws, codes, and regulations including those pertaining to special events.
- Tenant shall have the right to use the Museum and Open Space Improvements for any other programming and events that are consistent with the mission of Tenant, all laws, codes, and regulations including those pertaining to special events, and in conformance with this Agreement.

5.2 **Rental of Premises by Tenant to Third Parties: Rental Fees.**

A. **Fee Schedule.** Tenant shall annually set the fee schedule for use of the Premises by others, and provide the schedule to the Landlord.

B. **Operations.** Tenant shall be solely responsible for the monitoring, scheduling and control of bookings, approval of users, and related matters. Third party users shall pay the rental fee assessed for use directly to Tenant.

C. **Completion of Initial Open Space Improvements required.** Prior to using the Premises for rental to third parties, the initial construction phase of the Project must be complete, including all facilities and the initial Open Space Improvements indicated on the approved Site Plan.

5.3 **Licensing for Concessions.** Tenant may license concessions for a snack bar and/or the gift shop to third parties, satisfactory to Tenant.

ARTICLE 6

TITLE TO MUSEUM AND MUSEUM IMPROVEMENTS

During the term of this Agreement and subject to the provisions contained herein, City shall be vested with title to the Museum and Museum Improvements. "Museum Improvements" include but shall not necessarily be limited to any and all buildings and improvements and alterations thereto, as well as all fixtures, building equipment and systems, landscaping and Open Space Improvements. Furniture, furnishings, paintings, sculptures and other objets d'art owned by Tenant are specifically excluded as Museum Improvements. Notwithstanding the ownership by City, Tenant shall have complete maintenance obligations under Article 15, for the Museum and Museum Improvements. Upon the expiration or earlier termination of this Agreement, the Museum and Museum Improvements shall remain a part of the realty that is the property of the Landlord.

ARTICLE 7

POSSESSION AND OCCUPANCY

Upon satisfaction or waiver of all conditions precedent set forth in Article 4 hereof by both parties, Tenant shall have possession and full control of the Premises and may construct the Museum Improvements on the Premises, subject to the other terms and conditions set forth herein; provided,

that the Tenant shall be required to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the leased Premises. During the time between the Effective Date and the date that all conditions precedent set forth in Article 4 have been satisfied or waived, (1) Tenant shall have all rights to existing museum building as it had under the 1960 Memorandum of Agreement as of the Effective date; and 2) Landlord shall permit Tenant reasonable access to the Premises to prepare for the design, construction and management of the Museum and Museum Improvements; and (2) Landlord shall not use the Premises or allow a third-party to use the Premises in a manner that increases Tenant's design and construction costs of the Museum and Museum Improvements by, for example constructing permanent structures therein that must be demolished. Landlord may use or rent to third parties all existing open space and amphitheater until commencement of construction as referenced in Section 4.4. Landlord shall insure all grounds within Lease area with the exception of the existing museum building until Commencement of Construction.

ARTICLE 8

CONSIDERATION

In consideration of the mutual obligations and benefits set forth herein, and as Policy 7.6.3 of the City of Fort Pierce Comprehensive Plan, adopted May, 2007, states that the City of Fort Pierce shall maintain cooperative relationships and seek to develop partnerships with both public and private agencies, groups, individuals, organizations and facilities that currently or may potentially offer recreation opportunities to City residents, the Landlord agrees to provide a location for the Museum and Museum Improvements, and the Tenant commits to provide a Museum of regional quality to be measured by the uses and standards found in Article 5 and in the Tenant's Operations Plan and Commitments. For and in consideration of the foregoing and the mutual covenants contained herein, and for annual rent payable by Tenant to Landlord equal to \$1 per year during the Initial Term and Renewal Term, if any, the receipt and sufficiency of which are hereby acknowledged, the parties have entered into this Agreement.

ARTICLE 9

CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

9.1 **Duty to Construct.** Tenant shall construct, or cause to be constructed, the Museum and related Open Space Improvements for Phase 1 as contemplated by Tenant and as indicated on the Site Plan for the Premises subject to the provisions of Article 4. The construction shall be at Tenant's sole cost and expense, except as otherwise provided in this Article. As part of Tenant's construction obligations, Tenant shall be required, at its sole cost, to demolish any and all existing improvements on the Premises, except to the extent that the same are reused or incorporated into the proposed new Museum Improvements. Provided, however, that the Museum shall contribute to the City the sum of Thirty Thousand Dollars (\$30,000.00), being one-half of the estimated cost of demolition of the Amphitheater as per the demolition estimate appended hereto as Exhibit "E", and the City shall immediately undertake the demolition and removal of such Amphitheater at its cost.

9.2 **Museum Design.** Prior to construction of the Museum and Museum Improvements, Tenant shall submit an application for site plan review to the City of Fort Pierce Planning Division and obtain Site Plan approval as specified in Section 4.2. The Site plan shall include an expanded museum, and initial Open Space Improvements open to the public, and shall be of a design that reflects the intent of the City to further superior architectural and urban design. This design shall be substantially in keeping with the Site Diagram of the Backus Gallery Expansion, as submitted to the City of Fort Pierce Planning Department on October 6, 2009, by its consulting architects, Springboard Design, appended to this agreement as Exhibit "C".

9.3 **Compliance with Law and Quality of Work.** Tenant, at Tenant's sole cost and expense, shall cause all construction to be performed by or on behalf of Tenant under this Agreement to be approved by all appropriate governmental agencies and all applicable permits and authorizations shall be obtained by Tenant as and when required. The Museum Improvements shall be constructed and all work performed shall be in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county or local governmental agencies or entities having jurisdiction over the Premises. All work performed or authorized by this Agreement, shall be done in a good workmanlike manner and only with new or recycled materials of good quality.

9.4 **Liens: Indemnification of Landlord.** Tenant shall keep the Premises and the Museum free and clear from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. If Tenant, in Tenant's good faith, determines that any such lien should

be contested, Tenant shall, at Tenant's sole cost and expense, procure and record a lien release bond, in an amount equal to one and one-half (1.5) times the amount of the claim of the lien, issued by an insurance company acceptable to Landlord who is authorized to do business in the State of Florida. The bond shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if any recovered in the action.) Tenant's failure to procure and record such lien release bond within thirty (30) calendar days after demand of the Landlord shall be deemed a default by Tenant under the terms of this Agreement. Tenant agrees to hold Landlord, the Premises, and the Museum Improvements free and harmless of, and to indemnify Landlord against, all liability from any and all such liens, claims or demands, together with costs and expenses, including but not limited to reasonable attorney's fees, and other costs incurred by Landlord in connection therewith or arising out of Tenant's failure to comply with the requirements of this Section, which indemnity obligation shall survive the termination of this Agreement in accordance with Subsection 14.2 hereof. Tenant shall pay to Landlord within thirty (30) calendar days after written demand, all such costs and expenses incurred by Landlord.

9.5 **Ownership of Plans and Specifications.** All plans and specifications for the Museum shall be the sole property of the Tenant, subject to any rights of the architect, except that the same shall become the property of the Landlord upon the expiration or earlier termination of the Initial Term or the Renewal Term, as applicable.

9.6 **Easements and Dedications.** The parties hereto acknowledge that in order to provide for the orderly development of the Premises, it may be necessary, desired, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Premises or other portions of Landlord's property. Landlord shall, upon request of Tenant, join with Tenant in executing and delivering such documents, from time to time, and throughout the Lease term, as may be appropriate, convenient, necessary or required by the governmental agencies, public utilities, and companies for the purpose of granting such easements and dedications; provided that such documents must be acceptable to Landlord in its reasonable discretion, that such documents comply with all applicable portions of the City of Fort Pierce Code of Ordinances. Any expenses associated with this paragraph shall be borne exclusively by Tenant.

9.7 **Alterations.** From and after completion of the Phase 1 construction of the Museum and Museum Improvements, any future phase(s) or alterations shall be subject to the prior approval of

Landlord in accordance with all applicable Codes in the City of Fort Pierce Code of Ordinances, as well as any and all local, state and federal permitting agencies.

ARTICLE 10

PROJECT MANAGEMENT AND COORDINATION

10.1 **Designation of Project Manager.** Immediately after Tenant employs a project manager, Tenant shall notify Landlord, in writing, of the name and business and home telephone numbers of the individual who shall serve as Tenant's project manager for the purpose of liaison between Landlord and Tenant regarding any and all matters related to the construction of the Museum, and Landlord shall so notify Tenant of the identity of Landlord's project manager. In the event either such person is replaced, then not later than the effective date of such replacement the Party making such change in personnel shall notify the other of the change, indicating the effective date of the replacement, and the name and business and home telephone numbers of the replacement.

10.2 **Coordination Meetings.** Tenant's project manager shall meet from time to time with Landlord's project manager, and shall keep Landlord's project manager informed about the status of the construction.

ARTICLE 11

GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITY

11.1 **Indemnification from Claims for Unpaid Wages.** Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims for unpaid wages due to any laborer who has worked on the Museum Improvements, together with any claims for interest and penalties associated with such unpaid wages. The indemnification provided hereunder shall survive the termination of this Agreement. Tenant shall also comply, at its sole cost and expense, with all prevailing wage or public contracting requirements, to the extent the same are applicable to the construction of the Museum Improvements by Tenant.

ARTICLE 12
TAXES, UTILITIES AND SERVICES

12.1 **Taxes.** To the extent required by law, Tenant shall pay, before delinquency, all taxes, levies and assessments arising from its activities or any improvements on, or its occupancy of the Premises.

ARTICLE 13
INSURANCE

13.1 **Insurance to be Procured by Tenant.** Tenant and Landlord, to the extent their respective interests may require, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to person or damages to property which may arise from or in connection with Tenant's operation and use of the Premises. The cost of Tenant's insurance shall be borne by Tenant, and Landlord shall be named as an additional insured party.

Tenant shall be responsible for all damage to persons or property resulting from its negligent acts, reckless or intentional misconduct, errors or omissions or those of their subcontractors, agents or employees in connection with such services and shall be responsible for all parts of its work, both temporary and permanent. Tenant shall likewise procure and maintain insurance upon the contents of the Museum owned by Tenant in amounts satisfactory to Tenant.

TENANT'S Insurance Primary The insurance provided by the Tenant pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the Landlord or any of the Landlord's members, officials, officers or employees shall be in excess of and not contributing with the insurance provided by or on behalf of the Tenant.

Deductible or Self-Insured Retention Provisions Except as otherwise specifically authorized herein, no deductible or self-insured retention for any required insurance provided by the Tenant pursuant to this Agreement will be allowed unless and until the Tenant has received prior written approval from the Landlord to use such deductible or self-insured retention in connection with the required insurance. The extent to which, if any, the Landlord agrees to allow deductibles or self-insured retentions for any required coverage is subject to the sole discretion of the Landlord. The Tenant shall be responsible for paying any losses, including losses and defense costs with respect to claims against the Landlord, and the Landlord's

members, officials, officers or employees, within the amount of any deductible or self-insured retention allowed under this section.

13.2 **Generally.** Tenant shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to Landlord, the types and amounts of insurance required by law. Tenant shall not commence work until the required insurance is in force and evidence of insurance acceptable to Landlord has been provided to, and approved by, Landlord. An appropriate Certificate of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by construction, Tenant shall provide Landlord with renewal or replacement evidence of insurance at least thirty (30) calendar days prior to the expiration or termination of such insurance.

13.3 **Workers' Compensation/Employer's Liability Insurance.** Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$1,000,000	Each Accident
	\$1,000,000	Disease - Policy Limit
	\$1,000,000	Disease - Each Employee

13.4 **General Liability Insurance.** Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements. Landlord shall be included as an "Additional Insured" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

13.5 **Automobile Liability Insurance.** Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with

the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Each Occurrence - Bodily Injury and Property Damage Combined

13.6 **Liability of Tenant.** Compliance with these insurance requirements shall not limit the liability of Tenant. Any remedy provided to Landlord by the insurance provided by Landlord shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of Tenant) available to the Landlord under this Agreement or otherwise.

13.7 **Tenant's failure to obtain, pay for, or maintain insurance.** Tenant's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which LANDLORD may immediately terminate or suspend this Agreement.

13.8 **Changes in Insurance.** The Tenant shall furnish to the Landlord Certificates of Insurance. Tenant shall provide the Landlord with copies of the actual endorsements to each insurance policy provided in accordance with this Agreement showing that the insurer will provide the Landlord with thirty (30) days notice for any change, cancellation or non-renewal of the policy. If the insurance policies expire during the terms of the Contract, a renewal certificate or binder shall be filed with the Landlord fifteen (15) calendar days prior to the renewal date.

13.9 **Waiver.** The Landlord and Tenant waive all rights against (1) each other and any of their subcontractors, subcontractors, agents and employees each of the other, and (2) the separate contractors if any, and any of their subcontractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the event covered by property insurance obtained pursuant hereto applicable to the Work, provided such waiver does not compromise coverage under such insurance coverage. The Landlord or Tenant, as appropriate, shall require separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, to extend similar waivers each in favor of other parties enumerated herein. The required Builder's Risk policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

13.10 Property Insurance.

A. At all times during this Agreement when construction and/or renovation of the Museum is taking place, the Tenant shall furnish and maintain, and the Tenant shall bear the cost of, all-risk builder's risk property insurance, satisfactory to the Landlord, upon the entire Work at the site to the full replacement cost of the completed project. This coverage shall name Landlord as an additional insured, must include the interests of the Landlord, Tenant, subcontractors and sub-subcontractors in the Work. At a minimum, the policy must insure against perils including, but not limited to, earthquake, fire, extended coverages, windstorm, lightning, flood, and physical loss or damage, including theft, vandalism and malicious mischief.

