



THE SUNRISE CITY
FORT PIERCE
CITY ATTORNEY'S OFFICE *Florida*

TO : Rebecca Grohall, AICP
FROM : Benjamin Bryan, City Attorney *BBB*
RE : Supplemental Revocable Encroachment Permit
DATE : December 14, 2018

The attached Permit have been approved as to Legal Form and Correctness.

BB/mm

cc: Nicholas C. Mimms, P.E., City Manager

Received
DEC 14 2018
City of Fort Pierce
City Manager's Office

OK
[Signature]
12/14/18



CITY ATTORNEY USE ONLY

Date Received:	
Assigned To:	
File:	
Due Date:	
Hours:	

RECEIVED
 DEC 13 2018
 BY _____

REQUEST FOR LEGAL SERVICES

To: CITY ATTORNEY *BFB*

SUBMITTED BY: REBECCA GROHALL, AICP *[Signature]*

CITY MANAGER AUTHORIZATION: NICHOLAS C. MIMMS, P.E., CITY MANAGER *NCM*

RE: SUPPLEMENTAL REVOCABLE ENCROACHMENT PERMIT

DATE: DECEMBER 13, 2018

Received
 DEC 13 2018
 City of Fort Pierce
 City Manager's Office

Service Required: (please circle or underline)

<u>Review Documents</u>	<u>Draft Document</u>	Written Opinion Requested
Attend Meetings	<u>Advise</u>	Other: _____

Upon review and/or "Approval as to Form and Correctness," the Department submitting the RLS is responsible for placement of any related item on a Commission or Board Agenda.

1. Brief statement of the nature of the request or problem: (Provide description of the issue and what is being requested of the City Attorney's office.)

Request to review the draft document (drafted by Speedy Fee) to extend the existing encroachment behind Sailfish Brewery at 130 N 2nd Street.

2. Discussion of the implications and the possible impact if not apparent from preceding information: (Discuss any issues related to the underlying matter to assist with the City Attorney's analysis.)

The City in previous years approved a revocable encroachment for the building for a loading dock at the rear of the property that is not contained within their property. They are asking for an extension of the length of that to accommodate a large grain silo that would be outside of their property line.

If legal is amenable to the form and correctness of the agreement, we will start routing it through the Technical Review Committee for department comments.

CITY ATTORNEY USE ONLY			
Routed for Review	Date	Response Deadline	Response

FEE, YATES & FEE, PLLC

A Partnership of Professional Corporations

ATTORNEYS AT LAW

SINCE 1905

HISTORIC POPPELL HOUSE

426 AVENUE A

FORT PIERCE, FLORIDA 34950

FEE & FEE, PLLC
FRANK H. FEE, III
FRANK "HANK" FEE, IV
E. CLAYTON YATES, P.A.
E. CLAYTON YATES

Writer's Email:
ffee@feeyateslaw.com

FRED FEE (1888-1939)
FRANK FEE (1913-1983)

TELEPHONE
(772) 461-5020
FACSIMILE
(772) 468-8461

November 28, 2018

Rebecca Grohall, Planning Director
City of Fort Pierce
100 North U.S. Highway 1
Fort Pierce, Florida 34950
Via Email: rgrohall@city-ftpierce.com

RE: Supplemental Revocable Encroachment Permit

Dear Ms. Grohall:

As invited to do by Linda Cox, I am transmitting a Supplemental Revocable Encroachment Permit to expand the prior permit issued to Kraaz & Kraaz Finance, LLC, to include a 5.8' x 12' concrete slab encroachment for silo storage. The terms of the Supplemental Revocable Permit are precisely the same as those included by Mr. Messer in the earlier document.

At your convenience I would appreciate you processing this Supplemental Permit for execution by the Mayor. By copy of this message, including the Supplemental Permit, interim City Attorney Buck Bryan is kept informed and he is asked to proof the document and approve it as to form.

Thanks to both of you for your assistance.

Very truly yours,



Frank H. Fee, III

FHF:llb

Enclosure

cc: Ben L. Bryan, Jr., Esq. via

Email: mmcclendon@city-ftpierce.com

Prepared by and when recorded return to:
Frank H. Fee, III, Esq.
Fee, Yates & Fee, PLLC
426 Avenue A
Fort Pierce, Florida 34950
Telephone: 772-461-5020

Parcel ID Number: 2410-503-0055-000-9

Property Legal Description: AARON LEE'S MAP OF FORT PIERCE BLK G N 95 FT OF LOTS 1 AND 2 AND ALL LOT 3 (MAP 24/10B) (OR 3818-2574)

