

RESOLUTION NO. 2001 - 9 |

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING A 2ND EXTENSION OF LEASE AGREEMENT BETWEEN ST. JOHNS COUNTY AND COWBOYS, INC.

WHEREAS, the County and Tenant executed a Lease Agreement dated April 28, 1981, which provided for an initial term of ten (10) years, commencing May 1, 1981 and expiring May 1, 1991 leasing County right-of-way on Dondanville Road; and

WHEREAS, the County and Tenant entered into an Extension of Lease Agreement dated May 16, 1991 for the extended term of ten (10) years which terminates May 1, 2001; and

WHEREAS, the Tenant has requested the County extend the terms of the lease for a period of five (5) years in the 2nd Extension of Lease Agreement attached hereto as Exhibit "A".

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

Section 1. The above Whereas are incorporated as findings of fact.

Section 2. The 2nd Extension of Lease Agreement in substantially the form attached hereto and incorporated by reference is hereby approved for execution by the Board of County Commissioner Chairperson.

Section 3. The Clerk is instructed to file the 2nd Extension of Lease Agreement in the Official Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 8th day of May, 2001.

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

By: Mary F. Kohnke
Mary F. Kohnke, Chair

ATTEST: Cheryl Strickland, Clerk

Yvonne King
Deputy Clerk

EXHIBIT "A" TO RESOLUTION

2nd EXTENSION OF LEASE AGREEMENT

THIS EXTENSION of Lease Agreement is executed this ___ day of May, 2001, by **ST. JOHNS COUNTY**, a political subdivision of the State of Florida, (the "County"), and **COWBOYS, INC.** a Florida corporation, ("Tenant").

WHEREAS, the County and Tenant executed a Lease Agreement dated April 28, 1981 (the "Lease") which provided for an initial term of ten (10) years, commencing May 1, 1981 and expiring May 1, 1991 attached hereto as Exhibit "A"; and

WHEREAS, the County and Tenant entered into an Extension of Lease Agreement, dated May 16, 1991 for the extended term of ten (10) years which terminates May 1, 2001, attached hereto as Exhibit "B"; and

WHEREAS, the Tenant has requested the County extend the terms of the lease for a period of five (5) years.

NOW, THEREFORE, for and in consideration of the sum of \$10.00 paid by Tenant to the County, the parties agree as follows:

1. The term of the Lease shall be extended by a period of five (5) years (the "Extended Term", as identified in paragraph #3 in the Extension of Lease Agreement attached hereto), commencing May 1, 2001 and terminating on April 30, 2006, on the same terms and conditions as contained in the Lease, with the exception of the annual rental.
2. During the Extended Term the tenant shall pay the County as rent, the sum of \$6,659.00 per year, payable in equal monthly installments of \$554.92 each, commencing May 1, 2001 and continuing on the first day of each month during the Extended Term.
3. The Tenant shall have the option of extending the Lease for one (1) additional five (5) year terms beyond the Extended Term on the same terms and conditions as contained in the Lease, with the exception of the annual rental which shall be mutually agreed upon by the parties.
4. All other terms and provisions contained in the Lease not in conflict with the terms of this Extension Agreement shall remain in full force and effect during the Extended Term.

IN WITNESS WHEREOF, the parties have executed this instrument under seal on the day and year first above written.

**Signed, sealed and delivered
in the presence of:**

ST. JOHNS COUNTY, FLORIDA

Print Witness: _____

BY: _____
Mary F. Kohnke, Chair

Print Witness: _____

State of Florida
County of St. Johns

The foregoing instrument was acknowledged before me this ____ day of _____, 2001 by Mary F. Kohnke, Chairperson of the Board of County Commissioners, St. Johns County, Florida, who is personally known to me.

Notary

**Signed, sealed and delivered
in the presence of:**

COWBOYS, INC.

Print Witness: _____

By: _____
Print Name: _____
Title: _____

Print Witness: _____

State of Florida
County of St. Johns

The foregoing instrument was acknowledged before me this ____ day of _____, 2001 by _____ its _____ of Cowboys, Inc., who is personally known to me or who has produced a driver's license as identification.