B. At all times during this Agreement when construction and/or renovation of the Museum is not taking place, the Landlord shall furnish and maintain, all-risk commercial property insurance insuring all buildings and structures on the Premises for full replacement cost of such buildings and structures provided such insurance is reasonably available to Landlord at commercially reasonable premiums and subject to City of Fort Pierce appropriations of such funds for each budget year of the Lease. At a minimum, the policy must insure against perils including, but not limited to, earthquake, fire, extended coverages, windstorm, lightning, flood, and physical loss or damage, including theft, vandalism and malicious mischief.

C. The Landlord shall not, at any time, be responsible for insuring any Museum contents or any other personal property of Tenant.

13.11 Future Modifications - Changes In Circumstances

A. Increases in Required Limits of Insurance.

The Tenant acknowledges that the minimum limits of insurance required by this Agreement are based on circumstances, including the limits of insurance typically maintained by, or required of, organizations such as the Tenant, at the inception of this Agreement. The Tenant agrees that, if, in the opinion of the Landlord, changed circumstances merit an increase in such minimum limits of insurance required by this Agreement, the Landlord may increase the minimum limits of insurance required, and that the Tenant shall, within 60 days of receipt of written notice of a change in the minimum limits required, comply with such increased minimum limits and provide evidence of such compliance in the manner required by the Agreement. Provided, however, that no increase in the minimum limits of insurance required with respect to a given insurance coverage shall be made by the Landlord until at least three years after inception of this Agreement. Subsequent increases in the

minimum limits of insurance with respect to any given coverage shall not be made by the Landlord until at least three years after any prior increase by the Landlord.

B. Changes in Description of Coverages

In order to accurately describe the scope and nature of the insurance required by this Agreement, reference is made to certain standard insurance industry forms in general use at the inception of this Agreement. If, during the term of this Agreement, the standard insurance forms referenced in this Agreement are discontinued, replaced, or substantially modified, the Landlord may, at the Landlord's sole discretion, periodically modify the insurance requirements in this Agreement to require that the insurance maintained by the Tenant, with respect to one or more of the coverages, be no more restrictive than a specified standard insurance industry form or forms then in general use for the same type of insurance coverage.

ARTICLE 14

LEGAL LIABILITY

14.1 Limits on Liability.

A. Disclaimer by Landlord. This Agreement is made upon the express condition that, except as specifically set forth herein, Landlord is to be free from, and Tenant assumes the risk of, all liability and claims for damage, loss, cost, or expense by reason of any injury to any person or persons, including Tenant, or to any property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or any causes whatsoever, in, upon or in any manner connected with the Premises or the Museum Improvements, during the term of this Agreement or any extension or renewal thereof or any occupancy hereunder. Without limiting the generality of the foregoing, Landlord and Landlord's agents and employees shall not be liable except to the extent of available insurance for any such loss or damage to persons or property resulting from fire, electricity, gas, water, wind or rain or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any cause (except to the extent such liability arises out of any sublease by Landlord of any portion of the Museum Improvements from Tenant.)

B. Obligation of Tenant Limited to Corporation. Any and all obligations of the Tenant under this Agreement are enforceable only against the Tenant, and are not enforceable against

nor do they impose any formal liability upon Tenant's officers, directors, trustees or employees or any other individual or entity, public or private.

14.2 **Indemnification.**

A. **Tenant Indemnification.** Tenant shall indemnify, defend and hold Landlord, its officers, employees and agents, harmless against and from any and all losses, claims, actions, damages, costs and expenses (including reasonable attorney's fees) arising out of or relating to any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Agreement, arising out of or relating to any breach of any representation or warranty made by Landlord under this Agreement, or arising out of or relating to any actual or alleged negligent act, intentional wrongful act, or omission or any willful misconduct of Tenant or any of its officers, employees or agents.

B. **Survival of Indemnification Obligations.** Any liability of Tenant for acts or omissions occurring during the term of this Agreement, or arising under any indemnity provision of this Agreement shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued.)

ARTICLE 15

REPAIRS, MAINTENANCE AND OPERATIONS

15.1 **Museum and Museum Improvements excepting Landscaping.** Tenant shall, at Tenant's sole cost and expense, keep and maintain the Museum, Museum Improvements, and any and all other facilities, now or hereafter appurtenant to the Premises, including but not limited to, Open Space Improvements, all exterior walls, roofs, interiors, windows, doors, glass, plumbing, heating, air conditioning, ventilation, electrical and lighting facilities, and equipment in good order and repair and in a safe and clean condition, ordinary wear and tear excepted.

15.2 **Maintenance of Grounds prior to Commencement of Construction.** Landlord shall maintain the Premises, with the exception of the existing museum building, until the Commencement of Construction.

15.3 **Operations.** Tenant shall be solely responsible for all costs associated with the annual operating budget. Landlord is not required to expend public funds to support either the capital or operating expenses of the Project.

ARTICLE 16

COMPLIANCE WITH LAW

16.1 **General Requirements.** This Agreement shall be construed under and governed by, and the Tenant, at its sole cost and expense, shall comply with, all laws, ordinances, rules, regulations, environmental permits and all other obligations imposed by applicable provisions of building, housing, health and environmental codes of any State or Federal law, regulation or agency, including current land use plans, as now or hereafter enacted or promulgated. Whenever Tenant is informed of any violation of any such law, ordinance, rule, regulation license, permit or authorization committed by it or any of its officers, employees, contractors, agents or invitees, or any of its contractor's subcontractors, Tenant shall desist as soon as reasonably possible from and/or prevent or correct such violation.

16.2 **Licenses and Similar Authorizations.** Tenant, at no cost to Landlord, shall secure and maintain in full force and effect during the term of this Agreement, all necessary licenses, permits, regulatory approvals and similar legal authorizations required for the operation, use and development of the Premises and shall comply with all requirements thereof. Nothing herein shall be construed as assurance that any such legal authorization required from Landlord will be granted, or that the Landlord will grant consents, approvals or modifications hereunder for the purpose of compliance with the conditions of any permit, approval or license sought or obtained by Tenant.

16.3 **Americans with Disabilities Act Compliance.** Tenant, at no cost to Landlord, shall comply with all requirements of the Americans with Disabilities Act, as now or hereafter amended, and all rules and regulations implementing the same.

16.4 **Safety.** Tenant shall contractually require its contractors, subtenants and licensees to comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction over the safety of persons or property, or over protection of same from damage, injury or loss, and to erect and maintain all necessary safeguards for such safety and precaution, Nothing contained in this Agreement shall be construed as imposing any duty upon

Landlord with regard to, or as constituting any express or implied assumption by Landlord of control or responsibility over, safety at or on the Premises or the Museum Improvements.

16.5 **Hazardous Substances.** Museum shall not cause or permit any hazardous substances (as defined in federal, state or local law) to be brought on, discharged from, or stored or used at or in connection with the premises, by Museum, its agents, employees, contractors, licensees, or invitees. For purposes hereof, the term "Hazardous Substances" shall be as defined in applicable federal, state and local laws, and shall include any pollutant or contaminant as defined in 42 U.S.C. Sec. 9601(33), toxic pollutant as defined in 33 U.S.C. Sec. 1362(13), hazardous substance as defined in 42 U.S.C. Sec. 9601(14), hazardous chemical as defined in 29 CFR Sec. 1910.1200(e), or hazardous waste as defined in 42 U.S.C. Sec. 6903(5).

ARTICLE 17

ACCEPTANCE OF THE PREMISES

Except as otherwise provided herein in Section 4.1 and Section 9.1 (amphitheater demolition) and otherwise, by entry thereunder, Tenant accepts the Premises in the condition existing as of the Effective Date of this Agreement and acknowledges Tenant has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, the Premises are suitable for the construction and completion of the Museum Improvements contemplated herein and for its subsequent use and occupancy by Tenant.

ARTICLE 18

DAMAGE AND DESTRUCTION DURING THE TERM OF THE LEASE

18.1 **Repairs, Alterations and Further Improvements.** In the event of damage to or destruction of any or all of the Museum Improvements (excluding therefrom ordinary wear and tear requiring maintenance and routine repairs) during the term of this Agreement, this Article shall apply.

18.2 **Museum Damage or Destruction.** If the cost of repair or reconstruction of the Museum Improvements following damage or partial destruction is available to Tenant from the property hazard insurance carried by Landlord or from other sources available to Tenant, Tenant and Landlord agree that Tenant may repair or reconstruct the Museum substantially to its condition prior to the occurrence using such insurance proceeds, up to the exhaustion thereof. If, however, Tenant determines that the damage or destruction is too extensive to merit repair or restoration of the

museum on the Premises, Tenant shall receive the proceeds of property hazard insurance carried by Landlord and shall restore the Premises to its Original Condition. This Agreement shall terminate and any remaining balance of insurance proceeds may be used by Tenant to relocate the Museum. Any repairs or reconstruction shall be in conformity with the construction approvals and requirements of this Agreement.

ARTICLE 19
CONDEMNATION

19.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Article the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by Landlord to the condemn or under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Article.

B. "Total condemnation" and "total taking" mean the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises under such power as to prevent or substantially impair the conduct of Tenant's business thereon.

C. "Partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total taking as defined above.

19.2 Effect of Total Condemnation. In the event that there shall be a total taking of the Premises during the term of this Agreement, or any renewal or extension thereof, under the power of eminent domain as defined in this Article, the leasehold estate hereby created in the Premises shall cease and terminate as of the date title to the Premises is taken by the condemnor. On termination of this Agreement by a total taking of the Premises under the power of eminent domain, all other charges payable by either Party to or on behalf of the other under the provisions of this Agreement shall be paid up to the date on which actual physical possession of the Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto arising from and after the date of such termination.

19.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Agreement, or any renewal or extension thereof, under the

power of eminent domain as defined in this Article, this Agreement shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Agreement shall also terminate on such date as to the balance of the Premises once more than ten percent (10%) of the ground area (including the common area) or five percent (5%) of the floor area of the Museum Improvements have been taken and Tenant gives written notice of termination to Landlord within thirty (30) calendar days after Landlord shall have given Tenant written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of ground area or floor area is taken or Tenant fails to timely elect to terminate, this Agreements shall continue in full force and effect as to the remainder of the Premises not so taken.

19.4 **Award.** Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain (the "Just Compensation") shall be allocated between Landlord and Tenant as follows:

A. Out of the total Just Compensation, Landlord shall receive the present value of the reversion (assuming expiration at the end of the Renewal Term) as of the time of taking; the remainder shall be payable to the Tenant. The foregoing allocation shall be established by the same court of law or other trier of fact that establishes the Just Compensation, using a qualified commercial real estate appraiser acceptable to the parties and who is experienced in the valuation of ground leasehold estates (the "Appraiser"), but if there is no court of law available, able, or willing to make such allocation, then Landlord and Tenant shall attempt to agree themselves on one Appraiser who shall determine the then-present value of the Landlord's reversion and make the appropriate allocation of the total Just Compensation. If the aforementioned court or trier of fact cannot or will not make the allocation, and if the parties cannot thereafter agree on one Appraiser who will be able to make such allocation within sixty (60) calendar days after the amount of Just Compensation has been determined, the allocation shall be determined in accordance with the procedures set forth in Article 33. The foregoing shall not limit Tenant's right to separately pursue compensation or damages for lost revenues, business interruption, and moving expenses, provided that such awards do not reduce any award to Landlord, and Tenant shall be solely entitled to any such compensation or damages free and clear of any claim by Landlord.

B. Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be allocated in the same manner as in Section 19.4(A) above.

C. The term "time of taking" as used in this subsection shall mean 12:01 a.m. of whichever shall occur first, the date title or the date physical possession of the Premises or any portion thereof is taken by the agency or entity exercising the eminent domain power.

19.5 **Temporary Taking.** If the whole or any part of the Premises or of the Tenant's interest under this Agreement be taken or condemned by any competent authority for its temporary use or occupancy, then this Agreement shall continue and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Tenant shall be entitled to receive the entire amount of any Just Compensation made for such taking, whether paid by way of damages or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the then-effective term of this Agreement, in which case such Just Compensation shall be apportioned between Landlord and Tenant as of such date of expiration of the then-effective term of this Agreement.

ARTICLE 20

BANKRUPTCY OR INSOLVENCY

In the event Tenant voluntarily or involuntarily files for an order for relief under the bankruptcy code, or similar provisions of succeeding law or makes an assignment for the benefit of creditors, or if a receiver is appointed over all or any portion of Tenant's assets located upon the Premises, and such receivership continues for a period of 120 calendar days, or if an attachment or execution or process of court issuing upon or against all or any portion of Tenant's property located upon the Premises remains unreleased for a period of 120 calendar days, such event shall constitute, at the option of Landlord, an Event of Default (as defined in Article 21 below) and Landlord shall thereafter have all of the remedies for such Event of Default set forth in Article 21 below (including the right to terminate this Agreement).