Site Address: 130 N 2nd St., Fort Pierce, FL 34950

Present Owner(s) of Record: Kraaz & Kraaz Finance Inc

SUPPLEMENTAL REVOCABLE ENCROACHMENT PERMIT

City of Fort Pierce

THIS SUPPLEMENTAL REVOCABLE ENCROACHMENT PERMIT ("Supplemental Permit") is issued by the City of Fort Pierce, a Florida municipal corporation ("City"), to Kraaz & Kraaz Finance, LLC ("Permittee"). This Supplemental Permit expands the permit for encroachment heretofore granted by the City for Permittee to maintain and utilize a loading dock, recorded in O.R. Book 4206, Page 2993 of the Public Records of St. Lucie County, Florida, as depicted on Exhibit "A" attached hereto ("Original Permit"). This Supplemental Permit extends the area allocated to Permittee by an additional 5.8' x 12' concrete slab adjacent to the East building wall, permitting such slab to encroach in, over, upon or under the City's property for the additional purpose of installing and maintaining silo(s) for the storage of vegetative material utilized in the brewing process. The Supplemental Permit area is further depicted on Exhibit "A" and is for the benefit of Permittee's property located at street address 130 North 2nd Street, Fort Pierce, Florida 34950, and more fully described as follows:

The North 95 feet of Lots 1 & 2 and all of Lot 3, Block G, AARON LEE'S MAP OF FORT PIERCE, FLORIDA, according to the plat thereof as recorded in Plat Book 1, Page 189, of the Public Records of St. Lucie County, Florida

This Supplemental Permit is subject to the following requirements, conditions, restrictions, limitations and obligations (all further references to "Permit" shall refer to both the original Permit and the Supplemental Permit):

1. ENCROACHMENT. Permittee shall maintain for its use only those improvements that are depicted and more fully described in the attached Exhibit "A" for the purpose of using and maintaining a loading dock and for the installation of storage silo(s), which encroach upon City's existing property.
2. TERM/REVOCATION. This Permit shall run with the land and the terms and conditions set forth herein, and all of the duties and liabilities created hereby, shall be a benefit to and a burden upon the owners and occupants of the land, their assigns, and their successors in interest. The permission granted by City for shared use of the existing described lands *is subject to revocation* by City upon written notice to the property owner of record, as listed in the public

tax records. Revocation is effective at the time the written notice is issued. Furthermore, this Permit neither conveys to Permittee any right, title or interest in or to any of the legal or equitable property rights of City, nor serves as City's abandonment of its rights in and to the property being encroached upon.

If City exercises its right to revoke this Permit and provides Permittee with written notice of such revocation, Permittee and/or any successors, assigns or future holders of interest in the land shall be responsible for the removal of the encroachment(s), obstruction(s), or structure(s) and the restoration of the terrain, at Permittee's sole cost and expense, within thirty (30) days of Permittee's receipt of City's written notice of revocation, unless the emergency of the situation requires the removal of the encroachment to be accomplished in a shorter period of time. Said written notice of City's revocation of this Permit shall be made by certified mail, return receipt requested, hand-delivery or personal service. In the event that removal of the encroachment(s) and restoration are not accomplished within thirty (30) days after Permittee's receipt of City's notice of revocation, City shall be hereby authorized to remove the encroachment(s). Permittee agrees to immediately reimburse City for any and all costs incurred for said removal and restoration. The City shall have the right to make an assessment against the real property and collect the costs of removal and restoration. The City shall have the right to make an assessment against the real property and collect the costs of removal and restoration in the same manner as general taxes are collected under state and local laws.

3. INDEMNIFICATION. Permittee releases, waives, relinquishes, discharges, holds harmless, and will indemnify City, its officers, elected officials, employees, agents, successors and assigns, from and against any and all claims, actions, damages, costs, losses, expenses, causes of action, demands and liabilities of any nature and character whatsoever, that Permittee may have, known or unknown, arising in any manner from or related to Permittee's construction, maintenance, repair, removal, or utilization of the above-described encroachment(s). The types of claims, actions, causes of action, demands and liabilities that are released, waived discharged, relinquished, and will be indemnified herein include, but are not limited to, claims for any future revocation of this Permit by City, or acts of Permittee's contractors, agents, employees, members, invitees, and consultants. Further, Permittee understands that this release, hold harmless and indemnification agreement detailed in this paragraph shall inure to the benefit of City, its officers, elected officials, employees, agents, successors, and assigns, and that it shall bind Permittee and Permittee's heirs, legal representatives, members, assigns and successors in interest.

4. PRIORITY OF USE. This Permit is made subordinate to the right of City to use said property area for any purpose. It is understood and agreed that if City subsequently determines, in its sole discretion, to use or occupy the area of the encroachment, then the encroachment hereby authorized may be modified or removed completely. The public use and/or condition of the encroachment area shall be restored by spreading material uniformly over the site, and seed and sod as necessary, at Permittee's sole cost and expense, and to the satisfaction of the Public Works Director/City Engineer or City Manager. City's decision as to the necessity of restoring such public use, occupancy, or improvements shall be final and binding upon Permittee and Permittee's heirs, legal representatives, members, assigns and successors in interest.