Notary

EXHIBIT "A"

LEASE

THIS LEASE, made and executed in duplicate this 28th day of April, 1981, by and between ST. JOHNS COUNTY, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the County, and Cowboy's Inc., hereinafter referred to as the Tenant.

WHEREAS, it has come to the attention of the Board of County Commissioners of the chaotic parking situation on the property more particularly described below, and

WHEREAS, said parking is disruptive to the neighborhood and the patrons of COWBOYS, INC., and

WHEREAS, this lease was bid pursuant to Florida Statute 125.35 and the Tenant was proven to be the highest and best bidder, and

WHEREAS, in consideration of the respective agreements of the parties herein contained and pursuant to Florida Statute 125.35, the County does hereby lease, without warranty, to the Tenant, its interest in the following described real estate in the County of St. Johns, State of Florida, to-wit:

All that part of Dondanville Road, a sixty (60) foot County Road right-of-way being West of the extended West line of Lot 25, Block 2, Williamson Manor, as in map book 8, page 64 and East of the waters of San Julian Creek.

1. TO HAVE AND TO HOLD the above described real estate and premises for a term of 10 years, commencing on the first day of June, 1981, the Tenant paying therefore a minimum rental of \$ 300.00 per year, payable in continuous monthly installments of \$ 25.00, commencing May 1, 1981, rent for the first month being hereby acknowledged. ~~The County shall have the option to extend the term of this lease for two additional five-year periods.~~

2. The property is to be used for a public parking lot. No vehicle shall be permitted to remain more than three and a half hours during a 24 hour period. Tenant shall make the following improvements more particularly described in Exhibit "A" attached hereto and made a part hereof, and maintain the property. In the event said improvements are not completed within a period of one year of the execution of this lease, this lease may be terminated by the County and the County may re-advertise bids. Tenant shall not charge patrons for parking service.

3. This lease shall be nonexclusive and Tenant will allow the continuance of any use or access by the general public which have become customary on the property. Moreover, Tenant agrees to allow the County to grant any utility easements during the period of this lease.

4. Tenant agrees to hold the County harmless for any and all zoning, building, use, or other governmental restrictions which may frustrate the intention of this lease.

5. Tenant shall have the right to sublet or assign this lease, with the written consent of the County, said consent shall not be unreasonably withheld.

6. In the event Tenant is unable to obtain all initial licenses and permits necessary to be issued by any governmental agency, state, local or federal for the anticipated expansion of the restaurant, then this lease shall terminate at Tenant's option upon sixty (60) days notice, with County retaining the rental payments previously paid.

7. All improvements placed on the premises shall become the property of the County upon the termination of this lease or any renewal thereof. However, the County may at its option, require the Tenant to remove at Tenant's expense any or all of said improvements and to restore the property to its original condition upon termination or expiration of this lease, or any renewals thereof.

8. Tenant reserves the right to terminate this lease by giving the County a sixty (60) day notice in writing.

9. Any sale of the majority of the stock, now held by Tenant, to other persons shall be construed to be an assignment of this lease, and the Tenant shall obtain written consent of the County prior to any change in the control of said corporation.

10. It is hereby determined by the County that the above described leased property will not be necessary for County purposes during the term of this lease, and this lease is granted pursuant to the authority of Section 125.35, Florida Statutes.

11. As a condition of this lease, Tenant will keep said premises in a sanitary and clean condition.

12. The Tenant shall not be permitted to:

a. Use said premises in any manner that will obstruct or interfere with or encroach on the walks or approaches to said premises.

b. To make or suffer any waste or unlawful, improper or offensive use of said property, and not to sell or otherwise dispose of said premises except as herein provided.

13. The County and its agents, servants and employees shall have and hereby reserve the right and privilege, at all reasonable time during the term of this lease, to enter upon said leased premises and examine and inspect the same.