ARTICLE 21

TENANT DEFAULT

21.1 **Tenant Default/Cure Periods.** The following shall constitute Events of Tenant Default:

A. Subject to Force Majeure Events, as provided in Article 44 below, Tenant's failure to comply with any term or provisions of this Agreement if such default shall continue, after written notice from Landlord specifically identifying the nature of the default, for a period of sixty (60) calendar days, or such longer or shorter period as may be (1) specified by another applicable Section of this Agreement; or (2) may be reasonably required to cure the default, provided Tenant commences the cure within said sixty (60) calendar days after Landlord's written notice of default, and covenants to diligently complete the cure within such reasonable period; or

B. There shall have been three (3) or more discrete and distinct defaults within the previous two-year period, of which notice shall have been given to Tenant (whether or not such defaults shall have been cured); or

C. The insolvency or bankruptcy of Tenant, as described in Article 20 above; or

D. Tenant abandons the Premises in violation of Article 28.

21.2 **Landlord's Remedies upon an Event of Tenant Default.** Upon the occurrence of an Event of Tenant Default, Landlord may exercise anyone or more of the following remedies as Landlord in its sole discretion shall determine:

A. Terminate this Agreement upon at least ninety (90) calendar days' advance written notice and further subject to and in accordance with Section 21.3.

B. Seek specific performance or other injunctive relief.

C. Recover monetary damages (but specifically excluding consequential or special damages).

D. Undertake payment and performance of Tenant's obligations under this Agreement and, in such case Tenant shall reimburse Landlord on demand for all sums Landlord pays pursuant to this Subsection and for all costs and expenses Landlord incurs in connection with the performance of any act authorized by this Subsection. together with interest on the foregoing amounts accruing from the date of such expenditures by the Landlord at the rate of twelve percent (12%) per annum.

E. Exercise any other rights and remedies, now or hereafter, available to Landlord under this Agreement and the laws and judicial decisions of the State of Florida, subject, however, to the limitation on the right to terminate set forth in Section 21.3 below.

21.3 **Termination upon an Event of Tenant Default.** The parties recognize and agree that, except for termination in accordance with Article 4, termination of this Agreement is a drastic and severe remedy. Accordingly, Landlord shall only have the right to exercise its right to terminate this Agreement for an Event of Tenant Default, if:

A. The Event of Tenant Default is of the nature described in Subsections 21.1.C. or 21.1.D. above; or

B. The Event of Tenant Default is of the nature described in Subsections 21.1.A or 21.1.B, the underlying default(s) are Material Defaults, and Landlord is not likely to be made whole through pursuit of any other commercially-reasonable remedies available to Landlord under this Agreement for such a Tenant Event of Default.

On the date that the termination of this Agreement pursuant to this Article takes effect, all rights and interests of Tenant in, to, and under this Agreement shall terminate, except to the extent otherwise directed by Landlord in its sole discretion. In addition, on the date of such termination, Tenant shall immediately surrender to Landlord the Premises and the Museum, as more fully set forth in Article 24

21.4 **Remedies Cumulative** Each right and remedy of Landlord hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute; subject, however, to the limitation on the right to terminate set forth in Section 21.3 above. The exercise or beginning of the exercise by Landlord of anyone or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Landlord of any or all other such rights or remedies.

ARTICLE 22

SUBLEASES AND ASSIGNMENTS

22.1 **No Assignment or Sublease of Lease.** Except as otherwise provided in Article 22, Tenant shall not voluntarily, involuntarily, or by operation of law, assign or in any manner transfer

this Agreement, any interest in this Agreement, any option that may be contained in this Agreement, or any title to all or any portion of Tenant's interest in the Museum to a third party without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned. Except as otherwise provided in this Agreement, any assignment, license, mortgage, sublease, hypothecation, transfer, or occupancy of the Premises or the Museum in violation of this Subsection shall be null and void and of no force and effect and shall further constitute a breach of this Agreement by Tenant.

ARTICLE 23

ENCUMBRANCE OF LEASEHOLD ESTATE

Landlord and Tenant acknowledge that Tenant's sole interest in the Premises is as a Tenant and that Landlord owns the Museum and underlying land. Landlord and Tenant further acknowledge that Landlord has no legal authority to transfer to Tenant any interest greater than a leasehold interest without a vote of the public and that no such vote has been held. Tenant may enter into a loan to construct the Museum Improvements,, provided that Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord in the Premises (including without limitation Landlord's interest in the Premises, its interest in this Agreement, and/or its interest in the Museum Improvements following whether before or after expiration or earlier termination of this Agreement (collectively, "Landlord's Interests"), and provided further that, in connection with financing, Tenant may, if necessary to effect financing, (i) grant to a lender a lien on Tenant's interest in the Lease and the Museum Improvements (including without limitation a leasehold mortgage or other commercially reasonable form of security instrument acceptable to a lender, but expressly excluding the Landlord's Interests); (ii) grant to a lender reasonable rights, upon a loan default, to assume the Lease (i.e., stepping into the "shoes" of the Tenant without the same constituting a default under the Lease), and assign it to a new tenant (subject, however, to all of the use restrictions and other terms and conditions herein); and (iii) simply as a mechanism to effect financing, assign the Lease to a new nonprofit corporation to operate the Museum during the term of the financing and/or for the new nonprofit corporation to sublease the Museum Improvements back, to the Tenant, so long as Tenant shall remain no less liable for the performance of the Lease, either through a Lease guarantee or other similar mechanism in effect.

ARTICLE 24
SURRENDER

Tenant agrees that on the last day of the Term or the sooner termination of this Agreement, Tenant will surrender the Premises and the Museum to Landlord in good condition, reasonable use and wear and tear of the Museum excepted. Upon termination of this Agreement, Tenant shall have no further interest in the Museum or the Premises. If so requested by Landlord, Tenant shall convey to Landlord by special warranty deed and/or by bill of sale, all Museum facilities and Improvements, subject only to such encumbrances and leases as shall have been specifically approved in writing by Landlord. On or before such termination date Tenant shall deliver to Landlord (a) all keys to any structures, fixtures, or personal property on the Premises; and (b) all plans, blueprints, surveys, diagrams, leases, contracts, and documents relating to the Premises or the Museum. Upon the termination or expiration of this Agreement, Tenant shall have the right and shall be given a reasonable opportunity not to exceed 90 calendar days, provided Tenant is not then in default, to remove from the Premises any furnishings, equipment, and other personal property not constituting Museum Improvements as defined in Article 6. Tenant shall, at Tenant's sole cost and expense, immediately repair all damage done or occasioned by reason of the removal of any such furnishings, equipment, and personal property. All property not removed by the Tenant within 90 calendar days of termination shall be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to the Tenant and without obligation to account therefor. If the Agreement shall be terminated as to a portion of the Premises, then this Article shall apply to such portion and all improvements thereon, together with all related personal property.

ARTICLE 25
HOLDING OVER

If Tenant shall, with the acknowledgment and consent of Landlord, continue to remain in possession of the Premises after the expiration of the term of this Agreement or any extension or renewal hereof, such holding over shall be on a month-to-month basis and shall not constitute a reletting or releasing of the Premises unless the Parties agree otherwise. Said tenancy from month-to-month shall be upon the same terms and conditions herein specified and shall continue to be such until 30 calendar days after Tenant shall have given to Landlord or the City shall have given to Tenant a written notice of termination of such monthly tenancy. Nothing contained herein shall be construed as

a consent by Landlord to the occupancy or possession of the Premises by Tenant after the expiration of the term hereof.

ARTICLE 26
WARRANTIES BY LANDLORD

Landlord, represents, warrants, and covenants that:

A. The title to the Premises is vested in Landlord, subject to no defects or encumbrances other than restrictions, reservations, and easements of record.

B. Landlord shall not, after the date hereof, agree to or create any liens or encumbrances on the Premises, except for any encumbrances agreed to by Tenant, and Landlord shall, at or prior to the commencement of the Term, cause the Premises to be free of all liens and encumbrances.

C. Landlord has the authority to enter into this Agreement and its execution and delivery by Landlord has been duly authorized.

D. Landlord shall not voluntarily, assign, license, mortgage, hypothecate, sublet, sell, or in any manner transfer this Agreement, any interest herein, any option that may be contained herein to all or any portion of the Premises, or any title or interest in all or any portion of Landlord's interest in the Premises without first obtaining the written consent of Tenant, such consent to not be unreasonably withheld. Any assignment, license, mortgage, sublease, hypothecation, transfer, or sale of the Premises in violation of this Subsection shall be null and void and of no force and effect and shall further constitute a breach of this Agreement by Landlord.

E. Landlord covenants and agrees that Tenant shall peacefully and quietly hold and enjoy the Premises during the term hereof or any extension or renewal hereof, without interference or hindrance from Landlord or any person or persons holding or claiming under Landlord in any manner whatsoever.

ARTICLE 27
DEFAULT BY LANDLORD

27.1 Landlord Default/Cure Periods. The following shall constitute Events of Landlord Default:

A. Subject to Force Majeure Events, as provided in Article 44 below, Landlord's failure to comply with any term or provisions of this Agreement, if such default shall continue, after written notice from Tenant specifically identifying the nature of the default, for a period of sixty (60) calendar days, or such longer period as may be (1) specified by another applicable Section of this Agreement or (2) may be reasonably required to cure the default, provided Landlord commences the cure within said sixty (60) calendar days after Tenant's written notice of default and covenants to diligently complete the cure within such reasonable period;

B. There shall have been three (3) or more discrete and distinct defaults of a similar nature within the previous one-year period, of which notice shall have been given to Landlord (whether or not such defaults shall have been cured).

27.2 **Tenant Remedies upon an Event of Landlord Default.** Upon the occurrence of an Event of Landlord Default, Tenant may exercise anyone or more of the following remedies as Tenant in its sole discretion shall determine:

- A. Terminate this Agreement upon at least ninety (90) calendar days' advance written notice.
- B. Seek specific performance or other injunctive relief.
- C. Recover monetary damages (but specifically excluding consequential or special damages).
- D. Exercise any other rights and remedies available to Tenant under this Agreement.

27.3 **Remedies Cumulative.** Each right and remedy of Tenant hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute. The exercise or beginning of the exercise by Tenant of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Tenant of any or all other such rights or remedies.

ARTICLE 28
ABANDONMENT OF PREMISES

Tenant shall not abandon the Premises at any time during the term of this Agreement, or any extension or renewal thereof. If Tenant abandons the Premises in violation of this Article or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises shall be deemed abandoned at the option of Landlord and shall be disposed of in the manner provided in Article 24. The absence of Tenant from the Premises for a period of ninety (90) consecutive days shall be considered an abandonment thereof, unless such absence is due to damage or destruction governed by Article 18 above or due to a Force Majeure Event governed by Article 44 below. If Tenant ceases operation of the Museum for a period of greater than ninety (90) consecutive days, Tenant shall be considered to have abandoned the Premises under this Article, unless such cessation is due to damage or destruction governed by Article 18 above or due to a Force Majeure Event governed by Article 44 below.

ARTICLE 29
SIGNS

Tenant shall have the right to design and install permanent exterior signage on the Premises subject, however, to any consent or approval required from the City's Planning and Building Departments and compliance with any applicable City ordinances regarding signs and design review. Permanent and temporary signage shall be of a cohesive, professional design, with all signage reflecting a cohesive design, font, color scheme, scale and proportion. Tenant shall further have the right to design and install temporary, exterior, event signage subject to the following criteria:

- A. All signs must correctly identify any facilities referenced in the Tenant signage;
- B. Signs must be reasonably relevant to activities taking place at the Museum; and
- C. Signs shall be consistent with the Tenant mission and programs and programming.

ARTICLE 30
SECURITY

Tenant, at Tenant's sole expense, shall provide or cause to be provided all security services on the Premises and for the Museum as are customary and appropriate for a facility of this type.

ARTICLE 31

RIGHTS CONFERRED UPON TENANT

31.1 **Tenant Control over Programming.** Subject to Tenant's compliance with all ordinances, laws, and regulations governing the same, Tenant shall have the unrestricted right to program Museum facilities for regular and special events that are consistent with the Tenant mission and programs. This includes, but shall not be limited to, special exhibits, performances, concerts, and presentations.

ARTICLE 32

CITY'S CONSENT OR APPROVAL

Whenever the consent of Landlord to any act to be performed by the Tenant is required under this Agreement (a) the Tenant must obtain the consent or approval in writing expressly for purposes of this Agreement, regardless whether a consent or approval shall have been granted by Landlord in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may be withheld in Landlord's sole discretion.

ARTICLE 33

MEDIATION OF DISPUTES

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to participate in good faith in the mediation process described below.