5. NO PRECEDENT ESTABLISHED. This Permit is issued with the understanding that any action herein is not to be considered as establishing a precedent, as to the utility or the

acceptability, of any permit to any other or future situation. Each approval of a Revocable Encroachment Permit will be determined on a case-by-case basis.

6. PERMITEE'S ACCEPTANCE OF PERMIT TERMS. As evidenced by the attached Exhibit "B," which is incorporated herein, Permittee agrees to and accepts the above terms, conditions and restrictions of this Revocable Encroachment Permit and acknowledges that said terms, conditions and restrictions shall run with Permittee's real property and be binding upon Permittee's heirs, legal representatives, members, assigns, and successors in interest.

CITY:

Signed in the Presence of:

By: _____
Linda Hudson, Mayor

Witness
Print Name: _____

Witness
Print Name: _____

APPROVED AS TO FORM AND
CORRECTNESS:

By Ben L. Bryan, Jr.
Ben L. Bryan, Jr., Interim City Attorney

STATE OF FLORIDA
COUNTY OF ST. LUCIE

I HEREBY CERTIFY that on this ____ day of _____, 2018, Linda Hudson as Mayor of the City of Fort Pierce, a Florida Municipal corporation, and authorized to act on behalf of the City of Fort Pierce, who is personally known to me, executed the foregoing instrument for the purposes therein expressed.

Witness my hand and official seal at City Hall, in the County and State last aforesaid on this ____ day of _____, 2018.

Notary SEAL/STAMP

Notary Signature

Notary Printed Name

Notary Public, State of _____
My Commission expires _____

LEGAL DESCRIPTION:

NORTH 95 FEET OF LOTS 1 AND 2, AND ALL OF LOT 3, BLOCK G, AARON LEE'S MAP OF FORT PIERCE, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGE 189, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY.

CERTIFIED TO:

M&T BANK, ITS SUCCESSORS AND ASSIGNS
KRAAZ AND KRAAZ FINANCE, LLC
ALLAN FALK P.A.
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

FLOOD ZONE:

ZONE: B
PANEL: 12111C-0179J-J
EFFECTIVE: 2/16/2012

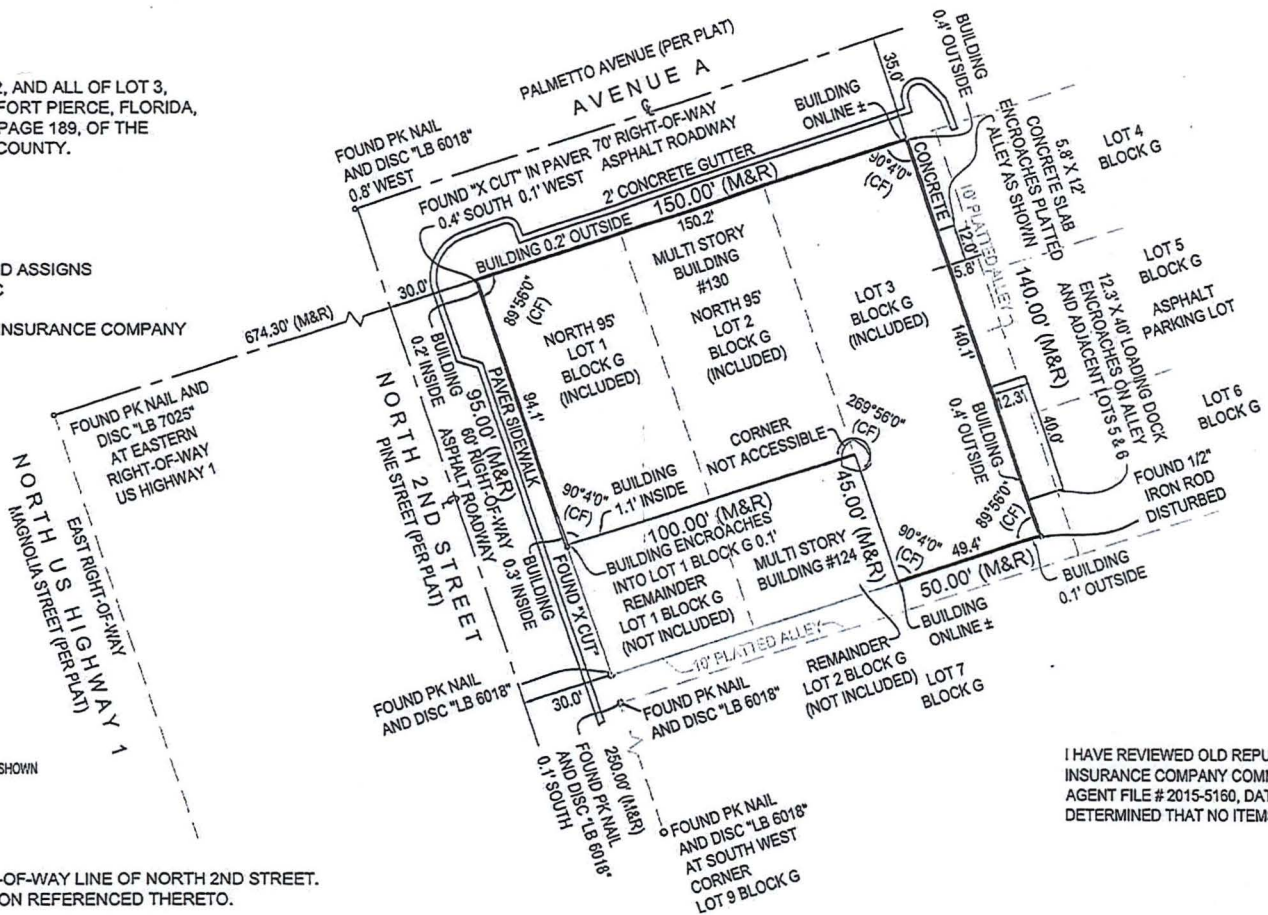
SITE ADDRESS:

130 NORTH 2ND STREET
FORT PIERCE, FL
34950

SURVEY NOTES:

- BUILDING ENCROACHES BEYOND BOUNDARY LINE AS SHOWN

BEARING REFERENCE: NORTH RIGHT-OF-WAY LINE OF NORTH 2ND STREET.
ALL ANGLES SHOWN HEREON REFERENCED THERETO.



AERIAL PHOTOGRAPH
#101-10-SCALE



I HAVE REVIEWED OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY COMMITMENT, SCHEDULE B-2, AGENT FILE # 2015-5160, DATED 10/16/2015 AND HAVE DETERMINED THAT NO ITEMS WERE PLOTTABLE.

LB 8111

NEXGEN
SURVEYING, LLC

1973 PGA BLVD SUITE C
NORTH PALM BEACH, FL 33408
www.NexGenSurveying.com

PHONE: 561.508.6272
FAX: 561.508.6309

Boundary Survey
of
130 NORTH 2ND STREET
FORT PIERCE, FLORIDA 34950
for
KRAAZ AND KRAAZ FINANCE, LLC

C - CALCULATED	ASPHALT	⊕ CENTER LINE
R - RECORD	CONCRETE	☐ CATCH BASIN
M - MEASURED	PAVER/BRICK	⊕ FIRE HYDRANT
P - PLATTED	WOOD	⊕ LIGHT POLE
WM - WATER METER	UTILITY POLE	⊕ WELL
xxx - TOPOGRAPHIC ELEVATION	⊕ MANHOLE	⊕ WATER VALVE

Clyde McNeal

Digitally signed by Clyde McNeal
DN: cn=Clyde McNeal,
o=NexGen Surveying, LLC,
ou=Licensed Surveyor,
email=clyde@nexgensurveying.com, c=US
Date: 2015.12.09 21:29:37 Z

REVOCABLE ENCROACHMENT PERMIT

Property Owner of Record: Kraaz & Kraaz Finance Inc
Property Address: 130 N 2nd St., Fort Pierce, FL 34950

Exhibit "B"

Permittee hereby represents that it is the owner of the property for which the Revocable Encroachment Permit ("Permit") is being issued, and after reviewing the terms, conditions and restrictions of the Permit, accepts this Permit for which it has applied, and that it has read and knows the contents thereof, and for itself and its heirs, assigns and successors in interest, as owners or occupants of the parcel of land therein described, agree to abide by and be bound by all of the terms, conditions, restrictions and provisions thereof.

If Permittee is a corporation or a limited liability company, Permittee also warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Florida, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Permittee has been duly authorized to act for and bind Permittee.

Dated this 25 day of March, 2018.⁹

Signed in the Presence of:

Nicole Friedrich

Witness
Print Name: Nicole Friedrich

Rebecca Weachrowsk

Witness
Print Name: Rebecca Weachrowsk

PERMITEE:

By: [Signature]
Print Name: Hans Kraaz

STATE OF FLORIDA
COUNTY OF ST. LUCIE

I HEREBY CERTIFY that on this 25 day of March, 2018,⁹ before me, an officer duly authorized to administer oaths and take acknowledgments, appeared Hans Kraaz, personally known to me or proven by producing the following identification DL to be the person described in and who executed the foregoing instrument freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal in the County and State last aforesaid on this 25 day of March, 2018.⁹

Notary SEAL/STAMP

[Signature]
Notary Signature
Nikki Bates
Notary Printed Name

Notary Public, State of FL
My Commission expires 9/10/20