14. The Tenant, in consideration of the premises and the rate of rent herein provided for, does hereby release and discharge and further will indemnify and save harmless the said County from any and all claims for loss or damage caused by fire, theft or robbery to any and all property kept or stored in or about the leased premises, whether owned by the Tenant or there by its permission or sufferance, including any and all liability and claims for personal injuries or property damages during the existence of this lease, arising in any manner by virtue of the use or occupancy of such premises by the Tenant; that the Tenant does hereby further agree to indemnify and save harmless the County from liability for damage, injury or death to any person or persons arising out of the use of said property, or from the lack of keeping same in good repair and order, or from the negligent operation of same, or for any other cause of any nature whatsoever, providing such damage, injury or death is not due to County's own negligence.

15. The Tenant in carrying on its business on said premises will conform to and comply with all laws, orders and regulations of the federal, state, county and municipal governments and all of their departments and bureaus, and further will pay all public utility service bills as the same shall be incurred and become due in connection with the operation of the business, and the occupancy of said premises by the Tenant, during the term of this lease, except as above stated.

16. Tenant hereby pledges and assigns to the County all of the furniture, fixtures, goods and chattels of said Tenant, which are or may be brought onto or put in said leased premises, as security for the payment of the rent

herein reserved, and agrees that the said lien may be enforced by distress, foreclosure or otherwise, at the election of County, provided, however, that any equipment placed on the premises, which is subject to retain title contracts, shall be excepted from the provisions of this paragraph.

17. If Tenant shall fail to pay to County any sum of money or any part thereof herein specified, and the same shall remain unpaid for fifteen days, or if Tenant shall fail to comply with or abide by any of the other provisions or stipulations in this lease on its part, and such default continues for fifteen days, the County may, at its option, exercise any one or more of the following remedies:

- a. County may declare as immediately due and payable the whole rent remaining unpaid for the entire term covered by this lease, and the same shall thereupon become immediately due and payable, anything herein to the contrary notwithstanding.
- b. County may terminate this lease and may reenter and take possession of said demised premises.
- c. County may reenter and take possession of said demised premises and sublet the same for the account of Tenant, applying all rents received by it as a result of any such subletting to the credit of Tenant on all rents thereafter accruing, but such reentry and subletting by County shall not relieve Tenant of its obligation to pay the rents herein provided for, but Tenant shall remain liable therefore and shall pay to County as and when the installments of rent herein provided for shall become due, the difference herein agreed to be paid by the Tenant and the rent received by County as a result of such subletting.

18. The waiver of County of any such breach hereof on the part of the Tenant, or the indulgence by County as to the payment or time of payment of any installment of rent, at any time or from time to time shall not be deemed, held or construed as a waiver of any subsequent breach, or imply any further indulgence.

19. In the event it shall be necessary for County to place this lease in the hands of an attorney at law to collect any of said rent in default, or to institute any suit by reason of any default hereunder by Tenant, Tenant shall pay to County all costs and expenses thereby incurred by County, including reasonable attorney's fees.

20. In the event of the breach of any of the covenants of this lease by the Tenant during the term hereof and failure of the Tenant to rectify same

within 10 days, after written notice thereof by the County, then in such event the County, at its option, may declare the lease forfeited and immediately recover possession thereof, under the terms as set forth in Paragraph 17 hereof.

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

Signed, sealed and delivered
in the presence of:

ST. JOHNS COUNTY, FLORIDA

[Signature]
Mrs. Hazel Foster
As to County

By: [Signature]
Chairman, Board of County Commissioners
of St. Johns County, Florida

Attest: CARL "BUD" MARKEL, CLERK
BY: Deputy Clerk, Board of County Commissioners
of St. Johns County, Florida

[Signature]

Signed, sealed and delivered,
in the presence of:

[Signature]
[Signature]

By: [Signature]
Its President

Attest: [Signature]
Its Secretary

STATE OF FLORIDA
COUNTY OF ST. JOHNS

Before me personally appeared _____ and _____
known to me to be the persons who executed the same, and
acknowledged before me the said instrument is the free act and deed of said persons
for the purposes therein expressed.

WITNESS my hand and official seal this 15th day of May 1991.