33.1 **Involvement of Mediator & Mediator's Consultants.** In the event an issue cannot be resolved by negotiations between subordinate staff of Tenant and the Landlord, the matter shall be referred to the City Manager and Tenant's President. If those officials are unable to resolve the dispute within a period of 15 calendar days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven calendar days to select a mediator to assist in the resolution of such dispute. If Landlord and Tenant cannot agree upon a mediator within such seven day period, either Party may apply to the American Arbitration Association or the Judicial Arbitration & Mediation Service for the appointment of a mediator according to the process that is established by such entity for such action. Tenant and Landlord shall share equally the cost charged for the mediation

of any dispute. The mediator shall have the authority to engage one or more expert consultants with knowledge in the field(s) or area(s) involved in the matter(s) that are in dispute to assist the mediator and the parties to evaluate their respective claims and resolve their dispute.

33.2 Continuation of Efforts in Event of Dispute No Litigation without Mediation.

Notwithstanding the existence of any dispute between them, the parties shall continue to carry out; without unreasonable delay, all of their respective responsibilities under this Agreement which are not affected by the dispute. Neither Party to this Agreement shall commence any litigation against the other with respect to any claim or dispute arising hereunder without first participating, in good faith, in mediation as contemplated in this Article.

ARTICLE 34

RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed as to make the Parties hereto partners, associates, joint venturers, or participants in any legal relationship other than that of lessor and lessee. Neither Party hereto shall have the power to contract or incur any obligation or liability in the name of the other Party.

ARTICLE 35

AMENDMENTS

The Parties hereto expressly reserve the right to renegotiate and change the provisions of this Agreement from time to time as may be necessary. No alteration or modification of the terms or conditions of this Agreement shall be valid and binding unless made in writing and signed by the authorized representatives of the Parties.

ARTICLE 36

NO WAIVER OF DEFAULT

No waiver of default by either Party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other Party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants, and conditions of this Agreement to be performed, kept, and observed by the other Party.

ARTICLE 37
BINDING EFFECT

This Agreement shall be binding upon the successors and assigns of the parties hereto.

ARTICLE 38
NEGOTIATED AGREEMENT

The Parties hereto acknowledge that both Parties participated equally in the drafting of this Agreement and that in the event of a dispute neither Party shall be ascribed as the author of this Agreement nor have any ambiguity resolved against such Party on account thereof.

ARTICLE 39
NOTICES

All notices required to be given hereunder shall be given in writing and shall be personally delivered or deemed delivered if dispatched by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as set forth opposite their respective names below:

If to Landlord:	City of Fort Pierce c/o City Manager 100 North US Highway 1 Fort Pierce, FL 34950	Copy to:	City Attorney 100 North US Highway 1 Fort Pierce, FL 34950
If to Tenant:	AE "Bean" Backus Gallery and Museum, Inc 500 North Indian River Drive Fort Pierce, FL 34950		

The Parties, by notice given, may designate any further or different addresses to which subsequent notices or other communications shall be sent.

ARTICLE 40
TIME

Time is of the essence of this Agreement.

ARTICLE 41

ESTOPPEL

41.1 **Landlord's Estoppel.** Landlord, within twenty (20) calendar days after written request to Landlord from Tenant or any Lender, will furnish a written statement, duly acknowledged, as to the following items:

A. Whether or not this Agreement is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

B. Whether or not to Landlord's actual knowledge, Tenant is in default and specifying the nature of any such default; and

C. Such other matters as Tenant or the Lender may reasonably request and which relate to the actual knowledge of Landlord.

41.2 **Tenant's Statement.** Tenant, within twenty (20) calendar days after written request of Landlord, will furnish a written statement, duly acknowledged, as to:

A. Whether this Agreement is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

B. Whether there are any defaults thereunder on the part of Landlord to the actual knowledge of Tenant and specifying the nature of such defaults, if any; and

C. Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

41.3 **Failure to Furnish.** Upon the failure of Landlord or Tenant, as the case may be, to furnish such statements within the said twenty (20) day period, it shall be conclusively presumed that this Agreement is in full force and effect and that there are no defaults thereunder by the other Party, except to the extent of facts actually known by the Party to whom such statement was to be directed.

ARTICLE 42

CAPTIONS

The table of contents and the headings to the Subsections of this Agreement are not a part hereof and shall have no effect on the construction or interpretation of any of the terms and provisions contained herein.

ARTICLE 43

INVALIDITY OF PROVISIONS

Should any term, provision, condition, or other portion of this Agreement be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition, or other portion of this Agreement, and the remainder of this Agreements shall be effective as if such term, provision, condition, or portion were not a part hereof.

ARTICLE 44

FORCE MAJEURE

44.1 **Definition of Force Majeure Event.** "Force Majeure Event" shall mean any circumstance or act beyond the control of a Party, that such Party could not have reasonably anticipated or prevented and that has, or may reasonably be expected to have, a material adverse effect on the rights or obligations of such Party. Examples of Force Majeure Events shall include without limitation, an intervening act of God or public enemy, fire, storm, flood, hurricane, tidal wave, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, earth movement, quarantine restriction, freight embargo, riot or public discord, civil disturbance, work stoppages and labor strikes, terrorist act, or changes in law. Another example of a Force Majeure Event is a lawsuit filed challenging the validity of one or more permits, licenses, or other governmental approvals related to the development or operation of the Museum, until such time as any such lawsuit is finally and ultimately resolved.

44.2 **Effect of Force Majeure Event** If either Party is rendered wholly or partly unable to perform its material obligations (excluding, however, any monetary obligations) under this Agreement within two (2) years from the first occurrence of a Force Majeure Event, then the Party whose performance is not so effected may elect to terminate this Agreement and such termination shall take effect ninety (90) calendar days following notice thereof. If either Party is rendered wholly or partly

unable to perform its material obligations hereunder or to meet any deadline or milestone dates set forth in this Agreement because of a Force Majeure Event for a period of less than three (3) years from the first occurrence of a Force Majeure Event, such Party's time to perform any obligation hereunder (excluding, however, any monetary obligations) affected by such Force Majeure Event, shall be equitably adjusted and the applicable deadline or milestone dates shall be revised accordingly.

ARTICLE 45

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida. Venue for any legal action under the Lease shall be in Saint Lucie County, Florida.

ARTICLE 46

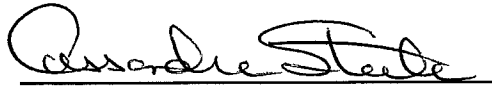
AGREEMENT CONTENTS

This Agreement, including all exhibits and attachments hereto, embody the entire agreement and understanding between the Parties with respect to the lease of the Premises and supersede all other understandings or agreements, written or oral, between the Parties relating to the subject matter of this Agreement. No representations, promises, conditions, or warranties with reference to the execution of this Agreement have been made or entered into between the Parties other than as expressly provided in the aforementioned documents.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement as of the day and year first above written.

WITNESS AS TO CITY:

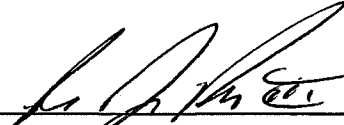
ATTEST:



Print Name: CASSANDRA STEELE

Title: CITY CLERK

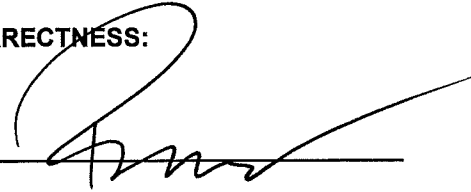
CITY OF FORT PIERCE, FLORIDA

By: 

Robert J. Benton, Mayor

Date: June 2, 2010.

**APPROVED AS TO FORM AND
CORRECTNESS:**

By: 


Robert V. Schwerer, City Attorney

WITNESS AS TO MUSEUM:



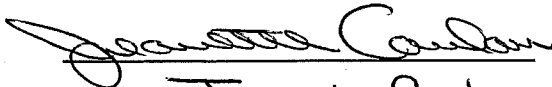
Print Name: LESLIE OLSON

**A. E. "BEAN" BACKUS GALLERY & MUSEUM,
INC.**

By: 

Print Name: Kathleen P. Fredrick

Title: Executive Director



Print Name: Jeanette Conlon

Date: June 2, 2010.

COMPOSITE EXHIBIT "A"
(Page 1 of 2)

Backus Gallery Description

Commence at the intersection of the centerlines of Avenue C (now Backus Drive) and Indian River Drive as shown in Plat Book 10, page 36 of the Public Records of St. Lucie County, Florida, run North $18^{\circ}25'30''$ West, along said centerline of Indian River Drive, 367.63 feet; thence South $78^{\circ}07'30''$ East, 80.60 feet to the Point of Beginning. From the Point of Beginning run South $11^{\circ}48'30''$ West, 43.73 feet; thence South $22^{\circ}20'08''$ East 56.56 feet; thence North $67^{\circ}39'52''$ East, 222.52 feet; thence North $22^{\circ}20'08''$ West, 23.79 feet; thence North $78^{\circ}07'08''$ West, 202.55 feet; thence South $11^{\circ}48'30''$ West, 54.30 feet to the Point of Beginning.

COMPOSITE EXHIBIT "B"

(Page 1 of 6)

Clear plan of the means by which the facility will be maintained and operated

1) Who will operate and maintain facility

As we have done for the past half-century, the facility will be governed by a volunteer board of directors comprised of professionals representing many disciplines from across St. Lucie County. The addition of exhibition areas will not necessitate a significant increase in staffing. The current staff structure will remain unchanged. At present staff includes a full-time Executive Director, part-time Administrative Director, part-time Marketing and Development Director, part-time bookkeeper and three part-time reception and clerical staff. We will hire one additional part-time reception and clerical staff person once the expansion is completed.

2) Anticipated first year full operation and maintenance costs

Our current annual operating cost is \$607,941. Once the expansion is completed, we anticipate our utility and cleaning costs to increase. Basic staffing will remain the same, as the expansion of exhibition space will not necessitate an increase in staffing. The cost for utilities and cleaning for the previous fiscal year was \$11,748. We anticipate a 50% increase in these expenses, adding a total of \$5,874 to the operating budget. (Insurance for the structure itself is paid for by the City of Ft. Pierce which owns the land the building sits upon and technically owns the building itself.)

3) The operations plan and hours of operation to the public

The expansion is an augmentation of our existing facility. As with our current operations, the expanded facility will be open to the public from September - July, Wednesday through Sunday from 11:00 a.m. until 4:00 p.m. In addition to regular operating hours the building will be open for special events that are held during the evening hours. Special events held over weekends often necessitate expanded hours of operation.

Over the past 50 years the facilities hours have been adjusted to reflect visitor trends and the economic climate. The museum's board of directors and staff will continue to evaluate these factors and adjust hours accordingly.

4) Source for the funds

Additional museum revenue will be generated by increased sales from the gift shop as well as increased membership and donations resulting from the enhanced programming of the Backus' space and exhibition areas. Interest in the work of A. B. Backus and other significant Indian River School artists

COMPOSITE EXHIBIT "B"
(Page 2 of 6)

continues to grow. The development of a more appropriate state-of-the-art facility will increase our recognition as a visual arts facility throughout the region and will assist in attracting a broader base of donors as we pursue our mission of perpetuating the artistic and humanitarian legacy of A. E. Backus.

COMPOSITE EXHIBIT "B"
(Page 3 of 6)
"Time Line and Phases of Development"

Total Time Frame for Plan Implementation 15 Years with a 10 Year Extension, which may be granted by the City Commission

General Budget for Phase I Expansion of A.E. Backus Museum

Projected completion date: October 1, 2011

<u>Line Item And Brief Description</u>	<u>Total Cost</u>	<u>Applicant Match</u>	<u>County Match</u>
Exhibit Hall (2,000 Square Feet)	\$300,000		\$300,000
Exhibit Hall (500 Square Feet)	\$75,000		
Vestibule (65 Square Feet)	\$9,750		
Entry Lobby (200 Square Feet)	\$30,000		
Reception (300 Square Feet)	\$45,000		
Washroom (Female - 175 Square Feet)	\$26,250		
Washroom (Male - 175 Square Feet)	\$26,250		
Hurricane Vault (150 Square Feet)	\$22,500		
Janitor's Closet (30 Square Feet)	\$4,500		
Hallways – Misc. Space (866 Square Feet)	\$129,900		
Removal of Amphitheater hill and site improvements	\$ 30,000		
<u>Professional Fees</u>	<u>\$ 80,850</u>		
Total Estimated Cost	\$753,750.00		

Phase I - \$750,000 FUNDS CURRENTLY PLEDGED AND IN HAND

COMPOSITE EXHIBIT "B"
(Page 4 of 6)

Phase II - 2 Story Addition

Estimated Completion Date October 1, 2021

Expanded Gallery Space (3,000 Square Feet)

Elevator

Secure Curatorial Space (750 Square Feet)

Collection Storage (750 Square Feet)

Kitchen Expansion (1,000 Square Feet)

Educational/ Classroom/ Meeting Space (1,000 Square Feet)

2nd Story Terrace Overlooking River

Dedicated, Secure Loading Dock with Direct Access and Easement to North Indian River Drive

Phase III

Estimated Completion Date October 1, 2026

Amphitheater structure to be removed by City

Multi-functional space for events, (3,000 Square Feet)
café and public gathering

Landscaped Terrace with Water Feature

Public Drinking Fountains for Humans and Dogs

Shaded Public Seating

Bicycle Racks

Landscaped paths and Sculpture Garden Leading to Waterfront
(Sculpture selected and purchased with input from County's Art in Public Places Committee and Funding)

May, 2010

- Receive Tourism Development Council Grant Funds
- Go before City Commission to complete lease negotiations, first meeting in May
- Perform site analysis to determine environmental issues, if any.
- Perform survey to define boundaries of projected foot print of building and patios.
- Sign lease with City following site analysis and survey

June – August, 2010

- Design and Development of plans and site
- Work with City Planning Department to coordinate plans and vision for park's open space aesthetic as phased development takes place.
- Create additional Capital Campaign documents to begin formal solicitation for funds for additional phases of development.

September – October, 2010

- Permitting and Construction Documents as required
- Begin serious fundraising for Phase II (hope to build Phase II once Phase I is completed)

November – December, 2010

- Bidding and Permitting
- Hire Project Manager
- Removal of Amphitheater, bathrooms and hill (by City)
- Continue Fundraising

January, 2011 – August 2011

- Construction Administration of Phase I
- Close Backus Museum for the 2010 – 2011 Season on June 1st to allow for construction and connection of spaces

September, 2011

Restore park lands to usable space with sod and appropriate landscaping
Open expanded Museum to the public in late September

COMPOSITE EXHIBIT "B"
(Page 6 of 6)
MUSEUM COMMITMENTS

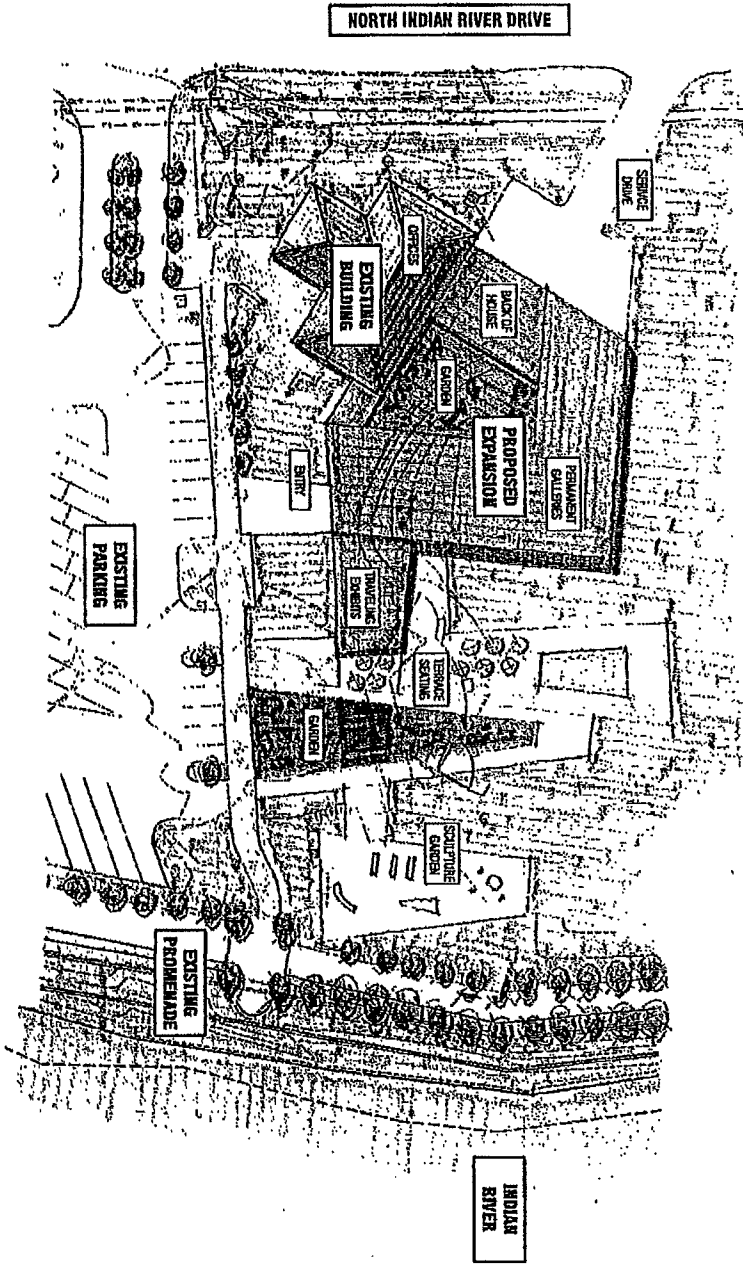
The A.E. Backus Gallery & Museum, Inc., d.b.a. The A.E. Backus Museum & Gallery, Inc., shall continue to operate a public, visual arts facility which enhances the quality of life in the City of Ft. Pierce, St. Lucie County and the Treasure Coast, whose mission is "To promote the arts in the community and to perpetuate the artistic and humanitarian legacy of A.E. Backus."

With the goal of becoming the first accredited art museum in St. Lucie County, the Museum commits to adhere to the following principals and directives of operation which are true to our stated mission and are based upon the *Criteria for Accreditation* by the American Association of Museums.

The Museum will:

- Exhibit to the public the nation's most significant collection of A.E. Backus paintings and Indian River School paintings which includes the work of the Florida Highwaymen.
- Provide educational resources to enhance the public's understanding of the importance of the work of A.E. Backus, the Indian River School of painting and enhance the profile of Ft. Pierce, FL as the birthplace of Florida landscape painting.
- Be a legally organized nonprofit institution
- Be essentially educational in nature
- Have a formally stated and approved mission and remain true to that mission
- Use and interpret objects and/or a site for the public presentation of regularly scheduled programs, exhibits and events
- Have a formal and appropriate program of documentation, care, and use of collections and/or objects
- Carry out the above functions primarily at its physical facility in Veteran's Memorial Park
- Be open to the public at least 1,000 hours a year
- Have a full-time executive director to whom authority is delegated for day-to-day operations
- Have the financial resources sufficient to operate effectively
- Be sensitive to the standards of the community which supports it
- Comply with local, state, and federal laws, codes, and regulations applicable to its facilities, operations, and administration.

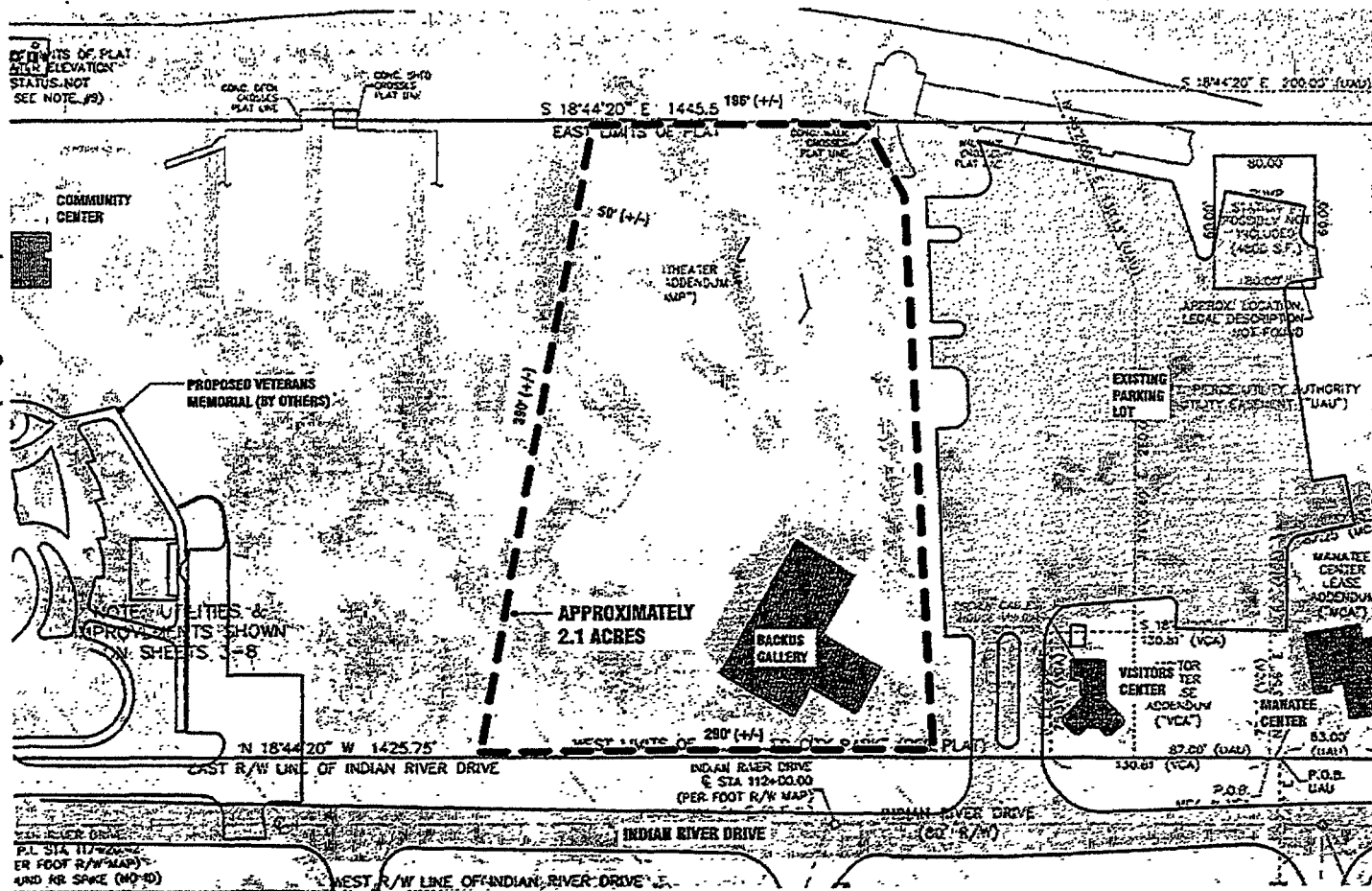
COMPOSITE EXHIBIT "C"
 (Page 1 of 2)



BACKUS MUSEUM PROPOSED EXPANSION
 SCALE 1" = 50'



COMPOSITE EXHIBIT "C"
(Page 2 of 2)



NOTE:
WITH PERMISSION FROM NORTHSTAR GEOMATICS
(THE SURVEYOR), SPRINGBOARD ADDED TEXT AND
GRAPHIC NOTATION OVERLAIN ONTO THE PROPERTY
SURVEY PREPARED BY THE SURVEYOR, DATED JULY
1, 2007. SPRINGBOARD IS RESPONSIBLE FOR SITE
WORK REPRESENTED HERE ONLY; DEPICTION OF
ALL OTHER PROPERTY, UTILITY, SURVEY
INFORMATION, ETC. REMAINS THE RESPONSIBILITY
OF THE SURVEYOR.



A.E. BACKUS MUSEUM
A.E. Backus Museum & Gallery
Fort Pierce, FL
38028



SPRINGBOARD
architecture communication design
3 NOVEMBER 2009

EXHIBIT "D"
PROJECT SCOPE

Phase II - 2 Story Addition

Estimated Completion Date October 1, 2021

Expanded Gallery Space (3,000 Square Feet)

Elevator

Secure Curatorial Space (750 Square Feet)

Collection Storage (750 Square Feet)

Kitchen Expansion (1,000 Square Feet)

Educational/ Classroom/ Meeting Space (1,000 Square Feet)

2nd Story Terrace Overlooking River

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Phase III

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café and public gathering

Landscaped Terrace with Water Feature

Public Drinking Fountains for Humans and Dogs

Shaded Public Seating

Bicycle Racks

Landscaped paths and Sculpture Garden Leading to Waterfront

(Sculpture selected and purchased with input from County's Art in Public Places Committee and Funding)



EXHIBIT "E"

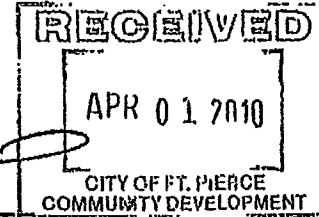
INTEROFFICE MEMORANDUM PUBLIC WORKS DEPARTMENT