[Signature]
NOTARY PUBLIC, State of Florida at large
My commission expires: Notary Public, State of Florida at large
My Commission Expires Jan. 4, 1992
Bonded by American Fire & Casualty Company

EXHIBIT "A"

Providing for forty-five (45) parking spaces along either side of Dondanville Road, each space being eighteen feet by twenty-four feet (18' 24') and also providing for a sixty foot (60') right-of-way, the planting of shrubs, the laying of coquina shell along said right-of-way, and erection of planting areas and lighting fixtures all of which are more particularly described in that certain drawing attached to the original and duplicate original lease which can be inspected in the office of the Clerk of the County Commission, St. Johns County Courthouse, St. Augustine, Florida.

EXHIBIT "B"

EXTENSION OF LEASE AGREEMENT

THIS EXTENSION of Lease Agreement is executed this 16th day of May, 1991, by ST. JOHNS COUNTY, a political subdivision of the State of Florida, (the "County"), and COWBOYS, INC. a Florida corporation, ("Tenant").

WHEREAS, the County and Tenant executed a Lease Agreement Dated April 28, 1981 (the "Lease") which provided for an initial term of ten (10) years, commencing May 1, 1981 and expiring May 1, 1991; and

WHEREAS, the County and Tenant have agreed to extend the term of the lease by a period of ten (10) years.

NOW, THEREFORE, for and in consideration of the sum of \$10.00 paid by Tenant to the County, the parties agree as follows:

1. The term of the Lease shall be extended by a period of ten (10) years (the "Extended Term"), commencing May 1, 1991 and terminating on May 1, 2001, on the same terms and conditions as contained in the Lease, with the exception of the annual rental.

2. During the Extended Term, the Tenant shall pay the County as rent, the sum of \$1,500.00 per year, payable in equal monthly installments of \$125.00 each, commencing May 1, 1991 and continuing on the first day of each month during the Extended Term.

3. The Tenant shall have the option of extending the Lease for two (2) additional five (5) year terms beyond the Extended Term on the same terms and conditions as contained in the Lease, with the exception of the annual rental which shall be mutually agreed upon by the parties.

4. All other terms and provisions contained in the Lease not in conflict with the terms of this Extension Agreement shall remain in full force and effect during the Extended Term.

IN WITNESS WHEREOF, the parties have executed this instrument under seal on the day and year first above written.

Signed, sealed and delivered in the presence of:

Wenne Carter

Connie E. McDaniel

As to County

ST. JOHNS COUNTY, FLORIDA

By Donald H. Herald
Chairman, Board of County Commissioners, St. Johns, Florida

ATTEST:
Carl "Bud" Markel, Clerk

By Amy B. Mulligan
Deputy Clerk

Signed, sealed and delivered in the presence of:

Amy B. Mulligan

Wenne Carter
As to Cowboys, Inc.

COWBOYS, INC.
By Carl Markel
Its President

ATTEST:
By W. White
Its Secretary

STATE OF FLORIDA

COUNTY OF ST. JOHNS

I HEREBY CERTIFY that on this day before me, the undersigned authority, personally appeared Donald H. Herald Chairman of the Board of County Commissioners, St. Johns County, Florida, Lessor, known to be to be the person described herein and who executed the foregoing instrument, and he acknowledged before me that he executed the same for the uses and purposes therein expressed, and same is the act and deed of said political subdivision.

WITNESS my hand and official seal in the County and State last aforesaid this 16 day of May, 1991.

Diane K. Baer
Notary Public, State of Florida
at Large
My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 20, 1993

STATE OF FLORIDA

COUNTY OF ST. JOHNS

I HEREBY CERTIFY that on this day before me, the undersigned authority, personally appeared Scott Singleton, President of Cowboys, Inc., a Florida corporation, Lessee, known to be to be the person described herein and who executed the foregoing instrument, and he acknowledged before me that he executed the same for the uses and purposes therein expressed, and same is the act and deed of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 16 day of May, 1991.

Derek Boyce

Notary Public, State of Florida
at Large

My commission expires: 17 Commission Expires June 20, 1993