TO: Leslie Olson, Historic Preservation Officer

FROM: Nick Mimms, P.E., Director of Public Works *N/m*

RE: **BACKUS GALLERY LEASE - DEMOLITION ESTIMATE**

DATE: March 31, 2010



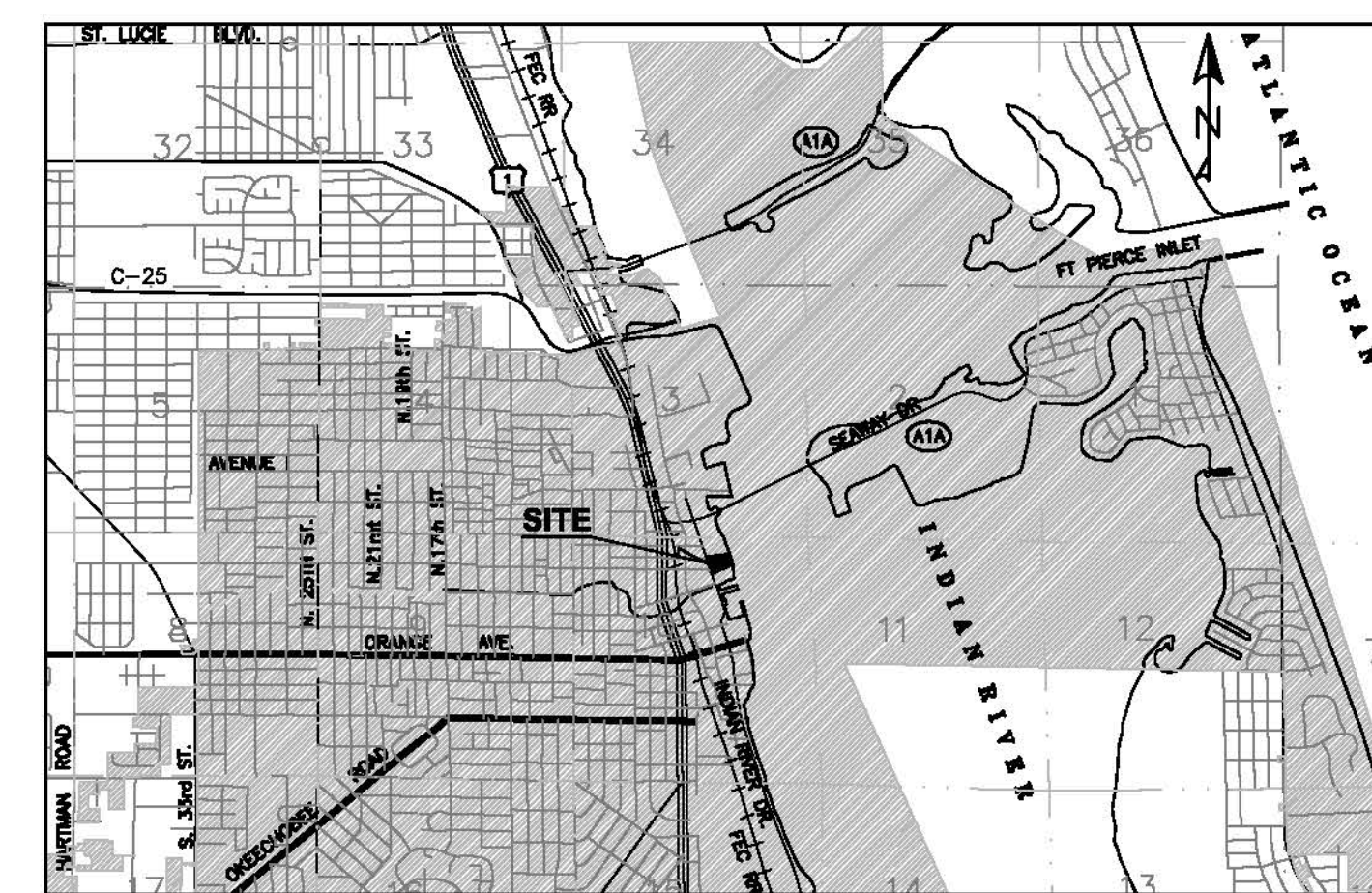
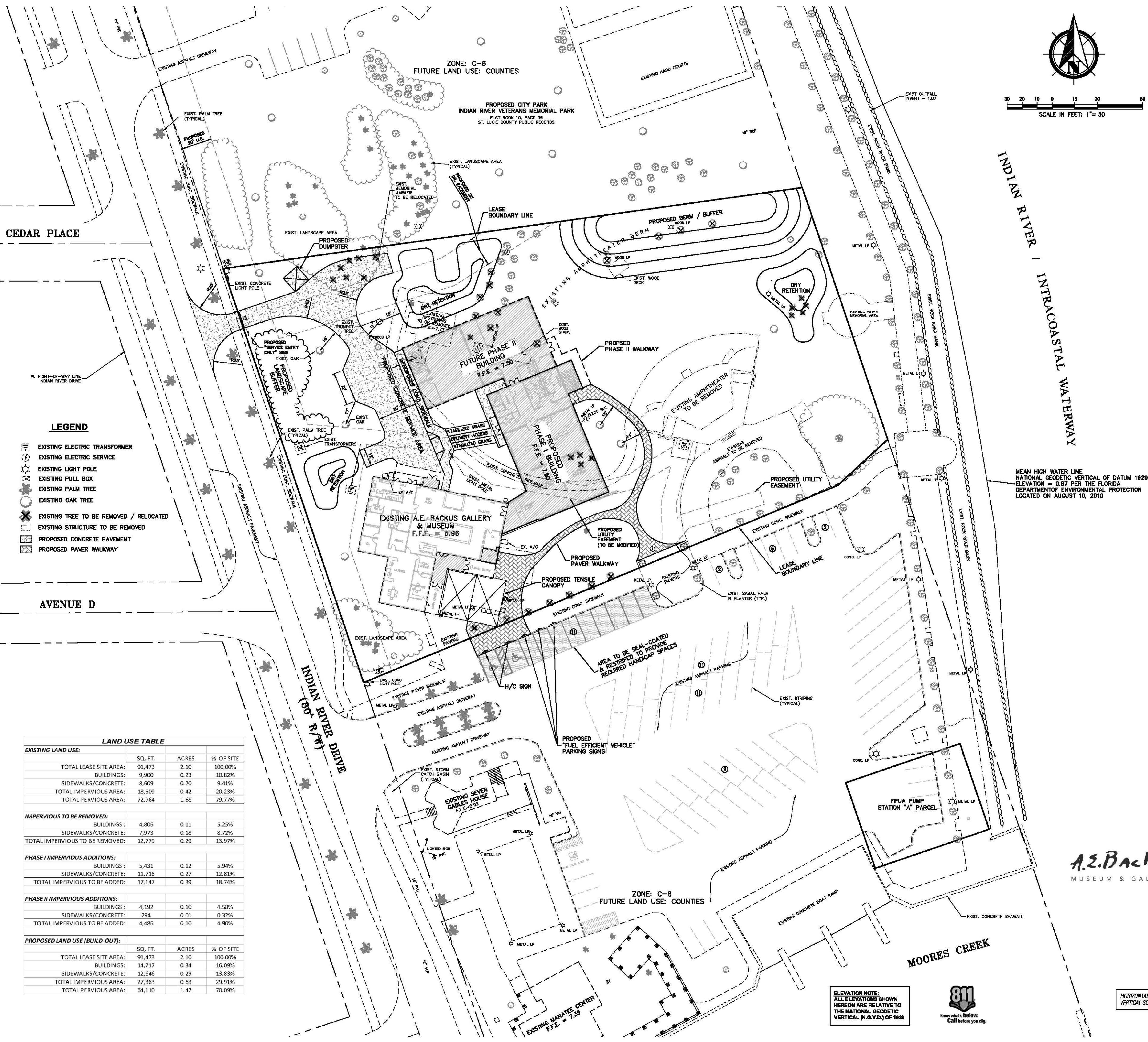
Please see below an estimate for the demolition of the structures included in the prospective lease agreement with The A.E. "Bean" Backus Gallery and Museum.

Item	Unit	Qty.	Unit Price	Estimated Amount
Demolition of Amphitheater & Stage	SF	4,000	\$3.50	\$14,000.00
Demolition of Wood Deck & Steps	LS	1	\$1,500	\$1,500.00
Demolition of Restroom Structure	SF	1,000	\$3.50	\$3,500.00
Excavation of Mound	CY	4,800	\$4.00	\$19,200.00
Removal of Vegetation (8 Oaks, 8 Palms)	LS	1	\$2,500.00	\$2,500.00
Irrigation Reconfiguration	LS	1	\$500.00	\$ 500.00
Electrical Distribution Reconfiguration	LS	1	\$5,000.00	\$5,000.00
Site Grading	SY	3,000	\$2.00	\$6,000.00
Subtotal				\$52,200.00
Contingencies @ 15%				\$7,830.00
ESTIMATED TOTAL				\$60,030.00

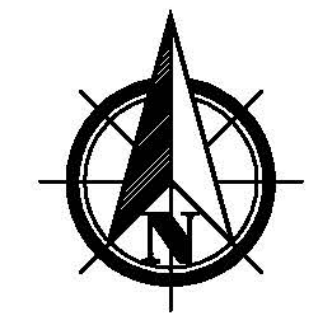
Please review this information and contact this office if you have any questions.

cc: Director of Planning
Streets & Drainage Division Manager

Backus Gallery Lease Demolition Estimate to Planning 3-31-10.doc



LOCATION MAP
N.T.S.



SCALE IN FEET: 1" = 30'

SITE DATA

PROJECT NAME: A.E. BACKUS MUSEUM & GALLERY
TYPE OF PROJECT: MUSEUM EXPANSION AND RENOVATION, PHASE I
SITE ADDRESS: 500 N. INDIAN RIVER DRIVE, FORT PIERCE, FL 34950
TAX ID#: 2403-801-0026-000-0
APPLICANT: A.E. BACKUS MUSEUM & GALLERY, 500 N. INDIAN RIVER DRIVE, FORT PIERCE, FL 34950
ARCHITECT: SPRINGBOARD DESIGN, BILL SZUSTAK, R.A., 24 TERMINAL WAY, PITTSBURGH, PA 15219, OFFICE: (412) 390-4040, FAX: (412) 390-0240, bsz@springboarddesign.net
LANDSCAPE ARCHITECT: LISA NELSON, L.A., 5008 OLEANDER AVENUE, FORT PIERCE, FL 34982, OFFICE: (772) 370-6776, FAX: (772) 465-2790, lisa@lisa-nelson.com
ENGINEER: SUSTAINABLE ENGINEERING & DESIGN, LLC (SED), DAVID L. PHILLIPS, P.E., LEED AP, P.O. BOX 2247, VERO BEACH, FL 32961-2247, OFFICE: (772) 257-3032, FAX: (772) 257-3033, EMAIL: dp@sed-eng.com
SURVEYOR: ROLAND E. ROLLINS, PROFESSIONAL LAND SURVEYOR, 3221 SW CRUMPACKER ST., PORT ST. LUCIE, FL 34953, OFFICE: (772) 873-4700
GENERAL CONTRACTOR: PROCTOR CONSTRUCTION, 1401 S.W. A1A, VERO BEACH, FL 32963, OFFICE: (772) 234-8164, FAX: (772) 234-8198
REQUIRED PARKING, MUSEUMS AND LIBRARIES: 1) 5 SPACES / 300 S.F. 14,717 SF FLOOR SPACE (ULTIMATE BUILD-OUT) 14,717 SF / 300 = 49 SPACES
PROVIDED PARKING: FACILITY SHALL UTILIZE EXISTING PARKING PROVIDED FOR THE VETERAN'S MEMORIAL PARK. 52 SPACES PROVIDED. HANDICAP: 2 REQUIRED, 2 PROVIDED
UTILITIES: 1) WATER SERVICE: FORT PIERCE UTILITIES AUTHORITY (FPUA) 2) SEWER SERVICE: (FPUA) 3) NATURAL GAS SERVICE: (FPUA) 4) SOLID WASTE: WASTE MANAGEMENT 5) ELECTRIC: (FPUA)

LEGAL DESCRIPTION: A PART OF PROPOSED CITY PARK, INDIAN RIVER VETERANS MEMORIAL PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 36, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA AND THE LAND LYING EAST OF PROPOSED CITY PARK AND THIS TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPOSED CITY PARK; THENCE NORTH 18°44'20" WEST, ALONG THE WEST LINE OF SAID PROPOSED CITY PARK AND THE EAST RIGHT-OF-WAY LINE OF INDIAN RIVER DRIVE, A DISTANCE OF 367.47 FEET TO THE POINT OF BEGINNING OF THE HERIN DESCRIBED TRACT OF LAND; THENCE NORTH 18°44'20" WEST, ALONG THE WEST LINE OF SAID PROPOSED CITY PARK AND THE EAST RIGHT-OF-WAY LINE OF SAID INDIAN RIVER DRIVE, A DISTANCE OF 290.00 FEET TO A POINT; THENCE NORTH 82°03'57" EAST, A DISTANCE OF 387.85 FEET TO A POINT ON THE EAST LINE OF SAID PROPOSED CITY PARK; THENCE SOUTH 18°44'13" EAST, ALONG THE EAST LINE OF SAID PROPOSED CITY PARK, A DISTANCE OF 176.43 FEET TO A POINT; THENCE SOUTH 47°28'56" WEST, A DISTANCE OF 45.03 FEET TO A POINT; THENCE SOUTH 67°24'18" WEST, A DISTANCE OF 340.59 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.100 ACRES OF LAND MORE OR LESS.
FLOOD ZONE: THIS PROPERTY LIES IN FLOOD ZONE(S) "X", "AE ELEVATION 8" AND "VE ELEVATION 8", ACCORDING TO FLOOD INSURANCE RATE MAP (FIRM) PANEL 12111C0179 G, MAP REVISED NOVEMBER 4, 1992.
ZONING: C-6
LAND USE: OSR - RECREATION OPEN SPACE
SETBACKS & DIMENSIONAL CRITERIA: FRONT = 25' SIDE = 10' REAR = 15' MAX. BLDG. HEIGHT = 45' MAX. BLDG. COVERAGE = 50%
STORMWATER MANAGEMENT: SITE'S EXISTING STORMWATER MANAGEMENT SYSTEM WHICH CONSISTS OF AN ONSITE DRY RETENTION & SWALE SYSTEM, WILL CONTINUE TO PROVIDE WATER QUALITY AND STORM ATTENUATION. THE STORMWATER MANAGEMENT SYSTEM COMPLETES WITH CITY OF FORT PIERCE WATER MANAGEMENT DEPARTMENTS AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S (SFWMD) STANDARDS AND SPECIFICATIONS AND IS PROPOSED TO REMAIN IN PLACE.

- LEGEND**
- EXISTING ELECTRIC TRANSFORMER
 - EXISTING ELECTRIC SERVICE
 - EXISTING LIGHT POLE
 - EXISTING PULL BOX
 - EXISTING PALM TREE
 - EXISTING OAK TREE
 - EXISTING TREE TO BE REMOVED / RELOCATED
 - EXISTING STRUCTURE TO BE REMOVED
 - PROPOSED CONCRETE PAVEMENT
 - PROPOSED PAVER WALKWAY

LAND USE TABLE			
EXISTING LAND USE:	SQ. FT.	ACRES	% OF SITE
TOTAL LEASE SITE AREA:	91,473	2.10	100.00%
BUILDINGS:	9,900	0.23	10.82%
SIDEWALKS/CONCRETE:	8,609	0.20	9.41%
TOTAL IMPERVIOUS AREA:	18,509	0.42	20.23%
TOTAL PERVIOUS AREA:	72,964	1.68	79.77%
IMPERVIOUS TO BE REMOVED:			
BUILDINGS:	4,806	0.11	5.25%
SIDEWALKS/CONCRETE:	7,973	0.18	8.72%
TOTAL IMPERVIOUS TO BE REMOVED:	12,779	0.29	13.97%
PHASE I IMPERVIOUS ADDITIONS:			
BUILDINGS:	5,431	0.12	5.94%
SIDEWALKS/CONCRETE:	11,716	0.27	12.81%
TOTAL IMPERVIOUS TO BE ADDED:	17,147	0.39	18.74%
PHASE II IMPERVIOUS ADDITIONS:			
BUILDINGS:	4,192	0.10	4.58%
SIDEWALKS/CONCRETE:	294	0.01	0.32%
TOTAL IMPERVIOUS TO BE ADDED:	4,486	0.10	4.90%
PROPOSED LAND USE (BUILD-OUT):			
	SQ. FT.	ACRES	% OF SITE
TOTAL LEASE SITE AREA:	91,473	2.10	100.00%
BUILDINGS:	14,717	0.34	16.09%
SIDEWALKS/CONCRETE:	12,646	0.29	13.83%
TOTAL IMPERVIOUS AREA:	27,363	0.63	29.91%
TOTAL PERVIOUS AREA:	64,110	1.47	70.09%

SITE PLAN SUBMITTAL	
ISSUE DATE:	REVISION DATE:
DECEMBER 15, 2010	
	DESCRIPTION

SPRINGBOARD
 architecture • communication • design
 24 Terminal Way, Pittsburgh, PA 15219
 Tel: 412.390.4040 Fax: 412.390.0240
www.springboarddesign.net

Sustainable Engineering & Design, LLC
 Consulting Civil Engineers
 PO Box 2247, Vero Beach, FL 32961-2247
 O: (772) 257-3032 F: (772) 257-3033
 Florida Board of Professional Engineers Authorization # 28157
www.SED-eng.com
 David L. Phillips, P.E.
 Florida Reg. No. 98732

COPYRIGHT:	PROJECT NO.	SHEET NO.	DRAWN BY:
© 2010 SPRINGBOARD ARCHITECTURE	SD0258	1/10	JLW
PROJECT TITLE:	SHEET TITLE:		

BACKUS MUSEUM EXPANSION AND RENOVATION PHASE I
 500 North Indian River Drive
 Fort Pierce, FL, 34950
 for A.E. Backus Museum & Gallery

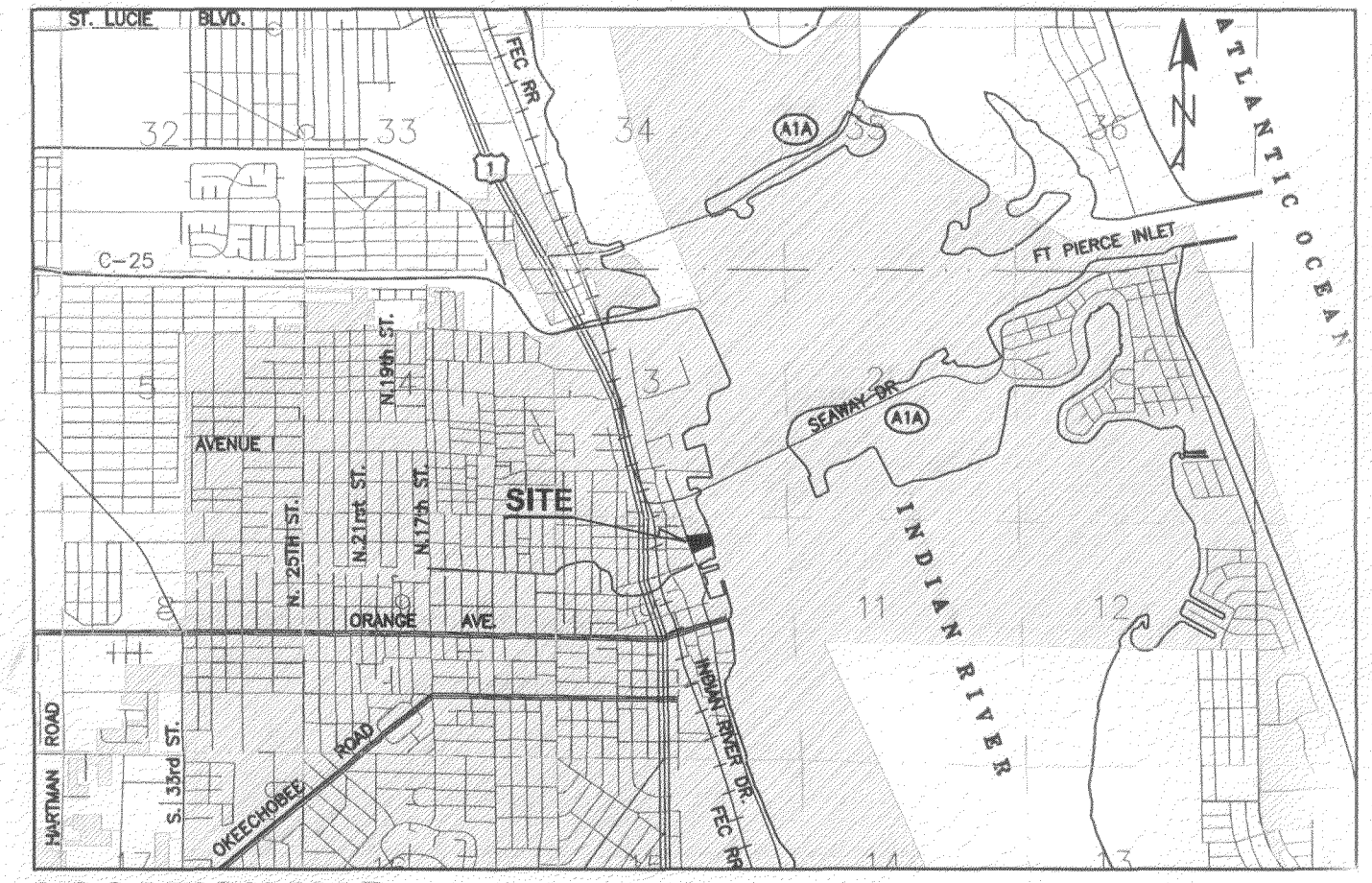
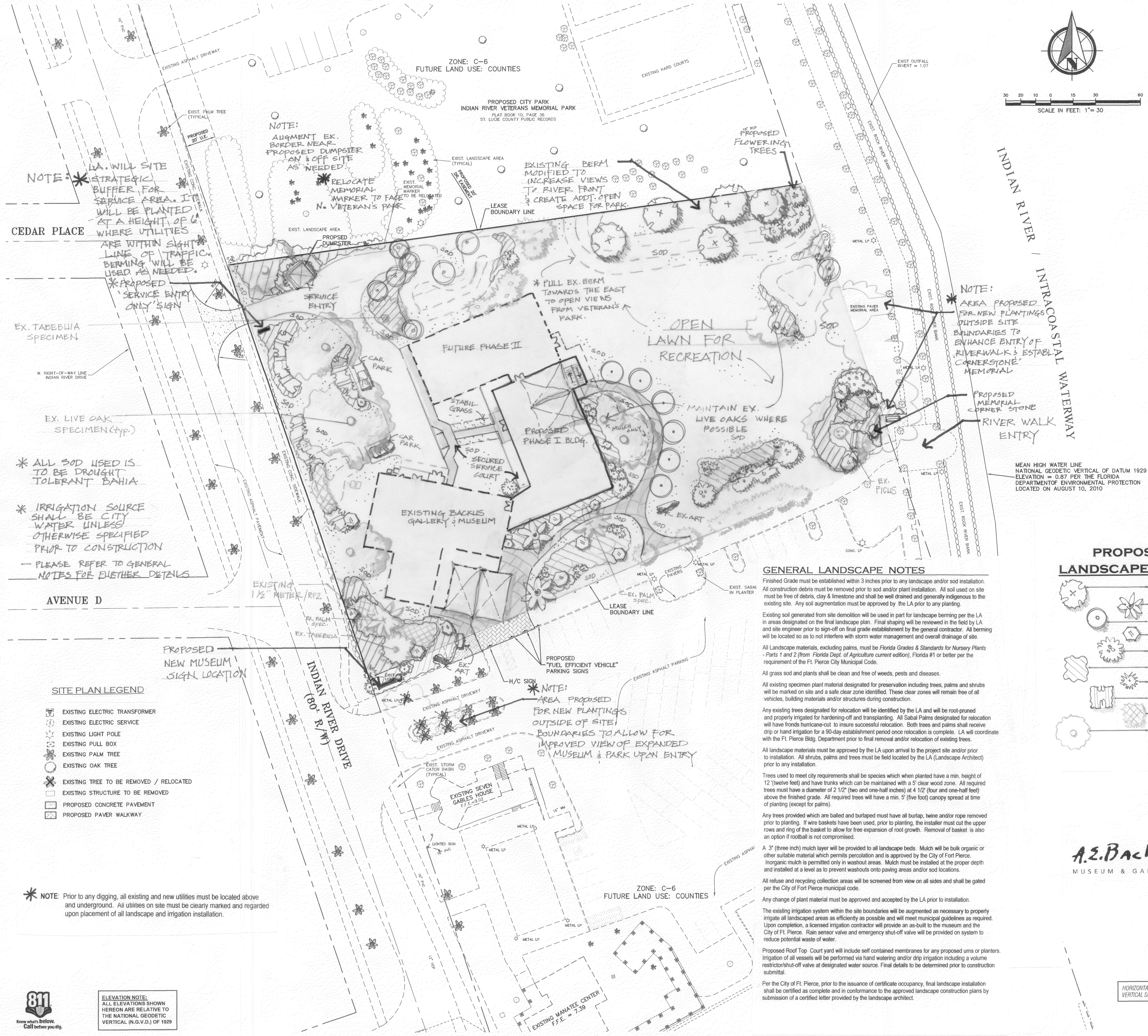
SITE PLAN

C.1

ELEVATION NOTE:
 ALL ELEVATIONS SHOWN HEREON ARE RELATIVE TO THE NATIONAL GEODETIC VERTICAL (N.G.V.D.) OF 1929



HORIZONTAL SCALE: 1" = 30'
 VERTICAL SCALE: AS NOTED

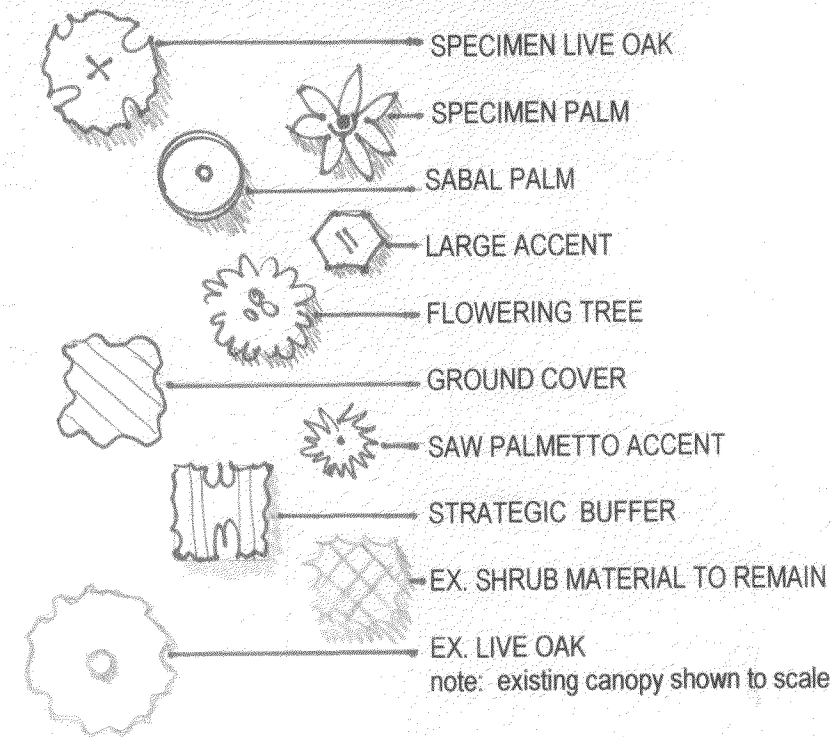


LOCATION MAP
N.T.S.

PRELIMINARY PLANT PALETTE

TREES			
Live Oak	<i>Quercus virginiana</i>	Frangipani	<i>Plumeria</i> spp.
Yellow Tabebuia	<i>Tabebuia argentea</i>	Winter Cassia	<i>Senna bicapsularis</i>
Royal Poinciana	<i>Delonix regia</i>	Sweet Acacia	<i>Acacia farnesiana</i>
Glaucous Cassia	<i>Senna surattensis</i>	Silver Buttonwood	<i>Conocarpus erectus</i>
PALMS			
Sabal Palm	<i>Sabal palmetto</i>	Medjool Palm	<i>Phoenix dactylifera</i>
Silver Thatch Palm	<i>Coccothrinax argentea</i>	African Oil Palm	<i>Elaeis guineensis</i>
Saw Palmetto	<i>Serenoa repens</i>	European Fan Palm	<i>Chamaerops humilis</i>
Lady Palm	<i>Rhapis excoisii</i>	Bismarck Palm	<i>Bismarckia nobilis</i>
Sylvester Palm	<i>Phoenix sylvestris</i>		
GROUND COVER / SHRUBS			
Dwarf Fakahatchee	<i>Tripsacum floridanum</i>	Muhly Grass	<i>muhlenbergia capillaris</i>
Cocoplum	<i>Chrysobalanus icaco</i>	Dwarf Jatropha	<i>Jatropha integerrima 'compacta'</i>
Saw Palmetto	<i>Serenoa repens</i>	Wax Myrtle	<i>Myrica cerifera</i>
Adam's Needle	<i>Yucca smalliana</i>	Silver Buttonwood	<i>Conocarpus erectus var. sericeus</i>
Pittosporum	<i>Pittosporum tobira</i>	Dwarf Firebush	<i>Hamelia palenisi 'compacta'</i>
Aloe	<i>Aloe 'Cynthia Giddy'</i>	Century Plant	<i>Furcraea gigantea</i> spp.
Bromeliad	<i>Bromeliad</i> spp.	African Bulbine	<i>Bulbine frutescens - Orange and Yellow</i>
Red Flagjack Plant	<i>Kalanchoe luciae</i>	Ficus Green Island	<i>Ficus microcarpa 'Green Island'</i>
Sand Cordgrass	<i>Spartina bakeri</i>	Dwarf Carissa	<i>Carissa microcarpa 'Emerald Blanket'</i>

PROPOSED LANDSCAPE LEGEND



GENERAL LANDSCAPE NOTES

Finished Grade must be established within 3 inches prior to any landscape and/or sod installation. All construction debris must be removed prior to sod and/or plant installation. All soil used on site must be free of debris, clay & limestone and shall be well drained and generally indigenous to the existing site. Any soil augmentation must be approved by the LA prior to any planting.

Existing soil generated from site demolition will be used in part for landscape berms per the LA in areas designated on the final landscape plan. Final shaping will be reviewed in the field by LA and site engineer prior to sign-off on final grade establishment by the general contractor. All berming will be located so as to not interfere with storm water management and overall drainage of site.

All landscape materials, excluding palms, must be Florida Grades & Standards for Nursery Plants - Parts 1 and 2 (from Florida Dept. of Agriculture current edition), Florida #1 or better per the requirement of the Ft. Pierce City Municipal Code.

All grass sod and plants shall be clean and free of weeds, pests and diseases.

All existing specimen plant material designated for preservation including trees, palms and shrubs will be marked on site and a safe clear zone identified. These clear zones will remain free of all vehicles, building materials and/or structures during construction.

Any existing trees designated for relocation will be identified by the LA and will be root-pruned and properly irrigated for hardening-off and transplanting. All Sabal Palms designated for relocation will have fronds hurricane-cut to insure successful relocation. Both trees and palms shall receive drip or hand irrigation for a 90-day establishment period once relocation is complete. LA will coordinate with the Ft. Pierce Bldg. Department prior to final removal and/or relocation of existing trees.

All landscape materials must be approved by the LA upon arrival to the project site and/or prior to installation. All shrubs, palms and trees must be field located by the LA (Landscape Architect) prior to any installation.

Trees used to meet city requirements shall be species which when planted have a min. height of 12 (twelve feet) and have trunks which can be maintained with a 5' clear wood zone. All required trees must have a diameter of 2 1/2" (two and one-half inches) at 4 1/2" (four and one-half feet) above the finished grade. All required trees will have a min. 5' (five foot) canopy spread at time of planting (except for palms).

Any trees provided which are balled and burlapped must have all burlap, twine and/or rope removed prior to planting. If wire baskets have been used, prior to planting, the installer must cut the upper rows and ring of the basket to allow for free expansion of root growth. Removal of basket is also an option if rootball is not compromised.

A 3" (three inch) mulch layer will be provided to all landscape beds. Mulch will be bulk organic or other suitable material which permits percolation and is approved by the City of Fort Pierce. Inorganic mulch is permitted only in washout areas. Mulch must be installed at the proper depth and installed at a level as to prevent washouts onto paving areas and/or sod locations.

All refuse and recycling collection areas will be screened from view on all sides and shall be gated per the City of Fort Pierce municipal code.

Any change of plant material must be approved and accepted by the LA prior to installation.

The existing irrigation system within the site boundaries will be augmented as necessary to properly irrigate all landscaped areas as efficiently as possible and will meet municipal guidelines as required. Upon completion, a licensed irrigation contractor will provide an as-built to the museum and the City of Ft. Pierce. Rain sensor valve and emergency shut-off valve will be provided on system to reduce potential waste of water.

Proposed Roof Top Court yard will include self contained membranes for any proposed urns or planters. Irrigation of all vessels will be performed via hand watering and/or drip irrigation including a volume restrictor/shut-off valve at designated water source. Final details to be determined prior to construction submittal.

Per the City of Ft. Pierce, prior to the issuance of certificate occupancy, final landscape installation shall be certified as complete and in conformance to the approved landscape construction plans by submission of a certified letter provided by the landscape architect.

NOTE: LA WILL SITE STRATEGIC BUFFER FOR SERVICE AREA. IT WILL BE PLANTED AT A HEIGHT OF 4' WHERE UTILITIES ARE WITHIN SIGHT LINE OF TRAFFIC. BERMING WILL BE USED AS NEEDED.

NOTE: AREA PROPOSED FOR NEW PLANTINGS OUTSIDE SITE BOUNDARIES TO ENHANCE ENTRY OF RIVERWALK & ESTABLISH CORNERSTONE MEMORIAL

NOTE: ALL SOD USED IS TO BE DROUGHT TOLERANT BAHIA

NOTE: IRRIGATION SOURCE SHALL BE CITY WATER UNLESS OTHERWISE SPECIFIED PRIOR TO CONSTRUCTION

NOTE: PLEASE REFER TO GENERAL NOTES FOR FURTHER DETAILS

- SITE PLAN LEGEND**
- EXISTING ELECTRIC TRANSFORMER
 - EXISTING ELECTRIC SERVICE
 - EXISTING LIGHT POLE
 - EXISTING PULL BOX
 - EXISTING PALM TREE
 - EXISTING OAK TREE
 - EXISTING TREE TO BE REMOVED / RELOCATED
 - EXISTING STRUCTURE TO BE REMOVED
 - PROPOSED CONCRETE PAVEMENT
 - PROPOSED PAVER WALKWAY

NOTE: Prior to any digging, all existing and new utilities must be located above and underground. All utilities on site must be clearly marked and regarded upon placement of all landscape and irrigation installation.

ELEVATION NOTE:
ALL ELEVATIONS SHOWN
HEREON ARE RELATIVE TO
THE NATIONAL GEODETIC
VERTICAL (N.G.V.D.) OF 1929



SITE PLAN SUBMITTAL

ISSUE DATE: OCTOBER 29, 2010 REVISION DATE: DESCRIPTION:

SPRINGBOARD
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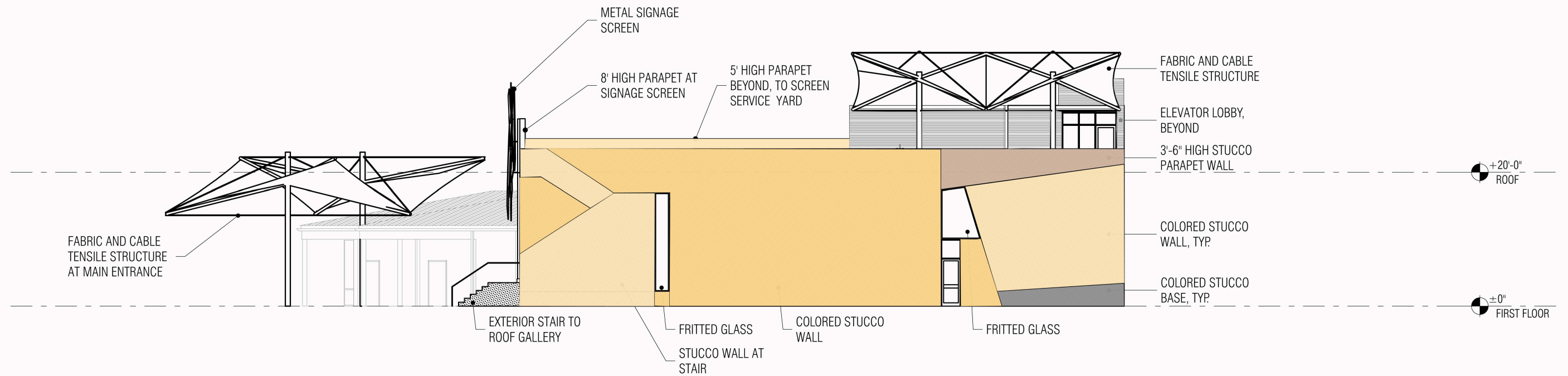
COPYRIGHT: 2010 SPRINGBOARD ARCHITECTURE Date: 12/10/2010 30 SCALE Drawn by: LRN

**BACKUS MUSEUM
EXPANSION AND
RENOVATION PHASE I**

500 North Indian River Drive
Fort Pierce, FL, 34950
for A.E. Backus Museum & Gallery

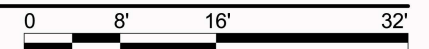
Conceptual
Landscape Plan

HORIZONTAL SCALE: 1" = 30'
VERTICAL SCALE: AS NOTED



EAST ELEVATION

SCALE: 1/16" = 1'-0"



EAST ELEVATION

BACKUS MUSEUM EXPANSION AND RENOVATION PHASE I

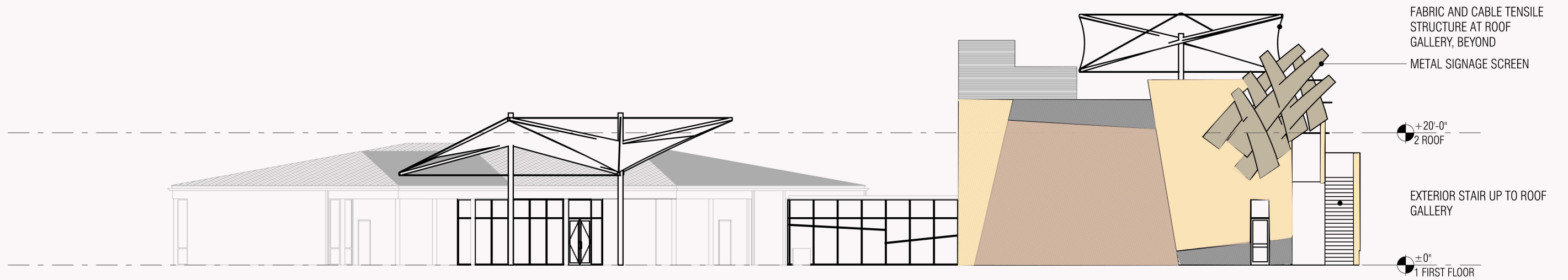
A.E. Backus Museum & Gallery
 Fort Pierce, FL 34950
 SB0258

SD.20

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15 OCTOBER 2010



FABRIC AND CABLE TENSILE
STRUCTURE AT ROOF
GALLERY, BEYOND
METAL SIGNAGE SCREEN

+20'-0"
2 ROOF

EXTERIOR STAIR UP TO ROOF
GALLERY

±0"
1 FIRST FLOOR

SOUTH ELEVATION

SCALE: 1/16" = 1'-0"



SOUTH ELEVATION

**BACKUS MUSEUM EXPANSION AND
RENOVATION PHASE I**

A.E. Backus Museum & Gallery
Fort Pierce, FL 34950
SB0258

SD.19

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15 OCTOBER 2010